

BPB Appeal No. A1287

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:	Auckland Airport Holiday Inn – 15 th August 2017
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Appeal heard by:	Chris Preston – Board Chair Mel Orange Bob Monteith Robin Dunlop
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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 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 31 May 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 June 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 Schedule1³.
- 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, 2, 3 & 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 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 holds a recognized qualification but was not able to provide two referees who were able to confirm he had carried out the full scope of carpentry work within the last 5 years.
- The original referee number one had not worked with the Appellant for 15 years and so was replaced by a new referee.
- The replacement referee one was supportive of the Appellant becoming licensed and stated that the last time they had worked together was 2008.
- Referee two was supportive of the Appellant becoming licensed based on his knowledge of him in 2008. He also stated that the last time they worked together was 2008.
- The Appellant could not provide any referees confirming he had carried out residential building work in Australia or New Zealand in the last 9 years.
- The Assessor noted that the Appellant has worked as a Maintenance Supervisor at a Port since 2008.

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 appellants] application.
- I reviewed the assessor's report and [the appellants] 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

- 5.1.1 Opening letter
- 5.1.2 Self assessment questionnaire
- 5.1.3 NZ Cert of Due Completion of Apprenticeship in Carpentry (1992)
- 5.1.4 Site Safe Supervisor Training Certificate (2017)
- 5.1.5 NZQA Cert of Concrete Construction – Sitework (2003)
- 5.1.6 NZQA Cert of Concrete Construction – Precast Concrete (2003)
- 5.1.7 NZQA List of Standards achieved with results (2005-2007)

⁷ clause 10 and 11 of the Rules

- 5.1.8 Reference from Smithbridge Ltd (2004)
- 5.1.9 Cert as Registered Sampling Officer for Opus International (2000)
- 5.1.10 Reference from Bournville Furniture Systems (1992)
- 5.1.11 Reference from Bay Builders Ltd (1992)
- 5.1.12 Cert of Australian National Police Check (2013)
- 5.1.13 Curriculum Vitae

5.2 The Board asked questions of the Appellant and received oral submissions.

6.0 Board's consideration

6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the following Competencies for the 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 3: Carry out planning and scheduling for carpentry work.*
- Competency 4: Carry out carpentry work.*

6.2 The Board then considered Competencies 1, 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 1, 2, 3 & 4 for a Carpentry Licence.

6.5 The Board made comment to the Appellant that whilst he met the requirements for Competency 1 he would benefit from expanding his regulatory knowledge and was encouraged to do so without delay.

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.

Signed and dated this 17th day of August 2017



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.”*