

BPB Appeal No. A1363

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 **[the Appellant]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	14 December 2021 on Zoom
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Appeal heard by:	Mr C Preston (Presiding) Mrs J Clark, Legal Member Mr D Fabish, LBP, Carpentry and Site AOP 2 Mr R Monteith, LBP Carpentry and Site AOP 2
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Appearances by:	[the Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of Northland 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 15 September 2021. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 4 October 2021 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.

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

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.

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 recommendation to decline a carpentry licence is based on the Applicant's 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 work within the last 5 years.
- Referee 1 was supportive but referee 2 was not supportive of this licence application.
- Therefore competencies 2, 3, or 4 have not been covered during this assessment, however [the Appellant] has a very good understanding of the regulatory environment, so I am able to confirm competency 1.
- [The Appellant] has supplied an uncertified copy of his 'Dept of Workforce Development, Carpentry Certificate in Australia' dated September 2013

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.

⁷ clause 10 and 11 of the Rules

- 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 large amount of detailed information relating to the building process that he had carried out, in the past with his appeal.
- 5.2 The Board asked questions of the Appellant with reference to the competencies the Registrar said he had not met. After in depth questioning, he demonstrated a comprehensive knowledge of the required processes.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for the Carpentry licence:

Carpentry Licence 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.
- 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 recommended that [the Appellant] join an industry association, attend upskilling seminars and subscribe to industry publications, in order to keep abreast of changes and complexities in the industry.

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 [the Appellant] with a Carpentry Licence.

7.2 The Board directs the Registrar to issue a Carpentry Licence to [the Appellant] 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 22nd day of December 2021



Mr C 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.”*