

BPB Appeal No. A1279

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:	7 March 2017 in Auckland
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Appeal heard by:	Richard Merrifield, Deputy Chair Mel Orange, Board Member Robin Dunlop, Board Member Brian Nightingale, Board Member
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Appearances by:	The Board contacted the Appellant on the day by phone to confirm that he was not intending to attend the hearing.
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1.0 Introduction

- 1.1 [the Appellant] of Auckland applied for a Roofing profiled metal and/or wall cladding 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 12 December 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 12 January 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.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 Roofing profiled metal and/or wall cladding 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 1, 2, 3 and 4 for a Roofing profiled metal and/or wall cladding Licence.

Roofing Licence Competencies:

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

Competency 2: Demonstrate knowledge of current roofing trade practice.

Competency 3: Carry out planning for roofing work.

Competency 4: Carry out roofing work.

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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *In making the recommendation that [the Appellant]'s application for an Roofing license should be declined, the assessor noted the following:*
- *The referees confirmed that [the Appellant] carried out work on the projects presented, but they were not supportive of licensing him.*
- *Both referee's commented that [the Appellant] requires more time in the industry before they would be prepared to support his licensing application.*
- *The referee for project two stated that [the Appellant] needed a further year to learn the finer points of roofing.*
- *The assessor also noted that [the Appellant] did not display sufficient regulatory knowledge during the discussion with the assessor.*

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 did not provide any information over and above the information provided in his original application.

⁷ clause 10 and 11 of the Rules

6.0 Board's Consideration

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the Competencies for a Roofing profiled metal and/or wall cladding Licence.
- 6.2 The Board then considered Competency 1, 2, 3 and 4 for a Roofing profiled metal and/or wall cladding Licence.
- 6.3 As the Appellant did not attend the hearing the Board was unable to further question him on his competence and experience.

Board's findings

- 7.0 The Board decided to uphold the Registrar's decision to decline a Roofing profiled metal and/or wall cladding license.
- 7.1 The Board found that the Appellant has not demonstrated competency in a sufficient number of the performance indicators for a Roofing profiled metal and/or wall cladding Licence.

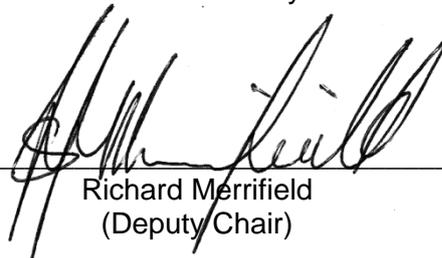
7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision and not license [the Appellant] with a Roofing profiled metal and/or wall cladding 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 30th day of March 2017



Richard Merrifield
(Deputy Chair)

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.”*