

BPB Appeal No. A1318

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	19 June 2019 Auckland
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Appeal heard by:	Richard Merrifield, LBP, Carpentry Site AOP 2 David Fabish, LBP, Carpentry Site AOP 2 Robin Dunlop, Retired Professional Engineer Bob Monteith, LBP Carpentry and Site AOP 2
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Appearances by:	[REDACTED] ("the Appellant") [REDACTED] [REDACTED]
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1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland applied for Carpentry and Site (Area of Practice (“AOP”) 2) Licenses 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 23 April 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 14 May 2019 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 Carpentry and Site (Area of Practice (“AOP”) 2) Licenses

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

Carpentry Licence Competencies:

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

Competency 4: Carry out Carpentry work.

Site Licence Competencies:

Competency 3: Organise and manage building projects.

Competency 4: Manage personnel.

Competency 5: Provide technical supervision.

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 **19 and 20**, the following from the Assessor's recommendations:

- In making the recommendation that [the Appellant]'s application for a Carpentry licence should be declined, the assessor noted the following:
- [The Appellant] has a background in construction but operates in an internal finishing works' niche.
- [The Appellant] has a good understanding of the overall construction process and is a competent operator in his limited scope of works.
- [The Appellant] has acknowledged that he did not demonstrate the scope and repetition required to demonstrate competency for critical elements of the Carpentry licence criteria. Specifically involving residential site set out, preparing or installing foundations, structural elements or weathertightness/cladding elements.
- In making the recommendation that [the Appellant]'s application for a Site AOP 2 licence should be declined, the assessor noted the following:
- [The Appellant] has a background in construction but operates in an internal finishing works' niche.
- [The Appellant] has a good understanding of the overall construction process and is a competent operator in his limited scope of works.
- [The Appellant]'s construction knowledge has not been practised from set out to close in stages, either in a hands on or supervisory capacity. He did, however, demonstrate a strong understanding for internal fit out and bracing elements.

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."

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant included in his appeal documentation substantial evidence of his experience in relation to the competencies that he had been declined on. He also provided evidence as to his qualifications and experience within his area of practice within the building industry.
- 5.2 The Appellant appeared with his wife/business partner, and a senior member of his management team. They supported him in his appeal and gave evidence of his company's operational systems.
- 5.3 The Board asked questions of the Appellant in relation to his written submissions on each of the competencies that he had been declined on.

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 AOP 2 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 The Board then considered Competencies 3 and 4 for a Carpentry Licence, and Competencies 3, 4 and 5 for a Site 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 3 and 4 for a Carpentry License.
- 6.5 The Appellant demonstrated an in-depth knowledge and record of experience of specific specialty area (i.e. plasterboard fixing and bracing) in relation to restricted building work. However, his knowledge and experience of what is required for a Carpentry license was insufficient, and the Appellant acknowledged this.
- 6.6 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 3, 4 and 5 for a Site AOP 2 License.

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 [REDACTED] with a Carpentry Licence.

7.2 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [REDACTED] with a Site AOP 2 License.

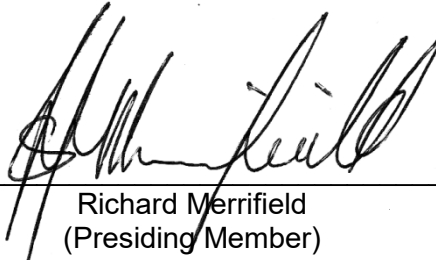
7.3 The Board directs the Registrar to issue a Site AOP 2 Licence to [REDACTED] as soon as practicable.

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 18th day of July 2019



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.”*