Before the Building Practitioners Board

	BPB Complaint No. 26551
Licensed Building Practitioner:	Kelvin Adrian Boyd (the Respondent)
Licence Number:	BP 134362
Licence(s) Held:	Design AoP 2

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:	Christchurch
Hearing Type:	In person
Hearing and Draft Decision Date:	18 December 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2
Mr C Lang, Building Surveyor and Quantity Surveyor, Building Control Manager

Appearances:

Ben Saunders Counsel for the Respondent
Mikaela Sotutu Counsel for the Respondent
John Rennie Special Advisor for the Board

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) of the Act.

The Respondent's licence is reduced from Design Area of Practice 2 to Design Area of Practice 1, and he is ordered to pay costs of $4,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary of the Board's Decision

[1] The complaint related to the Respondent's design work over three properties and four building consents. The Building Consent Authority complained that his design work was substandard. The Board found that the Respondent had carried out building work (design work) in a negligent and incompetent manner.

[2] Because of the finding of incompetence, the Board decided to restrict the Respondent's licence to design work within Design Area of Practice 1 until he demonstrates that he is competent to carry out Design Area of Practice 2 work. The Board also ordered that the Respondent pay costs of $4,150 and that a record of the disciplinary offending be recorded on the public Register for a period of three years. A summary of this decision will be published by the Registrar. The Respondent will not be named or identified.

The Charges

[3] 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]

[4] In this matter, the disciplinary charges the Board resolved to further investigate[2] were that the Respondent may, in relation to building work (design work) over four building consents at three properties [OMITTED], have carried out or supervised building work in a negligent or incompetent manner as set out in the Special Advisor's report dated 21 March 2025 contrary to section 317(1)(b) of the Act.

[5] The Board initially dealt with the complaint by way of a Draft Decision. The Respondent disputed the findings. The Draft Decision was set aside, and a hearing was scheduled.

Background

[6] The complaint was made by the Selwyn District Council as the Building Consent Authority (BCA), which processed building consents submitted by the Respondent. The allegations were put to the Respondent, whose lawyer responded, submitting that the Respondent had not been negligent or incompetent.

[7] Following that response, the Board decided to appoint a Special Adviser under section 322(1)(d) of the Act to assist the Board. Mr John Rennie was appointed. He was instructed to review the complaint and response and to provide his expert opinion on the matters complained about.

[8] Mr Rennie reviewed each consent and gave his opinion on the standard of the Respondent's design work. His opinion was that there were issues with the original consents submitted and with how Requests for Information (RFI) were dealt with. There were consistent themes with respect to each of the consents and properties. In particular, Mr Rennie considered there had been a lack of research and preparation by the Respondent before he carried out the design work, which resulted in errors in the consents submitted, a failure to demonstrate how Alternative Solutions would comply with the Building Code, a lack of specific detailing, and an over-reliance on the BCA to assist the Respondent to develop a Building Code compliant design.

[9] The Respondent and his lawyer were sent a copy of Mr Rennie's Special Adviser's report and were offered an opportunity to comment, but they did not. The Board decided to issue a Draft Decision on the basis that the Special Adviser's report had not been contested. The Draft Decision noted that the Respondent could still request an in-person hearing, in which case the Draft Decision would be set aside. After 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.

Draft Decision was issued, Counsel for the Respondent notified the Board that the Respondent did not accept the Board's findings and that a hearing was required. The Draft Decision was set aside, and a Notice of Proceeding was issued.

Evidence

[10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[3]. 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.

[11] As noted, the Board sought an independent expert review of the Respondent's design work. Mr Rennie, the appointed Special Adviser, reviewed each consent and gave his opinion on the standard of the Respondent's design work. His opinion was that there were issues with the original consents submitted and with how Requests for Information (RFIs) were handled. He noted consistent themes across each of the consents and properties. In particular, Mr Rennie considered there had been a lack of research and preparation by the Respondent before he carried out the design work, which resulted in errors in the consents submitted, a failure to demonstrate how Alternative Solutions would comply with the Building Code, a lack of specific detailing, and an over-reliance on the BCA to assist the Respondent to develop a Building Code compliant design.

[12] At the hearing, the Board heard from Mr Rennie and from two experts appointed by the Respondent. They were [OMITTED], at [OMITTED], and [OMITTED].

