

BPB Complaint No. C2-01432

IN THE MATTER OF

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners Board under section 315 of the Act

AGAINST

Scott Dunnett, Licensed Building Practitioner
No. BP 116862

DECISION OF THE BUILDING PRACTITIONERS' BOARD

Introduction

- [1] [The Complainant] lodged a complaint with the Building Practitioners Board (the Board) on 20 June 2016 in respect of Scott Dunnett, Licensed Building Practitioner (the Respondent).
- [2] The complaint alleged that the Respondent had, in relation to building work at [omitted]:
- (a) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act);
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
 - (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 (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act);
 - (d) breached s 314B of the Act (s 317(1)(h) of the Act); and
 - (e) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- [3] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 17 May 2012 and a Site Area of Practice 2 Licence issued 16 May 2012.
- [4] The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).

- [5] The following Board Members were present at the hearing:
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|--------------------|------------------|---|
| Chris Preston | Chair(Presiding) | Layperson |
| Richard Merrifield | Deputy Chair | Licensed in Carpentry and Site Area of Practice 2 |
| Mel Orange | Board Member | Legal Member appointed under s 345(3) of the Act |
| Robin Dunlop | Board Member | Retired Professional Engineer |
| Bob Monteith | Board Member | Licensed in Carpentry and Site Area of Practice 2 |
- [6] The matter was considered by the Board in Napier on 9 March 2017 in accordance with the Act, the Regulations and the Board's Complaints Procedures.
- [7] The following other persons were also present during the course of the hearing:
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|--------------------|--|
| Elizabeth Nicholls | Board Secretary |
| Scott Dunnett | Respondent |
| [Omitted] | Complainant |
| [Omitted] | Support person for the Complainant |
| Simon Cunliffe | Special Adviser to the Board |
| Jason Sewell | Witness, Building consent Officer, Napier City Council |
- [8] No Board Member declared any conflict of interest in relation to the matters under consideration.

Board Procedure

- [9] The "form of complaint" provided by the Complainant satisfied the requirements of the Regulations.
- [10] On 10 October 2016 the Registrar of the Board prepared a report in accordance with reg 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint.
- [11] On 17 November 2016 the Board considered the Registrar's report and in accordance with reg 10 it resolved to proceed with the complaint that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act);
 - (c) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);

- (d) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act); and
 - (e) breached s 314B of the Act (s 317(1)(h) of the Act).
- [12] The Board requested a Technical Assessor be appointed to prepare a report. Simon Cunliffe's report dated 24 January 2017 was received and circulated to the Respondent and Complainant.
- [13] A Notice of Proceeding dated 7 December 2016 was sent to the Respondent advising of the date of the hearing. On 17 February 2017 a pre-hearing document was sent to the Respondent providing further confirmation of the hearing details. This step was taken as a prehearing teleconference with the Respondent could not be arranged. A revised Notice of Hearing was issued on 2 March 2017 providing a time and place of the hearing.

Function of Disciplinary Action

- [14] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom¹.
- [15] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*²:
- Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist 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 practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*
- [16] In *McLanahan and Tan v The New Zealand Registered Architects Board*³ Collins J. noted that:
- “ ... the disciplinary process does not exist to appease those who are dissatisfied with their architect. The disciplinary process for architects exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*
- [17] The same applies as regards the disciplinary provisions in the Building Act.
- [18] It must also be noted that the Board has jurisdiction with regard to “the conduct of a licensed building practitioner” and with respect to the grounds for discipline set out in

¹ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

s 317 of the Act. It cannot investigate matters outside of those grounds, does not have any jurisdiction over contractual matters and cannot deal with or resolve disputes between a complainant and the person who is the subject of the complaint.

The Hearing

- [19] The hearing commenced at 10.30 a.m.
- [20] Persons giving evidence were sworn in, their evidence was presented and they answered questions from the Board.

Substance of the Complaint

- [21] The Complainant set out the following issues with the building work:
- (a) work was left incomplete;
 - (b) items required remedial action to rectify or had an unsatisfactory finish; and
 - (c) failure to comply with the Building Code and sections 14E, 17 and 40 of the Act.
- [22] The Complainant also alleged the Respondent carried out or supervised building work:
- (a) outside of his competence and/or building work that he was not licensed to carry out with respect to his having allegedly carried out design work; and
 - (b) that did not comply with the building consent with respect to the installation of window and door joinery.
- [23] There was also an allegation that the Respondent failed to provide a record of work on completion of restricted building work.

Evidence

- [24] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*⁴ where Justice McGrath in the Supreme Court of New Zealand stated:

[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the

⁴ [2009] 1 NZLR 1

reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction of the Tribunal”. A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal’s reasonable satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.

[25] It is to be noted that under s 322 of the Act the Board has relaxed rules of evidence:

322 Board may hear evidence for disciplinary matters

- (1) *In relation to a disciplinary matter, the Board may—*
- (a) *receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the disciplinary matter, whether or not it would be admissible in a court of law.*

[26] The alterations included the addition of a verandah, covered entranceway, new aluminium joinery units, including some new and altered openings, internal wall alterations and reconfiguration of the kitchen, laundry and rear hall areas.

