

BPB Appeal No. A1298

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:	30 January 2018 – Whangarei
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Appeal heard by:	Richard Merrifield Mel Orange Bob Monteith Faye Pearson-Green
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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 (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 1 November 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 13 November 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.² 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 Schedule1³.
- 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 (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 & 5 for an External Plastering (PPCS) Licence.

External Plastering (PPCS) Licence Competencies:

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

Competency 5: Carry out external plastering work.

¹Incorporating amendments for 2008, 2009 and 2010.

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

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(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 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 was not able to supply any PPCS jobs with complex components such as cavity with polystyrene substrate or AAC panel that comes with a BRANZ appraisal.
- The Appellant carries out plastering over bricks and blocks which does not demonstrate ability in full scope PPCS plastering work.

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 with his appeal

- 5.1.1 Letter with further explanations regarding competencies 2, 4 & 5
- 5.1.2 Letter of competence from STO
- 5.1.3 Code of compliance from most recent project
- 5.1.4 Sto Miral Brochure with specifications of plastering
- 5.1.5 BRANZ appraisal for Sto plaster
- 5.1.6 STO Armat Miral Render System specifications – concrete block construction
- 5.1.7 STO Concrete Block Brochure
- 5.1.8 Photo of latest building project

5.2 The Appellant brought samples of the substrate and plastering accessories that he uses and spoke to his application methodology.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 1, 3 & 4 for the External Plastering (PPCS) licence:

⁷ clause 10 and 11 of the Rules

External Plastering (PPCS) Licence Competencies:

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

Competency 3: Carry out planning for external plastering work.

Competency 4: Work Safely.

6.2 The Board then considered Competencies 2 & 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 **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2 & 5 for an External Plastering (PPCS) Licence.

6.5 The Board noted that the Appellant had undergone formal training in External Plastering as part of his Masters Certificate in Building qualification in Germany and that he has extensive experience over the past 35 years in New Zealand and previously in Germany in plastering.

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 (PPCS) Licence.

7.2 The Board directs the Registrar to issue an External Plastering (PPCS) 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, 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 1ST day of February 2018



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.”*