

Before the Building Practitioners Board

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| | BPB Complaint No. CB26201 |
| Licensed Building Practitioner: | David Bate (the Respondent) |
| Licence Number: | BP131685 |
| 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

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| Complaint or Board Inquiry | Complaint |
| Hearing Location | Auckland |
| Hearing Type: | In Person |
| Hearing Date: | 24 January 2024 |
| Decision Date: | 9 February 2024 |

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

Appearances:

E Davies for the Respondent

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) and 317(1)(h) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$3,500. 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 building work on a pool shed that included sanitary fixtures. Because of those fittings, a building consent was required. One had not been obtained prior to the work being carried out. The Board found that the Respondent had been negligent because he knew or ought to have known that a building was required. The Board also found that the Respondent had carried out building work that he was not competent to carry out when he completed plumbing work by installing pipes in a foundation.
- [2] The Respondent was fined \$2,000 and ordered to pay costs of \$3,500. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Charges

- [3] 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
- [4] 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, IN THAT, he may have carried out building work that required a building consent prior to one being in place in relation to the construction of:
 - (i) a pool house;
 - (ii) a retaining wall; and
 - (b) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have operated machinery and carried out foundations work in an unsafe manner; and
 - (c) breached section 314B of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out building work that he was not competent to carry out in relation to:
 - (i) the design of a pool house; and
 - (ii) carrying out plumbing work.

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged 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.
- [6] The Respondent was engaged to construct a pool shed and retaining wall. A building consent had not been obtained by the owner for the building work. The complaint included evidence that the pool house included or was to include sanitary fixtures and was higher than 3.5 metres, either of which would have meant that a building consent was required. The Complainant also provided measurements of the retaining wall, which indicated that it may, at various points, have been higher than

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.

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

1.5 metres. Again, the height of the retaining wall would have triggered a requirement for a retaining wall.

- [7] The Complainant noted that the Respondent may have designed the pool house and carried out plumbing work and alleged that, in doing so, the Respondent may have carried out building work that he was not competent to carry out.
- [8] The Complainant also provided evidence that a worker may have been struck by machinery during the build.

Post-hearing Evidence and Submissions

- [9] The Board received evidence and submissions after the hearing concluded, which have been taken into consideration.

Negligence or Incompetence

- [10] There was no evidence of incompetence, which is the lack of skill or knowledge to carry out or supervise the building work. As such, the conduct was considered under the alternative of negligence.
- [11] 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.
- [12] As noted, there were two issues under investigation with respect to negligence. The first was whether a building consent should have been obtained for the building work prior to the associated building work being undertaken. The second was in relation to a potential health and safety breach.

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”.

Has the Respondent departed from an acceptable standard of conduct?

- [13] 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

Building Consent Evidence

- [14] There were two matters under investigation. Whether a building consent was required for a retaining wall and for a pool house.
- [15] Retaining walls must be consented if they exceed 1.5 metres in height or if a surcharge is placed on them. The Board was satisfied that what was being retained was less than 1.5 metres and that there was no surcharge. As such, the issue will not be considered any further.
- [16] Turning to the pool house, the Board received designs that had been developed by a Licensed Building Practitioner with a Design AoP 1 Licence. The Designer gave evidence. He was instructed by the Complainant. He stated the Complainant did not want to obtain a building consent for the pool house because of time constraints. He advised the Complainant that a building consent was required if a toilet and shower were to be included, was instructed to exclude them and was advised that they would be included at a later date. That statement was consistent with his letter of engagement dated 18 January 2022, which stated:

Design & construction documents for 8x6m pool cabana as per design brief. Outdoor pizza oven, allowance for future toilet & shower room. No Building Consent required as structure complies with Schedule 1.

- [17] And with an email sent by the Designer dated 22 March 2022, which stated:

Please find attached pool shed drawings for final review. [Omitted] can you please do your thing and let me know what needs changing?

As far as WC placement goes, it's really up to you on site as anything I put in my drawings needs to have a BC.

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.

