

Before the Building Practitioners Board

	BPB Complaint No. CB26523
Licensed Building Practitioner:	Ben Michael Kidd (the Respondent)
Licence Number:	BP131175
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 Type:	On the Papers
Hearing and Draft Decision Date:	10 September 2024
Finalised Draft Decision Date:	8 November 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mr G Anderson, LBP, Carpentry and Site AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, 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 section 317(1)(b) and (g) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$1,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board’s Decision

- [1] The Respondent was engaged to carry out building work that required a building consent. He commenced work without one. Partway through the scope of work, the Respondent’s involvement came to an end. Another contractor reviewed the Respondent’s work and noted compliance issues.
- [2] The Board investigated two disciplinary offences. The first related to the quality and compliance of the Respondents building work. The Board found that the Respondent had carried out or supervised building work in a negligent manner on the basis that the work he had completed did not meet Building Code compliance requirements.
- [3] The second disciplinary offence investigated was whether the Respondent had breached the Code of Ethics for Licensed Building Practitioners (LBPs) when he failed

to ensure a building consent was in place for the building work prior to it being commenced. The Board found that the Respondent had breached clause 10 of the Code, which requires that LBPs comply with the law. The finding was made on the basis that clause 10(1)(a) of the Code stipulates that LBP's must comply with the Building Act, which, in turn, requires that all building work be carried out under a building consent.

The Charges

- [4] 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
- [5] 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 the building work completed may not have met an acceptable standard; and
 - (b) breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, in that he may have breached clause 10 of the Code, which states:

10 You must comply with the law

(1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*

(a) *the Building Act 2004:*

Draft Decision Process

- [6] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [7] Ordinarily, the Board makes a decision having held a hearing.³ The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.⁴

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 Regulation 10 of the Complaints Regulations.

⁴ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

[8] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

Evidence

[9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.

Background

[10] The Respondent was engaged to carry out building work for the Complainant. A building consent had not been obtained for the building work. The Respondent started but did not finish the building work. Another contractor reviewed the Respondent's work and noted compliance issues.

Negligence or Incompetence

[11] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁶ 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*⁷ test of negligence.⁸ 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.⁹ 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.¹⁰ If it does not, then a disciplinary finding cannot be made.

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁶ *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.

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ 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)

⁹ 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"

¹⁰ *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

- [12] 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 Code¹¹ and any building consent issued.¹² The test is an objective one.¹³
- [13] The evidence provided to the Board established that the building work had not been completed in a manner that complied with the Building Code. Specifically, the Complainant provided an opinion from another LBP who noted that the building work did not comply with NZS3604, which is an Acceptable Solution for compliance with the Building Code.¹⁴ The opinion stated:
- As discussed, please see photos and info attached to add to your draft email you sent me regarding Ben Kidd.*
- The information attached are the guide lines and standards from NZS3604 which is an acceptable solution for building a timber framed house in NZ.*
- It outlines the timber treatment of the timber piles as H5 not H4 which has been used and the size of the timber pile as 125mm x 125mm square and not the 100mm x 100mm square that has been used.*
- It also outlines the pile spacings/bearer spans in table A6.4 which are not correct as per photos attached.*
- Because Ben has not followed these standards the subfloor framing and piles will have to be removed and you will have to start again.*
- [14] The Board was provided with photographs of the work that corroborated the above statements.
- [15] The Respondent sent the Board a written response to the complaint. In it, he noted:
- The plans attached to the complaint filed must have been drawn up after I left site. I'm confused as to why they weren't drawn up earlier, this would have helped considerably.*
- [16] The Board notes that if the Respondent did not have plans, he should have either sought them or carried out the work in accordance with an Acceptable Solution to ensure compliance with the Building Code. The above evidence indicates that he did not do either.

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ *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.

¹⁴ Section 19(1)(b) of the Act.

[17] In response to the specific allegations, the Respondent stated:

A conversation was had between myself and the client about the H4 posts and I informed her that the correct posts to use for the job are 125x125 H5 but she had already purchased the H4 posts. [OMITTED] was adamant I was to use the H4 posts to save money. I have a witness privy to this conversation, which adds to my confusion as to why/how it has come to this.

