

**BPB Appeal No. A1299**

**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:	13th February 2018 Wellington
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Appeal heard by:	Richard Merrifield Mel Orange Robin Dunlop Cath Taylor
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Appearances by:	[the Appellant]
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## 1.0 Introduction

- 1.1 [the Appellant] of Lower Hutt 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 24 October 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 21 November 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 Schedule1<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 1, 2 & 4 for a Carpentry Licence.

### **Carpentry Licence Competencies:**

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- Competency 2: Demonstrate knowledge of current building and trade practice.*
- 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 three contracted referees were unable to confirm that [the Appellant] had carried out the full scope of Carpentry work without direct supervision.
- The questionnaire was not sufficiently answered and [the Appellant]'s regulatory knowledge was unsatisfactory when questioned.
- [the Appellant] demonstrated limited knowledge of current trade practice and the LBP scheme.

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 a cover letter and a number of references with his appeal. The references spoke highly of his capability and supported his appeal.

5.2 The Appellant provided photos of past work to the Board at the hearing.

5.3 The Board asked questions of the Appellant.

#### **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 3: Carry out planning and scheduling for carpentry work.*

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

- 6.2 The Board then considered Competencies 1, 2 & 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 **did not provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2 & 4 for a Carpentry Licence.
- 6.5 Whilst the appellant demonstrated some of the performance indicators in Competencies 2 and 4, he lacked the regulatory knowledge and understanding to satisfy competency 1.
- 6.6 The Board recommends that the Appellant obtains and studies the Understanding Regulatory Environment booklet (to be re-published as the LBP Handbook), prior to any new application for a license, or that he undertakes a course of formal study.

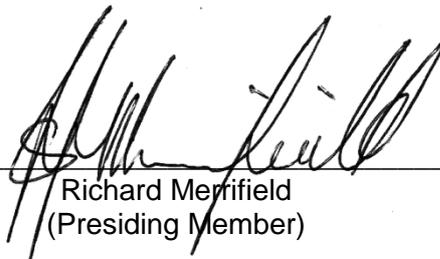
**7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [the Appellant] with a Carpentry Licence.**

**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 7th day of March 2018



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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.”*