

BPB Appeal No. A1112

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:	18 February 2013 at [omitted]
-------------------------------	-------------------------------

Appeal heard by:	David Clark Bill Smith Brian Nightingale Jane Cuming	Deputy Chair (Presiding) Board Member Board Member Board Member
------------------	---	--

Appearances by:	The Appellant [omitted] (witness for the Appellant) [omitted] (witness for the Appellant) The Registrar, Mark Scully, was available by telephone but was not required to participate.
-----------------	--

1.0 Introduction

- 1.1 The Appellant of [omitted] applied for an External Plastering Licence Area of Practice Solid Plastering (AOP) 1 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 application and notified his decision by letter dated 24 September 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 9 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 licence AOP 1.
- 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 an External Plastering AOP 1 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

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 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 22, the following from the Assessor's recommendations:

" ...

- *[The Appellant] has been building residential houses for 23 years in [omitted] and more recently in [omitted].*
- *[The Appellant] listed nine jobs in his job records list, which covered a ten year period in both [omitted] and [omitted].*
- *Of the nine listed jobs, six of them were PPCS plastering over either brick or block and were not part of the criteria for Solid Plastering.*
- *The assessor did not request any additional projects as [the Appellant] confirmed that the nine jobs that he had listed in his application were the most recent jobs. The projects were completed in both [omitted] and [omitted] over a ten year period, with the majority involving PPCS plastering.*
- *Both of the referees were supportive of his application and confirmed [the Appellant] working on the projects; however one of his referees, [omitted], described [the Appellant] as being a very good builder.*
- *[The Appellant] could not demonstrate adequate knowledge of the New Zealand Standard for Solid Plastering and does not use the New Zealand Standards or the Good Stucco Practice book.*
- *[The Appellant] has a good understanding of the regulatory environment and has a reasonable knowledge of current trade plastering practices; however some of his trade practices differ from normal practice.*
- *The assessor noted that he found some of [the Appellant's] answers quite evasive in some areas, but in other areas [the Appellant] answered all the questions freely and correctly."*

⁷ clause 10 and 11 of the Rules

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

4.3 The Registrar concluded:

- "23. I reviewed the assessor's assessment report and *[the Appellant's]* application.
24. I based my decision on the assessment report for the reasons set out above.
25. However, I did not agree with the assessor's recommendation that *[the Appellant]* did demonstrate Competency 2: Demonstrate knowledge of current external plastering trade practice."

5.0 Appellant's Submissions

- 5.1 The Appellant submitted that he has 23 years' experience in house building - commencing as an Apprentice Carpenter for his [omitted]. He has worked for 15 years in [omitted] and 8 years in [omitted].
- 5.2 The Appellant submitted that he has progressed from an apprentice, to a carpenter, then foreman and in recent years to land development and the building of "Spec" Homes, some of which he lived in for short periods. Like his [omitted] he prefers to undertake much of the work himself. This includes the solid plastering work.
- 5.3 The Appellant submitted that his broad work experience and qualification as a NZ LPB Carpenter has provided him with the knowledge and competence to complete most stages of construction. For Solid Plastering work this includes reading plans accessing and interpreting relevant technical information, site establishment, interactions with other trades, and the management of environmental issues and safe working practices on site.
- 5.4 The Appellant submitted that he did not carry out Proprietary Plaster Cladding System work and that his solid plaster work consisted of rendering over brick and stucco. The stucco system he uses is traditional sand and cement for scratch and flank coats then he applies a proprietary finish coat.
- 5.5 The Appellant spoke to a number of projects that he had been involved in and described the work that he carried out on these projects and the relevance of this work to the license competencies.
- 5.6 As evidence of his involvement in carrying out solid plaster work the Appellant tabled copies of Council inspections naming him as the external plasterer.
- 5.7 The Appellant submitted that as he had worked for most of the past eight years in Australia it was some time since he had read NZS 4251 for Solid Plastering. The Appellant advises that since the original interview for his license he has acquired a copy of this Standard.
- 5.8 [Omitted], a builder and witness for the Appellant, attested to the quality of the Appellants workmanship.

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 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 considered the scope and nature of the Appellants work. The Board also notes the provisions of s. 314B of the Act which state that:

“A licensed building practitioner must –

a) Not misrepresent his or her competence;

b) Carry out or supervise building work only within his or her competence.”

Board's findings

6.5 The Board by a majority decision considered that the Appellant provided sufficient 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 Licence AOP 1.

7.0 Board's Decision

7.1 Pursuant to s335(3) of the Act the Board by majority decision has resolved to reverse the Registrar's decision and license the Appellant with an External Plastering Licence in the Area of Practice 1.

7.2 The Board directs the Registrar to issue an External Plastering Licence AOP 1 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 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 6th day of May 2013.

David Clark
Deputy Chair
(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.”*