Later in the piece we were approached by [OMITTED] via email about the incorrect posts – all of which are in the emails attached. To try and clear this up amicably and move forward smoothly we removed 2 weeks' worth of wages, most of which didn't relate to the work that is in question. This was a huge loss to us as the posts only took 2 days to install.

I also sent her an email (also attached) saying I would come out and dismantle the bearers and joist so they can be used again and pull the posts out at my cost so the next builder can get started. She didn't reply to that email and instead contacted the complaints office.

[OMITTED] has also not paid the materials bill, I have had to pay it. All the materials remain on site, this has cost my business a significant amount of money and it has been a struggle to recover from it, which has caused our business a considerable amount of financial stress as we are in the early years of operating.

[18] Section 17 of the Building Act states that all building work must comply with the Building Code. That requirement cannot be contracted out of. As such, it is not a defence to state that a client required an LBP to use non-compliant materials or building methods. In this respect, the Code of Ethics states, in clause 18, that an LBP must follow unless doing so would breach a law. In this instance, following the client's instructions, if those instructions were issued, has breached section 17 of the Building Act.

[19] The Board also notes that the Respondent has offered to remediate the non-compliance. Whilst that may be appropriate in terms of a contractual dispute, the Board considers that LBPs should be aiming to get building work right the first time. In line with this, during the first reading of changes to the Act around licensing,¹⁵ 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.

¹⁵ Hansard volume 669: Page 16053

- [20] The introduction of the licensed building practitioner 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 legislation¹⁶:

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.

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.

- [21] The Board would expect a competent LBP to know of the need to build in accordance with the Building Code. The Respondent should have carried out the work by reference to NZS3604, a well-known and referenced Acceptable Solution for lightweight timber structures. He did not, and the Board finds that he has carried out building work in a negligent manner.

Was the conduct serious enough

- [22] The Respondent's departure from an acceptable standard is serious. The use of incorrect materials and the incorrect spacing of underfloor timber structural elements were significant departures. The conduct warrants the Board taking disciplinary action.

Has the Respondent been negligent or incompetent

- [23] The Respondent has conducted himself in a negligent manner.

Code of Ethics

- [24] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.¹⁷ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics

¹⁶ Hansard volume 669: Page 16053

¹⁷ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

is new, ethics have been a part of other regulatory regimes¹⁸ for some time, and the Board has taken guidance from decisions made in other regimes.

- [25] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [26] The disciplinary provision in the Act simply states, “has breached the code of ethics”. Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,¹⁹ Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

- [27] The Board also notes that the courts have applied a threshold test to disciplinary matters. It is the same as those for negligence. The Board has, in considering the matter, applied those tests.

The Conduct

- [28] The issue under consideration is whether the Respondent has breached the Building Act By undertaking building work without a building consent. If he did, then that breach could, in turn, be considered a breach of clause 10 of the Code of Ethics.
- [29] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.²⁰ 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 assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken²¹ and that the consented work is then assessed against the consent issued through scheduled inspections.²² In *Tan v Auckland Council*,²³ 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:

¹⁸ Lawyers, Engineers, Architects and Accountants, for example

¹⁹ [1992] 1 NZLR 720 at 724

²⁰ Refer sections 40, 41 and 42A of the Act.

²¹ Section 49 of the Act.

²² Section 222 of the Act.

²³ [2015] NZHC 3299 [18 December 2015]

[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.

- [30] 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.
- [31] The building work involved the creation of a conservatory that measured approximately 45m² and the conversion of a living room into a laundry bathroom and sewing room.
- [32] As noted, there are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those who seek to rely on an exception to show that the building work comes with that exception.
- [33] Looking at the work, clause 15 of Schedule 1 allows for: *building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres*. The area was greater than 5m², and there was no existing subfloor structure. As such, the exemption does not apply. The building work on the conservatory required a building consent.
- [34] Schedule 1 also provides exemptions for plumbing work. Those exemptions do not apply if new sanitary fixings are being installed or if existing fixtures are being moved. The creation of a bathroom and laundry required a building consent as new sanitary fittings were being installed in a new location within the dwelling.
- [35] The building work may also have included work on structural framing elements. If it did, then a consent would have been required for that work because the Schedule 1 exemptions only apply to structural work other than building work that is the repair or maintenance of existing building work, which this was not.
- [36] Given the above, the building work clearly required a building consent. As the Respondent proceeded to carry out the building work without one, there has been a breach of section 45 of the Act. It follows that the Respondent has breached the Building Act, and, in turn, breached clause 10 of the Code of Ethics.

