

**BPB Appeal No. A1321**

**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:	30 July 2019, in Auckland
Appeal heard by:	Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding) Mel Orange, Legal Member David Fabish, LBP, Carpentry Site AOP 2 Robin Dunlop, Retired Professional Engineer
Appearances by:	[REDACTED]

## 1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland 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 24 June 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 7 July 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.<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 3 and 4 for a Carpentry Licence.

### **Carpentry Licence Competencies:**

*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:

- ██████████ is still completing his training programme and needs more time to further improve his practical skills in applying technical knowledge
- The evidence at this time does not indicate the minimum standard of competency expected has been achieved to meet the licence criteria. The work submitted does not confirm a minimum of repeatability and/or meet the minimum scope of the licence criteria applied for.

4.3 The Registrar concluded:

"I have been delegated under S312 (1) to review the assessment report and make a decision about ██████████ application.

I reviewed the assessors report and ██████████ application.

I based my decision on the assessor's recommendation and 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 did not include any further information with his appeal.

5.2 The Appellant appeared. The Board provided an interpreter to assist the Board and the Respondent.

5.3 The Board asked questions of the Appellant in respect of the Respondent's building experience and competencies 3 and 4. The Appellant stated that he had been working in the building industry for about 5 years and that he had been working towards his New Zealand Certificate in Carpentry for about 18 months.

#### 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 licence:

##### **Carpentry Licence Competencies:**

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

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<sup>7</sup> clause 10 and 11 of the Rules

*Competency 2: Demonstrate knowledge of current building and trade practice.*

- 6.2 The Board then considered Competencies 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.
- 6.3 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 Licence.
- 6.5 The Board noted that whilst the Appellant was able to answer some of the Board's questions he struggled with many and did not have a depth of knowledge. It also noted that he did not have experience in a range or variety of residential building work.
- 6.6 In general, the Board considered that the Respondent was still developing his skills and knowledge but that he was not yet at the level where he meets sufficient of the competencies to grant a licence.
- 6.7 The Appellant is encouraged to complete his qualification and to continue to obtain practical on the job experience in a full range of residential building work before he reapplies to be licensed.

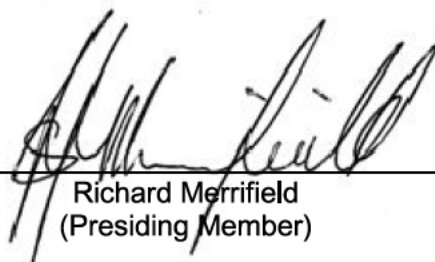
**7.0 Board's Decision**

- 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.

**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 23rd day of August 2019



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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.”*