

BPB Appeal No. A1179

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:	12 August 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Dianne Johnson Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [Omitted] (Witness for Appellant) [Omitted] (Witness for Appellant) [Omitted] (Witness for Appellant) The Registrar's delegate, Stanil Stanilov, 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) 2: Proprietary Plaster Cladding Systems (PPCS) 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 4 April 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 18 April 2013 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 meets 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 Area of Practice 2: Proprietary Plaster Cladding Systems 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 and 4 for an External Plastering 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 Competencies:

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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 19, the following from the Assessor's recommendations:

“...

- *[The Appellant's] work history is recorded as carrying out both interior and exterior plastering work using PPCS and Solid Plastering methods over a six year period for four different companies in [omitted].*
- *[The Appellant] has seven years plastering experience and worked for seven different employers.*
- *[The Appellant] has worked in New Zealand for eight months for two different employers carrying out PPCS work on residential projects.*
- *[The Appellant] has recent learning activities recorded, however he is not a member of any industry organisation and has no relevant qualification.*
- *[The Appellant] stated that he is currently part way through an external plastering course with the [omitted].*
- *Both of [the Appellant's] referees were supportive of his plastering ability.*
- *One of [the Appellant's] referees stated that he still checks [the Appellant's] work on a daily basis. The second referee stated that he had concerns about [the Appellant's] technical skills.*
- *[The Appellant] knows how and where to seek advice if it is required.*
- *[The Appellant] has a very good understanding of the New Zealand regulatory environment however his knowledge of current external plastering practices, apart from PPCS, is quite limited.”*

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

4.3 The Registrar concluded:

“20. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.

⁷ clause 10 and 11 of the Rules

21. *I reviewed the assessors report and [the Appellant's] application.*
22. *I based my decision on the assessor's recommendation, for the reasons set out above.*
23. *[The Appellant] has only been in New Zealand since [omitted] and has a limited knowledge of the current New Zealand trade practice.*
24. *[The Appellant's] role on all of his jobs that he provided appears to be of limited scope as he has only been involved in applying an AAC product and has not demonstrated any knowledge or practical skills in fixing the substrates. This has also been confirmed by the referees provided.*
25. *The second referee [the Appellant] provided has expressed concerns about the insufficient level of [the Appellant's] technical skills in relation to the full scope of external plastering work."*

5.0 Appellant's Submissions

- 5.1 The Appellant spoke of his training and experience in solid plastering initially gained in [omitted], and more latterly in proprietary systems in [omitted] and New Zealand. He spoke to the various projects he had undertaken in New Zealand and supported this with photographs of plastering work he had carried out on various substrates.
- 5.2 The Appellant used a sample of aerated autoclaved closed cavity panel system to demonstrate detailing and techniques of this specialist system.
- 5.3 The Appellant's witnesses attested to his experience and ability with the proprietary plastering systems, which was supported by various references tabled.
- 5.4 In response to questions from the Board the Appellant described his experience and knowledge in EFIS and fibre cement systems.
- 5.5 The Appellant clarified his involvement in [omitted] as being a trainer of an apprentice, not receiving training as an apprentice as referred to in the Registrar's report.

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 AOP 2: PPCS Licence:

External Plastering Competencies:

- 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 for an External Plastering AOP 2: PPCS Licence. 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 that the Appellant demonstrated a suitable knowledge of plastering techniques and related weathertightness principles.

Board's findings

- 6.5 The Board was satisfied that the Appellant demonstrated that he met sufficient performance indicators in External Plastering AOP 2: PPCS Competencies 2 and 4.

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 2: Proprietary Plaster Cladding Systems Licence.**

- 7.2 The Board directs the Registrar to issue an External Plastering Area of Practice 2: Proprietary Plaster Cladding Systems Licence 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 13 day of August 2013.

Brian Nightingale
(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.”*