

BPB Appeal No. A1323

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:	6 November 2019, in Auckland
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Appeal heard by:	Chris Preston (Presiding) Mel Orange, Legal Member David Fabish, LBP, Carpentry and Site AOP 2 Rob Shao, LBP Carpentry and Site AOP 1
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Appearances by:	[REDACTED]
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1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland applied for a Carpentry Licence and a Site (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 19 September 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 21 September 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 a Carpentry License and a Site (AOP 1) License

- 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 1-4 for a Carpentry License, and Competencies 1-5 for a Site (AOP 1) License.

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

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.
- 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 **21 and 22** the following from the Assessor's recommendations:

"21. In making the recommendation that [REDACTED] application for an Carpentry licence should be declined, the assessor noted the following:

- [REDACTED] could not answer any of the regulatory knowledge questions
- When asked basic building methodology questions around foundations (both types) and construction, most of the answers were exaggerated and incorrect, the Applicant did answer some internal bracing elements correctly.
- There were inconsistencies in the dates provided for when the applicant was working and studying. None of the Referees could verify that the Applicant has been building for 4 years. The Applicant told the Assessor that it has been hard for him to get a Referee who has seen his work from day 1 as he has moved employers often.
- One Referee stated that the [REDACTED] could not build a house as he had no practical experience.

22. In making the recommendation that [REDACTED] application for an Site 1 licence should be declined, the assessor noted the following:

- [REDACTED] claims that he has been in the building trade for the last 4 years building 2 and 3 storey new homes, and is now in a hands on supervision role.
- The Applicant claims to be a Site Manager but his Referee states that he is on contract as a trainee carpenter to another builder doing foundation work only. Other Referees provided either did not recommend [REDACTED] for the Site 1 licence or could not verify they had witnessed the applicant carry out work.
- The Applicant holds no Site Safe Certificate or the like there of, and no First Aid."

⁷ clause 10 and 11 of the Rules

4.3 The Registrar concluded:

"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 a limited number of photographs of his work with his appeal.

5.2 The Board asked questions of the Appellant covering Competencies 1 for Site (AOP 1) and Carpentry, and Competency 4 for Carpentry.

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 or the Site (AOP 1) License.

6.2 The Board then considered Competencies 1 - 4 for a Carpentry License and Competencies 1 – 5 for Site (AOP 1) License. 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 1 for Site (AOP 1) and Carpentry, and Competency 4 for Carpentry. Based on this finding the Board did not question the Appellant on the other Competencies.

6.5 The Appellant had limited knowledge and experience in building work. The Board recommends that he undertakes formal training and obtains a breadth of experience prior to reapplying.

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 or a Site (AOP 1) License.**

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 13th day of November 2019



Chris Preston
(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.”*