

BPB Appeal No. A1284

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:	2 May 2017 in [Omitted]
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Appeal heard by:	Chris Preston (Board Chair) Robin Dunlop Mel Orange Bob Monteith
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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 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 16 January 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 27 March 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.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 (Competencies 1, 3, and 4)

- 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, 3 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry*
- 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 recognized qualification and has been teaching BCATS (Building, Construction and Allied Trade Skills) units for the past 6 years.*
- *The assessor did not consider his regulatory knowledge sufficient for licensing in that [the Appellant] could not adequately describe restricted building work and demonstrated a lack of knowledge of E2/AS1.*
- *The assessor considered that competency two has been met by the applicant holding a recognized qualification.*
- *The assessor contacted four referees who were each unable to confirm repetition of a sufficiently wide scope of carpentry work for [the Appellant]."*

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, and 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 submissions on how he met the missed competencies, photos of past work and plans along with his assessment report with his appeal form.

5.2 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 Competency 2 for the Carpentry licence:

⁷ clause 10 and 11 of the Rules

Licence Competencies:

Competency 2: Demonstrate knowledge of current building and trade practice

- 6.2 The Board then considered Competencies 1, 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.

Board's findings

- 6.4 The Appellant was not able to demonstrate the minimum level of understanding of the legislative and regulatory environment.
- 6.5 The Appellant also demonstrated a limited understanding of building procedures, lacked a depth of technical knowledge and had a limited understanding of Restricted Building Work.
- 6.6 The recent work undertaken by the Appellant did not demonstrate to the Board broad industry experience in the current environment and especially the changes brought into place by the 2004 Building Act. The Appellants knowledge was largely based on the 1991 Act and NZS3604:2006.
- 6.7 The Board considered the Appellant would benefit from further experience under the supervision of suitably licensed building practitioners.
- 6.8 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 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 uphold the Registrar's decision not to license Mr [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 18th day of May 2017.



Chris Preston (Board Chair)

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.”*