

BPB Appeal No. A1343

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:	Monday, 11 May 2020, by videoconference
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Appeal heard by:	Mel Orange, Legal Member (Presiding) Richard Merrifield, LBP, Carpentry Site AOP 2 David Fabish, LBP, Carpentry Site AOP 2 Bob Monteith, LBP Carpentry and Site AOP 2 Chris Preston (Observing)
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Appearances by:	[Omitted]
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1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Tauranga 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 2 March 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:

- [Omitted] has not worked on a residential building site as a carpenter since 2006
- The recommendation to decline a carpentry licence is based on the applicants inability to provide two technical referees that were able to confirm his ability to carry out or supervise the carrying out of the full scope of carpentry within the last 5 years.

4.3 The Registrar concluded:

- I have been delegated under S312 (1) to review the assessment report and make a decision about [Omitted] application.
- I reviewed the assessors report and [Omitted] 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 included qualifications, job history and references with his appeal. He also sent in an email that detailed the competencies and the reasons why he had not met these in the licensing assessment.

5.2 The Board asked questions of the Appellant, during which he also provided detail about a [Omitted] shed he had recently built.

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 License Competencies:

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

6.2 The Board then considered Competencies 2, 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.

⁷ 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 **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 whilst the Appellant had not been carrying out building work for some time, he had been directly engaged in the industry and in particular with restricted building work as both a structural enginger and as a building inspector. The Board was confident that he had current knowledge of building practices and that he met the competencies required for a Carpentry licence.


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 license [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 15th day of May 2020



Mel Orange
(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.”*