

**BPB Appeal No. A1296**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	1 November 2017 - Auckland
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Appeal heard by:	Chris Preston Mel Orange Robin Dunlop Faye Pearson-Green
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Appearances by:	The Appellant
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## 1.0 Introduction

- 1.1 The Appellant of Auckland applied for a Carpentry Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 5 September 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 19 September 2017 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.<sup>2</sup> The minimum standards are set out as “Competencies” in Schedule 1 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 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 & 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.*

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>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 recommendation<sup>7</sup>. 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 **18**, the following from the Assessor's recommendations:

- The Appellant last carried out building work in New Zealand roughly 10 years ago.
- The projects and referees provided relate to building work in Australia and no inspections were undertaken of this work.
- The referees were supportive of licensing (noting that one was a family member who did not undertake site visits during the work) and confirmed the applicant was undertaking work in Australia.
- There is insufficient evidence of the appellants work and understanding under NZ Building Regulations in the last 5 years to recommend licensing.

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."

#### **5.0 Appellant's Submissions**

5.1 The Appellant included with his appeal copy of the registered building inspectors report on a project submitted in the appellants assessment. Copy of plans from a current project in New Zealand, copy of plans of house built by the appellant and photographs were submitted on the day.

5.2 The Appellant appeared with a support person and has two referees noted to be contacted by phone – [Omitted] LBP and [Omitted] LBP. Both referees gave evidence as regards recent building work carried out by the Respondent in New Zealand.

5.3 The Board asked questions of the Appellant and received oral submissions which included detail on the building work he has carried out in New Zealand since returning from Australia.

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<sup>7</sup> clause 10 and 11 of the Rules

## 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 & 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 & 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 6<sup>th</sup> day of November 2017



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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.”*