

BPB Appeal No. A1269

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:	9 August 2016 at Wellington
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Appeal heard by:	Richard Merrifield, Presiding Member Dianne Johnson, Board Member Robin Dunlop, Board Member Brian Nightingale, Board Member
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Appearances by:	[Omitted] (Appellant) [Omitted] (Witness) Member of the public
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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 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 11 May 2016 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 1 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- 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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *"The applicant was issued with a National Certificate in Carpentry in 2008. However, he was unable to provide adequate answers around the regulatory environment even after he was given the opportunity to study the booklet.*
- *He was able to discuss NZ3604. Though he did not demonstrate knowledge of E2 or E2/AS1 and did not know who must make sure that an application for a Building Consent is made. He also did not know what Restricted Building Work is and he was not able to provide any examples of it. Therefore competency 1 was not demonstrated.*
- *His qualification does provide evidence of his knowledge of current building and trade practice and both of his referees stated that he reads and interprets plans. As such, competencies 2 and 3 were demonstrated.*
- *[The Appellant] does have a qualification and he has some recent industry experience. Though there was insufficient evidence demonstrating that he has carried out carpentry work in the key areas of set out, structure and weatherproofing. Thus competency 4 was not demonstrated.*
- *While both referees were supportive of [the Appellant], there was insufficient evidence provided to demonstrate to that he met competencies 1 and 4. Therefore a recommendation was made to the Registrar to decline the granting of a Carpentry licence."*

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.*

⁷ clause 10 and 11 of the Rules

- *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 In the appeal application, the Appellant included a submissions bundle for the Board.
- 5.2 At the appeal hearing, the Appellant outlined his work experience for the Board. He confirmed that he has worked within the construction industry for 14 years and completed his Carpentry qualification in 2008. He advised that he worked in a carpentry team carrying out residential building work. He noted that this included renovations, extensions, and four new builds. He explained that, following an injury, he is now working for [omitted] as a Carpentry Tutor.
- 5.3 The Appellant then spoke to photographs of projects he carried out carpentry work for.
- 5.4 The Board asked questions of the Appellant to ascertain his current competence.
- 5.5 The Appellant's witness then provided a witness statement in favour of the Appellant's carpentry skills.

6.0 Board's Consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 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.*

- 6.2 The Board considered Competencies 2 and 3 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. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.

Board's findings

- 6.1 The Board considered that the Appellant met a sufficient number of the performance indicators for Competency 4 of the Carpentry Licence. However, the Board considered that the Appellant did not meet Competency 1.
- 6.2 The Board noted then that the Appellant has met 3 of the 4 Competencies but considered that he needed to further up-skill himself in Regulatory Knowledge,

in particular his responsibilities as a Licensed Building Practitioner (Competency 1), and reapply 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 and not 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 day of 10 August 2016



Richard Merrifield
(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.”