

**BPB Appeal No. A1199**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	25 February 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Brian Nightingale, Board Member Colin Orchiston, Board Member Mel Orange, Board Member
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Appearances by:	[The Appellant]
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## 1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for an External Plastering Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 27 September 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 15 October 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.<sup>2</sup> 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 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:

*The grant of an External 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 Competency 4 for an External Plastering Licence.

### **External Plastering Licence Competencies:**

*Competency 4: Carry out external plastering work.*

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>S335(4) of the Act

#### 4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. 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 20, the following from the Assessor's recommendations:

- "[The Appellant] has primarily worked as a builder and over the past 20 years has been involved in the design and overall construction of straw bale homes, including the application of the external plastering system.
- He provided a list of 10 major jobs with the appropriate level of detail noted.
- [The Appellant] provided three Job Records to support his application for both areas of practice, noting that each job included Solid Plastering, and Job 2 covered Solid Plastering and PPCS.
- The system of plastering used by [the Appellant] is a customised system and does not meet the specification criteria for NZS4251. None of the provided jobs meet licensing criteria as the plastering was not applied in ways which meet the standards of NZS4251.
- The referee's each confirmed that [the Appellant] carried out the plastering work as he stated. Referees [omitted] and [omitted] were familiar with [the Appellant's] work, but had only worked with him directly a few times.
- [Omitted], a builder, mentioned that the applicant began plastering on his straw bale homes was because [the Appellant] could not communicate his desired plastering system to traditional solid plasterers. [Omitted], the technical representative for [omitted] emphasised that [omitted] would only warranty the plaster and not the system as used by [the Appellant].
- Job 2 included a small amount of fixing and plaster finishing to polystyrene cladding. According to the statements [the Appellant] made, this did not meet common PPCS cladding practices or compliance methods. The referee for this job was unable to comment on this due to his lack of involvement.
- [The Appellant] is not an approved/endorsed contractor for any of the PPCS manufactures, and could not provide jobs which use a full PPCS specification as stipulated by any of the range of PPCS manufacturers or any system which is BRANZ appraised or similar to support his assessment.
- Job 2 has been granted consent under Stucco plastering, but the system used does not fit the requirements of a stucco plastering system. This was confirmed by the referee, who said that while the plaster has been developed for stucco, [the Appellant's] methods are more of a custom standalone system rather than a typical stucco plaster system. [The Appellant] could not supply any jobs which use a Stucco plaster system and which meets NZS4251 criteria.

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<sup>7</sup> clause 10 and 11 of the Rules

- [The Appellant] was able to show a reasonable level of regulatory knowledge, and knowledge of current external plastering trade practice. He also demonstrated planning for external plastering work.
- When questioned further he was unable to relate and demonstrate a sufficient underpinning of knowledge and skill to support his projects as they relate to the licensing criteria.”

4.3 The Registrar concluded:

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

- “I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessors 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 provided substantial supporting documentation with his appeal and tabled display photographs of various projects he had designed and or built.
- 5.2 In response to questioning from the Board, the Appellant provided information on his background in external plastering and his knowledge of the required Competencies.

## 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:

### **External Plastering Licence Competencies:**

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- Competency 2: Demonstrate knowledge of current external plastering trade practice.*
- Competency 3: Carry out planning for external plastering work.*

- 6.2 The Board then considered Competency 4 for an External Plastering 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.

*Board's findings*

- 6.4 The Registrar's decision was partly formed as a result of the assessor's report which was framed around the plastering of strawbale buildings by the Appellant. However, the Board concluded that the demonstrated skills and knowledge were directly applicable to the Plastering AOP 1 and AOP 2 Competencies. This was because those competencies include, but are not limited to, the work and techniques described in NZS4251.
- 6.5 The Board concluded that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competency 4 for External Plastering Licences AOP 1 and AOP 2.

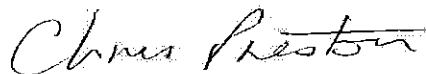
**7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [the Appellant] with an External Plastering Licence in AOP 1 and AOP 2.
- 7.2 The Board directs the Registrar to issue an External Plastering Licence in AOP 1 and AOP 2 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 day of 28 February 2014



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Chris Preston  
(Presiding Member)

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**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.”*