[18] The email was in response to the following email query from the Complainant:

Re the pool house/ shower, toilet area, Is it within your scope to provide position of WC, basin and shower? Kitchen Sink and bench top position, lighting positions?

[19] An email from the Designer dated 17 January 2024 reiterated his position as regards a building consent:

Thanks for the email and yes, I do recall the conversation. The client came to me via David's introduction and explained he was after a pool house and it was to be completed in time for a wedding therefore he did not want to obtain a building consent. I explained to him this was not possible if he wanted to include the plumbing fixtures in the shower room area so he was happy to create the space and fit out at a later stage by Building Consent. As the area of the pool house veranda was under 40sqm veranda and 30sqm metre of floor area set out under Schedule 1 NZBC and was greater than its own height from the boundaries, we concluded that it did not need consent as long as the work was carried out or supervised by an LBP practitioner. In this case we had a builder, an engineer and myself all who are LBP registered. However, I understand now I did not take into account of the height being greater than 3.5 metres and now realise I should have.

The client was adamant throughout the whole process that he did not want to go for a building consent no matter what.

[20] The preliminary design that the Designer provided did not include any details for plumbing. The plans made reference to a future shower and toilet. The Designer was adamant that if sanitary fixtures or plumbing details had been included, then a building consent would have had to of been obtained.

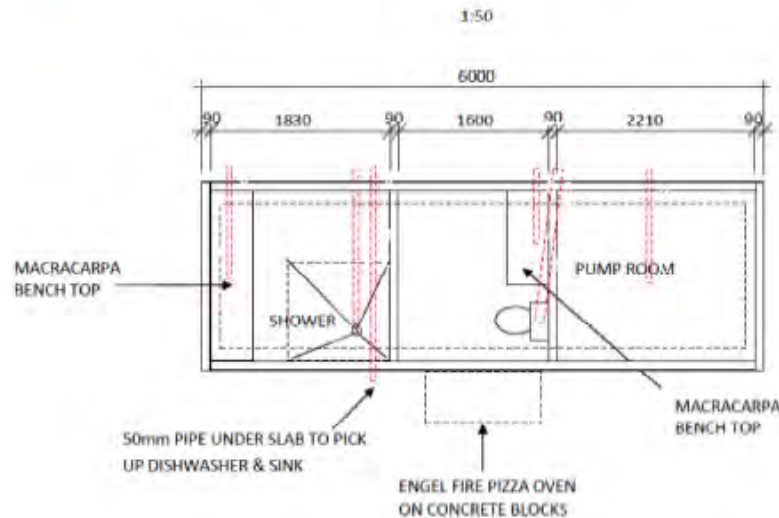
[21] At the hearing, the Complainant disputed that there was any time pressure with respect to the construction of the pool house or that he did not want to obtain a building consent for the pool house stop. He did acknowledge that he intended to hold a family wedding in the pool area and that he wanted the facilities in time for that wedding.

[22] The Respondent proceeded to construct the pool shed in line with the design provided but with the addition of plumbing outlets in the foundation slab. Sanitary fixtures (shower, toilet, vanity sink, and kitchenette sink) were fitted prior to the Respondent's involvement in the project coming to an end.

- [23] The Complainant provided emails from Respondent that attached a PDF document entitled “Ablution block set out PIPE WORK”.

Item 1.7.

‘Ablution block set out Pipe work’ – Design sent from David Bate to myself.



- [24] Counsel for the Respondent submitted:

Mr Bate relied on Hagen and Irons’s experience and advice regarding whether or not the Pool Shed required building consent and proceeded on that basis. Accordingly, Mr Bate’s conduct cannot be determined incompetent or negligent.