[27] The Board accepted the documentary evidence provided with the complaint file. Included was the Technical Assessor’s report. The Technical Assessor was engaged by the Board to provide an independent technical assessment of the alleged deficiencies and non-compliance of the building work. The Technical Assessor set out the various items of concern raised by the Complainant, Napier City Council building inspectors and himself following his site inspection. They were:

- (a) inadequately installed aluminium joinery;
- (b) flexible flashing tape has been used in place of a solid folded metal saddle flashing to flash around exterior components of the house;
- (c) failed to carry out instruction issued by Napier City Council;
- (d) failure to provide Record of Work within a realistic time frame following the request date;
- (e) entranceway doors installed at differing sill heights;
- (f) bowing in the new framing and weatherboard along the return wall of the covered entranceway;
- (g) roof purlins not installed;
- (h) adequacy of the verandah beam; and
- (i) poor internal finish.

[28] The Technical Assessor noted:

5.2.1 As highlighted within Appendix A, our inspection of the works have revealed a number of areas that fall below what is expected to achieve compliance with the NZBC. Elements of the work have been constructed in a manner that will fail to meet the performance requirements of the NZBC, in particular the following clauses:

B2 – Durability

E2 – External Moisture

In the deficiencies identified the Respondent has deviated from the consented plans. However, in doing so the Respondent has failed to obtain the necessary detail from the architectural designer, failed to obtain the required variations to the consent, or has not referred to standard details available in documents such as the Acceptable Solutions to enable the works to be carried out in a compliant manner.

[29] The relevant aspects of Appendix A referred to above is appended to this decision.

[30] As regards variations the Technical Assessor noted in paragraph 5.2.2 of his report:

The consented plans contained deficiencies, and variations to the design were made by the Complainant (increased verandah dimensions) which required an amendment to the approved Building Consent documents. The only formal amendment was requested by the Complainant and related to changing the joinery units from timber to aluminium.

The number of variations and deviations from the Building Consent documents are numerous, and although accepted that a number could be considered to be minor variations that could be recorded during the building work by the Building Consent Authority, when changes are made or elements of the building work are constructed without adequate detailing or the appropriate consultation with the designer (to seek further clarification or identify areas where inadequate detail has been provided), the Licensed Building Practitioner (Respondent) is considered to hold the responsibility for the deviations made to the design.

When responding to the allegations made by the Complainant, consideration is given to the fact that the building work has not been completed. This is due to the fact that the quotation to complete the work, provided by the Respondent, was not accepted by the Complainant.

We therefore raise no concern relating unfinished items, or items that can be reasonably amended or added onto, prior the completion of the Building Work (i.e. the roof flashings have not been installed, joist hangers have not been installed or floor joists to the decks have not been installed, which can all be reasonably added prior to completion of building work).

[31] The Board questioned the Technical Assessor, the Respondent, the Complainant and the Council witness with regard to each of the items numbered 1-19 in the Appendix A Table.

[32] The Respondent gave evidence that he either carried out or supervised the building work complained about.

[33] With regard to items 1-3 and 10 the Technical Assessor noted the building work did not comply with the building consent and had not been carried out in accordance with an acceptable solution such as E2/AS1. He noted the manner in which it was carried out would have to be assessed as an alternative solution by the building consent authority as it was for it to decide whether the method used would meet the functional requirements of E2 of the Building Code.

[34] The Respondent accepted that he had not carried out the work as per the building consent or processed it as a minor variation. He noted that the flashings had not been provided with the joinery and that he had consulted with the manufacturer who

had advised him that the method he intended using was compliant and that they would be able to provide documentation to support this. He has not, however, been able to obtain such documentation from them. He had not consulted the designer or the building consent authority as regards the variation prior to it being undertaken.

- [35] With regard to item 4 the Technical Assessor noted there was a lack of detail in the consented design and considered the Respondent should have consulted with the designer to obtain more detail.
- [36] It was accepted that item 5 involved matters which were either detailed elsewhere in the Technical Assessor's report or were items that were not complete as a result of the contractual relationship coming to an end.
- [37] Item 6 related to the record of work. It was provided in August 2016. Building work came to an end in March 2016.
- [38] With regard to item 7, the installation of head flashings, the Respondent noted that the weatherboards were not nailed off. They were tacked in place to allow for the later insertion of the head flashings which were not provided at the time the windows were delivered. This was not strictly as per the building consent but the Council witness stated the building consent authority would have accepted it as a minor variation. The contractual relationship came to an end before the work of inserting the flashings was completed.
- [39] Item 8, 11, 12, and 14 were noted as aesthetic as opposed to compliance issues.
- [40] The Respondent gave evidence that with regard to item 9 that the manner in which he installed the WANZ bar was the only way he considered it could be installed as there was insufficient room for an alternate method to be used or a wider bar to be installed. The Technical Assessor noted that the consented plans had limited detail and that the Respondent should have consulted with the designer on how the issue could have been dealt with. Item 13 was noted as being outside MBIE Guide to Tolerances but the Respondent noted that the guidance document allowed for greater tolerances where alterations to existing buildings are being carried out.
- [41] The Respondent gave evidence that the Complainant requested the changes as regards item 15 and that it was discussed with the designer and the Council's consenting team leader prior to it being undertaken. The Council witness noted the Council would accept it as a minor variation by way of "as built" plans.
- [42] Item 16 was not complete. The Respondent stated he intended to replace temporary fixings with the required fixing.
- [43] Item 17 was also discussed with the designer prior to it being undertaken and the Council Witness confirmed it would be accepted as a minor variation by way of "as built" plans being provided.
- [44] Item 18 was temporary and item 19 was noted by the Complainant as being of significance to him notwithstanding the comments in the Technical Assessor's report.
- [45] The Technical Assessor was questioned as to whether items in the overall report should have been completed in sequence. He noted that it will be difficult to remediate certain items as a level of deconstruction will be required. This would especially be the case with the doors which would have to be removed.

