

BPB Appeal No. A1084

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:	26 November 2012 at [omitted]
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Appeal heard by:	Colin Orchiston Jane Cuming Dianne Johnson Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (representation for the Appellant) [omitted] (support for the Appellant) [omitted] (support for the Appellant) [omitted] (witness for the Appellant) [omitted] (witness for the Appellant) The Registrar, Mark Scully, was contacted by telephone for part of the hearing.
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Brick and Blocklaying Licence, and an External Plastering Licence in both Area of Practice 1 (Solid Plastering) and Area of Practice 2 (Proprietary Plaster Cladding Systems) under s288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 By letter dated 4 July 2012 the Registrar of Licensed Building Practitioners (“the Registrar”) granted the licenses in Brick and Blocklaying and in External Plastering AOP 2, but declined the Appellant’s application for External Plastering AOP 1. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 6 August 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision in respect of External Plastering AOP 1.

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 Area of Practice 1: Solid Plastering

“Review of NZQA/DBH LBP application set up for foreign qualified application stream”

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 6 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 By letter of 13 August 2012, the Appellant was advised that the Board does not have jurisdiction to review the process for recognising qualifications. This aspect of the appeal is not considered further.
- 3.4 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 External Plastering AOP 1: Solid Plastering.

External Plastering Licence AOP 1: Solid Plastering

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 The Registrar's report notes the following from the Assessor's recommendations:

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- The Appellant began plastering in [omitted] 35 years ago and has been plastering in New Zealand since 1983. He is an approved applicator for [omitted].
- All the Appellant's referees were supportive of his skills.
- The Appellant could not supply any projects with solid plaster that were less than five years old. The earliest one supplied was nine years old.
- With Proprietary Plaster Cladding Systems area of practice the job the Appellant listed is 12 years old.
- The project at [omitted] had a finish date of September 2007 – 5 years old. This was the most recent project listed and is plastering over bricks and blocks.
- Additional information for Proprietary Plaster Cladding Systems was also requested, but the Appellant could not supply any so there is no history of recent projects that can be assessed.
- The recommendation was to decline as there is no recent history for either AOP 1 Solid Plastering or AOP 2 Proprietary Plaster Cladding Systems ”

⁸ clause 10 and 11 of the Rules

- 4.3 The reasons for the Registrar's decision are set out, in some detail, in paragraphs 26-35 of the Registrar's report. Whilst noting the assessor's recommendations, the Registrar nevertheless granted the licence in respect of AOP 2 Proprietary Plaster Cladding Systems.

5.0 Appellant's Submissions

- 5.1 The Appellant provided photographs of work he had undertaken, including traditional stucco, and rendering on solid substrate and steps and landings, some of which were more than five years old.
- 5.2 The Appellant had constructed a sample of work to demonstrate competency, and submitted photographic verification and reports on it.
- 5.3 The Appellant provided the Board with information in relation to his [omitted] trade qualifications.
- 5.4 The Appellant's lawyer outlined the issues and assisted the Appellant in putting further information before the Board.
- 5.5 Two witnesses (one of whom was an LBP) attended the hearing and both attested to the Appellant's depth of knowledge of solid plastering and trade skills, based on their first-hand experience observing him on projects undertaken over a number of years.
- 5.6 These submissions were supported by written references provided by past clients and tradesmen who had worked with the Appellant.
- 5.7 The Registrar was contacted by phone, and responded to questions from the appellant and the Board.
- 5.8 The Board questioned the Appellant.

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 Area of Practice 1: Solid Plastering licence:

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

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 their competency.

- 6.4 The Board noted the Appellant had significant experience in rendering onto solid surfaces, and considered whether he had demonstrated competency in stucco work. That is, a cladding comprising the application of a three coat plaster with mesh reinforcing over a timber frame.
- 6.5 The Board understood that the Appellant undertook a broad range of plastering work, but that stucco work was now only rarely specified. However, responses by the Appellant to questions from the Board indicated that he had a thorough and detailed knowledge of the practical and theoretical aspects of the stucco method of construction, and of interior and exterior solid plastering.
- 6.6 The Board's questions and the Appellant's responses covered all of the performance indicators of competencies 2 and 4, and the Board was satisfied that the appellant meet all of them.

Board's findings

- 6.9 The Board considered that the Appellant had provided the 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 Area of Practice 1: Solid Plastering.

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 license the Appellant with a External Plastering Licence in Area of Practice 1: Solid Plastering.**

- 7.2 The Board directs the Registrar to issue an External Plastering Licence in Area of Practice 1: Solid Plastering to the Appellant as soon as practicable.**

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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 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 17th day of December 2012.

Colin Orchiston
(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.”*