

**BPB Appeal No. A1248**

**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:	Opened: 16 December 2015 at [omitted] Adjourned to:13 January 2016 by teleconference
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Appeal heard by:	Chris Preston, Chairman Robin Dunlop, Board Member Mel Orange, Board Member Brian Nightingale, Board Member (Absent on the 13 <sup>th</sup> )
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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 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 12 June 2014. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.2 On 14 July 2014 the Appellant lodged an appeal to the Board against the Registrar’s decision. This appeal was received into an inactive email address for the Building Practitioners Board. A letter of apology and acknowledgement was sent to the Appellant on 7 April 2015.
- 1.3 Due to the Appellant wishing to be heard face-to-face, his appeal was placed on hold until he was able to return to New Zealand for a hearing.
- 1.4 On 14 December 2015, the Appellant phoned the MBIE contact center to advise that he was unable to attend the hearing set down for 16 December 2015 in [omitted] due to bereavement in his family and his own current health. The Board resolved to continue with the hearing on the papers.

## 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 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 1<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 2 and 4 for a Carpentry Licence.

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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

### **Carpentry Licence Competencies:**

*Competency 2: Demonstrate knowledge of current building and trade practice.*

*Competency 4: Carry out carpentry work.*

#### **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 assessor's recommendation.

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

- *"[The Appellant] originally applied for licensing via TTMRA however the licence he holds ([omitted] Builder Low Rise) is not recognised under TTMRA, so this assessment is being completed along the qualified applicant pathway as the applicant served an apprenticeship in NZ completed in April 1976.*
- *[The Appellant] was not able to discuss NZS3604, Clause E2 of the Building Code, or the requirements of the LBP Scheme as far as responsibilities, Restricted Building Work, or other trades needing to be licensed. He was able to discuss the role of the BCA in the building process.*
- *As he has not built in NZ recently, he was not able to show that his knowledge of current building and trade practice was up to date, even though he has completed an apprenticeship in NZ. I asked him to describe the processes involved in installing a window - he said that he had seen one ready to be installed on a recent trip back here, but he wasn't able to discuss how or why it was done that way.*
- *He does read plans and take off materials lists as well as order and take delivery of those materials on site, as verified by his referees. Although the evidence of this is based on the work he does in [omitted], the processes and skills are the same as would be used here.*
- *[The Appellant] provided evidence of carrying out carpentry work on recent projects, verified by 2 referees that have worked with him on numerous other projects, but this work only aligns with the setting out on a site and structural stability of buildings in a comparison with NZ building practice. He did not provide evidence of carrying out work on the weatherproofing of a building under Clause E2 of the NZ Building Code.*

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

- *Although [the Appellant] has shown that he covers most of the Competencies in the licence class, it is not in the NZ environment under the New Zealand Building Code. He has not been able to demonstrate an acceptable knowledge of current rules or industry and trade practices, or of having built in NZ since relocating to [omitted] in 1988.*
- *The applicant indicated that he would be building in accordance with the plans and specifications attached to the work - just as he does now. He said that the reason he was applying for the licence was so that he can carry out some building work at his daughter's house in [omitted] in the coming summer."*

#### 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 Hearing and Appellant's Submissions**

- 5.1 In the appeal application, the Appellant included his [omitted] qualifications and a written response to the Board.
- 5.2 On 16 December 2015, the Board opened the "on the papers" hearing.
- 5.3 The Board was satisfied, on the basis of the papers before it, that the Appellant met the requirements for Competency 4. However, there was insufficient evidence before it to ascertain whether or not the Appellant met the requirements of Competency 2.
- 5.4 In order to make a decision, the Board resolved that they required further evidence as to whether the Appellant had knowledge of current New Zealand building practices, and in particular whether he has knowledge of NZS3604 and E2/AS1.
- 5.5 The Board resolved to adjourn the hearing pending a telephone conference being scheduled with the Appellant to allow the Board to question him on his knowledge of NZS3604 and E2/AS1.
- 5.6 A revised hearing date was set down.

- 5.7 On 13 January 2016, the Board opened the “teleconference” hearing. The subcommittee members for this resumed hearing were Chris Preston (Presiding), Mel Orange, and Robin Dunlop.
- 5.8 The Appellant outlined his work experience for the Board, and the Board asked questions of the Appellant in relation to Competency 2.

## **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 Competency:**

*Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*

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

- 6.2 The Board agreed that the Appellant met Competencies 2 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. 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 was satisfied that the Appellant met sufficient performance indicators of each Competency for the Carpentry Licence.
- 6.2 The Board strongly recommends that the Appellant continues to further his knowledge of the regulatory responsibilities of a Licensed Building Practitioner in New Zealand and that he gains a better understanding of the Building Act, the Building Code and visit the MBIE web site for the relevant guidance documents.
- 6.3 The Board also cautions the Appellant to only work within his competence and to seek advice and or guidance if and when he encounters matters which are outside of his current knowledge base.

## **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 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 13<sup>th</sup> day of January 2016



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Chris Preston  
(Chairman)

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**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.”*