

BPB Appeal No. A1093

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:	13 November 2012 at [omitted]
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Appeal heard by:	David Clark Brian Nightingale Jane Cuming Bill Smith Richard Merrifield	Deputy Chairman Board Member Board Member Board Member Board Member
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Appearances by:	The Appellant The Registrar, Mark Scully, was available by telephone but was not required to participate.
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for External Plastering Solid Plastering Area of Practice (AOP) Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the External Plastering Solid Plastering AOP application and notified his decision by letter dated 1 August 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 31 August 2012², [omitted] lodged an appeal to the Board against the Registrar’s decision.
- 1.4 By letter dated 31 October 2012 the appellant requested the appeal be determined on the papers. The Deputy Chairman of the Board issued directions to the parties.

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.³ The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person met a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1⁴.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁵

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁶ however the Board will not review matters outside the scope of the appeal⁷.
- 3.2 The appeal seeks the following relief:
To be licensed in External Plastering Solid Plastering AOP.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 28 August 2012.

³ S286 of the Act and rule 4 of the Rules.

⁴ Clause 4(2) of the Rules

⁵ S330(1)(a) of the Act.

⁶ S335(2) of the Act

⁷ S335(4) of the Act

- 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 and 4 for a External Plastering Solid Plastering AOP licence.

External Plastering Licence

- Competency 2: Demonstrate knowledge of current external plastering trade practice.*
- Competency 4: Carry out external plastering work.*

4.0 Registrar's report

- 4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁸. 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 In making the recommendation to decline the External Plastering Solid Plastering AOP licence, the reasons below were recorded by the Assessor:

- The Appellant has worked in the building industry for 42 years. He lays bricks and blocks and does the plastering of these substrates. He does the odd small stucco job.
- The jobs the Appellant had listed in his application were all small plastering jobs and not jobs of substance.
- The Appellant was asked to produce a solid plaster job that would qualify for solid plastering and could only produce one small patch up job with one referee that is the same referee as job one.
- The first two jobs are ones that do not qualify for solid plastering and the third is not enough to prove applicants ability and show a good understanding of all that is needed to complete a solid stucco plaster job.
- During conversation with applicant he stated the last stucco plaster house he completed was 15 to 20 years ago.
- The evidence in this assessment is not enough to indicate that the Appellant has a good enough knowledge of today's methods for solid plastering.

The basis for the Registrar's decision to decline the application

- 4.3 The Registrar reviewed the assessors report and the Appellant's application

⁸ clause 10 and 11 of the Rules

4.4 The Registrar based his decision on the assessor's recommendation, for the reasons set out above. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

4.5 However, the Registrar did not agree with the assessor that the Appellant achieved Competency 2: Demonstrate knowledge of current external plastering trade practice. The Registrar outlined his reasons for this below.

- Two forms of solid plastering are covered by the New Zealand Standard NZS 4251:
 - Solid plaster (or 'render') over a masonry substrate; and
 - Stucco.
- Render over masonry substrate is decorative, and requires an acrylic paint system to be weatherproof. Stucco is a cladding system comprising three coats of plaster applied over mesh or lath in accordance with NZS4251 and the Building Code Compliance Document E2/AS1. More detail on this is provided in the attached document "Registrar Guidance on the External Plastering licence. September 2011".
- Plaster-clad buildings have been a significant feature of weathertightness failure in New Zealand. Houses and apartments clad in stucco have in particular been prone to failure. Members of the public rely on the Registrar to be satisfied that a licensed building practitioner meets the minimum standard of competence for their licence class. In the Registrar's view, most members of the public would not readily distinguish between solid plaster and stucco. Members of the public who engage a licensed External Plasterer who holds the Solid Plaster area of practice should reasonably be able to expect that person to be conversant with stucco.
- The assessor reported that the Appellant had not carried out significant stucco work for many years. NZS4251 was last revised in 2007. The stucco section in E2/AS1 was revised in August 2011; prior to that it was revised in July 2005.
- The evidence suggests that the Appellant is a masonry worker who is skilled at applying plaster primarily over masonry substrates. The ability to apply render over a masonry substrate demonstrates a practitioner's ability to apply plaster to form a 'decorative' surface. It does not provide evidence about their knowledge of, or ability to construct, a weathertight cladding system.
- The assessor had found that there was insufficient evidence that the Appellant met Competency 4. Without evidence that the Appellant understands and has recently applied stucco cladding to E2/AS1 and NZS4251, the Registrar could not be satisfied that the Appellant meets Competencies 2 or 4 for Solid Plaster.

5.0 Appellant's Submissions

- 5.1 The Board noted that the Appellant wished to have his appeal heard "on the papers". The documentation which had been submitted as part of appeal and the original application was;
- (a) a number of small stucco plastering contracts;
 - (b) a number of referees who confirmed the contracts that the Appellant had performed;
 - (c) written submissions by the Appellant confirming that he had undertaken mostly renovations as a sole trader and that he had been plastering for more than 30 years as a plasterer/stucco systems plasterer on both renovations and new homes.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the External Plastering Solid Plastering AOP licence:

Competency 1: Demonstrate knowledge of the regulatory environment.

Competency 3: Carry out planning for external plastering work.

- 6.2 The Board then considered Competencies 2 and 4. 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 his competency.
- 6.4 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 and 4 for an External Plastering Solid Plastering AOP licence.
- 6.5 In particular the Board considered that the Appellant failed to demonstrate sufficient current knowledge of the building regulatory environment in relation to NZS4251 Solid Plastering and the evidence that he provided did not demonstrate that the work complied with NZS4251 Solid Plastering together with a lack of evidence regarding applying plaster to windows, doors, control joints and corners regarding weathertightness.

Board's findings

- 6.6 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a External Plastering Solid Plastering AOP 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 the Appellant with a External Plastering Solid Plastering Area of Practice Licence. The appeal is therefore declined.

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 day of 2012.

David Clark
Deputy Chairman
(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.”