[13] [OMITTED] concluding comments were:

> *61. Two of the applications for building consent were accepted for processing with only minor additional information requests made at that time. The plans were of an appropriate standard to submit, albeit that additional information and clarifications needed to be requested and submitted before the Council could make their final building consent decisions.*
>
> *62. The consent applications required responses to RFIs before the Council had reasonable grounds to satisfy itself that the building works would comply with the Building Code if constructed in accordance with* [OMITTED] *design. That is totally normal. Section 48(2) of the Building Act 2004 specifically allows for a BCA to "require further reasonable information in respect of the application" (RFIs). They are very common on most, if not all building consents, even for very simple projects. The fact of them being made does not mean that the designer (or other professional) has been negligent or incompetent – it shows the system is working.*

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

> 63. *My view is that the RFIs issued on the projects at issue were reasonable and, in my view, would be reasonably standard. I do not believe they raise an issue of competence or negligence. It was entirely appropriate that an RFI identified an issue with building classification and fire separation for* [OMITTED], *(Part 1). But* [OMITTED] *responded appropriately to that RFI, as he did with all the other RFIs. The communications that I have viewed were appropriate and considered.* [OMITTED] *engaged with experts and relied on that expertise.*
>
> 64. *From the design work and communications I have reviewed, it is my opinion that* [OMITTED] *competency is consistent with other LBP practitioners with this competency. I do not think there has been any serious departure from the level of design work I see every day. If* [OMITTED] *is found to not meet the requirements to be appropriately licenced as Design 2, the same would apply to many, if not most, practicing LBPs.*
>
> 65. *My role for* [OMITTED], *involves assessing whether practitioners should be referred to regulatory bodies. I would not refer* [OMITTED] *to the BPB for the work he has completed on these projects, either individually or cumulatively. I do not think this work would even be elevated to our group to consider his work – it very similar to many design practitioners that we deal with daily.*

[14] [OMITTED]

> 5. *My impression of the design and architectural documentation produced by* [OMITTED] *for the four building consent applications is that they were generally incomplete at the time of submission, lacking in detail in some respects, and, in some instances, relying more on the generic manufacturer details, rather than including project-specific solutions. In that respect, I generally agree with the Special Advisor's Report.*
>
> 6. *I also agree that the fire separation issue at the* [OMITTED], *and the commercial classification and need for the fire wall at the* [OMITTED], *should have been identified and addressed before the applications were submitted (I understand* [OMITTED], *has acknowledged the* [OMITTED], *oversight to the Board). I comment below on the appropriate steps that* [OMITTED] *took in response these issues being raised by the Council via the RFIs.*
>
> 7. *I do not, however, agree that there were serious failures in the documents (subject to the issues mentioned in paragraph 6 above). The best way I can describe the design and architectural documents is that they were about 85%-90% complete.* [OMITTED] *was just between 10%-15% 'short' when the documents were submitted. My*

general impression is that design documents are often submitted by Designers with about another 5% of work still needed for completeness, which is highlighted via the Council's RFIs that are now standard on many building consent applications for one reason or another. Overall, and importantly, the 85%-90% complete documents submitted by [OMITTED] *did not include any serious failings, and they are of what I would expect from a reasonable architectural designer.*

[15] [OMITTED] concluding opinion was:

> *15. Based on my comprehensive review of the design and architectural documentation submitted as part of these consents, and* [OMITTED] *responses to the RFIs, I have reached the following conclusions:*
>
> > *a. The architectural documentation submitted by* [OMITTED] *as part of the building consent processes was generally competent but exhibited deficiencies in project-specific detail and coordination, relying on generic manufacturer information.*
> >
> > *b. Most deficiencies related to procedural or documentation quality, rather than substantive technical errors; most matters were ultimately resolved through subsequent clarification or the inclusion of additional supporting material via the RFI process.*
> >
> > *c.* [OMITTED] *consistently sought specialist and expert advice in circumstances involving technically complex or ambiguous compliance issues, which demonstrates professional prudence, albeit that advice could have been obtained earlier in the consenting process.*
> >
> > *d.* [OMITTED] *design work demonstrated compliance with the Building Code for the* [OMITTED] and [OMITTED] *projects. I do not believe that the other consents were rejected for reasons related to* [OMITTED] *design work as discussed above.*
>
> *16. Overall, I did not identify any evidence of any significant technical failures, nor, in my view, any indications of professional negligence or conduct falling outside the bounds of reasonable practice for an architectural designer with a AOP Design 2 licence. I have been fortunate to be on the [OMITTED] for the last 4-years, and I remain on its [OMITTED] (which advises the members and MBIE). This has given me a broad exposure to many architectural designers across the country, of all quality. In my opinion, based on my experience including that within [OMITTED],* [OMITTED] *work, as submitted for the four building consents, falls*

within the spectrum of reasonably professional conduct expected of an architectural designer at his design level (AOP Design 2).

