

BPB Appeal No. A1305

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:	13 June 2018 – Wellington
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Appeal heard by:	Richard Merrifield Mel Orange Cath Taylor Bob Monteith
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Appellant:	[Omitted]
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1.0 Introduction

- 1.1 The Appellant of [Omitted] applied for a Roofing Licence (Roof Membrane Area of Practice) 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 22 March 2018. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 16 April 2018 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 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 Roofing Licence (Roof Membrane Area of Practice)

3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competency 4 for a Roofing Licence (Roof Membrane Area of Practice)

Roofing Licence Competencies:

Competency 4: Carry out roof work

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

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

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 provided sufficient information to clarify the application in Competencies 1, 2 and 3 and discussion with the applicant confirm regulatory knowledge of this area of practice.
- Competency 4: Carry out the roof work – With only one referee supporting the applicant that he can always carry this out to industry best practice and with the applicant only having completed stage one of the installing training with Viking, I can only recommend licensing is not granted for roof membrane.

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

5.1.1 Certificate from Viking – Stage 1 Licensing course for application of Viking Enviroclad

5.1.2 Referee contact details for the hearing

6.0 Board's consideration

The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Roofing Licence (Roof Membrane Area of Practice)

Roofing Licence Competencies:

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

Competency 2: Demonstrate knowledge of the current roofing trade practice.

Competency 3: Carry out planning for roof work.

⁷ clause 10 and 11 of the Rules

The Board then considered Competency 4 for a Roofing Licence (Roof Membrane Area of Practice). This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

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

Board's findings

- 6.2 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competency 4 for a Roofing Licence (Roof Membrane Area of Practice)
- 6.3 The Appellant failed to appear at the hearing. He did not answer a phone call made to him after the scheduled commencement time to ascertain whether he would attend. The Board proceeded to make its decision on the basis of the documentary evidence before it.
- 6.4 The evidence before the Board included the Assessors report which noted one referee who did not support the granting of a membrane licence and one who did. The only additional evidence to that which the Registrar made his decision on that the Board was provided with was the Viking Licenced installer certificate – Stage 1 for the application of Viking Enviroclad and a submission from the Appellant that the licence had been wrongly declined on the basis that he did not have competencies for Torch on Membrane whereas he had applied for Roofing Membrane. The Board did not accept the submission. The evidence before it clearly showed that the Registrar decision was in respect of Roofing Membrane and that the Assessors report had considered the same.
- 6.5 Having reviewed the documentary evidence before it the Board decided that there was insufficient evidence on which to reverse the Registrars decision to decline a Roofing Membrane Licence.

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 Roofing Licence (Roof Membrane Area of Practice).**

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 14th day of June 2018



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.”*