

**BPB Appeal No. A1364**

**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 [Appellants Name] 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:	26 January 2022 at Auckland
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Appeal heard by:	Mr M Orange, Barrister, Presiding Mr D Fabish, LBP, Carpentry Site AOP 2 Ms F Pearson-Green, LBP Design AOP 2 Mr R Shao, LBP, Carpentry Site AOP 1
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Appearances by:	[Appellants Name] [the Appellant] [Omitted], Interpreter [Omitted], Witness [Omitted], Witness
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## 1.0 Introduction

- 1.1 [Appellants Name] (“the Appellant”) of Auckland applied for a Roofing (Profiled metal roof and/or wall cladding) 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 email dated 26 August 2021. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 13 October 2021 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 Schedule 1<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 (Profiled metal roof 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 roof 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 roof work.*

*Competency 4: Carry out roof 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

#### **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:

- The work undertaken by the applicant falls outside the criteria needed by the LBP license scheme. The applicant is really only doing repair/reroofing work. Both referees confirmed the jobs and the applicant's role on site, and were supportive of the applicant.
- Profiled metal roofing and wall cladding would be covered under the applicants carpentry LBP license which he says he has applied for (if he achieves the carpentry license technically he will be able to sign off profiled metal roofing.)
- Insufficient evidence was provided, to show the applicant has the ability to carry out the installing of profiled metal roofing and wall cladding to the level required by the LBP roofing scheme.
- Therefore my recommendation would be decline.

4.3 The Registrar concluded:

- 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 written submissions with his appeal which addressed each of the four competencies for a Roofing AoP 2 licence. At the hearing, it was ascertained that the document was compiled by [Omitted], who works for the Respondent. [Omitted] stated it was an English interpretation of what the Appellant had told him. The written submission included copies of qualifications, marked up plans and photographs of work completed.

5.2 The Appellant appeared with his witnesses. The Board asked questions of the Appellant with regard to the required competencies starting with competency one, regulatory knowledge. The Appellant was not able to answer the questions posed to him with the correct information. He submitted that he thought the hearing was about his skills, not his knowledge. He stated he would obtain the required knowledge while he worked and as it was needed. The Board noted that the responses to the Board's questions and the "learn as he worked"

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

submission did not accord with his written submission which stated he was well versed with the regulatory requirements.

- 5.3 The Board questioned the Appellant about his on-site knowledge of compliance requirements using photographs and standard details as aides. Again, the Appellant was not able to provide appropriate answers to the questions.

## 6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met none of the Competencies for the Roofing licence.
- 6.2 The Board then considered Competencies 1, 2, 3 and 4 for a Roofing (Profiled metal roof and/or wall cladding) 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 any of the Competencies for a Roofing (Profiled metal roof and/or wall cladding) Licence.
- 6.5 The Board noted that the Appellant lacked fundamental knowledge required of a Licensed Building Practitioner. For example, he did not know what restricted building work was, had limited knowledge of what the Building Code is and what it is for, did not understand what an acceptable solution was and had only obtained a copy of E2/AS1, a document that is fundamental to compliant roofing and cladding work, only one week prior to the appeal hearing, had very limited knowledge of building consent and the exceptions to the requirements for a consent, and no knowledge of what a Record of Work was. When asked to explain how he would carry out specific types of roofing work, the Appellant was not able to provide responses that would have resulted in compliant building work.
- 6.6 The Appellant needs to understand that persons who hold a Building Practitioners Licence are required to have both the knowledge and the skill required to ensure work is carried out or supervised in a safe and compliant manner. Skills alone are not enough.
- 6.7 The Board recommends that the Appellant study the regulatory framework and compliance documentation prior to reapplying for a 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 [Appellants Name] with a Roofing (Profiled metal roof 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 3rd day of February 2022




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Mr M 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.”