

Before the Building Practitioners Board

	BPB Complaint No. 26555
Licensed Building Practitioner:	Dong Li (the Respondent)
Licence Number:	BP 142707
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry:	Complaint
Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	23 April 2023
Decision Date:	16 May 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor
Mr C Lang, Building Surveyor and Quantity Surveyor

Procedure:

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

Disciplinary Finding:

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

The Respondent is fined \$3,000 and ordered to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

[1] The Respondent supervised building work on a residential alteration. He failed to adequately supervise that building work. As a result, the Board found that he had supervised building work in a negligent manner and in a manner that was contrary to a building consent. The Board also found that he had failed to provide a record of work on completion of restricted building work. The Board fined the Respondent \$3,000 and ordered that he pay costs of \$2,950. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act; and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, it would be inquiring into the quality and compliance of the building work, including whether correct consent change processes were followed. The specific issues that will be investigated in relation to the matters those raised in the following reports:
- (a) [OMITTED] of [OMITTED] (starting at page 61 of the Board's file);
 - (b) [OMITTED] of [OMITTED] (starting at page 78 of the Board's file); and
 - (c) [OMITTED] of [OMITTED] (starting at page 84 of the Board's file).

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [6] The Respondent, an employee of [OMITTED], carried out and supervised building work on an alteration to a dwelling under a building consent. Mr [OMITTED], the

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

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

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

Respondent's employer and the sole shareholder and director of [OMITTED], was also involved in the build.

- [7] The full scope of the contracted building work was not completed. Another contractor was engaged after a commercial dispute arose. Termination of the [OMITTED] contract occurred in or about April or May 2024.
- [8] A record of work was not provided by the Respondent when the contract came to an end. The Respondent stated that he had not been asked for one and that it was unclear if the contract had been terminated. The Complainant gave evidence that the contract came to an end on 6 May 2024 by mutual consent, that a new builder had been appointed and was completing the building work, a fact that the Respondent was aware of.
- [9] The Respondent was, at the time, supervising multiple jobs for [OMITTED]. He described Mr [OMITTED] as the boss who oversees the work. He stated that the [OMITTED] staff, including Mr [OMITTED], work as a team but that he was the lead person for that team. He gave evidence that he provided technical support, health and safety direction, and that he ordered some materials. He was the only Licensed Building Practitioner (LBP) involved and was the supervisor for the Restricted Building Work (RBW) that was undertaken and completed.
- [10] The Respondent's supervision process involved establishing a step-by-step plan for the day at a toolbox meeting and then obtaining a summary of the work at the end of the day, which included checking to see if it was compliant. He noted that a group chat was used for team communications while the building work was underway.
- [11] Mr [OMITTED] stated that he oversaw the work, gave instructions to staff, organised materials and subcontractors, and engaged with the client, designer and engineer. Mr [OMITTED], a salesperson and subcontractor to [OMITTED], also engaged with the client.
- [12] The Board received evidence from the authors of the three reports that were being investigated, except for Mr [OMITTED], who did not appear. The Respondent did not object to the matter proceeding in his absence, and he was offered the opportunity to respond to his report in writing. The Board also stipulated that it could, if necessary, resume the hearing to allow for evidence from Mr [OMITTED] to be taken, but decided that was not necessary.
- [13] Prior to the hearing, the Respondent had not responded to the specific issues raised in the three reports. His general response was that client variations and design issues caused delays and impacted the build. He stated:

1. Frequent Variations:

- [OMITTED] frequently changed her requirements, particularly for bathroom designs and garage plans. These changes caused significant delays and increased costs.

- Documents from 22 Mar 2024 and 13 Apr 2024 highlight ongoing bathroom

variations, and the email thread shows how these impacted the project timeline and execution.

2. Engagement of Other Professionals:

- [OMITTED] engaged another builder to inspect [OMITTED] work, indicating a lack of trust and causing additional complications.

3. Delays in Design Decision Making by [OMITTED]:

- [OMITTED] delays in making decisions on plans and specifications (e.g., windows) stalled the project's progress. Please see the attached statement from the architects.

4. Complaint and Dispute Resolution:

- Despite [OMITTED] attempts to resolve the issues amicably and mutually close the contract, [OMITTED] escalated the matter to a formal complaint with MBIE, LBP, and Master Builder.

- [OMITTED] did not provide us the opportunity to explain the delays or address the issues.

A project of this magnitude typically requires a reasonable amount of time to complete, even without variations and client delays. It is important to note that the Building Consent (BC) was only obtained and stamped by the council on February 12, 2024. This left us with less than three months of actual BC work time, despite our engagement starting in November 2023.