Building Consent Discussion

- [25] The Designer accepted that his pool house design required a building consent because it exceeded 3.5 metres in height but submitted that his error was an oversight. The Respondent was entitled to rely on that design.
- [26] It is noted that the design included a veranda, which may have meant that the total floor area exceeded the 30m² exemption limit. The Designer should have been alert to the potential issue and have taken it into consideration.
- [27] The Designer was also consistent in his advice that if sanitary fixings were to be included in the pool house, a building consent was required. He gave that advice to the Complainant. His design did not include plumbing details. Reference was made to a future shower and toilet.
- [28] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.¹² The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is

¹² Refer sections 40, 41 and 42A of the Act.

assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken¹³ and that the consented work is then assessed against the consent issued through scheduled inspections.¹⁴ In *Tan v Auckland Council*¹⁵ the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

- [29] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken.
- [30] In terms of exemptions available in Schedule 1, such as Clause 3A and 3B, neither is available if a building contains sanitary facilities or facilities for the storage of potable water.
- [31] What was built included sanitary fixtures. As such, irrespective of the height issue, a building consent was required and should have been obtained before the building work was undertaken. The Respondent did not receive plans from the Designer that indicated sanitary fixtures were included. Nor was he given any advice or instructions that a building consent was not required when sanitary fixtures were to be installed. As such, unlike the height issue, the Respondent was not entitled to rely on the advice of others.
- [32] The question for the Board then is whether, by failing to ensure building consents were in place, the Respondent has departed from an acceptable standard of conduct.
- [33] Looking at the *Tan* case, the decision envisaged that those who are in an integral position as regards the building work, such as a Licensed Building Practitioner, have a duty to ensure a building consent (or an amended building consent) is in place prior to building work being carried out. It follows that failing to do so can fall below the standards of care expected of a Licensed Building Practitioner. The Board finds that the Respondent should have known that a building consent was required and that he either ignored that requirement or was wilfully blind to it. The Board finds that the Respondent's conduct has fallen below what is expected of a Licensed Building Practitioner.

¹³ Section 49 of the Act.

¹⁴ Section 222 of the Act.

¹⁵ [2015] NZHC 3299 [18 December 2015]

Health and Safety

- [34] The Board received conflicting evidence as regards health and safety practices and whether another person on the building site had been injured when he was hit by a digger. The Respondent accepted that there may have been an incident but denied the incident that the other worker claimed caused an injury. The worker stated he would be able to provide medical evidence after the hearing. None was received.
- [35] The Board noted that there was a lack of a site-specific health and safety plan and that on-site systems and processes were lax. Notwithstanding those observations, the Board did not receive sufficient evidence on which to make a finding that a specific allegation under investigation, that the Respondent operated machinery in an unsafe manner, had occurred.
- [36] The allegation that the Respondent had carried out foundation work in an unsafe manner related to exposed structural steel that was not capped and made safe. Photos established that the steel had not been capped. The conduct, however, in isolation, was not serious enough to warrant further investigation.

Was the failure to ensure a building consent was in place serious enough?

- [37] The Respondent, as a Licensed Building Practitioner, should have known that a building consent was required or at least have carried out investigations to ascertain that one was not required. He took no such steps. Moreover, it was plainly evident that the design he used did not include plumbing or sanitary fixtures, which he then installed. The Respondent's departure was not inadvertence or simple error. It was serious, and the Respondent should be disciplined.

Has the Respondent been negligent?

- [38] The Respondent has carried out building work in a negligent manner by failing to ensure that a building consent was in place.

Misrepresentation or Outside of Competence

- [39] There are two types of disciplinary offences under section 314B. The first relates to representations as to competence (section 314(a)). The second relates to carrying out or supervising building work outside of a licensed person's competence (section 314(b)). It was this second aspect that the board was investigating.

- [40] Section 314B(b) of the Act provides:

A licensed building practitioner must—

(b) carry out or supervise building work only within his or her competence.

- [41] In the context of the Act and the disciplinary charge under section 317(1)(h) and 314B(b) a Licensed Building Practitioner must only work within their individual competence. In this respect, it should be noted that if they hold a class of licence for the building work they are undertaking but are not able to successfully or efficiently complete the building work, then it may be that they are working outside of their

competence. If a Licensed Building Practitioner undertakes work outside of their licence class,¹⁶ then they can be found to have worked outside of their competence if they do not have the requisite skill set, knowledge base or experience especially if the building work is noncompliant or is in some way deficient.