Board's Conclusion and Reasoning

Negligence and/or Incompetence

- [46] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v Far North Council*⁵. Judge McElrea provided guidance on the interpretation of those terms:

[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.

[44] In my view a "negligent" manner of working is one that exhibits a serious lack of care judged by the standards reasonably expected of such practitioners, while an "incompetent" manner of working is one that exhibits a serious lack of competence.

[46] The approach I have adopted recognises that the terms "negligent" and "incompetent" have a considerable area of overlap in their meanings, but also have a different focus - negligence referring to a manner of working that shows a lack of reasonably expected care, and incompetence referring to a demonstrated lack of the reasonably expected ability or skill level.

- [47] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*⁶ as regards the threshold for disciplinary matters:

[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.

- [48] The Board does not consider that there is any evidence which shows the Respondent has been incompetent. There is, however, evidence of the Respondent having been negligent, on the basis of the tests above, as regards the way in which he dealt minor variations for items 1-4 of the Technical Assessor's report.
- [49] All building work must be carried out in accordance with a building consent⁷. Failure to do so is a disciplinary matter under s 317(1)(d). Variations to a building consent can be made but building work must cease whilst the variation is processed by the responsible building consent authority. An exception is made for minor variations under s 45A of the Act. Failure to deal with the process correctly can be a matter of negligence.
- [50] Key aspects of the minor variation process provided for in s 45A is obtaining agreement with the owner and then consulting with the designer and the building consent authority prior to undertaking the building work. The rationale for these latter steps is to ensure that the variation is actually minor before work is undertaken and that the variation will still meet Building Code and will not adversely affect other parts of the building work.

⁵ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁶ [2001] NZAR 74

⁷ Refer s 40 of the Act.

- [51] Put quite simply the minor variation has to be agreed to by all the key parties prior to it being undertaken, not once it has already been done.
- [52] The evidence before the Board was that the Respondent proceeded with changing the E2 compliance method provided for in the consented documents as regards door sills without taking the required steps to process it as a variation. In failing to do so the Board finds the Respondent has been negligent. The Respondent should have been aware of his obligations as regards variations and of the requirements for processing them.
- [53] In terms of the remaining items in the Technical Assessor's report the Board finds that they were minor in nature which do not warrant a disciplinary outcome on the basis of the tests set out in *Collie*⁸.

Contrary to a Building Consent

- [54] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act and as discussed above) must be submitted as a variation to the consent before any further work can be undertaken. It is also an offence under s 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.
- [55] In *Tan v Auckland Council*⁹ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[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.

- [56] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.
- [57] Many of the variations to the building consent were accepted by the Council as being items that they considered were minor in nature and would be accepted as such provided "as built" plans were submitted.
- [58] The same cannot be said of the door sills and the changes outlined in items 1-4 of the Technical Assessor's report. The evidence before the Board was that compliance with the building code as regards them had not been established and that further work would most likely be required to achieve compliance. Unlike other aspects of the building work complained about, the work was complete. The doors had been installed and would have to be removed to rectify the issue.
- [59] On this basis the Respondent is found to have carried out building work that does not comply with the building consent issued for it.

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

⁹ [2015] NZHC 3299 [18 December 2015]

Not Licensed or not within Competence

- [60] There was an allegation that the Respondent had carried out design work. If this was the case then the Respondent could have been found to have either carried out building work he was not licensed to (s 317(1)(d) of the Act) or was not competent to carry out (s 317(1)(h) and s 314B(b) of the Act).
- [61] The Board did not hear any evidence that the Respondent carried out design work. As such further consideration is not required and the Respondent is found to have not committed disciplinary offences under ss 317(1)(c) or (h) of the Act.

Record of Work

- [62] There is a statutory requirement under s 88(1) of the Act for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work¹⁰.
- [63] Failing to provide a record of work is a ground for discipline under s 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [64] The Board discussed issues with regard to records of work in its decision C2-01170¹¹ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, whom a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [65] The statutory provisions do not stipulate a timeframe for the licensed person to provide a record of work. The provisions in s 88(1) simply states “on completion of the restricted building work ...”. In most situations issues with the provision of a record of work do not arise. Contractual disputes or intervening events can, however, result in a record of work being due prior to the intended work being completed.
- [66] The Board has consistently held that when the point in time arises when the licensed building practitioner will no longer be able to carry out any further building work then a record of work will be due. This is regardless of whether the intended work has been completed. The reason is that they will not be able to return to carry out any further restricted building work so completion has, in effect, occurred. The Board has also consistently held that a record of work is due a short time after the deemed completion has occurred. A degree of reasonableness will be applied to this interpretation.
- [67] In the present case completion occurred in March 2016 and the record of work was not provided until August 2016 some five months later. On this basis the Board finds that the record of work was not provided in accordance with the statutory requirements.
- [68] Section 317(1)(da)(ii) of the Act does provide for a defence of the licensed building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to

¹⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹¹ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

the Board to find that a disciplinary offence has not been committed. No good reasons were put forward.