Was the Conduct Serious Enough

- [37] In *Tan v Auckland Council*²⁴ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

²⁴ [2015] NZHC 3299 [18 December 2015]

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

- [38] This was not a case where it was a marginal call as to whether a building consent was required. The envisaged building work was substantial, and it should have been clear to any LBP that a consent would be required. Notwithstanding, the Respondent has proceeded to carry out the work without one.
- [39] Further, the Respondent was in any way unsure he should have made enquiries before commencing building work. In this respect, there is no evidence that the Respondent took any steps. The Board would expect that the Respondent would have, at the least, made enquiries with the BCA or a qualified design professional to ascertain if a consent was needed.
- [40] Given the above, whilst it could be said that the Respondent was somewhat ignorant of the Building Act provisions that apply to building consents, the conduct was not a case of mere inadvertence, error or oversight. The Board has made this decision because, as an LBP, the Respondent should have known that consent was required, and because there is no evidence that the Respondent took any steps to satisfy himself that a consent was not required prior to commencing the building work.

Board's Decision

- [41] The Respondent **has** breached:
- (a) section 317(1)(b) of the Act; and
 - (b) section 317(1)(g) of the Act.

Penalty, Costs and Publication

- [42] 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.
- [43] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [44] 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.²⁵ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁶

- (a) protection of the public and consideration of the purposes of the Act;²⁷
- (b) deterring other Licensed Building Practitioners from similar offending;²⁸
- (c) setting and enforcing a high standard of conduct for the industry;²⁹
- (d) penalising wrongdoing;³⁰ and
- (e) rehabilitation (where appropriate).³¹

- [45] 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 cases³² and applying the least restrictive penalty available for the particular offending.³³ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³⁴ that is consistent with other penalties imposed by the Board for comparable offending.³⁵
- [46] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.³⁶
- [47] The Board decided that a fine was the appropriate form of penalty to impose. The conduct is in the mid-range of seriousness, and on that basis, it adopted a starting point of a fine of \$2,500. The starting point has taken into consideration that the matter has been dealt with on the papers, and the fine is consistent with other fines imposed by the Board for similar disciplinary offences.
- [48] The Respondent has offered to make things right. That, however, is not considered by the Board to be a mitigating factor as the Respondent is offering to do no more than what he should have done in the first place. As such, there are no mitigating factors present. Nor is the Board aware of any aggravating factors. The Board, therefore, sees no reason to depart from the starting point. The fine is set at \$2,500.

²⁵ *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]

²⁶ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁷ Section 3 Building Act

²⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

³⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³¹ *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

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

³³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁶ 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.

Costs

- [49] 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.³⁷
- [50] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁸. The starting point can then be adjusted up or down, depending on the particular circumstances of each case³⁹.
- [51] 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. Adjustments are then made.
- [52] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,150 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

Publication

- [53] 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,⁴⁰ 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.
- [54] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴¹ 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.⁴²
- [55] 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

³⁷ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁸ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁹ *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.

⁴⁰ Refer sections 298, 299 and 301 of the Act

⁴¹ Section 14 of the Act

⁴² *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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

[56] 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 pay a fine of \$2,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,150 (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.

[57] 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 Draft Decision

[58] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[59] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **7 November 2024**.

[60] If submissions are received, then the Board will meet and consider those submissions.

[61] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[62] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

[63] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.

[64] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **7 November 2024**.

[65] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

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

Signed and dated this 17th day of October 2024.



M Orange
Presiding Member

This decision and the order herein were made final on 8 November 2024 on the basis that no further submissions were received.

Signed and dated this 16th day of December 2024.



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.*