

BPB Appeal No. A1342

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:	Wednesday 8 July 2020 Ellerslie International Hotel and Conference Centre 2 Wilkinson Road Ellerslie, Auckland
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Appeal heard by:	Chris Preston (Presiding) Mel Orange Bob Monteith Rob Shao
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Appearances by:	[Omitted] (Appellant) [Omitted] (Witness via Telco)
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1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of [Omitted], Auckland 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 26 February 2020. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 18 May 2020 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 Schedule1³.
- 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 being restricted to consideration of Competencies 2, 3 and 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*

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:

- *[the Appellant] was unable to provide two technical Referees that were able to confirm his proficiency to carry out or supervise the carrying out of the full scope of carpentry work within the last 5 years.*
- *The initial referee provided had last worked with [the Appellant] 15 years ago, so a new referee was requested.*
- *Both Referees spoke very confidently of his carpentry skills on the work they had seen him carrying out, his technical knowledge and his organisation and communication skills the last time they both worked with [Omitted] on site.*
- *However neither referee had witnessed [the Appellant] carry out a full scope of carpentry work in the residential context, as they had only worked with him on non-residential work (new Gymnasium and the renovation of a factory)*

4.3 The Registrar concluded:

- *I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant] application.*
- *I reviewed the assessors report and [the Appellant] 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.*
- *I appreciate [the Appellant] may some level of competency. However his application and assessment did not provide enough evidence of currency and repeatability in residential building to meet minimum standards for licensing.*

5.0 Appellant's Submissions

5.1 The Appellant included with his appeal with images of properties he has worked on, character references

5.2 A character reference was provided to the Board by telephone from [Omitted], a client of the Appellant's for whom he was building a residence.

5.3 The Board questioned of the Appellant about his building background and experience and about the building work he had undertaken in recent years.

⁷ clause 10 and 11 of the Rules

The Appellant spoke of his early career as a qualified carpenter and of work that he had carried out on a project in Turangi. The Board asked the Respondent's questions about the Carpentry Competencies to ascertain the Appellant's knowledge and experience.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency 1 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 and 4 failed 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 had **provided** 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 was lacking in his regulatory knowledge. It recommends that he brings himself up to date and that, going forward, he keeps himself aware of changes in regulatory and compliance regime for building work.

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 8th day of July 2020



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.”*