Board Decision

[69] The Board has decided that Respondent has not:

- (a) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act); or
- (b) breached s 314B of the Act (s 317(1)(h) of the Act).

[70] The Board has decided that the Respondent has:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 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 (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act)

and should be disciplined.

Disciplinary Penalties

[71] The grounds upon which a Licensed Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Actⁱ.

[72] The Board's Complaints Procedures allow the Board to either set out the Board's decision on disciplinary penalty, publication and costs or to invite the Respondent to make submissions on those matters.

[73] As part of the materials provided to the Board for the Hearing the Respondent provided submissions which were relevant to penalty, publication and costs and the Board has taken these into consideration.

[74] Given the nature of the disciplinary offending, the mitigation already heard and the level of penalty decided on the Board has decided to dispense with calling for further submissions. The Respondent will, however, be given an opportunity to comment on the level of penalty, costs and on publication should he consider there are further matters which the Board should take into consideration.

[75] As stated earlier the purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct.

[76] The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹² has commented on the role of "punishment" in giving

¹² HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

penalty orders stating that punitive orders are, at times, necessary to uphold professional standards:

[27] Such penalties may be appropriate because disciplinary proceedings inevitably involve issues of deterrence. They are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [77] In *Lochhead v Ministry of Business Innovation and Employment*¹³, an appeal from a decision of the Board, the court, in respect of penalty noted:

[34] This is not a case to which the statutory principles of sentencing set out in the Sentencing Act 2002 apply. Nevertheless, the current approach adopted in criminal courts to the task of assessment of penalties to be imposed has significant advantages of simplicity and transparency compared to other approaches. Conceptual similarities between penalty assessment in this area, and the task of penalty assessment in other areas of health and safety legislation, or indeed the Building Act itself, are obvious.

[35] The modern approach to penalty assessment involves a multi stage process. Firstly, an assessment of the seriousness of the transgression is undertaken, often by reference to whether the offending conduct falls at the lower, mid-range or upper end of the scale of possible offending. That assessment will assist in the identification of an appropriate starting point on a principled basis. Secondly, aggravating features which may justify an uplift are identified and assessed. Thirdly, any mitigating features which may justify a reduction in penalty are identified and assessed. Finally, an overall assessment is made, often including the effect of the proposed penalty on the person receiving it, and such adjustments made as may be required in the particular circumstances of the case. See for example Department of Labour v Hanham & Philp Contractors Ltd & Ors (HC ChCh, CRI 2008-409-000002, 17 December 2008, Randerson and Pankhurst JJ).

- [78] The Board notes that the disciplinary offending was at the lower end of the scale. There have, however, been multiple offences committed although the matters under 317(1)(b) and (d) are very similar and as such will be treated, for the purposes of penalty, as a single offence.
- [79] Given the nature of the offending and the comments above the Board considers a fine will be sufficient penalty. A fine of \$1,000 is considered to be appropriate. In this respect it should be noted that for a record of work matter alone a fine of \$500 to \$1,000 is normally ordered and as such the overall fine for all three disciplinary offences is at the lower end of penalties imposed by the Board.

Costs

- [80] Under s 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”

¹³ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288, Judge Ingram

- [81] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case. The judgement in *Cooray v The Preliminary Proceedings Committee*¹⁴ included the following:

“It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure. In other cases, where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment.”

- [82] The judgment in *Macdonald v Professional Conduct Committee*¹⁵ confirmed the approach taken in *Cooray*. This was further confirmed in a complaint to the Plumbers, Gasfitters and Drainlayers’ Board, *Owen v Wynyard*¹⁶ where the judgment referred with approval to the passages from *Cooray* and *Macdonald* in upholding a 24% costs order made by the Board.

- [83] In *Collie v Nursing Council of New Zealand*¹⁷ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate. It is not hard to see that the award of costs may have imposed some real burden upon the appellant but it is not fixed at a level which disturbs the Court’s conscience as being excessive. Accordingly it is confirmed.

- [84] The Board notes the Respondent was cooperative and this has been taken into consideration. It also notes a Technical Assessor’s report was required which has added to the costs.
- [85] In all the circumstances the Board considers the sum of \$1,000 toward the costs of and incidental to the Board’s inquiry is appropriate.

Publication of Name

- [86] 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 Licenced Building Practitioners’ scheme as is required by the Act.
- [87] The Board is also able, under s 318(5) of the Act, to order publication over and above the public register:

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.

¹⁴ HC, Wellington, AP23/94, 14 September 1995

¹⁵ HC, Auckland, CIV 2009-404-1516, 10 July 2009

¹⁶ High Court, Auckland, CIV-2009-404-005245, 25 February 2010

¹⁷ [2001] NZAR 74

- [88] As a general principle such further public notification 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. This is in addition to the Respondent being named in this decision.
- [89] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁸. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁹. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁰. In *N v Professional Conduct Committee of Medical Council*²¹ the High Court pointed to the following factors:
- The tribunal must be satisfied that suppression is desirable having regard to the public and private interests and consideration can be given to factors such as:*
- *issues around the identity of other persons such as family and employers;*
 - *identity of persons involved and their privacy and the impact of publication on them; and*
 - *the risk of unfairly impugning the name of other practitioners if the responsible person is not named.*
- [90] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²². It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [91] The Board does not consider that any further publication is required.

