

BPB Complaint No. C1090

IN THE MATTER OF

The Building Act 2004

AND

IN THE MATTER OF

A complaint to the Building Practitioners' Board under section 315 by

AGAINST

Building Practitioner
Licensed

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1. Introduction

1.1 ("the Complainant") lodged a complaint with the Building Practitioners' Board ("the Board") on 04 July 2013 in respect of Licensed Building Practitioner ("the LBP").

1.2 The complaint alleged that the LBP has in relation to building work at,

1.2.1 carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Building Act 2004 ("**the Act**"));

1.2.2 carried out or supervised building work that does not comply with a building consent (s 317(1)(d) of the Act).

1.2.3 has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(b) of the Act).

1.3 is a Licensed Building Practitioner in the following licence class:

1.3.1 Design Area of Practice (AOP) 1 issued 11 April 2012

1.4 The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 ("the Regulations").

1.5 The appeal was considered on Tuesday 15th April 2014 in accordance with the Act, the Regulations and the Board's "Complaints Procedure" (12 September 2011).

- 1.6 Those present for the duration of the hearing were:
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| David Clark | Chairman (Presiding) |
| Dianne Johnson..... | Board Member |
| Richard Merrifield | Board Member |
| Mel Orange | Board Member |
| Colin Orchiston | Board Member |
| Catherine Taylor | Board Member |
| Sarah Jones | Board Secretary |
| Paul Chisnall | Registrar's Representative |
| Richard Te One | Special Adviser to the Board |
- Two observers from the Ministry of Business, Innovation, and Employment (MBIE) Louise Curtis and Katherine Young were also in attendance.

- 1.7 Those present by teleconference link for the duration of the hearing were:
- | | |
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| | Licensed Building Practitioner and Respondent. |
| | Complainant |
| | Witness |
| | Observer. |

- 1.9 The Board's deliberations were conducted in private with no other persons present.

2. Board Procedure

- 2.1 The "form of complaint" provided by the Complainant satisfied the requirements of Regulations 5(a) to (d) of the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008.
- 2.2 On 18 September 2013 the Registrar of the Board prepared a report in accordance with Regulations 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint.
- 2.3 On 14 October 2013 the Board considered the Registrar's report and in accordance with Regulation 10 resolved to proceed on two disciplinary grounds:
- 2.3.1 "carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Building Act 2004 ("the Act")); and
- 2.3.2 "has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(b) of the Act)".
- 2.4 The Board resolved not to proceed with the allegation, that the LBP:

- 2.4.1 “carried out or supervised or supervised building work that does not comply with a building consent (s317(1)(d) of the Act)”.
- 2.5 The Board requested that a special adviser should be appointed in this matter. Accordingly Mr Richard Te One’s report was received dated 02 December 2013 and circulated to the parties. The complainant provided a written response dated 23 December 2013. The LBP did not provide a written response.
- 2.6 On 20 March 2014 a Pre-hearing teleconference meeting was convened by Mr Chris Preston, Deputy Chair of the Board. During the course of this meeting the Complainant advised that the allegation that the LBP
- “has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute” (s 317(1)(b) of the Act)*
- was to be withdrawn. Notice of the withdrawal was confirmed by the Board in a letter to the parties dated 28th March 2014.
- 2.7 There remained only one disciplinary allegation to be considered by the Board;
- “carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act”.*

3 The Hearing

- 3.1 The hearing commenced at 10:00am on Tuesday 15 April 2014. No person raised any issue in relation to conflicts.
- 3.2 At the hearing the Board was assisted in the presentation of the case by the Registrar’s Representative.
- 3.3 All witnesses and the Special Adviser were sworn in, their evidence was presented with the assistance of the Registrar’s Representative and they answered questions from the Board.

4 The evidence and matters to be considered

- 4.1 The Complainant gave evidence that the LBP submitted plans and specifications over a number of years that fell short of the standard expected of a license holder. They provided examples from three separate building consent applications that supported their view that the issues were on-going rather than an isolated occurrence.
- 4.2 The LBP accepted that the documents provided for the building consent applications cited by the Complainant were not up to an acceptable standard.
- 4.3 The Complainant gave evidence that the LBP advised an Owner at one project to undertake work notwithstanding that a building consent had not issued.
- 4.4 The LBP accepted that she had given that advice.

- 4.5 The LBP explained that she had become professionally isolated when she set up her own practice working from home, and that she had recognised this before the time the complaint had been made to the Board.
- 4.6 The LBP gave evidence that she now works as an employee under the supervision of an architect and/or an engineer and is undertaking further education within the firm or within the wider industry.
- 4.7 The LBP admitted that she has submitted a small number of building consent applications since taking up employment. She advised that these were projects that needed to be completed before she closed her own practice and not an indication that she was continuing to seek new projects.

5 Board's Conclusions and Reasoning

- 5.1 The grounds for this complaint are that the LBP has;

"carried out building work in a negligent or incompetent manner". (Refer s317(1)(b) of the Act).

The building work specifically relevant in this instance concerns the design and location of building work at residential projects. In each of these instances the Board finds that the work undertaken by the LBP has fallen seriously short of what is required from a practitioner who holds a license in this category. The LBP has admitted the charge, and has demonstrated that she is determined to improve on these standards.

6. Board's Decision

- 6.1 The Board finds the grounds for discipline under 317(1)(b) proven, and that the LBP should be disciplined.

7 Disciplinary penalties

- 7.1 S.318(1) of the Act provides for a range of disciplinary penalties which the Board may apply in these circumstances.
- 7.2 The Board invites the LBP to make written submissions on the matter of possible disciplinary penalties up until close of business on **Friday 13 June 2014**. Such submissions may include information to satisfy the Board of the adequacy of the professional supervision of her design work and continuing skills development and financial circumstances.

8 Publication of Name

- 8.1 Pursuant to s318(5) of the Act, the Board may publicly notify any disciplinary action taken against a Licensed Building Practitioner in any way it thinks fit.
- 8.2 The Board invites the LBP to make written submissions on the matter of publication of disciplinary penalties, up until close of business on **Friday 13 June 2014**.

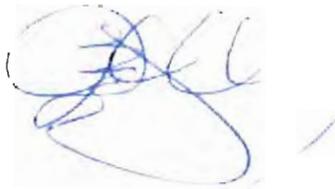
9 Costs

- 9.1 Under s. 318(4) of the Act, the Board has the power to order a Licenced Building Practitioner to pay the reasonable costs and expenses of, and incidental to, the Board's the inquiry.
- 9.2 The Board invites the LBP to provide written submissions on the matter of payment of costs up until close of business on **Friday 13 June 2014**. Such submissions may include information on her financial circumstances.

10 Right of Appeal

- 10.1 The right to appeal Board decisions is provided for in s 330(2) of the Building Act 2004.

Signed and dated this 28 day of May 2014.



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Chairman
David Clark