

BPB Appeal No. A1267

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:	8 June 2016 at Christchurch
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Appeal heard by:	Chris Preston, Presiding Member Bob Monteith, Board Member Mel Orange, Board Member Robin Dunlop, Board Member
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1.0 Introduction

- 1.1 [The Appellant] of Christchurch applied for a Site Area of Practice (AOP) 1 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 8 March 2016. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 8 April 2016 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 Site AOP 1 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) 1 licence.

Site AOP 1 Licence Competencies:

Competency 2: Apply technical knowledge of construction methods and practice.

Competency 3: Organise and manage building projects.

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

- Competency 4: *Manage personnel.*
Competency 5: *Provide technical supervision.*

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 Summary of the assessor's recommendation:

- *"Applicant's work history shows progression from an Apprentice Carpenter in 1990 in [omitted], through to his current position of Foreman for [omitted], undertaking the full scope of residential & commercial carpentry work.*
- *[The Appellant] referees confirmed his carpentry, technical & organisational skills and were supportive of his application for a carpentry licence.*
- *On reviewing the applicant's questionnaire and my conversations with the referees & the applicant, I am confident in recommending [omitted] for his carpentry licence.*
- *All three original projects were of a commercial nature, with project 2 a hotel earthquake repair & extension. Applicant offered to replace the commercial projects with residential projects, but he supplied a commercial project for his site application, this project is current & incomplete being only up to foundation stage.*
- *I am unable to recommend the granting of a site AOP 1 licence because [omitted] has not provided sufficient evidence of his ability or repeatability to supervise the construction of a category 1 dwelling within the last 5 years."*

4.4 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 assessors report and [the Appellant's] 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 In the appeal application, the Appellant included a submissions bundle with response, a CV, referees, and projects worked on.

5.2 On 8 June 2016 the Appellant advised the Board Secretariat that he would be unable to attend the hearing due to major issues at work.

5.3 The Board opened the hearing at 2:30pm and resolved to hear the appeal on the papers before the Board.

⁷ Clause 10 and 11 of the Rules

5.4 The Board then considered the Appellant's appeal.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for a Site AOP 1 licence:

Site AOP 1 Licence Competency:

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

6.2 The Board then considered Competencies 2, 3, 4, and 5 for a Site 1 Licence.

Board's findings

6.3 Given the new evidence presented in the Appellant's submissions, the Board was satisfied that the Appellant met Competencies 2, 3, 4, and 5 for the Site 1 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 licence [the Appellant] with a Site AOP 1 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 10th day of June 2016



Chris Preston
(Presiding Member)

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.”*