

**BPB Appeal No. A1314**

**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 [REDACTED] 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:	28 February 2019 via videoconference
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Appeal heard by:	Richard Merrifield Mel Orange Faye Pearson-Green Bob Monteith
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Appearances by:	[REDACTED]
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## 1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of [REDACTED], Australia 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 22 November 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 21 December 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.<sup>2</sup> 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 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, 3 & 4 for a Carpentry Licence.

### **Carpentry Licence Competencies:**

*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.*

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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

#### 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 assessors' recommendation.

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

- The Appellant was familiar with such documents as NZS3602 and E2, however there is no evidence that he has put that theory into practice on NZ construction projects.

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 an appeal form and covering letter.

#### 6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for the Carpentry licence:

**Carpentry Licence Competency:**

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

6.2 The Board then considered Competencies 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.

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<sup>7</sup> clause 10 and 11 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3 and 4 for a Carpentry Licence.
- 6.5 The Board noted that the Appellant had knowledge and experience of building and building practices in Australia. He did not hold any Australian Licenses or qualifications but was undertaking study for and had nearly completed a Certificate in Building Construction which was a theory-based qualification.
- 6.6 In questioning the Appellant as regards his knowledge of building practices in New Zealand the Board was not satisfied that he had sufficient knowledge to meet the required competencies.
- 6.7 The Board did consider that the Appellant could most likely close the gaps of his knowledge by working under supervision in New Zealand for a short period of time. The Board recommends that he pursues this course of action before re applying.

**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 Mr [REDACTED] 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 4<sup>th</sup> day of March 2019



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Richard Merrifield

**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.”*