

BPB Appeal No. A1300

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:	25 January 2018 - Auckland
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Appeal heard by:	Richard Merrifield 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 [Omitted] applied for a Carpentry and Site Licence (Area of Practice (AOP) 1) 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 14 September 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 20 November 2017 the Appellant lodged an appeal to the Board against the Registrar’s decision. The Appeal was lodged outside the timeframe but an extension was granted by the Board Chair on 24 November 2017.

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 and Site Licence (AOP 1)

- 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 3 & 4 for a Carpentry Licence and Competencies 3, 4 & 5 for a Site AOP 1 Licence.

Carpentry Licence Competencies:

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

Site Licence Competencies:

Competency 3: Organise and manage building projects

Competency 4: Manage personnel

Competency 5: Provide technical supervision

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 roofing licence and was recently (2016) declined for a Carpentry and Site application. The Appellant appears to have improved his knowledge and competence in the Carpentry and Site licence classes since his previous application, but the balance of competencies have not been indicated at this time.
- The Appellant puts forwards a referee that was an Auckland Council building inspector who noted that the applicant requires more understanding of technical standards and their onsite application. According to the referee, building inspections fail under the applicants watch due to poor application of those standards.
- The Appellant appears to operate in a mentored or supervised state, with most suitably technical referees confirming that they have recently or are currently supervising and checking his work.

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 Appellant's Submissions

5.1 The Appellant submitted his appeal form but did not include any additional evidence or any submissions to support his appeal.

⁷ clause 10 and 11 of the Rules

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Carpentry and Site licences:

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.

Site Licence Competencies:

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

Competency 2: Apply technical knowledge of construction methods and Practice.

- 6.2 Under questioning from the Board on Competency 4 of the Carpentry Licence the appellant clearly lacked the knowledge required for a Carpentry Licence. After a discussion with the appellant he indicated he was 6 months into a BCITO course.
- 6.3 The Appellant agreed not to continue with the Appeal Hearing and re apply at a later date after completing further educational training and experience.

Board's findings

- 6.4 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 3 & 4 for a Carpentry and Competencies 3, 4 & 5 for a Site AOP 1 Licence.

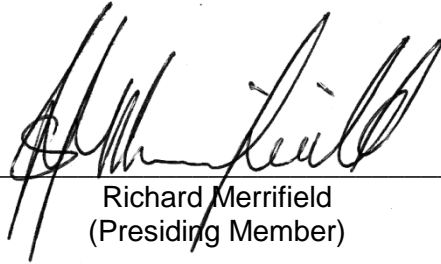
7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with Carpentry and Site AOP 1 Licences.**

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 29th day of January 2018



Richard Merrifield
(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.”*