

BPB Appeal No. A1214

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:	31 March 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Brian Nightingale, Board Member Colin Orchiston, Board Member Mel Orange, Board Member
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Appearances by:	[The Appellant] [Omitted] (Witness)
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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 25 November 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 18 December 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 the grant of 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

4.0 Registrar’s report

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

- 4.1 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 20, the following from the Assessor's recommendations:
- "[The Appellant] was able to answer the regulatory knowledge questions, and displayed a good understanding of the regulatory environment, including the LBP scheme.
 - [The Appellant] provided two projects that fell outside of the accepted guideline for recent competency. He was not able to provide projects of a sufficient scope which fell inside the last five years. Instead he stated that he wanted to continue with the provided projects.
 - Because the two projects [the Appellant] provided are unable to show current competency there is a lack of evidence to support [the Appellant's] competency in current building and trade practice; carrying out planning and scheduling for carpentry work; or carrying out a sufficient level of carpentry work in the current New Zealand context.

- 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 assessors 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."

5.0 Appellant's Submissions

- 5.1 At the hearing, the Appellant provided photographs of work that he had carried out.
- 5.2 Through questioning from the Board, the Appellant explained his work experience within the industry; including the construction of 15 spec homes. In the past five years the Appellant has worked mainly on small renovations and alterations.

6.0 Board's consideration

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

⁷ clause 10 and 11 of the Rules

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.
- 6.4 The Board considered that the Appellant's extensive experience in building spec homes demonstrated competence in carpentry work.

Board's findings

- 6.5 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, coupled with his work experience in related areas outside the construction industry, were helpful in assessing his current competence.

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 4 April 2014



Chris Preston
(Deputy Chairman)

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."*