

Before the Building Practitioners Board

	BPB Complaint No. 26588
Licensed Building Practitioner:	Kurt Thomas Barnes (the Respondent)
Licence Number:	BP 132698
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	by audiovisual link
Hearing Type:	In Person
Hearing Date:	30 October 2025
Decision Date:	17 November 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Pearson, Barrister and Solicitor, Legal Member
Mr C Lang, Building Surveyor and Quantity Surveyor

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b), (d) and (da)(ii) of the Act.

The Respondent is fined \$3,500 and ordered to pay costs of \$1,075. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent carried out and supervised building work in a negligent manner, carried out building work that was contrary to a building consent, and failed to provide a record of work on completion of restricted building work. He was fined \$3,500 and ordered to pay costs of \$1,075. The costs were apportioned across the three persons who appeared at a consolidation hearing. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at, [OMITTED], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act; and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, it would be inquiring into the issues noted in a Thames Coromandel District Council inspection report dated 13 May 2024, starting on page 63 of the Board's file, including whether correct building consent change processes were used for changes to the consent.
- [5] The Board also gave notice that, as part of its investigations, it would be inquiring into who the responsible Licensed Building Practitioner(s) were for the building work under investigation, noting that two other Licensed Building Practitioners were involved and are being investigated in relation to the same allegations (matters [OMITTED] and [OMITTED]).

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

Consolidation

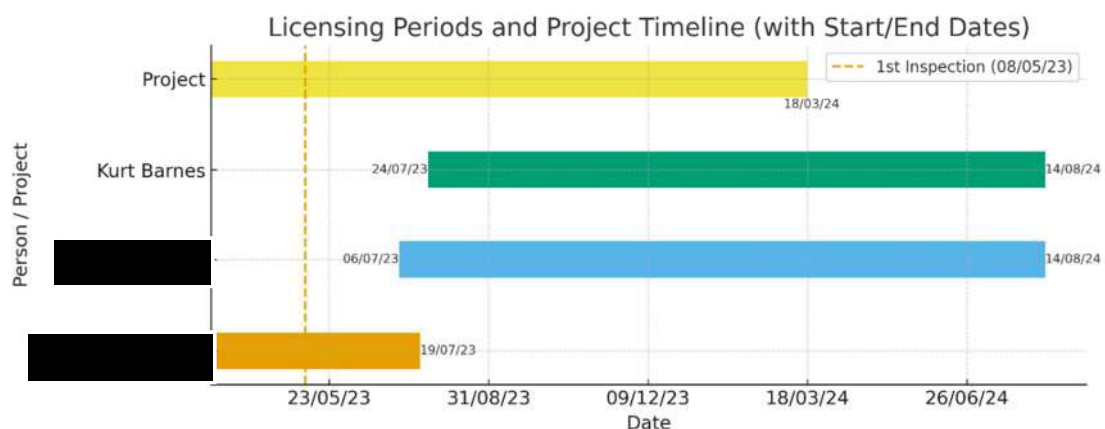
- [6] The Board may, under Regulation 13, consolidate two or more complaints into one hearing, but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the Complainant and the Licensed Building Practitioner in respect of each complaint agree to the consolidation. The matter proceeded as a consolidated hearing with matters [OMITTED] and [OMITTED].

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed³. Under section 322 of the Act, the Board has relaxed rules of evidence, which allow it to receive evidence that may not be admissible in a court of law.

Licensing

- [8] The build started on or about 10 March 2023. Multiple Licensed Building Practitioners (LBPs) were involved in the build, which included restricted building work that, under Section 84 of the Act, must be carried out or supervised by an LBP. Each of the LBPs involved, the Respondent, Mr [OMITTED], and Mr [OMITTED] (a subcontractor), were licensed for stages of the build. The following table shows their licensing status at the early stages of the build:



- [9] On the basis of the above, after the house foundations were completed by a separate foundation LBP sub-contractor, Mr [OMITTED] was the only LBP up until 6 July 2023, when Mr [OMITTED] became licensed. From 24 July 2023, when the Respondent obtained his licence, both he and Mr [OMITTED] were carrying out and supervising restricted building work, and were individually responsible and accountable for the building work they each undertook and supervised.

