

**BPB Appeal No. A1223**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	23 September 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Brian Nightingale, Board Member Dianne Johnson, Board Member Catherine Taylor, Board Member
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Appearances by:	[The Appellant]
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## 1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Site AOP 2 Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 16 April 2014. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 9 May 2014 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.<sup>2</sup> 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 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the Appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:

*The grant of a Site AOP 2 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, 4, and 5 for the grant of a Site AOP 2 Licence.

### Site AOP 2 Licence Competencies:

*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

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>S335(4) of the Act

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. 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:

- *"[The Appellant] was able to answer the regulatory knowledge questions correctly, meeting the requirements for Competency 1.*
- *[The Appellant] has worked in a few roles in the construction industry since 1997 in New Zealand and in England. In his roles over the past 5 years as Project Manager and as an Estimator for EQC, [the Appellant] has not been providing day to day management, coordination or significantly technical supervision during the construction works.*
- *In Project 1 [the Appellant] does not have sufficient evidence of applying technical knowledge of methods and practices as he liaised with the construction site supervisor, who was the one applying technical knowledge methods and practices during the construction phase. Project 1 is suitable for an AOP 2 assessment but [the Appellant's] role and responsibilities for the work are not suitable for the Site license.*
- *Project 2 is of Category 1 design with a low risk external envelope, and as such it lacks the appropriate scope and is not suitable for Site AOP 2 assessment.*
- *The current evidence provided demonstrates that [the Appellant's] role involves Contract and Project Management. His primary responsibilities include making assessment of the works, costing and feasibility studies, repair strategies, tendering process, engaging specialist consultants and contracting main building contractors, signing off contractor invoices and assessment of variation orders. There is no evidence to support the day to day site management and coordination of the construction phase, including planning and scheduling the work, organising sub-trades and coordinating deliveries and construction componentry."*

4.3 The Registrar concluded:

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

- *"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.*

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<sup>7</sup> 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 At the appeal hearing, the Appellant tabled an NZQA academic transcript for a construction management diploma, a reference from [omitted], a copy of his curriculum vitae, and a set of four project examples worked on.
- 5.2 Through questioning from the Board, the Appellant outlined his work history and background in site and project management in New Zealand and in the UK.
- 5.3 The Appellant advised that he had submitted this appeal as he had been unable to obtain clear guidance as to which area of practice of the Site Licence would best suit his skills.

## **6.0 Board's Consideration**

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for a Site AOP 2 Licence:

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

- 6.2 The Board considered Competencies 2, 3, 4, and 5 for a Site AOP 2 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 considered that the Appellant's experience as an LBP Carpenter, an owner-operator of a residential construction company, and more recently a project manager of [omitted] work, demonstrated that he met the Competencies for Site AOP 2.

### *Board's findings*

- 6.5 The Board found that the Appellant met sufficient of the performance indicators for a Site AOP 2 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 [the Appellant] with a Site AOP 2 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 8 October 2014



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Chris Preston  
(Deputy Chairman)

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**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.”*