

**BPB Appeal No. A1293**

**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:	5 October 2017 at Auckland
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Appeal heard by:	Richard Merrifield Faye Person-Green Robin Dunlop Bob Monteith Mel Orange
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Appearances by:	The Appellant Translator Witness
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## 1.0 Introduction

The Appellant of Auckland applied for an External Plastering (Proprietary Plastering Cladding Systems) (PPCS) 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 4 August 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).

1.3 On 17 August 2017 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 of the Rules. In determining whether a person meets a Competency, regard must be given 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 (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 1, 2, 3, 4 and 5 for an External Plastering (PPCS) 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*

*Competency 4: Work Safely*

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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

*Competency 5: 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 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 was originally unable to supply relevant jobs for both areas of practice. After withdrawing from Solid Plastering, the Appellant provided two new PPCS jobs with references.
- Both replacement jobs were plastering over brick or block surfaces, which do not constitute full scope PPCS applications.
- The scope of works as provided by the applicant "are cosmetic coatings only, and not a full PPCS cladding". This was reinforced by the applicant stating that he "only did plastering over bricks and blocks and needed his LBP to appease the local [council]."

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 assessor's 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 included references from clients and evidence of his applicator licenses with proprietary coating suppliers with his appeal.

5.2 The Appellant appeared with [Omitted]. The Board provided a translator.

5.3 The Board asked questions of the Appellant, initially focusing on Competency 1. The Appellant was also asked some introductory questions on the remaining Competencies which he had difficulty responding to.

#### **6.0 Board's consideration**

6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the following Competencies for the External Plastering licence:

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

**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*
- Competency 4: Work Safely*
- Competency 5: Carry out external plastering work*

- 6.2 The Board then considered Competencies 1, 2, 3, 4 and 5 for an External Plastering (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.

*Board's findings*

- 6.4 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met any of the Performance Indicators to satisfy the requirements of Competencies 1, 2, 3, 4 and 5 for an External Plastering (PPCS) Licence.

The Board noted and discussed with the Appellant his lack of regulatory knowledge and lack of understanding as to why a license is required for carrying out Restricted Building Work and advised him to obtain experience and knowledge by way of working with a licensed person before re-applying for a license.

**7.0 Board's Decision**

- 7.1 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 (PPCS) Licence.**

**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 5th day of October 2017



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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.”*