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [10] According to the Building Consent Authority (BCA) records, the first framing inspection was on 23 June 2023, when Mr [OMITTED] was the only licensed person. A framing and pre-wrap inspection then took place on 10 August 2023, when both the Respondent and Mr [OMITTED] were licensed, and Mr [OMITTED] was no longer licensed due a relicensing suspension.
- [11] In terms of who did what, the Board received evidence that [OMITTED] involvement was limited to wall and truss framing. He stated he was not involved in any foundation work, and the Respondent stated that the foundations had been subcontracted to Base Up Foundations, which had its own LBP. The Board's file included a record of work from an LBP who had carried out the foundations. That record of work excluded portal pads that were under investigation.
- [12] Once Mr [OMITTED] left the site, the Respondent and Mr [OMITTED] continued on with the build, with the Respondent being the person who had the most involvement in the build. He estimated he was on-site 95% of the time, whereas Mr [OMITTED] stated he spent 2 to 3 days a week on-site for 3 to 4 months. Mr [OMITTED] stated his involvement was limited to framing, including steel portal frames, trusses, cladding, and internal doors.
- [13] The Respondent considered that he was the person who was supervising unlicensed persons, in terms of which there were two qualified builders, an apprentice and a labourer.

Building Issues

- [14] The issues investigated by the Board were outlined in a Building Final Inspection Report dated 13 May 2024, prepared by Dennis McLeod, a Senior Building Control Officer of the Thames Coromandel District Council. It noted 11 failed items, as follows:

Inspection Summary: Final Building inspection for a single level 3 bedroom dwelling with attached double garage.

ITEMS TO ADDRESS

1/ All exterior cladding is to be removed in areas to enable the Engineer to carry out onsite investigation / monitoring for all SEO Steel Beam Post installation and connections, Portal Frame and connections.

2/ Cladding is to be removed above the main entry door, D02, D04, W0061, and refitted with a 5mm gap from the head flashings to the bottom of Linea Weather boards.

3/ Molding's are to be removed from the top of all other items of aluminum joinery, and head flashings installed and cladding fitted to comply with NZBC-E2.

4/ Cladding above D03 is to be removed, head flashing installed and reclad.

5/ Sill support WONZ bar to be installed to DO3.

6/ Facings are to be removed around the garage door, and head flashing installed, with new facings compliant with NZBC-E2.

7/ Box corner facings to all exterior corners are to be removed and replaced with detail in accordance with the Linea weather board detail for box corners.

8/ Exterior cladding is to be fixed on the gable end of South elevation.

9/ H3.2 Packers to be installed to the bottoms of aluminum joinery where there are 15mm gaps between aluminum and cladding.

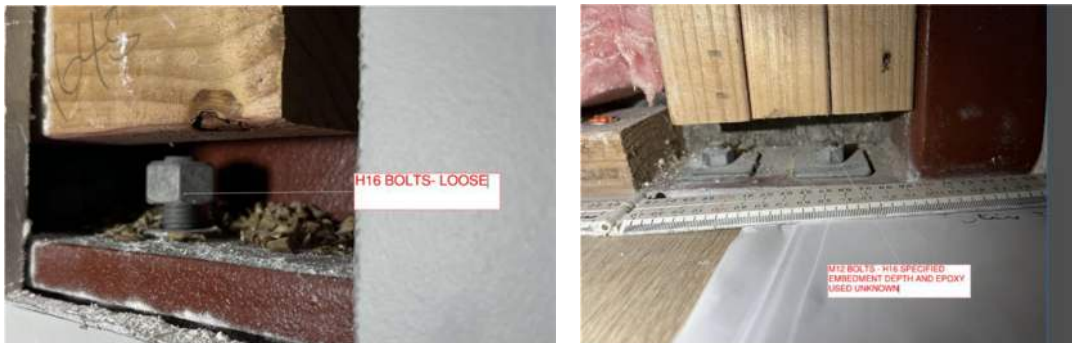
10/ H3.2 Packers are to be installed between all bottom weather boards and the cavity closer where there are 15mm gaps.

11/ Four roof support Portals have completely missed the Engineers foundation design (S1-Drawing number S3.1), and have metal support brackets fitting the sides of the concrete foundations, this is to be rectified under the Engineer's recommendation and monitoring.

