

BPB Appeal No. A1266

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:	8 June 2016 at Christchurch
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Appeal heard by:	Chris Preston, Chairman Mel Orange, Board Member Robin Dunlop, Board Member Bob Monteith, Board Member
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Appearances by:	[The Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of Christchurch 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 4 June 2016. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 22 March 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, 2, 3 and 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 assessor's recommendation.

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

- *"Applicant progressed himself from being involved in commercial foundation/concrete works in Auckland to applying himself to residential construction in Christchurch.*
- *Some of the interviewed technical referees that have been within the NZ construction industry for some time or have been through a formal process of training, do not believe applicant has yet achieved a level of competency that would warrant applicant being allowed to work under his own cognisance. The one referee who supported applicant was commenting based on 2 years of EQC/insurance jobbing/repair works.*
- *During applicants interview it was apparent that certain aspects of the construction process applicant understood what was required e.g. how to prepare and install a window, how to erect and finish gib board, which frame fixings are required to meet the inspection process.*
- *However applicant could not give examples of what was in the NZS3604 or what the E2AS1 was for. Applicant could explain how to achieve a Code of Compliance and could not give examples of what work may require Resource Consent, what is Restricted Building Work and what is a Disclosure Statement. The above are examples of applicant's lack of sufficient knowledge and scope of work to meet Competencies 1, 2, 3 and 4 for the Carpentry licence class.*
- *The recommendation at this time is to decline licencing and as an assessor I agree that applicant would benefit from more time on site under the supervision of a builder who has experience in NZ construction who can assist applicant in his abilities to discern best practice."*

4.3 The Registrar concluded:

The basis for the Registrar's decision to decline the application:

⁷ clause 10 and 11 of the Rules

- *“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 In the appeal application, the Appellant included a written submission and the names of several referees.
- 5.2 At the appeal hearing, the Appellant outlined his work experience for the Board. He explained that he worked in commercial and residential construction overseas, and has been in New Zealand for almost 10 years now. He explained that his trade qualification from [omitted] was accepted in Ireland where he worked on residential roofing. He outlined the main differences between building in [omitted] and New Zealand. In the last 4 years he has been working in construction in Christchurch. He also holds a New Zealand National Certificate in Carpentry.
- 5.3 The Appellant tabled photographs of projects worked on in New Zealand.
- 5.4 The Board then questioned the Appellant on the missed Competencies.

6.0 Board’s Consideration

- 6.1 The Board considered Competencies 1, 2, 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.
- 6.2 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

- 6.3 Whilst the Appellant demonstrated that he had carried out a range of residential building work, he was unable to convince the Board that he met a sufficient number of the Performance Indicators for the four Competencies of the Licence.
- 6.4 The Board encourages the Appellant to gain further experience working alongside other licensed builders, and further his knowledge of the New Zealand regulatory framework, before reapplying for a Carpentry licence.

7.0 Board's Decision

7.1 Pursuant to s335(3) of the Act, the Board has decided 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 10th day of June 2016

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.”*