

BPB Appeal No. A1347

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	2 December 2020 at Auckland
Appeal heard by:	Mr M Orange, Legal Member (Presiding) Ms F Pearson Green, LBP Design AOP 2 Mr R Shao, LBP Carpentry and Site AOP 1
Appearances by:	[Omitted]

1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Auckland 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 26 August 2020. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 15 September 2020 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 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 License

- 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 a Site AOP 1 License.

Site License 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.

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:

- [Omitted]'s role on-site and scope of works coordinated, as clarified by the applicant and confirmed by his referees, is insufficient to meet Site licensing criteria.
- The original referees provided were not suitable as they were college teachers
- Two further referees were provided, however they had witnessed an insufficient role and limited scope of works for a site licence. No other relevant project coordination information or referees were available.

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 witness statements and photographs of him working on various sites with his appeal. The Appellant also provided a written statement dated 21 October 2020.

5.2 At the hearing the Board heard from the Appellant with respect to competencies 2, 3, 4 and 5 and it asked him questions about those competencies.

6.0 Board's consideration

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

Site Licence Competency:

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

⁷ clause 10 and 11 of the Rules

- 6.2 The Board then considered Competencies 2, 3, 4 and 5 for a Site AOP 1 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3, 4 and 5 for a Site AOP 1 License.
- 6.5 The Board noted that whilst the Appellant was able to demonstrate knowledge and experience with respect to some of the Performance Indicators there were significant gaps in critical areas in his knowledge and experience. The Board also noted that the Appellant, who had undertaken formal learning, had gained limited experience in some aspects of the building process but that he lacked the breadth of experience required for a Site License. The Board would recommend that he gains further on-site experience and knowledge of the full building process prior to reapplying to be licensed.

7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [Omitted] 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 December 2020



M J Orange
(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.”*