

BPB Appeal No. A1194

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

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| Date and location of hearing: | 17 February 2014 at [omitted] |
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| Appeal heard by: | Chris Preston, Deputy Chairman Catherine Taylor, Board Member Richard Merrifield, Board Member Mel Orange, Board Member |
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| Appearance by: | [The Appellant] |
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a 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 21 May 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 26 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 Schedule¹³.
- 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

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

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 22, the following from the Assessor's recommendations:

- "[The Appellant] completed his cabinet making apprenticeship between 1965 and 1969 before then working as a builder with a few different employers until 1978. In 1978 he became self-employed as [omitted], doing alteration and addition work, as well as pre-purchase house inspections. In 2003 to the present, while still self-employed he is now registered as [omitted], and is contracting to [omitted] alongside altering his own home.
- Each of [the Appellant's] projects had been carried out on his own home, the first starting in 1993. They showed a range of work including foundations, framing, weathertightness which took place in the first 2 years, and internal work which continued until 2011. [The Appellant] was team leader/supervisor and leading hand carpenter on these projects. He took care of site supervision and safety, project managing, and arranging materials and council inspections.
- The bulk of the work in Project 1 sits outside of the 5 year timeframe to show current competency.
- No further information was requested by the assessor, as [the Appellant] had previously confirmed with MBIE that he had no other recent projects to supply.
- [The Appellant's] first referee is a trade qualified carpenter, but had not worked with him for the past 15 years and could not confirm his current carpentry competency. As his neighbour, this referee could confirm that he had carried out the work on these building alterations.
- [The Appellant's] second referee is a plumber who has worked with him since approximately 1983. He is supportive of [the Appellant's] application, and considers him to have good technical knowledge and organisational skills.
- [The Appellant] has an acceptable level of regulatory knowledge due to his occupation as a building surveyor."

4.3 The Registrar concluded:

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

- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessor's report and [the Appellant's] application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant provided documentation in support of his appeal. At the commencement of the hearing, the Appellant provided a further two references.
- 5.2 The Appellant gave a detailed account of his work history and outlined his skills and experience within the carpentry trade and across a wide range of projects – including projects where he undertook actual carpentry work. This entailed extensive experience overseas, the building of complete houses in the [omitted] region, and major renovations of his own home.
- 5.3 The Appellant also spoke to the documentation he provided and answered questions in relation to weathertight homes and his extensive experience as an assessor. The Appellant also answered questions from the Board on current building practices.

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 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. This competency 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 considered how the Appellant's experience related to current building technology and compliance documents. For previous appeals, the Board has considered experience that may have fallen outside the five-year guidelines relied upon by the Registrar. The Board has also previously considered the experience an appellant has in related fields of work. The Board accepted that, in this appeal, the Appellant's earlier experience was helpful in assessing his current competence.

Board's findings

- 6.5 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 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 27 February 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."