

Before the Building Practitioners Board

BPB Complaint No. C2-01722, C2-01723 and
C2-01724

Licensed Building Practitioner: Graeme Taylor (the Respondent)

Licence Number: BP 114421

Licence(s) Held: Design AOP 1

Penalty Decision of the Board under section 318 of the Building Act 2004

Complaint or Board Inquiry	Complaints
Hearing Location	Napier
Hearing Type:	In Person
Hearing Date:	4 April 2018
Substantive Decision Date:	4 May 2018
Penalty Decision Date:	8 June 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP Design AOP 2

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.

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Introduction

- [1] This penalty decision arises out of the Board's substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B of the Act (s 317(1)(h) of the Act).
- [2] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [3] In its substantive decision the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [4] On 24 May 2018, the Board received the Respondent's submissions. It has considered them and made the following decisions.

Penalty

- [5] The Board's initial view was that a cancellation of the Respondent's licence was appropriate. The Board noted:
- [46] *The Respondent put forward various personal circumstances that impacted on his conduct at the time as well as changes he has subsequently made to his design practice. Notwithstanding these the Board is concerned that the Respondent has failed to meet the competence standards required to be a licensed building practitioner and that he may still be below that standard. As such the Board considers that the cancellation of his licence may be warranted. In this respect cancellation would ensure, on reapplication to be licenced, that the Respondent's competence was once again objectively assessed.*
- [6] The Board provided the Respondent with an opportunity to make submissions and to satisfy the Board that cancellation was not required. The specific directions were:

- [47] *Out of fairness to the Respondent, and to ensure that he has an opportunity to substantiate the submissions he made as regards learnings and improvements the Board will allow the Respondent an opportunity to submit at least two but no more than three recent consented and stamped designs for review and consideration by the Board. The Respondent is to include all RFI requests and responses associated with the designs and should note that the Board may verify these with the building consent authority.*
- [7] The Respondent provided the following with his written submission:
- (a) A character reference from an architect under whose supervision the Respondent had worked;
 - (b) A character reference from an engineer the Respondent had worked with and under whose supervision the Respondent had worked;
 - (c) A design for 22 Wharemoana Road and an associated request for further information;
 - (d) A design for 620 Nottingham Road and an associated request for information for 540 Lyndhurst Road which is an alternative street address for 620 Nottingham Road (the property is a corner site); and
 - (e) A design for Porangahau School and an associated request for information.
- [8] The Board notes that the documentation provided does not accord with the instructions as set out above. The designs are not stamped building consent authority approved designs. As such there is no evidence, other than the Respondent's statements, that the designs have been consented and as such, no proof that the designs were accepted as being satisfactory. Full correspondence has not been. The Board also notes that one of the designs relates to design work that is not restricted building work that requires a licence (the school). The Board is left wondering if they have been given a partial or misleading picture of the designs supplied.
- [9] This aside the documentation provided has not established that the issues identified in the substantive hearing, and which led to the decision to cancel the Respondent's licence, have been addressed. There is no evidence of peer review or quality assurance, mistakes and errors in design work are still being made, and the Respondent has relied on the building consent authorities to identify those mistakes.
- [10] The Board accepts that it is not uncommon for a design and specification, when submitted for a building consent to result in requests for further information. What needs to be assessed is the nature and quantity of those requests. The requests for information that the Respondent has provided show that fundamental design mistakes and errors are still being made.
- [11] A designer should be developing a design with the intention of getting it right the first time and not relying on the building consent authority to assist them to get the design over the line. In this respect it is to be noted that it the building consent authority does not have a quality assurance function. It has a compliance function. It

is not for the building consent authority to educate the designer and to assist them to bring their design and specification up to standard. Their role is to ensure that the design and specification will result in a building that will be compliant with the building code. The Board is concerned that the Respondent is, in essence, still relying on the building consent authority to assist him with his design work.

[12] The Respondent, in his penalty submissions stated:

I strongly believe that the 6 months loss of license is too harsh a penalty, for what is essentially mostly minor omissions of information and not supplying sufficient backup information which is not actually required by the builders.

[13] This statement shows that the Respondent has not taken the Complaint or the Boards findings seriously and that he has failed to understand the fundamentals of the licensing scheme and the importance of a design. Since the introduction of changes to the Building Act in 2004 it is no longer acceptable to leave it up to the builder. A design has to detail exactly how compliance with the building code will be achieved and exactly how the building is to be constructed.

[14] Moreover the Respondents omissions in the three designs that lead to the Complaints were not minor omissions. They were serious failings.

[15] On the basis of the above factors the Board has decided to confirm its original decision.

[16] The character references note that the Respondent does work well under supervision. The Respondent will be able to work under supervision without a licence and it is strongly recommended that the Respondent does so prior to reapplying for a licence.

Costs

[17] The Board's initial view was that \$3,000 in costs was appropriate. This is affirmed.

Publication of Name

[18] The Board's initial view was there were good reasons to further publish the matter. No submissions in respect of publication were received. The order is affirmed

Section 318 Order

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

Penalty: Pursuant to s 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to s 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of six [6] months

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,000 (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(1)(iii) of the Act.

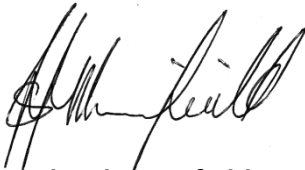
In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

- [20] 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.

Right of Appeal

- [21] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 8th day of June 2018



Richard Merrifield
Presiding Member

ⁱ **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.*

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- (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."*

ii **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.*