

## Before the Building Practitioners Board

	BPB Complaint No. CB26758
Licensed Building Practitioner:	Grant Alan Maitland (the Respondent)
Licence Number:	BP123204
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry:	Complaint
Hearing Location:	by audiovisual conference
Hearing Type:	In Person
Hearing Date:	25 November 2025
Decision Date:	25 November 2025
Reissue Decision Date:	18 May 2026
Board Members Present:	

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr G Pearson, Barrister and Solicitor, Legal Member  
Mr G Anderson, LBP, Carpentry and Site AoP 2

#### Procedure:

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

#### Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b), 317(1)(g) and 317(1)(h) of the Act.

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

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**Summary**

[1] The Respondent carried out building work in a negligent manner, breached the Code of Ethics by failing to comply with the law, and carried out building work (design work) that was outside of his competence. The Respondent’s licence was suspended for nine months, and he was ordered to pay costs of \$2,150. 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.<sup>1</sup>
- [3] In this matter, the disciplinary charges the Board resolved to further investigate 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) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act; and
  - (c) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into the quality and compliance of the building work carried out on the dwelling alterations, including the structural work, weathertightness elements, and deck construction.
- [5] The Board also noted that in further investigating the Respondent's conduct under section 317(1)(h) of the Act, it would be inquiring into whether the Respondent had carried out design work on the basis that certain aspects of the building work may not have complied with an Acceptable Solution, such as NZS 3604, and instead involved design decisions outside the Respondent's competence.
- [6] Finally, in relation to the alleged conduct under section 317(1)(g) of the Act, the Board notified the Respondent that it would be inquiring into whether the Respondent may have breached clause 10 of the Code (you must comply with the law), in relation to:
- (a) a possible failure to obtain building consent for building work that required consent under section 40 of the Act; and
  - (b) possible failures to comply with the Residential Consumer Rights and Remedies Regulations 2014, including the requirements for disclosure information and written contracts.

## Evidence

- [7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [8] The Respondent was engaged to carry out building work at the property, including structural alterations to the dwelling, the construction of a deck, and related cladding and weathertightness work. As the work progressed, a dispute arose between the parties. Concerns were raised regarding the quality and compliance of the building work, and portions of the work were subsequently removed or altered as part of remedial investigations.
- [9] Those issues form part of the matters under consideration by the Board. The Board's discussion in relation to each of the issues under investigation follows.
- [10] The Board heard evidence from the Respondent, the Complainant, Mr [OMITTED], Mr [OMITTED], a Licensed Building Practitioner who inspected the building work, and Mr [OMITTED]. Mr [OMITTED]'s evidence related to the contractual and administrative aspects of the engagement.

### **Negligence or Incompetence**

- [11] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>3</sup> 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<sup>4</sup> test of negligence.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> If it does not, then a disciplinary finding cannot be made.

### Has the Respondent departed from an acceptable standard of conduct

- [12] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>i</sup> as well as the requirement that all building work must comply with the Building Code. The test is an objective one.<sup>8</sup> In terms of the Building Code, section 17 of the Act states:

#### **17 All building work must comply with building code**

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<sup>3</sup> *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.

<sup>4</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>5</sup> 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)

<sup>6</sup> 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”

<sup>7</sup> *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”.

<sup>8</sup> *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.

*All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.*

- [13] The Building Code sets out minimum performance requirements that all building work must meet. Clause B1 of the Building Code deals with structural requirements. It requires that building elements withstand the combination of loads and physical conditions they are likely to experience throughout their lives, including live and dead loads, earthquakes, and wind.
- [14] There are various ways in which compliance with the Building Code can be achieved. The most common method for the type of structure that was built is NZS 3604:2011, an Acceptable Solution for Timber Framed Buildings. E2/AS1, Acceptable Solution for External Moisture. Other options include using an Alternative Solution or a Verification Method.
- [15] The evidence in the photographs provided, in the written reports, and in the oral testimony of Mr [OMITTED] and the Complainant, together with the Respondent's answers to the Board's questions, established that key structural and external-moisture elements of the building work were not carried out in accordance with NZS 3604, E2/AS1, or any other recognised compliance pathway. In particular:
- (a) the opening in the internal loadbearing wall between the original dwelling and the extension was enlarged without any design or engineering assessment, and the replacement beam and its fixing were not designed or specified by a suitably qualified person;
  - (b) the beam installed was a J-Frame member, which appeared from the photographic evidence to be previously used whereas the Respondent stated it was a Glulam Beam 250 x 50, which he stated was stronger than regular timber, however, the photographic evidence he submitted during the hearing indicated it was a J-frame beam that had been installed, and that it was split at the point where it transferred load to the supporting stud;
  - (c) the recladding work involved a change from direct-fixed cladding to a cavity system, which in itself required a building consent under the Building Act, and which the Respondent undertook without any design documentation or verification of compliance with E2/AS1, and the cladding installation did not meet the requirements associated with the timber species and standard weatherboard profiles, including the absence of a paint finish and the absence of a weather groove, as required to satisfy the durability provisions of NZS 3602, the profile requirements set out in NZS 3617, and the external-moisture performance requirements of E2/AS1 and clauses B2 Durability of the Building Code;
  - (d) the deck construction departed from NZS 3604 in several respects, including the absence of piles and pile foundation pads, reliance on attachment to existing concrete of unknown thickness and reinforcement, and the use of non-standard bearer and joist sizes of uncertain structural adequacy and

