

**BPB Appeal No. A1286**

**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:	6 <sup>th</sup> July 2017 - Christchurch
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Appeal heard by:	Chris Preston Richard Merrifield Robin Dunlop Bob Monteith
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Appearances by:	Appellant not present
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## 1.0 Introduction

- 1.1 (“the Appellant”) of [Omitted] applied for a Site Area of Practice 1 (AOP1) 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 5 April 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 3 May 2017 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 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 Schedule1<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 Area of Practice 1 Licence (AOP1)*

- 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, 4 & 5 for a Site Area of Practice 1 Licence.

### **Site Area of Practice 1 Licence Competencies:**

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

*Competency 4: Manage personnel*

*Competency 5: Provide technical supervision*

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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

#### 4.0 Registrar's report

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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph **19**, the following from the Assessor's recommendations:

- The Appellant is involved in project management and the business operations of the company he works with. He has not had "much involvement in providing technical supervision to the site personnel"
- The Appellant was not supported in his licensing application by his first referee due to lack of technical knowledge
- The Appellants second referee was unable to confirm that he has carried out any technical supervision.

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 notified the Board Secretary 3<sup>rd</sup> July 2017 by email he was unable to attend the appeal hearing as he had to travel overseas for an emergency family matter but would prepare and submit a report for the Boards consideration.

5.2 On 4 July 2017 the Appellant submitted a report to the board to consider his appeal without his presence.

#### 6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following 2, 4 & 5 for the Site Area of Practice 1 licence:

**Site Area of Practice 1 Licence Competencies:**

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

*Competency 4: Manage personnel*

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<sup>7</sup> clause 10 and 11 of the Rules

*Competency 5: Provide technical supervision*

- 6.2 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

*Board's findings*

- 6.3 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 4 & 5 for a Site Area of Practice 1 Licence based on his submission provided outlining his qualifications and experience.

- 6.4 Based on submission provided with qualifications and experience

**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 Area of Practice 1 Licence.**

- 7.2 The Board directs the Registrar to issue a Site Area of Practice 1 Licence to [the Appellant] as soon as practicable.**

Signed and dated this 10th day of July 2017




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Chris 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.”*