In our opinion, it is unjust to categorise negligence, incompetence, and unethical behaviour as grounds for breach in this project. This view is based on the considerable time and effort both parties have invested, as well as the inherent complexity of the project. The [OMITTED] structural engineer's report has highlighted several crucial points that support this perspective:

1. Site Modifications: Numerous modifications were made on-site, necessitating changes to the original building consent design and drawings. These modifications were essential to adapt to unforeseen conditions encountered during the project.

2. Discovery of Structural Issues: Upon opening the existing house, several structural elements were found to be inconsistent with the property file and non-compliant with current building code requirements. These discrepancies were beyond the control of any involved party and significantly impacted the project's scope and execution.

- [14] The Board reviewed the findings of each of the reports with the witnesses present. The reports showed non-compliant building work. The Respondent generally stated that it was temporary work or incomplete or work awaiting design or engineering details, and that the issues would have been rectified prior to completion if [OMITTED] had been able to complete the work. The Board did not accept that this was necessarily the case. For example, it was submitted that the framing shown

below was temporary to provide support, notwithstanding that insulation had been installed:



- [15] The notes accompanying the photograph highlighted that the bottom plate of the framing was rotten and needed to be replaced.
- [16] The same applied to the following, which was stated to be temporary work and which was placed directly on the ground:



Foundation Framing:

New Timber framed foundation wall has been constructed underneath new load bearing kitchen wall. Timber framing construction does not meet NZS3604 standards nor E2/AS1 standards.

New timber framed kitchen wall has been constructed above newly framed foundation framing. New kitchen wall is load bearing to all roof framing.

Refer to drawing No: S03 in engineers drawings for brace line 2.4 of kitchen wall.

No allowances to stop water ingress into basement area.

Recommendation:




Remove and reinstall framing as per BC plans.

Structural engineer to provide a suitable design for foundation framing.

Framing to comply with sheet No 001 general notes of architectural drawings. Refer to note No 5 and No 13 for correct framing material.




[17] The three reports contained multiple instances of non-compliant building work or work that was not in accordance with the building consent issued. For example, an engineer noted, amongst other issues, the following:

Table 1: Discrepancies with Approved Drawings

Photo	Description
	<p>Photo 1:</p> <p>The approved drawings specify a continuous ridge beam. However, during the inspection, it was observed that the ridge beam is interrupted at the mid-span, creating a joint. This alteration results in a slight reduction in structural strength, which is deemed acceptable. However, the beams are not aligned at the same level, posing potential risks and negatively impacting aesthetics. The updated design details have been provided to address this issue.</p>
	<p>Photo 2:</p> <p>The ridge beam connection to the exterior living room wall has not been executed according to the original detail. The beam is not fully seated on the stud and appears to rely entirely on side fixing. The updated design details have been provided to rectify this issue.</p>
	<p>Photo 3:</p> <p>The fixing between the ridge beam and the existing rafter has not been carried out according to the original detail. The ridge beam is positioned below the rafters, with noticeable gaps that suggest it is not providing adequate support. The updated design details have been provided to address this issue.</p>

[18] The Board received evidence that the beam in Photo 1 was installed as a single beam by a subsequent contractor, which removed the need for the supporting post shown in the photograph.

[19] Examples of non-compliant work in Mr [OMITTED] report included:

	<p>Photo 20</p> <p>Original rafter is completely rotten, rafter is still being used as a load bearing point running from new ridge beam to external wall framing.</p> <p>Rotten rafter has 90x45 timbers strapped to it. Rafter is acting as a load bearing point to newly installed Velux sky lights. All existing and new roof framing is attached to this rafter.</p> <p>Recommendation:</p> <p>Existing Rafter no longer holds any structural integrity. It does not comply with NZS3604 standards.</p> <p>Remove existing rafter and replace with a new 240x45 SG8 H1.2 rafter so that it complies with BC plans.</p> <p>Refer to architectural drawings sheet No 001 timber framed wall and floor notes. Refer to notes Number: 1,2,3.</p>
	<p>Photo 21</p> <p>Point load framing timber has been installed on existing steel beam, point load framing for upper level has been over cut, contractor has installed wedges to pack to height.</p> <p>Please refer to sheet No: S02 of the engineer drawings for 2x190/45 point load detail.</p> <p>Recommendation:</p> <p>Remove wedges and over cut point load framing timber. Install new framing as Per engineer detail BC plans.</p>
	<p>Photo 22</p> <p>Timber framing:</p> <p>Three layers of 90x45 timber have been installed, acting as what it looks like to be a joist. Timbers do not touch basement level load bearing beam. Timber framing is meant to support mid floor and stair case. Timber framing construction does not meet NZS3604.</p> <p>Double 190/45 lintel has a multi grip attached to the left hand side of it. Please Refer to Drawing S02 in engineering drawings, it requires (P2) double 90x45 studs as a point load.</p> <p>Wedges;</p> <p>Wedges packing midfloor to height. This does not meet NZS3604 standards nor engineers details as per BC plans</p> <p>Recommendation:</p> <p>Engineer to provide joist to steel beam connection detail.</p> <p>Remove wedges, overcut point load framing timbers, triple 90x45 framing timber. Install new joist framing that connects to load bearing steel beam as per BC plans.</p>