spacing, lack of deck bracing and the use of non-compliant fixing for durability;  
and

- (e) the sequencing of the work was inappropriate, resulting in deficiencies at the junction between the reclad elevations and the deck structure.

[16] The Board also considers that portions of the work required removal for inspection, and that remedial investigations revealed non-compliance and structural concerns, to be, in themselves, an indication that the work did not meet the minimum performance requirements of the Building Code.

[17] The Respondent gave evidence that the work was incomplete and that he would have resolved any non-compliance had he been permitted to continue. He accepted that NZS 3604 had not been followed, but stated that he believed the design and construction of the deck, based on his years of experience, was stronger than what was required and would easily last 50 years. With regards the internal opening in the load bearing wall, the Respondent stated that he considered the existing loads and the fact that the gable end, and sarking above gave additional strength, he sized the beam which he stated was a Glulam 250 x 50 stronger than normal timber was compliant and that he would take photos and an engineer would ultimately have signed it off. The Board did not accept those explanations. The lawful process required the engagement of suitably qualified design and engineering professionals at the outset and the obtaining of a building consent prior to commencing building work. Proceeding with building work first, and then intending to obtain a Certificate of Acceptance at the end of the project, was unlawful. Section 40 of the Building Act makes it an offence to carry out building work that requires a building consent without one. The work on the structural beam and the recladding both required a building consent. The Respondent's reliance on the possibility of a Certificate of Acceptance was misconceived; completed work cannot be fully inspected, there is no assurance an engineer will certify it, and any Certificate of Acceptance is necessarily qualified to reflect the limits of post-construction evaluation. Whether the work would ever have been accepted is far from clear. The Respondent stated how the load paths were transferred from the new beam to the foundation. A full stud at each end with one being tek-screwed into the existing four opening studs. Photographic evidence supplied indicates that the beam and supporting framing were not installed to Building Code (see below). The Respondent also admitted that the head flashings and stop ends were defective, but said he would have rectified them. External and internal cladding junctions were not to Building Code. The fact that such matters could have been rectified does not excuse the substandard work undertaken.



[18] The Respondent also submitted that aspects of the work sequence were directed by the Complainant. The Board does not accept that explanation. The record does not support that the Complainant dictated the order of work. The Respondent, as a Licensed Building Practitioner, bore responsibility for determining an appropriate construction sequence. That sequence was not followed. This contributed to deficiencies at the junction between the reclad areas and the deck. The Respondent also proposed to deal with an internal cladding corner without using the metal flashing required by E2/AS1 acceptable solution, preferring an alternative technique for which no design documentation existed. In relation to the cladding, although the previous cladding had been removed before the Respondent commenced work, it would have been obvious that the dwelling had been direct-fixed. A change to a cavity system required a building consent. The Respondent had a duty to make proper inquiries and ensure that the work he undertook was authorised and compliant. Photographs of the noncompliant deck and cladding follow.



[19] The Board is concerned that, following the lodging of the complaint and throughout the hearing, the Respondent did not demonstrate insight into the seriousness of undertaking building work requiring a building consent without first obtaining one. Section 40 of the Building Act makes it an offence to carry out building work for which a building consent is required. Despite this, and despite the consequences of non-compliance being expressly drawn to his attention, the Respondent maintained that it was a legitimate option to proceed with the work without a consent and to rely on a subsequent application for a Certificate of Acceptance. That position was misconceived. It was also inconsistent with the Respondent's obligations as a

Licensed Building Practitioner, particularly given that the work undertaken involved design and engineering considerations outside his competence. The Respondent's continued assertion that work could lawfully proceed without a building consent, and without qualified design or engineering input, demonstrated a lack of understanding of fundamental regulatory requirements and an absence of contrition for the breaches identified.