- [42] There were two aspects that were under investigation: design work and plumbing work.

Design Work

- [43] The Respondent, with the exception of plumbing work, built to a design that was provided to him. It was a preliminary and incomplete design that relied on specific engineering details. It had been reviewed by an engineer who had raised questions and had not provided a final design, including for foundations and trusses that exceeded NZS3604 parameters. The design did, however, have some design and engineering details. The Respondent did not strictly follow those details with respect to the foundation where he used blocks, which were not on the design. The Respondent gave evidence that he had been provided with final engineering details and was provided with an opportunity to submit those details. They were not provided. Notwithstanding, the Board finds that the Respondent, other than in relation to plumbing, has not carried out design work that was outside of his competence on the basis that the design work he did undertake did not meet the threshold for disciplinary action.

Plumbing Work

- [44] The plumbing work involved the installation of pipes in the foundations. The Respondent accepted that he had carried out the work and that he did so because the Plumber could not attend the site. The Plumber gave evidence. He stated that the pipe work did not comply with compliance standards and that the plumbing design was poorly conceived in that multiple pipes (five) were installed, whereas two would have been sufficient if the work had been done correctly. That resulted in additional costs when it came to fit-off. The Plumber did not consider the work had been done competently.
- [45] Under section 8 of the Plumbers, Gasfitters, and Drainlayers Act 2006, only an authorised person can carry out or assist with sanitary plumbing. The Respondent was not an authorised person.
- [46] Given that the Respondent was not authorised and because the work was not completed to an acceptable standard, the Board finds that the Respondent did carry out work that was outside of this competence.

Board's Decisions

- [47] The Respondent has breached :

¹⁶ Note that to carry out restricted building work outside of a licensed building practitioners licence class is a disciplinary offence under s 317(1)(c) of the Act.

- (a) section 317(1)(b) of the Act; and
- (b) section 317(1)(h) of the Act.

Penalty, Costs and Publication

- [48] 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.
- [49] The Respondent made submissions at the hearing as regards penalty, costs and publication.
- [50] The Board heard evidence during the hearing relevant to penalty, costs and publication 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

- [51] 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.¹⁷ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁸
- (a) protection of the public and consideration of the purposes of the Act;¹⁹
 - (b) deterring other Licensed Building Practitioners from similar offending;²⁰
 - (c) setting and enforcing a high standard of conduct for the industry;²¹
 - (d) penalising wrongdoing;²² and
 - (e) rehabilitation (where appropriate).²³
- [52] 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 cases²⁴ and applying the least restrictive penalty available for the particular offending.²⁵ In all, the Board should be looking to impose a fair, reasonable, and

¹⁷ *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]

¹⁸ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁹ Section 3 Building Act

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²³ *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

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty²⁶ that is consistent with other penalties imposed by the Board for comparable offending.²⁷

- [53] 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.²⁸
- [54] There are two disciplinary findings. The first relates to negligence, the second to a working outside of the Respondent's competence. The conduct is in the mid-range of seriousness, and the Board considers a fine to be the appropriate form of penalty. It has adopted a starting point of a fine \$3,000. The amount is consistent with other penalties imposed by the Board.
- [55] The Respondent has not accepted any responsibility. Whilst that is not an aggravating factor, it is noted that he has tried to minimise his culpability. To some extent that is warranted as other professionals were involved and the Complainant was complicit in the decision to proceed without a building consent. Those factors have been taken into account as mitigating factors and the fine is reduced to \$2,000.

Costs

- [56] 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.²⁹
- [57] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁰. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³¹.
- [58] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$3,500 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a half-day hearing.

Publication

- [59] 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,³² and he will be named in

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

²⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁸ 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.

²⁹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁰ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³¹ *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.

³² Refer sections 298, 299 and 301 of the Act

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.

- [60] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³³ 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.³⁴
- [61] 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

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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.

- [63] 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

- [64] 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 **15 April 2024**. 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

³³ Section 14 of the Act

³⁴ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 21st day of March 2024.



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.*