

BPB Appeal No. A1181

IN THE MATTER OF

the Building Act 2004 (the Act)

AND

IN THE MATTER OF

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **the Appellant** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	22 July 2013 at [omitted]
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Appeal heard by:	Colin Orchiston Brian Nightingale Dianne Johnson	Presiding Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (Support) [omitted] (Witness for Appellant) [omitted] (Witness for Appellant) The Registrar's delegate, Sharn Christensen, was available by telephone but was not required to participate.
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Carpentry Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 18 March 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 23 April 2013 the Appellant lodged an appeal to the Board against the Registrar’s decision.

2.0 Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.² The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵ however the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Carpentry Licence.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 2: Demonstrate knowledge of current building and trade practice.*
- Competency 3: Carry out planning and scheduling for carpentry work.*
- Competency 4: Carry out carpentry work.*

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁷. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 23, the following from the Assessor's recommendations:

"...

- *[The Appellant]* has been in the building trade for 25 years.
- From 1988 to 1990 *[the Appellant]* has worked as a Hammer Hand and then progressed to Carpenter.
- From 1990 to present *[the Appellant]* is a self employed builder carrying out work on both residential and alteration projects. His role includes carrying out the carpentry and site supervision work.
- Over the past five years the projects *[the Appellant]* has undertaken have included decks, internal fit-outs and maintenance work for [omitted].
- Two of the original projects *[the Appellant]* provided had an insufficient scope of work to cover all of the competencies.
- The original Project 1 had minimal structural and weathertightness work and was completed four and a half years ago. This project may have been considered if *[the Appellant]* could have supplied a significant project completed within the last five years.
- The assessor requested two new Carpentry projects, which *[the Appellant]* was able to supply. However, both projects were outside the five year time frame.
- All of *[the Appellant's]* referees were supportive of his application. The new referees that were provided could not confirm *[the Appellant's]* current competency.
- The assessor considered a Face to Face interview; however *[the Appellant]* did not have any recent relevant projects to supply.
- *[The Appellant]* has answered all of the regulatory questions correctly and has a good understanding of NZS 3604."

The basis for the Registrar's decision to decline the application.

4.3 The Registrar concluded:

"24. *I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*

25. *I reviewed the assessors report and [the Appellant's] application.*

⁷ clause 10 and 11 of the Rules

26. *I based my decision on the assessor's recommendation, for the reasons set out above.*
27. *[The Appellant] provided insufficient recent evidence, within the last five years, to demonstrate repeatability of performance to fulfil the scope of the Carpentry licence class.*
28. *Therefore, I found there was insufficient evidence that [the Appellant] demonstrated Competency 3: Carry out planning and scheduling for Carpentry work."*

5.0 Appellant's Submissions

- 5.1 The Appellant submitted a substantial body of documentation and then spoke to it and explained the relevance of it at the hearing.
- 5.2 In response to the Board's questions on the extent to which the Appellant carried out or supervised the work, the witnesses were able to confirm the Appellant's involvement.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Carpentry Licence:

Carpentry Licence Competency:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 6.2 The Board then considered Competencies 2, 3 and 4 for a Carpentry Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.4 The Board was satisfied that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Carpentry Licence.

7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act the Board has resolved to reverse the Registrar's decision and license the Appellant with a Carpentry Licence.**
- 7.2 **The Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.**

8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 The Board having considered the circumstances of this appeal directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this 30th day of July 2013

Colin Orchiston
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Act:

“330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
 (a) *decline to licence the person as a building practitioner;*
 ...
- (2) *A person may appeal to a District Court against any decision of the Board—*
 (a) *made by it on an appeal brought under subsection (1);*
 ...

331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.”*