Penalty, Costs and Publication Decision

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

Penalty:	Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.
Costs:	Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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 s 301(1)(iii) of the Act. In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register and him being named in this decision.

¹⁸ Section 14

¹⁹ Refer ss 200 and 202 of the Criminal Procedure Act

²⁰ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²¹ *ibid*

²² *Kewene v Professional Conduct Committee of the Dental Council* - [2013] NZAR 1055

Submissions on Penalty Costs and Publication

- [93] The Board invites the Respondent to make written submissions on the matters of disciplinary penalties, costs and publication up until close of business on 18 April 2017.
- [94] If no submissions are received then this decision will become final.
- [95] 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.

Non Payment of Fines or Costs

- [96] The Respondent should take note that the Board may, under s 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. Section 319 provides:

319 Non-payment of fines or costs

If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—

- (a) cancel the person's [licensing] and direct the Registrar to remove the person's name from the register; or*
- (b) suspend the person's [licensing] until the person pays the money and, if he or she does not do so within 12 months, cancel his or her [licensing] and direct the Registrar to remove his or her name from the register.*

Right of Appeal

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

Signed and dated this 23rd day of March 2017.



Chris Preston
Presiding Member

Extracts from Appendix A of the Technical Assessor's Report

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
1	<p>Inadequately flashed door sills to newly installed aluminium joinery.</p> <p>Refer Building Consent BC141413 document stamped 17 February 2015 for Head, Jamb and Sill details.</p> <p>Maynard Marks Photographs 7 - 13</p>	Sections 14E (2) and 17 of the Building Act 2004. Compliance with the Building Code and Building consent.	E2 External Moisture.	<p>The door sills have not been installed with metal sill flashings. They have instead been installed with flexible flashing tape to form sill flashing with no visible flashing tape extending to the front face of the weatherboards to the sills of the front door or the front bi-fold doors. The rear door has visible flashing tape over the front face of the weatherboards.</p> <p>The original building consent drawing called for timber joinery units. The amended documents call for aluminium although no details were provided for the door perimeters (no stamped drawings observed) a James Hardie (incorrect product reference) standard detail stamped 17 February 2015, was included which show a window sill flashing in addition to the flexible flashing tape.</p> <p>In the absence of details available on the drawings, it is reasonable to expect an LBP to reference the acceptable solutions, as a means of achieving Building Code Compliance.</p> <p>External Moisture, E2/AS1 provides an acceptable solution for the installation of door joinery, and figure 17D demonstrates the requirements for the installation of doors in a direct fixed cladding situation. This detail requires the installation of a sill tray in addition to flashing tape.</p> <p>Within the Respondents response to the Building Practitioner Board, and during my telephone conversation with him, he referenced advise and response provided by the window manufacturer (Pages R7MR11). This references Figure 73D, which is not applicable due to the application being neither masonry veneer or concrete slab floor. The response also refers to Figure 14 within E2/AS1 which references level floor entry for timber decks. We confirm that we have no issue in relation to there being a proposed timber slatted deck with level entry. Figure 17C</p>	<p>Breach of Code Clause E2 – External Moisture and in turn B2 – Durability. It is considered that the risk of damage due to the omission of sill flashings is reduced where covered by the entrance vestibule and verandah, and by being at floor/subfloor level, however the respondent has not constructed in accordance with the Building Consent documents.</p> <p>Where the respondent has deviated from the consented documents (or the consented documents were inadequate) he is considered to have undertaken design work. If he wished to install in an alternative manner than the consented documents, he should have referred back to the designer in order for the required amendments to be made and approved by council.</p>

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				<p>is referenced, and not applicable (The cladding at the property is direct fixed) to this application due to being for cavity construction, where a sill flashing is not required. Figure 65 is also referenced relating to ground clearances. We confirm that we have no concerns over ground clearance.</p> <p>In summary, we consider that the approved building consent documents are inadequate by not showing a door sill detail, and that the principles of E2/AS1 have not been followed, in that no sill flashings have been installed in addition to the flexible flashing tape. It is acknowledged that E2/AS1 is not mandatory in providing compliance with NZBC, although in the absence of detail within the Building Consent, and the simple nature of the building, it is the most appropriate reference document.</p> <p>A scan of Figure 17D of E2/AS1 was provided by the respondent claiming to be part of the Building Consent documents, although as it is not stamped and not included within the property file provided by Napier City Council. We therefore do not consider this document to have formed part of the approved Building Consent.</p>	
2	Flexible flashing tape has been used in place of the correctly detailed E2/AS1: 9.1.10 Direct Fixed Door Sill Flashing.	Refer item 1	Refer item 1	Refer item 1	Refer item 1
3	Folded door sill flashings have not been used during the installation of the new aluminium, door units. Flexible flashing tape has been used in place of the detailed	Refer item 1	Refer item 1	Refer item 1	Refer item 1