- [20] Given the above factors, the Board finds that the Respondent has carried out building work in a negligent manner in that his conduct fell below acceptable standards. The Board considered whether the extent of the departures warranted a finding of incompetence, particularly given the Respondent's lack of insight. However, by a narrow margin, it determined that a finding of negligence was sufficient. In making that decision, the Board took into account that, while some defects could have been rectified had proper methods been applied from the outset, the Respondent failed to meet his fundamental obligations as a Licensed Building Practitioner. The Complainant was entitled to rely on the Respondent to ensure that all work was compliant and lawful. The Respondent did not meet that obligation.

#### Was the conduct serious enough

- [21] The Respondent's building work was seriously deficient. As noted above, the conduct verged on incompetence. The Board's view was that the departures from the Building Code occurred without any measured evaluation of their consequences, many of which would fall directly on the homeowner in terms of regulatory compliance, including implications for future sale and the ability to obtain insurance, as well as the future performance and durability of the building. The Respondent did not demonstrate an understanding of the risks he created or the obligations he was required to meet as a Licensed Building Practitioner. In those circumstances, the Board finds that the conduct meets the threshold for disciplinary action.

#### Has the Respondent been negligent or incompetent

- [22] The Respondent has carried out and supervised building work in a negligent manner contrary to section 317(1)(b) of the Act.

#### **Outside of Competence**

- [23] Another issue under investigation was whether the Respondent had carried out design work that was outside of his competence. The issue arose because the building work included structural and weathertightness elements that were outside the scope of the applicable Acceptable Solution, NZS 3604. An Acceptable Solution is a deemed pathway to compliance with the Building Code in that, if building work is carried out in accordance with an Acceptable Solution, further evidence of how compliance is or will be achieved is generally not required. Where an Acceptable Solution is not used, those responsible for the building work must establish how the work meets the minimum requirements of the Building Code.
- [24] Looking at the disciplinary charge, section 314B(b) of the Act provides:

*A licensed building practitioner must—*

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

- [25] In the context of the Act and the disciplinary charge under sections 317(1)(h) and 314B(b), a Licensed Building Practitioner must only work within his or her individual competence. The Respondent holds a Carpentry Licence. That deems him to be competent to carry out carpentry work. It does not deem him competent to undertake design work, including structural or cladding design falling outside the scope of NZS 3604, or to make engineering assessments or determinations that require other professional qualifications.
- [26] The evidence shows that the Respondent carried out design work. He developed and implemented the structural and cladding design used on the project, including the selection and installation of a replacement beam for the enlarged opening in a load-bearing wall, the transition to a cavity-based cladding system, and the design and configuration of the deck. These aspects of the work did not accord with any Acceptable Solution and did not meet the minimum requirements of the Building Code, as outlined above in the Board's findings on negligence. The work required proper design by a suitably qualified professional, and, in the case of the beam, specific engineering design.
- [27] In undertaking this work, the Respondent effectively developed an Alternative Solution. An Alternative Solution is a design-led Building Code compliance solution that differs, in whole or in part, from those provided for in an Acceptable Solution. Alternative Solutions are normally used where an Acceptable Solution cannot be applied, or where a non-generic approach to the building work is necessary. They require analysis, documentation, and verification by persons with appropriate design or engineering qualifications.
- [28] Alternative Solutions must be developed by persons who have the necessary knowledge and skill to ensure that Building Code compliance will be achieved. Persons recognised as having the relevant skills include Architects, Design LBPs, and Chartered Professional Engineers. The Respondent does not have those qualifications, and there is no evidence that he has acquired or retained the skills or knowledge that those persons hold. Notwithstanding this, he proceeded on the basis that the work was compliant and that an engineer would later approve it, or that a Certificate of Acceptance could be sought after construction was completed. That approach was misconceived, unlawful, and outside his competence.
- [29] Based on the design decisions he made and implemented, the Board has identified multiple aspects that did not meet Building Code requirements. It follows that the Respondent has carried out design work that he was not competent to carry out, in breach of section 314B(b) of the Act, and has thereby committed a disciplinary offence under section 317(1)(h).

