

BPB Appeal No. A1110

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:	4 March 2013 at [omitted]
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Appeal heard by:	Richard Merrifield Bill Smith Colin Orchiston Jane Cuming	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [Omitted] (witness for 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 an External Plastering Area of Practice (AOP) 1: Solid Plastering and AOP 2: Proprietary Plaster Cladding Systems (PPCS) 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 AOP 1: Solid Plastering and AOP 2: PPCS licence application and notified his decision by letter dated 30 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 2 October 2012, 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 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 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 External Plastering AOP 1: Solid Plastering and AOP 2: Proprietary Plaster Cladding Systems (PPCS) 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 2, 3 and 4 for an External Plastering AOP 1: Solid Plastering and AOP 2: PPCS licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

External Plastering Licence - Area of Practice 1: Solid Plastering

Competency 2: Demonstrate knowledge of current external plastering trade practice.

Competency 3: Carry out planning for external plastering work.

Competency 4: Carry out external plastering work.

External Plastering Licence - Area of Practice 2: PPCS

Competency 2: Demonstrate knowledge of current external plastering trade practice.

Competency 3: Carry out planning for external plastering work.

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 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 24, the following from the Assessor's recommendations:

" ...

- *From 1982 to present [the Appellant] has been a self employed plasterer and bricklayer and blocklayer.*
- *[The Appellant] was unable to provide ten major projects that he has carried out External Plastering work on.*
- *Both projects [in the Appellant's application] were indicated to be Solid Plastering projects; however after discussion with [the Appellant's] referees, the assessor concluded that the projects were PPCS projects not Solid Plastering projects.*
- *The referees were supportive of [the Appellant's] application and were able to confirm him carrying out the work.*
- *[The Appellant] stated that he does not undertake or use any polystyrene systems for PPCS.*
- *[The Appellant] was unable to demonstrate sufficient evidence in his projects to cover all the competencies for External Plastering, specifically Competencies 2 and 4."*

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

4.3 The Registrar concluded:

⁷ clause 10 and 11 of the Rules

- “25. I reviewed the assessor’s assessment report and *[the Appellant’s]* application.
26. I based my decision on the assessment report for the reasons set out above, however I did not agree with the assessor’s recommendation that *[the Appellant]* meet Competency 3 - Carry out planning for external plastering work.”

5.0 Appellant’s Submissions

- 5.1 The Appellant appeared before the Board with a witness [omitted] who had worked with the Appellant periodically over the past seven years, and was an LBP in Brick and Blocklaying. [Omitted] spoke highly of the Appellant’s external plastering workmanship.

The Appellant explained he had undertaken a range of external plastering work from the time he began his apprenticeship.

- 5.2 The Appellant described to the Board the various types of plastering work he undertook:
- Plaster Bricks – A clay brick with a 170mm x 300mm face laid in conventional bricklaying fashion and then plastered using a proprietary plaster system.
 - AAC panel system – A proprietary cladding system using autoclaved aerated concrete panel on cavity and a proprietary plaster system.
 - Stucco – The Appellant has undertaken small alterations and panels but has not done a full house in stucco for approximately ten years. He explained the full stucco system including substrate and flashing checking, mesh fixing, mixes, and curing. He said he carries a copy of NZS 4251 in his vehicle.
 - Rendering – plastering over solid masonry and concrete substrates.
- 5.3 The Appellant stated that he did not plaster over EIFS substrate as described under Competency 4 AOP 2 “Proprietary Plaster Cladding Systems”.
- 5.4 The Registrar was contacted by telephone and responded to questions from the Board about which (if any) AOP covered the plastering of AAC panels. Whereas the Appellant had indicated that his local BCA required an LBP to undertake this work, the Registrar’s view was that it was not covered by the plastering licence and therefore was not restricted building work. The Board advised the Appellant that it would seek further information from MBIE on this matter.

6.0 Board’s consideration

External Plastering Licence - Area of Practice 1: Solid Plastering

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the External Plastering AOP 1: Solid Plastering licence:

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

- 6.2 The Board then considered Competencies 2, 3 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 was satisfied that the Appellant met the performance indicators in Competencies 2 and 3.
- 6.5 In respect of Competency 4, the Board notes that in this appeal and in others, appellants and witnesses have made it clear that stucco work is now only rarely done except in order to match existing work in additions and alterations. The Board took account of the appellant's long history of carrying out stucco plastering work including recent relatively small square metre areas of such work.
- 6.6 Notwithstanding the minor extent of stucco work undertaken by him in recent years, the Board was satisfied that the Appellant sufficiently demonstrated the knowledge, understanding and skills necessary to meet the relevant Competency 4 performance indicators.

External Plastering Licence - Area of Practice 2: Proprietary Plaster Cladding Systems

- 6.7 As it had indicated in the hearing, the Board sought clarification from MBIE about proprietary plaster systems applied over lightweight aerated panel systems. That enquiry confirmed the Registrar's view that such work was not Restricted Building Work and that MBIE had made that known to BCA's.
- 6.8 On the basis that the Appellant did not provide any evidence in relation to competency in EIFS or fibre cement sheet plaster cladding systems, the Board concluded that competency has not been demonstrated, and an AOP2: PPCS licence cannot be granted.

The Board's findings:

- 6.9 The Board concluded that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for an External Plastering AOP 1: Solid Plastering Licence.
- 6.10 The Board concluded that the Appellant did not meet the competency requirements for an External Plastering AOP 2: PPCS Licence.

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 an External Plastering Area of Practice 1: Solid Plastering Licence.**

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

7.2 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with an External Plastering Area of Practice 2: Proprietary Plaster Cladding Systems Licence. This part of 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 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 29th day of April 2013.

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.”*