- [15] After the Council's final inspection, [OMITTED] carried out a site inspection. They removed cladding and internal linings to be able to inspect fixings and notice multiple instances of non-compliance, and in particular, with regard to the portal pads and portal frame base plate fixings.
- [16] The Respondent noted that due to the liquidation of his company and a trespass order, he was unable to complete the build. He stated that in May 2024, when the full final inspection was carried out, the cladding had been completed and painted, but decks, a pool and tiling had not been completed.
- [17] The Board reviewed each of the failed items with the witnesses present. Mr McLeod expressed his opinion that the most serious item was that noted as number 11 above, which related to portal frames.
- [18] The Respondent gave evidence that the portal frames had been manufactured incorrectly and that, because they were the wrong size, the associated foundations had been constructed in the wrong position. The result was that modified plates had to be constructed to carry their weight and any transferred load, as shown in the following photograph:



- [19] The building consent included a requirement for the Engineer's Observations of the portal frame installation and connections. That did not occur. The Respondent stated he was not aware of the requirement, but stated that he was the person calling for inspections.
- [20] The [OMITTED] inspection carried out after the failed Final inspection and some structural elements were exposed, noted multiple instances of loose fixings, a lack of dry packing under steel, and the length of bolt embedment into the concrete was questioned. The following photos are examples:



- [21] The Respondent was asked whether he had discussed the changes to the portal frames method of connection to the foundation with any of the Owner, the Designer, the Engineer (Mr [OMITTED]), or the BCA before the work was carried out. He stated he had discussed the change on-site. He could not recall if any written instructions were issued by any of the aforementioned. He did not provide any evidence of any written instructions. There were no minor variations or amendments for the change on the BCA file. The Complainant (the Owner) stated that the change had not been discussed with him, and he had not authorised it.

- [22] The Respondent commented that the steel work may have been loosened to allow for adjustments and may not have been tightened afterwards.
- [23] The structural pads for the portal frames were, at a later point, enlarged to 450x450mm pads to enable the portal frames to sit on them (as shown below). That work was completed after the Respondent had left the site.



- [24] Regarding cladding changes from box corners to soakers, the Respondent stated the Complainant requested the change.
- [25] With respect to the issues with flashings, facings, and packers, the Respondent did not submit that the findings were not valid, but did give evidence that the issues were not brought to their attention, were going to be rectified, or they were waiting for materials. Also, regarding consent changes, the Respondent stated that all the changes had been discussed with the designer, and his intention was to address them all at once at the end of the project.
- [26] At the hearing, evidence was presented indicating that items 5 and 8 on the failed Final inspection were incomplete, rather than non-compliant.

Record of Work

- [27] The Respondent's involvement in the building work came to an end in March 2024 as a result of the liquidation of his company. His record of work, dated 5 August 2024, was provided to the owner in August 2024, after a complaint about its non-provision had been made in July 2024. The Respondent noted issues with its provision resulting from the liquidation and his access to documents during it. A copy of his record of work has not been submitted to the Territorial Authority.

Negligence or Incompetence

- [28] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [29] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹
- [30] The Board was investigating 11 items noted in a failed inspection report. Regarding items 1 and 11, which were noted as follows, the Board decided that the Respondent had conducted himself in a negligent manner because he had failed to ensure that the associated engineering observation and council inspections had been called for and completed and because of the engineer's findings regarding fixings.

1/ All exterior cladding is to be removed in areas to enable the Engineer to carry out onsite investigation / monitoring for all SEO Steel Beam Post installation and connections, Portal Frame and connections.

11/ Four roof support Portals have completely missed the Engineers foundation design (S1-Drawing number S3.1), and have metal support

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] “Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness”.

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

brackets fitting the sides of the concrete foundations, this is to be rectified under the Engineer's recommendation and monitoring.

- [31] The Board accepted that the construction of the portal foundations in the wrong position resulted from the portal frames being constructed to the wrong dimensions. That said, once the issue had been identified, the Respondent should have engaged with the Engineer, the Designer, and the BCA regarding the issue and obtained written instructions on how it was to be resolved. The solution that was developed, that of brackets, was neither adequate nor compliant, and whilst the Respondent may not have been solely responsible for that solution, he did have a duty to ensure the correct process for the change was followed, but failed in that duty. The result was that the work had to be deconstructed, new foundations built, and the portal frames reattached to those new foundations.
- [32] Additionally, the failure to have the work checked by an engineer and inspected by the BCA meant that the issues were not identified by the Respondent but by others who had to bring them to his attention. In this respect, whilst it is somewhat inevitable that an engineer or BCA authority will identify compliance issues that require remediation and it may not necessarily be that an LBP will be negligent because issues are identified, in this instance the issues with the fixings were covered over and Board is of the view that LBPs should be aiming to get building work right the first time and not rely on others to identify non-compliance issues.
- [33] Regarding the above, during the first reading of changes to the Act around licensing¹² it was noted by the responsible Minister:

In February this year the Minister announced measures to streamline and simplify the licensed building practitioner scheme. A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

- [34] The introduction of the LBP regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation¹³:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

¹² Hansard volume 669: Page 16053

¹³ Hansard volume 669: Page 16053

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

- [35] Section 3 of the Act, which sets out the Act's purposes, notes that the Act includes the purpose of promoting the accountability of builders. Section 14E of the Act encapsulates the statements in Hansard noted above. It sets out that:

14E Responsibilities of builder

- (1) *In subsection (2), builder means any person who carries out building work, whether in trade or not.*
- (2) *A builder is responsible for—*
 - (a) *ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates:*
 - (b) *ensuring that building work not covered by a building consent complies with the building code.*
- (3) *A licensed building practitioner who carries out or supervises restricted building work is responsible for—*
 - (a) *ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act; and*
 - (b) *ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.*

- [36] It is within this context that the Board considers that the acceptable standards expected of a reasonable LBP include taking steps to ensure building work is carried out competently and compliantly as and when it is carried out. That did not happen, and it follows that the Respondent's conduct has fallen below an acceptable standard.

- [37] Turning to the remaining items (2-10) the Board accepted that items 5 and 8 were incomplete, so it makes no findings about them. The same cannot be said for items 2, 3, 4, 6, 7, 9, and 10. Those issues were:

2/ Cladding is to be removed above the main entry door, D02, D04, W0061, and refitted with a 5mm gap from the head flashings to the bottom of Linea Weather boards.

3/ Molding's are to be removed from the top of all other items of aluminum joinery, and head flashings installed and cladding fitted to comply with NZBC-E2.

4/ Cladding above D03 is to be removed, head flashing installed and reclad.

6/ Facings are to be removed around the garage door, and head flashing installed, with new facings compliant with NZBC-E2.

7/ Box corner facings to all exterior corners are to be removed and replaced with detail in accordance with the Linea weather board detail for box corners.

9/ H3.2 Packers to be installed to the bottoms of aluminum joinery where there are 15mm gaps between aluminum and cladding.

10/ H3.2 Packers are to be installed between all bottom weather boards and the cavity closer where there are 15mm gaps.

- [38] The Board considered that the Respondent's building work and his supervision in relation to the above items fell below what is to be expected of an LBP. First, the comments made above regarding getting building work right the first time apply. The Respondent made submissions that many of the items could be rectified; however, the Board's view was that the work should have been completed in a compliant manner from the outset, and that, as the supervisor, he should have identified the issues and taken corrective action regarding them. Also, while rectification at a later point may have been possible, it was not logical, given that some deconstruction may have been required, and/or the rectification work would have been unnecessarily difficult due to the sequence in which it would have been completed.
- [39] The Board also noted that the correct change processes for building consent changes had not been followed. More relating to that will be said with respect to a failure to comply with the building consent below.
- [40] Based on the above factors, the Board finds that the Respondent's conduct has fallen below an acceptable standard and that he has carried out and supervised building work in a negligent manner.

Was the conduct serious enough

- [41] The conduct was serious. There were multiple instances of non-compliance, and they were not mere inadvertent errors or oversights. There was a pattern of the Respondent failing to adhere to consent requirements regarding observation and inspections and failing to adequately supervise unlicensed persons.

Has the Respondent been negligent or incompetent

- [42] The Respondent has carried out and supervised building work in a negligent manner and has breached section 317(1)(b) of the Act.

Contrary to a Building Consent

- [43] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁴ Once issued, the building work must be carried out in accordance with the building consent.¹⁵ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁶ Inspections ensure independent verification that the building consent is being complied with.
- [44] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁷ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁸ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

- [45] The items that the Board has made findings on in relation to negligence (items 1, 2, 3, 4, 6, 7, 9, 10 and 11 noted in the failed inspection) were also issues that were inconsistent with the building consent that had been issued. It follows that the work had been carried out and supervised in a manner that was contrary to the building consent that had been issued.
- [46] Also, regarding the failure to obtain observations and inspections that were mandated under the building consent, the Respondent, as the person who accepted responsibility for calling for them, has breached the building consent. The requirements were clear, important, and failure to adhere to them had serious downstream effects.
- [47] Finally, the change from soakers to box corners did not follow an acceptable consent change process. A minor variation should have been sought before the work was carried out. As matters transpired, that process was not followed and the change was identified by the BCA, rather than it being brought to their attention before the work was completed as per the required process.

