

BPB Appeal No. A1307

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 **[Omitted]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	27 June 2018 - Christchurch
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Appeal heard by:	Richard Merrifield Mel Orange Bob Monteith Faye Pearson-Green
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Appearances by:	[Omitted] [Omitted]– witness for appellant [Omitted]– witness for appellant
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1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of [Omitted] 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 27 April 2018. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 24 May 2018 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 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 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:

- Competency 2, 3 & 4 there are some good references from both referees however they cannot confirm the appellant consistently carried out a full scope of the carpentry work to meet the carpentry licence class criteria.
- Competency 1 the assessor noted that the appellant could answer all the regulatory questions out of the booklet, but was not up to date with current practical trade knowledge as he did not know what E2/AS1 was.

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 included with his appeal application

- 5.1.1 Cover Letter
- 5.1.2 Reference from [Omitted]
- 5.1.3 Inaccuracies of the Assessment Report
- 5.1.4 Evidence of competency
- 5.1.5 References from multiple sources (unsigned)

5.2 The Appellant appeared with [Omitted] and [Omitted] witnesses for the appellant.

6.0 Board's consideration

6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the Competencies for the Carpentry licence:

⁷ clause 10 and 11 of the Rules

- 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 noted that the appellant struggled with some of the NZ building terminology but in questioning he was able to demonstrate that he had sufficient experience and knowledge to meet the performance criteria. As regards Competency 1 the Board noted the Respondent was able to explain what E2/AS1 was and the difference between an acceptable and an alternative solution whereas he was not able to do this during his initial assessment.
- 6.6 The Appellant's referees spoke highly of him and clarified some misunderstandings that arose during his initial assessment. The Board noted the designer in particular had used the Appellant to help build his own home and was prepared to mentor him and use him in future projects.

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 [Omitted] with a Carpentry Licence.**
- 7.2 The Board directs the Registrar to issue a Carpentry Licence to [Omitted] as soon as practicable.**

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 28th day of June 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.”*