Has the Respondent breached section 314B(b) of the Act

[30] The Respondent has committed a disciplinary offence under section 317(1)(h) of the Act in that he has breached section 314B(b) of the Act by carrying out building work (design work) that was outside of his personal competence.

**Code of Ethics**

[31] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.<sup>9</sup> It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes<sup>10</sup> for some time, and the Board has taken guidance from decisions made in other regimes.

[32] The Code also differentiates between Licensed Building Practitioners who are in business and those who are not. It states that some ethical obligations apply only to those in business. In this matter, it is not necessary to determine whether the Respondent was "in business" as our adverse finding is confined to failure to comply with the law relating to obtaining a building consent, which applies to all LBPs.

[33] The disciplinary provision in the Act relating to the Code of Ethics simply states, "has breached the code of ethics". Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,<sup>11</sup> Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

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

[34] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,<sup>12</sup> the test was stated as:

*[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.*

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<sup>9</sup> Building (Code of Ethics for Licensed Building Practitioners) Order 2021

<sup>10</sup> Lawyers, Engineers, Architects and Accountants, for example

<sup>11</sup> [1992] 1 NZLR 720 at 724

<sup>12</sup> [2001] NZAR 74

- [35] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

#### The conduct being investigated

##### *Compliance with the Law*

- [36] Under section 317(1)(g) of the Act, the Board may make a disciplinary finding where a Licensed Building Practitioner has breached the Code of Ethics prescribed under section 314A. Clause 10 of the Code provides that an LBP must comply with the law. Compliance with the Building Act is fundamental to the responsibilities of an LBP, particularly where the work involves structural or weathertightness elements that have significant safety and performance consequences.
- [37] As set out above, the Respondent carried out building work that required a building consent without first ensuring that a consent was in place, in breach of section 40 of the Act. That breach was not inadvertent. It occurred in the context of a sustained course of conduct in which the Respondent undertook work outside the scope of any Schedule 1 exemption, made structural and design decisions without the necessary competence, and maintained throughout that it was permissible to complete the work and rely on a subsequent application for a Certificate of Acceptance. That view was incorrect as a matter of law, and the Respondent did not demonstrate insight into the seriousness of the breach even when it was drawn to his attention during the investigation and hearing.

##### *Disclosure and Contractual Documentation*

- [38] The Code of Ethics requires Licensed Building Practitioners who are “in business” to comply with all legal obligations that apply to the provision of residential building services. Those obligations include the requirements of the Building Act and the Residential Consumer Rights and Remedies Regulations 2014 for a written contract for residential building work valued at \$30,000 or more, and the obligation to provide the prescribed checklist before the contract is entered into.
- [39] The Board considered whether the Respondent was “in business” for the purposes of the Code of Ethics and reviewed the contractual documentation before it. That documentation consisted of quotes containing terms and conditions, some issued in the name of an unincorporated entity said to be trading as an incorporated company. The Respondent is neither a director nor a shareholder of that company. He stated that he acted as a manager but was not paid wages, instead receiving fees of an unspecified kind. The evidence also showed that the Respondent and his son, Mr [OMITTED], shared the same online presence to solicit work, and the Complainant understood that he was contracting directly with the Respondent as the principal performing the work. Taking these matters together, the Board considers that the Respondent was probably “in business” in the material sense for the purposes of the Code.

- [40] The Board has not made an adverse finding in relation to contractual documentation or disclosure obligations. The contractual arrangements were unclear, and a definitive analysis would have required evidence from parties whom the Respondent did not call. Further inquiry into those matters is not justified because it would not materially affect the determination of the complaint or the disciplinary charges that have been upheld. Notwithstanding, the Respondent should revisit his contract and disclosure information processes to ensure that he is complying with his obligations under Part 4A of the Act and the Building (Residential Consumer Rights and Remedies) Regulations 2014.
- [41] The absence of an adverse finding on those issues does not detract from the Board's conclusion that the Respondent was responsible for the building work and for ensuring compliance with the law. It simply reflects that the Board's finding under section 317(1)(g) is confined to the Respondent's failure to obtain a building consent for work that required one.