¹⁴ Section 49 of the Act

¹⁵ Section 40 of the Act

¹⁶ Section 222 of the Act

¹⁷ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] "Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness".

Was the conduct serious enough

- [48] The conduct was serious. As with the findings on negligence, the departures, whilst not deliberate, were not mere inadvertence, oversight, or error. Furthermore, the failure to obtain observations and inspections had a significant impact on the build.

Has the Respondent breached section 317(1)(d) of the Act

- [49] The Respondent has carried out building work that was contrary to a building consent and has breached section 317(1)(d) of the Act.

Failure to Provide a Record of Work

- [50] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.¹⁹
- [51] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work

- [52] The Respondent was engaged to carry out and/or supervise building work on a new residential dwelling under a building consent. His work included work on the primary structure and the external moisture management system of the residential dwelling, both of which are forms of restricted building work.²²

Was the restricted building work complete

- [53] The Respondent's building work came to an end when the contract was terminated in or about March 2024. That was the completion date, and it was when a record of work was due.

Has the Respondent provided a record of work

- [54] The Respondent did not provide a record of work on completion in March 2024. Rather, he provided one in August 2024. It was dated 5 August 2024, several months after completion had occurred. Its provision came after a complaint had been made.

Was there a good reason for the Respondent to withhold his records of work

- [55] The Respondent's company did go into liquidation, and he may not have had access to the company records. That is not a good reason for a failure to provide a record of work. A record of work is a simple document, and if the original had been taken by

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

the liquidator, there would have been no reason why a new record of work could not have been drafted and issued in a timely manner.

- [56] The Respondent should also note that the requirement is on the LBP to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations.

Did the Respondent fail to provide a record of work

- [57] The Respondent has failed to provide a record of work on completion of restricted building work in accordance with section 88(1) of the Act.

Board Decisions

- [58] The Respondent has breached sections 317(1)(b), (d) and (da)(ii) of the Act.
- [59] The Board does note the commonality between the findings under sections 317(1)(b) and (d), and it will consider the two offences as one when it determines the appropriate penalty.

Penalty, Costs and Publication

- [60] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [61] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [62] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴
- (a) protection of the public and consideration of the purposes of the Act;²⁵
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁶

²³ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- (c) setting and enforcing a high standard of conduct for the industry;²⁷
- (d) penalising wrongdoing;²⁸ and
- (e) rehabilitation (where appropriate).²⁹

- [63] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³
- [64] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³⁴
- [65] In this matter, the Board adopted a starting point of a fine of \$3,500. It set the fine at that level because it considered the Respondent to be the most culpable for the issues that had arisen, and to reflect the seriousness of the offending. The starting point is consistent with other findings made by the Board for similar conduct.
- [66] The Board does not consider that there are any aggravating or mitigating factors, but the Respondent will be given an opportunity to raise any mitigating factors that the Board is not aware of.
- [67] The fine is set at \$3,500.

Costs

- [68] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁵

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [69] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁷.
- [70] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderately complex, and it was a consolidated hearing.
- [71] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,075 toward the costs of and incidental to the Board's inquiry. The amount is half of what the normal half-day hearing costs would be. The amount has been halved because it was a consolidated hearing, and the costs have been apportioned between the three respondents.

Publication

- [72] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,³⁸ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [73] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.⁴⁰
- [74] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [75] For the reasons set out above, the Board directs that:

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

³⁸ Refer sections 298, 299 and 301 of the Act

³⁹ Section 14 of the Act

⁴⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,075 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

- [76] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

Submissions on Penalty, Costs and Publication

- [77] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs, and publication up until the close of business on **Tuesday, 27 January 2026**. The submissions should focus on mitigating matters as they relate to the penalty, costs, and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs, and publication.

Right of Appeal

- [78] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 15th day of December 2025.



Mr M Orange
Presiding Member

ⁱ **Section 3 of the Act**

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*

- (iii) *people who use a building can escape from the building if it is on fire; and*
- (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ii Section 318 of the Act

- (1) *In any case to which section 317 applies, the Board may*
 - (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

iii Section 318 Disciplinary Penalties

- (1) *In any case to which section 317 applies, the Board may—*
 - (a) *do both of the following things:*
 - (i) *cancel the person's licensing and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

^{iv} **Section 330 Right of appeal**

- (2) A person may appeal to a District Court against any decision of the Board—
(b) to take any action referred to in section 318.

Section 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.