

BPB Appeal No. A1190

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: | 24 February 2014 at [omitted] |
|-------------------------------|-------------------------------|

| | |
|------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Appeal heard by: | Chris Preston, Deputy Chairman Brian Nightingale, Board Member Colin Orchiston, Board Member Mel Orange, Board Member |
|------------------|--------------------------------------------------------------------------------------------------------------------------------|

| | |
|-----------------|-----------------|
| Appearances by: | [The Appellant] |
|-----------------|-----------------|

1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry Licence and a Site Area of Practice (AOP) 1 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 2 August 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 9 September 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 Appellant had appealed on both Carpentry and Site AOP 1 Licence. The Board clarified with him whether he was proceeding with both. The Appellant advised that his appeal was limited to Carpentry only. The appeal proceeded on this basis.
- 3.3 The appeal seeks the following relief:

The grant of a Carpentry Licence

- 3.4 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.

¹Incorporating amendments for 2008, 2009 and 2010.

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

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

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.

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 25, the following from the Assessor's recommendations:

- "[The Appellant] has been predominantly employed in the industry in various roles, both part time and full time, since 1986.
- Before the assessment, the assessor requested two referees in addition to the referee provided.
- [The Appellant] provided two additional referees, but stated that he did not have much interaction with them, and was answerable only to [omitted].
- While the application indicates that [the Appellant] was the site carpenter, he was not confirmed to have a lead role carrying out carpentry work, or a supervisory role in the projects provided.
- [Omitted] independently identified [the Appellant's] role on site as that of a hammerhand.
- [Omitted] worked on all 3 projects with [the Appellant]. In Projects 1 and 3 where [omitted] was referee, he confirmed [the Appellant] worked in a team with a small number of labourers. However [omitted] interpreted the plans, guided best practice, gave direction and controlled the site schedule, subtrades and inspection process.
- He believes [the Appellant] is proficient but needs more experience before undertaking the scope of work required from a carpenter.
- His two other referees both confirmed that [omitted] took the lead in the respective projects. They believed [the Appellant] appeared to be competent and working under his own supervision but could not give specific detail supporting this.
- [The Appellant] was not perceived as a carpenter or site supervisor by any of his referees.

⁷ clause 10 and 11 of the Rules

- [The Appellant] had sufficient knowledge of the regulatory environment to satisfy Competency 1.
- [The Appellant] did not provide projects that had sufficient evidence to meet competency 2, 3 or 4 for Carpentry or of competency 2, 3, 4, or 5 for Site 1. He did not show that he has carried out the scope or level of work consistently, and with a level of autonomy that would support minimum competency.
- There is insufficient evidence of [the Appellant] demonstrating his knowledge of current building trade practice or planning, scheduling and carrying out carpentry work.
- He has not shown sufficient evidence to support his application of technical knowledge of construction methods, nor organising, managing or supervising building projects or personnel.”

4.3 The Registrar concluded:

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

- “I am delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessors report and [the Appellant's] application.
- I based my decision on the assessor's recommendation, for the reasons set out above.
- The evidence provided was not sufficient to demonstrate [the Appellant's] competence to meet the minimum requirements of the Carpentry and Site 1 licence classes.
- [The Appellant] did not provide sufficient evidence demonstrating his knowledge of current building trade practice or planning, scheduling and carrying out carpentry work. Nor did he provide sufficient evidence of his application of technical knowledge of construction methods, or the organising, managing or supervising building projects or personnel.”

5.0 Appellant's Submissions

- 5.1 The Appellant attended the hearing and provided two statutory declarations from support persons and had available working drawings from projects he had worked on.
- 5.2 The Board asked questions of the Appellant covering Competencies 2, 3, and 4 of the Carpentry Licence and the Appellant made submissions in support of his appeal.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the licences:

Carpentry Licence Competencies:

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.

Board's findings

6.4 The Board concluded that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy 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 licence [the Appellant] with a Carpentry Licence.

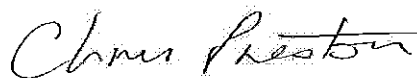
7.2 The Board directs the Registrar to issue a Carpentry Licence to [the Appellant] as soon as practicable.

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, 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 day of 5 March 2014



Chris Preston
(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."*