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
	flashings.				
4	<p>Flexible flashing tape has been used in place of a solid folded saddle flashing to flash around exterior components of the house which are in exposed locations.</p> <p>Maynard Marks Photographs 14 - 16</p>	Sections 14E (2) and 17 of the Building Act 2004 Compliance with the Building Code and Building consent.	<p>E2 – External Moisture.</p> <p>B2 – Durability.</p>	<p>Flashing tape has been used as a saddle flashing where the floor bearers continue out from the base of the newly constructed covered vestibule wall. There are two examples of this detail. The building consent documents take no consideration of this detail.</p> <p>The concern with this detailing is that (even after the installation of decking), the flashing is partially exposed to UV, although it is appreciated that the building work has not been completed, and the necessary protection could be completed. This detail has however been completed in such a manner that there is a lack of clearance at the base of the cladding with the bearers. There is also a lack of cover to the bottom plate by the weatherboard. The primary reason for this poor detailing is considered to be a design omission, and could have been negated by cutting the bearer and supporting with an additional pile, thus removing this high risk detail. The Respondent should have consulted the designer to provide alternative detailing, and to enable the necessary amendment to the consented documents to be made.</p>	<p>The absence of an appropriately detailed flashing arrangement is likely to lead to a Breach of Code Clause E2 – External Moisture and in turn B2 – Durability.</p> <p>The continuation of the bearer from the wall represents an alternative solution, and a detail for this ought to have been sought from the designer and a variation to the consent approved prior to the works commencing. The consented plans did not demonstrate clearly how this junction was to be formed, however the Respondent has assumed responsibility for the design detail and subsequent construction. In doing so he has operated outside his field of expertise.</p>
5	Failed to carry out instruction by Napier City Council in accordance with Section 14E of the New Zealand Building Act 2004. City of Napier Council 'Site Instruction' 22 March 2016.	None	None	<p>This allegation is considered to relate to the Complainants request within his email dated 24 March 2016 asking the Respondent to attend to the failed items that were identified within the 'Site Instruction' provided by City of Napier Council on 22 March 2016. At this point in time almost 12 months had past since the estimate (07 April 2015) was provided by the Respondent for completion of the building works, and not accepted by the Complainant. The failure to return to rectify or complete the building work, and therefore any breaches relating to the Building Act 2005, Section 14E have been addressed on an item by item basis within the remainder of this report. We do not consider that the Respondent failed to carry out instructions by Napier City Council. These 'site</p>	None

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				instructions' are considered to be advisory only as part of a normal working procedure between all parties. The 'official' method of rectify defects or completing work not completed (Notice to Fix). The ultimate responsibility for any instructions from the Building Consent Authority lies with the building owner (Complainant).	
6	Following an email response from Scott Dunnet on 22 March 2016 where he indicated that he would supply the requested Record of Work, no such document has been supplied within a realistic time frame following the request date.			<p>We have been informed that a Record of Work has been submitted to Napier City Council. This was submitted on circa 25 August 2016.</p> <p>Although this was some time after the building work and the request, the Respondent informed me that he was not clear on his responsibilities to submit the Record of Work in light of the Building Work not being completed, although after further consideration by the Respondent, he did in fact issue the Record of Work on 25 August 2016.</p> <p>We therefore do not consider this to be a breach of Section 88 of the Building Act 2004, which requires a Record of Work to be issued on completion of the restricted building work.</p>	None
7	<p>Flashings to all new aluminium doors and windows:</p> <p>a) Correct door sill flashings are not installed and do not meet the NZ Building Code.</p> <p>b) Door and window head flashings have not been supplied or installed.</p> <p>Maynard Marks Photographs 17 - 21</p>	<p>Sections 14E (2) and 17 of the Building Act 2004.</p> <p>Compliance with the Building Code and Building Consent.</p>	None	<p>a) Refer item 1 for comment on door sill flashings.</p> <p>b) In relation to the window head flashings, the head flashings have not been completed. The approved building consent documents show a James Hardie standard detail and although for an incorrect product (designer error), the detail is comparable to the timber weatherboards used. A critical factor is the head flashing being installed back to the timber framing, and lapped beneath the building wrap. This is a standard E2/AS1 requirement. The timber weatherboards have not been nailed off, which indicates (along with confirmation from the Respondent) that the intention was to install head flashings lapped between the installed weatherboards. This would match the original unaltered sections of the building, along with this method of flashing being a</p>	The Respondent has confirmed his intention to adopt an alternative detail for the head flashings, which although considered likely to comply with the NZBC, would deviate from the consented plans. Prior to undertaking this work the designer ought to be contacted to ensure an alternative detail is prepared and submitted to council for consideration.