Was the conduct (failure to obtain a building consent) serious enough

- [42] The Respondent's failure to obtain a building consent for work that plainly required one constitutes a serious breach of clause 10 of the Code (you must comply with the law). The obligation to obtain a building consent before commencing building work is a fundamental statutory requirement. Section 40 of the Act makes it an offence to carry out building work for which a consent is required without first obtaining that consent.
- [43] The Respondent's conduct was not an inadvertent or isolated omission. It formed part of a sustained course of action in which he undertook structural and cladding work outside the scope of any Schedule 1 exemption, made design and engineering decisions without the necessary competence, and maintained throughout that it was permissible to proceed without a building consent and rely on a subsequent Certificate of Acceptance. In these circumstances, the failure to obtain a building consent meets the threshold for an adverse disciplinary finding under section 317(1)(g).

Has the conduct breached the Code of Ethics

- [44] The Respondent has breached section 317(1)(g) of the Act. The conduct amounted to a breach of clause 10 of the Code of Ethics, which requires Licensed Building Practitioners to comply with the law. For the reasons set out above, the Respondent's decision to undertake building work that required a building consent without ensuring that a consent was in place, and to persist in the view that it was permissible to proceed on that basis, meets the threshold for an adverse disciplinary finding under section 317(1)(g).

**Board Decisions**

- [45] The Respondent has breached sections 317(1)(b), 317(1)(g) and 317(1)(h) of the Act.

- [46] The Board is satisfied that the Respondent carried out building work in a negligent manner, breached clause 10 of the Code of Ethics by undertaking building work that required a building consent without ensuring that one had been obtained, and carried out design work that was outside of his competence. Each of these breaches meets the threshold for disciplinary action.
- [47] Having made findings in respect of the disciplinary charges, the Board must now determine the appropriate disciplinary penalties, as well as matters relating to costs and publication.

### **Penalty, Costs and Publication**

- [48] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>ii</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [49] 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

- [50] The Board has the discretion to impose a range of penalties.<sup>iii</sup> 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.<sup>13</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>14</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>15</sup>
  - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>16</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>17</sup>
  - (d) penalising wrongdoing;<sup>18</sup> and
  - (e) rehabilitation (where appropriate).<sup>19</sup>
- [51] 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

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<sup>13</sup> *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]

<sup>14</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>15</sup> Section 3 Building Act

<sup>16</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>17</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>18</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>19</sup> *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

cases<sup>20</sup> and applying the least restrictive penalty available for the particular offending.<sup>21</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>22</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>23</sup>

- [52] 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.<sup>24</sup>
- [53] In this matter, the Board had decided that the penalty should be a suspension of the Respondent's licence.
- [54] 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. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee* commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[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.*

- [55] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*<sup>25</sup>. The High Court, when discussing penalty stated:

*[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.*

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

<sup>21</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>24</sup> 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.

<sup>25</sup> [2012] NZAR 481

- [56] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [57] In *Daniels v Complaints Committee 2 of the Wellington District Law Society*<sup>26</sup> the High Court, in relation to the principles relating to suspension of a legal practitioner's licence, stated:
- [34] In considering sanctions to be imposed upon an errant practitioner, a Disciplinary Tribunal is required to view in total the fitness of a practitioner to practise, whether in the short or long term. Criminal proceedings of course reflect badly upon the individual offender, whereas breaches of professional standards may reflect upon the wider group of the whole profession, and will arise if the public should see a sanction as inadequate to reflect the gravity of the proven conduct. The public are entitled to scrutinise the manner in which a profession disciplines its members, because it is the profession with which the public must have confidence if it is to properly provide the necessary service. To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not, treat lightly serious breaches of standards.*
- [58] This was affirmed in *Jefferies v National Standards Committee*<sup>27</sup> where the High Court also stated:
- [25] I accept the principle that suspension is not intended to be a punitive sanction even if it invariably has that effect.*
- [26] And I accept also that this means mitigating personal circumstances, though still relevant, are less closely connected to this purpose than would be the case in criminal sentencing. They will therefore carry less weight.*<sup>28</sup>
- [59] The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work, which is integral to the safe and healthy functioning of a home. A practitioner who fails to display the required competencies puts those objects at risk.
- [60] Taking all of the above factors into account, the Board considers that a suspension of the Respondent's licence is proportionate and required to deter others from such conduct.
- [61] The Respondent has a prior disciplinary history. In the Board's decision C2-01807, decided in 2018, the Board found the Respondent committed disciplinary offences under section 317(1)(b) and 317(1)(h) of the Building Act 2004. The findings included that the Respondent had carried out or supervised building work or building inspection in a negligent manner, and carried out building work outside of his

