

**BPB Appeal No. A1288**

**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:	30 August 2017 in Whangarei
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Appeal heard by:	Richard Merrifield Mel Orange Robin Dunlop Bob Monteith
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Appearances by:	[the Appellant] [Omitted]
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## 1.0 Introduction

- 1.1 (“the Appellant”) of Whangarei applied for a Roofing Licence (Area of Practice (AOP) Roof Membrane; Torch on Roof Membrane; Liquid Membrane) 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 27 May 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 4 July 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 Roofing Licence (Area of Practice (AOP) Roof Membrane; Torch on Roof Membrane; Liquid Membrane)*

- 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 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.*

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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

*Competency 4: Carry out roofing work.*

#### **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 18, the following from the Assessor's recommendations:

*"Summary of the assessor's recommendation*

In making the recommendation that the appellants application for a Roofing license (in areas of practice Roof membrane, torch on membrane and liquid membrane) should be declined, the assessor noted the following:

- The Appellant was not supported by either referee for any of the areas of practice applied for.
- The Appellant was not able to demonstrate a sufficient level of regulatory understanding with the assessor during their contact."

- 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 three unsigned references, and explained the relationship with the referees provided for the initial assessment and why they no longer supported his application.
- 5.2 The Appellant appeared with a witness [omitted] who has worked for him since March 2016 and is working towards a roofing qualification. He spoke highly of the Appellant and his skill and knowledge as a roofer.
- 5.3 The Appellant outlined his experience and background in roofing and answered questions from the Board. He displayed a sound working knowledge of trade practices relating to the areas of practice applied for. He did not however display a depth of knowledge of regulatory requirements.

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<sup>7</sup> 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 the following Competencies for the Roofing 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.*

- 6.2 The Board then considered Competencies 1, 2, 3 and 4 for a Roofing 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 **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2, 3 and 4 for a Roofing Licence.
- 6.5 The Board noted that the references supplied were not signed and advised the Appellant that signed copies will be required. The Board instructs the Registrar that the Board's decision is subject to receipt of signed copies of the provided references.
- 6.6 Whilst the Board considered the Appellants regulatory knowledge was lacking, it was confident that the Appellant understood his lack of knowledge and that he would undertake required up skilling. The Board strongly recommends that he obtain and study the Understanding the Regulatory Environment handbook available from the LBP website.

## 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 Roofing Licence.**
- 7.2 **The Board directs the Registrar to issue a Roofing Licence to the Appellant once the required references have been provided.**

## 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 15<sup>th</sup> day of September 2017



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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.”*