

BPB Appeal No. A1315

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:	12 March 2019 Wellington
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Appeal heard by:	Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding) Bob Monteith, LBP Carpentry and Site AOP 2 Robin Dunlop, Retired Professional Engineer David Fabish, LBP, Carpentry Site AOP 2
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Appearances by:	[the Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of [Omitted] applied for a Carpentry License 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 7 January 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 24 January 2019 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 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 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 License

- 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 License.

Carpentry License 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 18, the following from the Assessor's recommendations:

- The Appellant has a relevant NZ Qualification; however since qualifying in 2007 he hasn't worked in NZ. Neither referee could confirm observation of the applicant carrying out a full scope of carpentry work under the NZ building regulations, within the last 5 years.
- The applicant did have a reasonable understanding of the regulatory environment, however when pressed further he was limited in his knowledge around current trade practice. The applicant may be able to up skill himself with current trade practice by seeking employment in NZ for a time.

4.3 The Registrar concluded:

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

- *Vincent Kneebone was delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*
- *Mr Kneebone reviewed the assessors report and [the Appellant's] application.*
- *Mr Kneebone based his decision on the assessor's recommendation and the reasons set out above. He 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

- 5.1.1 His experience in relation to competencies 2 3 and 4;
- 5.1.2 Evidence of Qualifications;
- 5.1.3 Evidence of Safe Working Practice;
- 5.1.4 Evidence of Carpentry company formation;
- 5.1.5 Evidence of appellants carpentry work; and
- 5.1.6 Written references.

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.

⁷ clause 10 and 11 of the Rules

- 6.2 The Board then considered Competencies 2, 3 and 4 for a Carpentry License. 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 has provided evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3 and 4 for a Carpentry License.
- 6.5 The Board noted that whilst the Appellant had not carried out or supervised building work in New Zealand for a number of years he did, through questioning from the show sufficient knowledge, skill and experience to meet competencies 2, 3 and 4. In particular the Board found that the Appellant understood the relevant current Building Code compliance and reference documentation and that his past experience in New Zealand and overseas was sufficient to enable him to carry out work to the standards required under the Building Code.

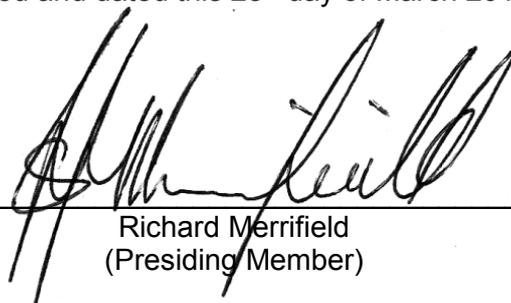
7.0 Board's Decision

- 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 License.**
- 7.2 The Board directs the Registrar to issue a Carpentry License 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 28th day of March 2019



Richard Merrifield
(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.”*