[20] The above were, by no means, the only serious issues noted in the three reports.

- [21] In a post-hearing submission that responded to Mr [OMITTED]' report, which was the most comprehensive and which generally duplicated issues noted by the engineers, the Respondent accepted that, in some instances, errors had been made or that work was out of sequence. He stated:

Final Remarks: This project has been the most challenging of my career so far. I take full responsibility for the issues raised and acknowledge that there were aspects of the work that should have been handled with more care and planning. Balancing client expectations with the realities of construction was difficult, and in hindsight, there are things I would do differently.

I sincerely regret the mistakes made and the stress this situation has caused for everyone involved. That said, I also believe there were many things done correctly on this project — efforts that should not be overlooked.

Some of the problems stemmed from evolving design changes, incomplete work, and miscommunication. As the Licensed Building Practitioner on this job, I want to make it clear that I am committed to learning from this experience and improving how I manage complex builds in the future. I am prepared to accept any guidance or decisions from the Board and take this opportunity to reflect and grow as a professional.

Negligence or Incompetence

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

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

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

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

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

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

Has the Respondent departed from an acceptable standard of conduct

[23] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹

[24] Based on the evidence received, what was in question was the Respondent's supervision of the building work. This is because it was apparent to the Board that the person who was actually directing and controlling the building work on site was Mr [OMITTED] and that he was the person who made decisions about how the building work would be carried out. On that basis, the question for the Board was whether the Respondent had been negligent or incompetent as regards his supervision. The term supervise is defined in section 7 of the Act. The definition states:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

[25] In previous matters, the Board discussed the levels of supervision it considers are necessary to fulfil an LBP's obligations, noting that the level of supervision required will depend on a number of circumstances but, ultimately, it needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

[26] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992¹². The definition of supervision in that Act is consistent with the definition in the Building Act, and, as such, the court's comments are instructive. In the case, Judge Tompkins stated at paragraph 24:

“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

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

¹² *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

- [27] The evidence clearly established that the Respondent was not providing the required level of supervision. There were multiple instances of non-compliant building work that were serious in nature and which would have compromised the safety and performance of the building. A competent supervisor would have identified or prevented those errors or at least taken steps to ensure the building work was completed in a compliant manner. That did not occur.
- [28] The Board formed the view that the person in charge of the work was Mr [OMITTED] and that the Respondent was allowing Mr [OMITTED] to carry out and complete the work as he saw fit. The result was that the Respondent did not provide adequate supervision and that his conduct has fallen below an acceptable standard.
- [29] The Board did consider whether the Respondent had been incompetent. It did so because it should have been evident even on a casual review of the building work by the Respondent that there were serious non-compliance issues. The Board formed the view that the Respondent knew what he should have been doing but did not take action because of a power imbalance between the Respondent and his employer. A power imbalance is not a reason or excuse for the Respondent to abdicate his responsibilities as the supervising LBP, which is why the board made a finding of negligence as opposed to incompetence.

Was the conduct serious enough

- [30] The conduct was serious. There were numerous areas of the building work that did not comply with the Building Consent or the Building Code. There was also evidence that, but for the intervention of the engineers and the diligence of the LBP that took over, the non-compliance would not have been dealt with and would have been covered over.
- [31] In this respect, the Board considers the Respondent should have ensured the building work was completed correctly as it was carried out, and not to rely on others to identify compliance failings. Moreover, when compliance failings were identified, the Board would have expected prompt action to have been taken. Neither occurred.
- [32] It should be noted that, during the first reading of changes to the Act around licensing,¹³ 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

¹³ Hansard volume 669: Page 16053

with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

- [33] The introduction of the LBP regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation¹⁴:

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.

- [34] The Respondent's conduct has defeated the stated intention.

Has the Respondent been negligent or incompetent

- [35] The Respondent has supervised building work in a negligent manner.

