

BPB Appeal No. A1294

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:	11 October – Commodore Airport Hotel, Christchurch
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Appeal heard by:	Richard Merrifield Mel Orange Bob Monteith Faye Pearson-Green
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Appearances by:	The Appellant
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1.0 Introduction

- 1.1 The Appellant of Christchurch applied for a Site Area of Practice (AOP) 2 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 17 August 2017. 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 September 2017 the Appellant lodged an appeal to the Board against the Registrar’s decision. In the appeal the appellant indicated that he was seeking a Site AOP 2 and AOP 3 Licence.

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 Site Licence (AOP 2)
- 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 3, 4 & 5 for a Site (AOP 2) Licence.

Site Licence Competencies:

- Competency 3: Organise and manage building projects*
Competency 4: Manage personnel
Competency 5: Provide technical supervision

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 did not demonstrate the minimum standard of competency for Site Competencies 3, 4 & 5. This was largely due to his role on site appearing to be outside the Site licence scope.
- The Appellant is not "*providing direction, control and oversight directly to on-site construction personnel in the assembly of construction componentry*". His role is rather that of a contracts manager/client representative.
- The assessor noted that whilst the recommendation is to decline, this is not a reflection of the appellants work, rather than his work does not fit the scope of licensing for the Site licence class.

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.
- 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 with his appeal a letter outlining his experience and his Australian Contractor licence, Qualified Supervisor certificate and a copy of the Trans Tasman Mutual Recognition Agreement (TTMRA). The Appellant submitted further submissions on 18 September 2017 in relation to the TTMRA and a signed reference.

5.2 The Board asked questions of the Appellant and received oral submissions which covered his building experience both in New Zealand and Australia where he ran his own business for some 20 years carrying out building work up to and including what would be a category 3 building in New Zealand.

⁷ clause 10 and 11 of the Rules

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 1 & 2 for the Site licence:

Site Licence Competencies:

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

Competency 2: Apply knowledge of construction methods and practice.

- 6.2 The Board then considered Competencies 3, 4 & 5 for a Site Licence AOP 2. 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 3, 4 & 5 for a Site AOP 2 Licence. The evidence provided related to his experience gained in Australia which the Board considered was relevant to the class of licence sought.
- 6.5 The Board also concluded that he **had not provided** evidence to demonstrate that he met performance indicators for a Site AOP 3 Licence.
- 6.6 The Board did note that the Appellant lacked a depth of regulatory knowledge and in particular with regard to Part 4A of the Building Act and the Construction Contracts Act and a general lack of knowledge of forms of New Zealand contractual documentation. The Board acknowledges that he has been granted competency 1 but nevertheless recommends that he upskill himself in these areas.

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 Site AOP 2 Licence.**
- 7.2 **The Board directs the Registrar to issue a Site AOP 2 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 17th day of October 2017



Richard Merrifield
(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.”*