

BPB Appeal No. A1344

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:	9 September 2020 at [omitted] (via Zoom)
-------------------------------	--

Appeal heard by:	Mel Orange, Deputy Chair, Presiding Rob Shao, Board Member Robin Dunlop, Board Member Bob Monteith, Board Member
------------------	---

Appearances by:	[Omitted] (Appellant)
-----------------	-----------------------

1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of [omitted] applied for a Carpentry Licence under s 287 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 2 July 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 23 July 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 to the Rules. In determining whether a person meets a competency, regard must be had 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 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 work 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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *[Omitted] hasn't worked as a Carpenter or Building Contractor covering a wide range of carpentry for at least the last 8 to 10 years. The applicant confirmed he only does minor works and is currently doing Prepurchase House Inspections.*
- *During the phone interview the applicant had a reasonable understanding of the regulatory environment. He was familiar with the Health and Safety regulations from a theoretical perspective but hasn't applied it on site under the current Health and Safety at Work Act. He did have knowledge of NZS3604 and E2, understands the consent and inspection process on site, knows what producer statements are and what to present for the CCC and he does have a reasonable knowledge of the LBP scheme.*
- *Competencies 2, 3 and 4 haven't been sufficiently demonstrated within a recent or current timeframe (i.e. within 5 years).*
- *Due to the age of the projects the referees struggled to recall actual scope and what applicant carried out.*
- *Irrespective of the age of the work, one referee could only confirm the setting out and foundation works of one of the projects. There was no suitably technical referee to provide feedback on project 1. A third referee was obtained upon the request of the assessor; however they hadn't worked that closely with the applicant or worked with them recently.*
- *The assessor did consider offering a face to face assessment, however there are no recent or current projects that the applicant could present as evidence covering a full scope of work with the applicant having full responsibility for the work.*

4.3 The Registrar concluded:

The basis for the Registrar's decision to decline the application:

⁷ clause 10 and 11 of the Rules

- *“I have been delegated under S 312(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 In the appeal application, the Appellant included a submissions bundle with a number of references.
- 5.2 At the appeal hearing, the Appellant outlined his work history for the Board. This included a breadth of building experience on various build types – from repairs, major additions through to 2-storey builds.
- 5.3 The Board asked questions to ascertain the Appellant’s knowledge of Competencies 2, 3, and 4 which the Registrar had declined him on.

6.0 Board’s Consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for a 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 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. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.
- 6.4 The Board decided that the Appellant had extensive knowledge and experience in residential building and that his knowledge was up to date with current requirements.

Board’s findings

- 6.5 The Board found that the Appellant met a sufficient number of the performance indicators 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.

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 day of 14 September 2020



Mel Orange
(Deputy Chair)

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.”*