Contrary to a Building Consent

- [36] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁵ Once issued, the building work must be carried out in accordance with the building consent.¹⁶ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁷ Inspections ensure independent verification that the building consent is being complied with.

- [37] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The

¹⁴ Hansard volume 669: Page 16053

¹⁵ Section 49 of the Act

¹⁶ Section 40 of the Act

¹⁷ Section 222 of the Act

Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁸ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁹ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

[38] As outlined in the evidence above and as disclosed in the three reports that were before the Board, there were multiple instances of building work that did not comply with the Building Consent.

Was the conduct serious enough

[39] For the reasons set out above in relation to negligence, the conduct was serious.

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

[40] The Respondent has supervised building work that did not comply with the Building Consent.

Failure to Provide a Record of Work

[41] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.²⁰

[42] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work²¹ unless there is a good reason for it not to be provided.²²

Did the Respondent carry out or supervise restricted building work

[43] The Respondent supervised building work on an alteration of a residential dwelling under a Building Consent. His work included building work on the primary structure and the external moisture management system of a residential dwelling, which are forms of restricted building work.²³

¹⁸ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁹ *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".

²⁰ Section 88(1) of the Act.

²¹ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²² Section 317(1)(da)(ii) of the Act

²³ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Was the restricted building work complete

[44] The Respondent's restricted building work came to an end when his employer's contract came to an end on or about 6 May 2024. That was when a record of work was due because, after that date, the Respondent would not be able to carry out or supervise any further restricted building work on the project.

Has the Respondent provided a record of work

[45] A record of work has not been provided.

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

[46] The Respondent submitted that he had not been asked for a record of work. That is not a good reason. The requirement is for the LBP to provide a record of work. Neither the Owner nor the Territorial Authority has to demand one. The Respondent should have acted on his own accord.

Did the Respondent fail to provide a record of work

[47] The Respondent has failed to provide a record of work on completion of restricted building work.

Board Decisions

[48] The Respondent has breached sections 317(1)(b), (d) and (da)(ii) of the Act.

Penalty, Costs and Publication

[49] 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.

[50] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[51] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.²⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁵

²⁴ *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]

²⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

- (a) protection of the public and consideration of the purposes of the Act;²⁶
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁷
 - (c) setting and enforcing a high standard of conduct for the industry;²⁸
 - (d) penalising wrongdoing;²⁹ and
 - (e) rehabilitation (where appropriate).³⁰
- [52] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases³¹ and applying the least restrictive penalty available for the particular offending.³² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³³ that is consistent with other penalties imposed by the Board for comparable offending.³⁴
- [53] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³⁵
- [54] In this matter, the Board adopted a starting point of a fine of \$3,500. It had considered a restriction on the Respondent's licence, such as a suspension, and would have imposed one if it were not for the power imbalance between him and his employer. The Board considers that a fine of \$3,500 reflects the seriousness of the offences, and the amount is consistent with penalties imposed by the Board for other similar disciplinary matters.
- [55] The Board took the power imbalance between the Respondent and his employer into account as a mitigating factor. As an LBP, the Respondent had an obligation to ensure that the building work was carried out to an acceptable standard and in accordance with the Building Consent, but it was, in part, because of his employer's actions. That said, he should have taken steps to protect his licence and uphold the licensing regime's intent, but he did not. Notwithstanding, the Board has decided it will reduce the fine by \$500 to a fine of \$3,000.

²⁶ Section 3 Building Act

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

²⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³⁰ *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

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

³⁵ 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

- [56] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁶
- [57] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁷. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁸.
- [58] 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.
- [59] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,950 toward the costs of and incidental to the Board's inquiry. That is the Board's scale amount for a moderately complex matter, and it is significantly less than 50% of the actual costs incurred.

Publication

- [60] 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,³⁹ 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.
- [61] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴⁰ 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.⁴¹
- [62] 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

³⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁸ *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.

³⁹ Refer sections 298, 299 and 301 of the Act

⁴⁰ Section 14 of the Act

⁴¹ *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

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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.

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

Submissions on Penalty, Costs and Publication

[65] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Tuesday 17th June 2025**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 26th day of May 2025



Mr M Orange
Presiding Member

i Section 3 of the Act

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) people who use buildings can do so safely and without endangering their health; and*
 - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) people who use a building can escape from the building if it is on fire; and*
 - (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ii Section 318 of the Act

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

iii Section 318 Disciplinary Penalties

- (1) In any case to which section 317 applies, the Board may—*
 - (a) do both of the following things:*
 - (i) cancel the person's licensing and direct the Registrar to remove the person's name from the register; and*

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- (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.*