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				historically acceptable method of head flashings and which would likely not result in a breach of NZBC.	
8	<p>Front entranceway Door:</p> <p>a) Door unit is not rebated into the floor boards to match the other new door units in the house and to allow for the new flooring system to be laid up to the aluminium as discussed.</p> <p>b) The door is of an incorrect overall height and differs from the head of the new Bi-fold door unit.</p> <p>Maynard Marks Photographs 22 – 26.</p>	None	None	<p>a) There are three new doors at the dwelling. The door sill, internally has been installed at a different height in each example. The Complainant refers to discussions regarding them being rebated to allow for the flush installation of flooring. We are not party to those conversations and therefore not able to comment upon any conversations that may, or may not have taken place. It is noted that the approved Building Consent documents do not specify whether the sill trims are to be removed, rebated or otherwise.</p> <p>b) The front door appears to have been measured or manufactured to the incorrect size, resulting in a difference of height to the adjoining bi-fold door. Our concerns relating to the installed height and height of sill rebates of the doors relates to the front entrance door and the bi-fold doors only, which are next to each other where the difference in height is noticeable and when referencing the MBIE Guide to Tolerances document considers for architraves and reveals “edge joints appear irregular from a normal viewing position” and therefore we consider not acceptable. In summary, this is considered to be an aesthetic defect that would not cause a breach of the Building Act or NZBC.</p>	The doors as installed would not result in a failure to comply with the NZBC, however are considered to be defective from an aesthetic standard and as such require remediation or replacement.
9	<p>Front Bi-fold Door WENZ bar installation is not to the expected WENZ installation detail and appears to have dropped in height.</p> <p>Maynard Marks Photographs 27 – 29.</p>	<p>Sections 14E (2) and 17 of the Building Act 2004.</p> <p>Compliance with the Building Code and Building consent.</p>	<p>E2-External Moisture.</p> <p>B1-Structure.</p>	<p>The WENZ support bar for the bi-fold door has been installed over the face of the timber weatherboards. The approved building consent documents do not show any WENZ installation details. The installation of a WENZ support bar in a direct fixed bevel back weatherboard system is not standard practice (usually a cavity system application). The adequacy of the support bar in this application is not known, and it is claimed that the sill height has dropped since installation. This may well have been re-fixed since the installation, although at the time of</p>	The fixings through the face of the weatherboards provide a potential moisture ingress path. In order to remediate the method of installation the weatherboards beneath the doors would have to be removed to allow a compliant detail to be adopted.

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				our inspection the levels of the sill was considered to be acceptable. The Respondent should have referred back to the designer, and an amendment to the building consent sought providing detail for this installation to be considered and approved by council. It should be noted that the detail may not be considered to be a standard acceptable solution detail due to the increased width of the bi-fold door. The Respondent claims that this installation method was advised by the joinery manufacturer, although the documents provided by the Respondent do not support this claim. It is also claimed that due to the proposed decking covering the bar, it would not be visible and therefore acceptable.	
10	Rear Entranceway Door. Timber sill liner has been removed from the door frame instead of rebating the door into the floor boards. Maynard Marks Photographs 13 - 25	None	None	Refer to item 1 for comment relating to the sill flashing of this door. The timber reveal of this door has been removed to provide a flush finish (which was the Complainants request). The Complainant claims that the floor should have been rebated. As this is a timber floor, we agree with this method of achieving a flush floor level due to the rebating of a timber floor structure not being practical.	None
11	New Aluminium joinery windows (lounge/dining area): a) Alignment between the mullions and frames not correct. b) Overall mitre finish is inconsistent throughout. Maynard Marks Photographs 30 - 32	None	None	a) The alignment of the opening window sashes do not in places align with the aluminium mullions. b) The mitres of the opening sashes do not align with the mitres of the outer aluminium frame. Referencing the MBIE Guide to Tolerances states for windows and doors– “doors are not straight or square”. We consider that they could be adjusted prior to completion of the building work. These alleged defects are considered to be due to a lack of adequate adjustment, or manufacturing deficiencies that would not result in any breach of the NZBC.	The remediation would involve the adjustment of the joinery installation.

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
12	<p>New aluminium joinery window (kitchen):</p> <p>a) Mitre joints are inconsistent in finish.</p> <p>b) Sealant is missing in one or more if the mitre joints allowing daylight to be seen through the joint.</p> <p>Maynard Marks Photographs 30 – 32.</p>	None	E2 – External Moisture	<p>(a) Inconsistent mitres and missing sealant at mitre joints (internally) are considered to be a window manufacturing defect or lack of minor adjustment. Referencing the MBIE Guide to Tolerances states for windows and doors – “doors are not straight or square” are not acceptable, although could be adjusted prior to completion of the building work.</p> <p>b) Any missing sealant that is required to the inside face of the mitre joints could also be a manufacturing defect, and could also be installed prior to completion of the works.</p>	
13	<p>All new timber windows and door units:</p> <p>a) Timber scribes are not consistent in finished ‘quirk’ depth.</p> <p>Maynard Marks Photographs 33 – 35.</p>	None	None	<p>The timber scribes beside the jambs of the new windows are claimed to have inconsistent ‘quirk’ depths. This is considered to relate to the measured depth of the scribe against the jamb face differing. They were measured to be between circa 2mm and 6mm. Referencing the MBIE Guide to Tolerances which states for window jambs – “Edge joints appear irregular from a normal viewing position” is not acceptable, we consider that this is an aesthetic construction deficiency. It does not result in the breach of the Building Act or NZBC.</p>	In order to remediate this visual imperfection the scribes will require to be replaced.
14	<p>Front entranceway / covered area:</p> <p>a) Bowing in the new framing and weatherboard along the return wall.</p> <p>Maynard Marks Photographs 36 – 39.</p>	None	None	<p>It is claimed by the Complainant that there is bowing in the new framing and weatherboards within the return wall of the front covered entranceway. A straight edge was placed against the boards which indicated a small bow to the weatherboards. This is likely to be caused by slight bowing to the timber framing or taped corners. The misalignment is difficult to measure although considered to be less than $\pm 3\text{mm}$ per metre. The framing should have been packed to ensure a straight and true finish. MBIE Guide to tolerances, timber weatherboard alignment says a $\pm 3\text{mm}$ allowance for horizontal weatherboards to be horizontal and straight. This allowance is not considered to have been breached and no NZBC clause is</p>	None

