

BPB Appeal No. A1368

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 **[Appellant name]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	1 June 2022, Auckland
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Appeal heard by:	Mr M Orange, Legal Member (Presiding) Mr D Fabish, LBP, Carpentry Site AOP 2 Mr R Shao, LBP, Carpentry Site AOP 1 Mr G Anderson, LBP, Carpentry Site AOP 2
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Appearances by:	[Appellant name] [Omitted]
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1.0 Introduction

- 1.1 [Appellant name] (“the Appellant”) of Auckland applied for an Exterior Plastering 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 23 November 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 2 January 2022, 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 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 an Exterior Plastering 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 1,2,3,4 and 5 for an Exterior Plastering Licence.

Exterior Plastering Licence Competencies:

- *Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- *Competency 2: Demonstrate knowledge of current external*

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

plastering trade practice.

- *Competency 3: Carry out planning for external plastering work.*
- *Competency 4: Work safely.*
- *Competency 5: 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 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:

- *Applicant has had a lot of experience plastering over bricks and concrete, and other such substrates. But has not done any stucco cladding to the exterior of any dwellings over the last five plus years .*
- *External Plastering .solid plastering. insufficient evidence recommend decline (Talked with applicant on the phone about Stucco jobs for this assessment 17. 11 2021. Applicant said he could not supply any stucco plastering jobs)*

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 pictures of his work with his appeal. He also provided a portfolio of work prior to the hearing along with a number of trade references.

5.2 The Appellant appeared with [Omitted], a Licensed Carpenter.

5.3 The Board asked questions of the Appellant with respect to the competencies for an External Plastering License.

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.
- 6.2 The Board considered competencies 1, Regulatory Knowledge. The Appellant was not able to answer the Board's questions.
- 6.3 The LBP scheme is a 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 Competency 1. As such, the Board did not proceed to consider competencies 2-5.
- 6.5 Competency 1 is fundamental to the licensing regime. It ensures that Licensed Building Practitioners are aware of their obligations under the Building Act and the licensing regime and that the public is protected.
- 6.6 The Board noted that the Appellant is a highly skilled tradesman and that he can work on restricted building work under the supervision of a licensed person.

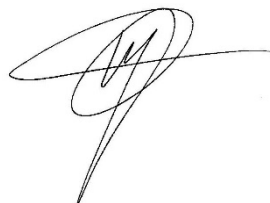
7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant.**

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 21st day of June 2022



Mr M Orange
(Presiding Member)

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.”*