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<sup>26</sup> [2011] 3 NZLR 850

<sup>27</sup> [2017] NZHC 1824

<sup>28</sup> *Bolton v Law Society* [1994] 2 All ER 486 (CA) at 492-493

competence. That included failing to engage appropriately licensed persons to carry out plumbing and electrical work both of which are regulated trades. Specifically:

*The Respondent has failed in this respect. The Complainant's evidence was that the Respondent carried out the work himself. The Respondent's evidence was that he got an unnamed person to do the work and that it would be checked post completion. There is no evidence that if the Respondent did engage another person to do the work, or that he took any steps to ensure that the person or persons were authorised, or that he had it checked post completion.*

*The Board finds that the Respondent is responsible for the electrical and plumbing work and that, in failing to take any steps to ensure the regulated work was carried out or supervised by an authorised person, he has fallen below the standards expected of a licensed building practitioner and is, accordingly, found to have been negligent.*

- [62] That conduct was serious, as it involved undertaking regulated work for which he was not qualified, or at the very least arranging for such work to be done without evidence that a qualified person was carrying out the work. As the previous decision observes, electrical and plumbing work are regulated, and unlicensed persons doing such work commit a criminal offence. The present matter exhibits similar features of disregarding the statutory requirements that govern the construction industry.
- [63] In this case, the Respondent has again undertaken work outside his competence, assuming roles requiring design and engineering expertise for which he has no qualification and has again acted with disregard for the law by carrying out building work requiring a building consent without ensuring that a consent was obtained. The recurrence of this pattern is of real concern to the Board. After careful consideration, the Board considers that a suspension period of nine (9) months is required in this case.
- [64] The Respondent should take careful note of the potential consequences of any further offending, particularly where it involves failure to comply with the law or carrying out work for which he is not qualified or registered.
- [65] Accordingly, pursuant to section 318(1)(d) of the Act, the Respondent's licence is suspended for a period of nine months. The period of suspension is to commence on the date this decision becomes final. In imposing this period of suspension, the Board has taken into account the seriousness of the offending, the Respondent's previous disciplinary history, and the need to protect the public and maintain confidence in the Licensed Building Practitioner scheme. The Board also considers that a period of suspension is necessary to deter the Respondent, and others, from undertaking work outside their competence or in breach of the Building Act. The Board notes that any further offending of a similar nature may result in a more serious outcome, including cancellation of the Respondent's licence.

### Costs

- [66] 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.<sup>29</sup>
- [67] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>30</sup> The starting point can then be adjusted up or down with regard to the particular circumstances of each case.<sup>31</sup>
- [68] 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 simple. Adjustments are then made.
- [69] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,150 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter heard using an audiovisual link. It is significantly less than 50% of actual costs.

### Publication

- [70] 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,<sup>32</sup> 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.
- [71] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>33</sup> 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.<sup>34</sup>
- [72] Based on the above, a summary of the decision will be published. The Respondent will be named in that publication. The publication is to be carried out by the Registrar, and it is to focus on the need to adhere to Acceptable Solutions where there is no consented design.

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<sup>29</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

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

<sup>31</sup> *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.

<sup>32</sup> Refer sections 298, 299 and 301 of the Act

<sup>33</sup> Section 14 of the Act

<sup>34</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### Section 318 Order

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

**Suspension:** Pursuant to section 318(1)(~~a~~)(b) of the Act, the Respondent's licence is suspended for a period of nine (9) months. The period of suspension is to commence on the date this decision becomes final.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website, and the Registrar is to publish an article summarising the Board's decision in the Wrap Up.

[74] 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

[75] 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 **Wednesday 28<sup>th</sup> January 2025**~~2026~~. 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

[76] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>iv</sup>.

Signed and dated this 15<sup>th</sup> day of December 2025



**Mr M Orange**  
Presiding Member

**This decision has been reissued on 18 May 2026 to correct two typographical errors. The remainder of the document is unchanged.**

Signed and dated this 18<sup>th</sup> day of May 2026.



**Mr M Orange**  
Presiding Member

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**<sup>i</sup> 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.*

**<sup>ii</sup> 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.*

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- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
  - (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
  - (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
  - (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

**iii Section 318 Disciplinary Penalties**

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

**iv Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
  - (b) *to take any action referred to in section 318.*

**Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*