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				considered to have been breached.	
15	Depth of the verandah and covered entrance larger than the approved plans. Building Consent drawing sheet 3, shows a verandah depth of 1800mm. Maynard Marks Photographs 40 – 41.	Sections 14E (2) and 17 of the Building Act 2004. Compliance with the Building Code and Building consent.		The depth of the verandah was increased from the 1800mm approved on the building consent to circa 2200 that has been constructed. No amendment for this additional size has been observed and we understand from both the Complainant and the Respondent that the intention was to gain a retrospective amendment to the building consent or notify council by way of additional information.	An amendment to the Building Consent prior to undertaking this work ought to have been applied for and approved by Council. It is not known whether the designer was consulted as to this change, results in larger spans/loads/foundation uplift considerations.
16	Verandah rafter fixings. Building Consent Sheet 4 and sheet 5. Maynard Marks Photograph 42.	None	None	The existing roof rafters have been extended with new rafters that form the new verandah roof. The sizing of the timber structure are all considered to be adequate and within span requirements when compared with NZS3604:2011. The fixing of the new verandah rafters and the existing building roof rafters is specified within the consented documents to be 2 no. M12 bolts per rafter (this is considered to be outside of the scope of NZS3604:2011 although has been approved as part of the Building Consent). The rafters have been screwed with purlin screws, and not in accordance with the building consent documents. We however must consider that the building work is not complete and it is feasible that the specified bolts would be installed prior to closing in of the soffits. It is claimed by the Respondent that this was the intention.	None – due to the possibility that the specified fixings would in fact be installed.
17	Roof purlins not installed. Building Consent Sheet 4 and sheet 5. Maynard Marks	Sections 14E (2) and 17 of the Building Act 2004 Compliance with the Building Code and Building consent.	E2 – External Moisture.	Consented plans sheets 4 & 5 both show roof purlins to be installed. The roof has been installed without purlins. Instead, solid blocking has been installed to provide the roof sheet support. This variation to the consented drawings was highlighted by the Napier City Council inspector, noting that it was a deviation from the consented plans. If the builder wished to construct in a	The variation in construction removes the ability for ventilation beneath the roofing sheets, increasing the risk of moisture accumulation within the numerous individual concealed roof voids, which could potentially lead to a failure to comply with NZBC – Clause B2

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
	Photograph 43.			different manner for whatever reason (suspected variation due to increased lack of pitch of roof due to height of walls/beam and increased depth) he should have consulted the designer and sought an amendment to the building consent.	Durability and E2 External Moisture.
18	Verandah Beam. Building Consent Sheet 3. Maynard Marks Photograph 44.	None	None	A timber prop was located mid span of the verandah beam when inspected. This is claimed by the Complainant to be installed as a precautionary measure whilst the roofing works are being completed. As a result of this temporary support being in place, the span was checked with 'Prolam'. The specified beam is out of date, although the equivalent beam PLV17 sized 290x88 is appropriately spanned. The visible connection bracket with the supporting post is appropriate and as specified. The rafters are supported by joist hangers, which can be installed prior to the installation of the ceiling. It was also noted that in relation to 'External Moisture' there is a high risk junction where the timber weatherboards terminate at the beam. Any underlying flashing arrangements are not known, although this high risk detail should have been detailed by the designer. The beam has been painted and specified to be H3 treated, which is appropriate for its application.	None
19	Internal finish. Maynard Marks Photographs 45 - 48.	None	None	The Complainant identified an area of internal lining beside the rear entrance door that is bowed, and a location within the internal hallway where the internal linings have been installed, forming part of an internal cupboard, where the edge of the plasterboard has cracked where screw fixed. The cause of the bowed lining is not known, although we consider it likely to be the result of the use the retained timber framing in conjunction with new timber framing, which is slightly smaller. This is the cause of the cracked edge of plasterboard at screw fixing points beside the cupboard. Any difference in framing size should have been packed out to prevent bowing and	

Item	Description	Contravention or non-compliance	Building Code Clause	Analysis of non-compliance	Implication of non-compliance
				<p>preventing fixings from allowing cracking to occur.</p> <p>Referring to the MBIE Guide to Tolerances – Section 6 refers to internal linings. It states that finished walls are to be straight and plumb. It also says that a gradual bow of 6mm at mid height under 3m long horizontal straight edge. The bow to the wall is greater than this allowance although it does not breach any NZBC Clause. In relation to the cracked plasterboard edge at the fixing points, the MBIE Guide to Tolerances states that popping that breaks the surface is not acceptable. It is appreciated that this affects a non-structural and non-bracing wall, and would have been concealed with metal edge trims and plaster, had the work been completed.</p>	

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.*
- (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.*