17. *It should be apparent that I believe that there are some areas of* [OMITTED] *practice that are requiring improvement, mainly around documentation standards, project-specific technical detail, and procedural quality rather than core technical competence or ethical compliance. This is not unique to* [OMITTED]*. I see that this is a clear opportunity for* [OMITTED] *to further develop his professional practice through support and better-quality assurance practices. However, it is my firm belief that the deficiencies identified do not rise to the threshold of professional misconduct, incompetence, or negligence as has been suggested.*

[16] The Board, whose members have expertise in the field of design and build consent evaluation, considered each expert's opinion when making its decision.

[17] There were three projects under investigation. They are discussed below.

Project 1: [OMITTED],

[18] The building consent application listed the project description as: Construction of detached dwelling – single storey with 2 bedrooms and attached carport. The resource consent granted prior to the building consent application described the project as a proposal to construct a second dwelling for workers to support horticultural activities on site.

[19] At the hearing, the Respondent accepted he had not adequately assessed the project with respect to the site's commercial/industrial use. He stated he was familiar with the site, having been involved in other work for the owners at the property.

[20] The documents submitted for the building consent application were incomplete. The vetting process requested information, RFI 1, requested further missing information, supporting documents and matters relating to B1, B2, H1, E2, E3, D1, F1, F3, G12, and G13, in addition to raising C/AS1: parts 4 and 5 Control of Fire and Smoke Spread, noting that the original shed was processed under C/AS2.

[21] On receipt of the fire report and its submission to and review by the Building Consent Authority (BCA), the Complainant in this matter, whilst acknowledging there was an internal issue with the completeness of the documentation provided to the BCA's consultants, further RFI notices were issued requesting additional architectural details to support the fire report and details specified within it.

[22] Within the Respondent's building consent application, there were inconsistencies within the architectural documentation and a lack of coordination between the structural and fire engineer's documents and the Respondent's architectural documents.

[23] The consent application for the construction of a detached dwelling and attached carport was refused by the BCA on the basis that there was insufficient evidence to determine compliance. An issue was also raised following a compliance review by the BCA's fire engineer. A building consent was later granted for an addition to the industrial shed, but only after RFI requests were issued and answered to demonstrate compliance.

[24] A second building consent was subsequently lodged for the construction of the attached dwelling, a single-story with two bedrooms and industrial alterations with an addition to its fire rating and specified systems.[4]

[25] Three RFI's were issued in relation to the second application. Some were repeats of the original application RFIs. Others related to B1, B2, E2, E3, D1, F7, G1, G2, G3, G7, G8, G9, G12, and H1. Clarifications were sought for conflicting information or because of a lack of coordination between the consultants' documentation and the Respondent's and architectural documentation.

<u>Project 2: [OMITTED],</u>

[26] The project involved a new 312 m^2, four-bedroom house with an attached garage on a 1,026 m^2 flat site.

[27] The building consent application relied on acceptable solutions for compliance. Some of the project-specific detailing, however, fell outside acceptable solutions and had not been identified and detailed as alternative solutions with detail to show Building Code compliance. Repeat RFI's raising the same E2-roofing and flashing-related questions were issued. The Respondent removed roof parapets and soffits, simplifying the house roof design to try to eliminate the need for complex junction flashing detailing. Following a meeting with the Council's consent processing officer, the design was further simplified, resulting in the consent being approved.

[28] At the hearing, the Respondent outlined how the owner was a builder and that, because of the owner's knowledge and ability, he had left details to be resolved during construction.

<u>Project 3: [OMITTED],</u>

[29] The project involved a re-clad and re-roof of a two-story dwelling built in 2000. The Respondents submitted documentation containing manufacturers' generic and standard details for acceptable solutions for E2/AS1 compliance, and limited project-specific details were included. During vetting of the Respondent's building consent application, an RFI was issued requesting clarification on the extent of the project, asking that the existing and proposed areas be marked, and requesting other missing information. The Respondent's responses did not adequately address several of the RFIs that had been issued.

[4] Specified system is a defined term in the Building Act and there are legislative requirements in relation to them.

[30] The Respondent submitted that the property owner was heavily involved in acting as the project manager. During the processing of the application, there was a dispute separate from the building consent application, between the owner and EQC over the extent of an insurance claim. The owner had requested the Selwyn District Council to put the application on hold while the insurance matter was resolved.

[31] On 14 December 2023, Selwyn District Council refused the building consent application, noting that the application did not sufficiently demonstrate how the proposed building work would continue to meet the durability requirements of the New Zealand Building Code clauses B2 (Durability) as it relates to clauses B1 (structure), E1 (surface water) and E2 (external moisture). What was later submitted still did not show compliance with those Building Code clauses.

[32] It was apparent that, once fire engineers had been engaged, there were differences of opinion between the fire engineer and the BCA. That said, there was an overfocus on the fire issue and little focus on the actual documents related to the fire separation required for a consent.

Negligence or Incompetence

[33] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,[5] 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*[6] test of negligence.[7] 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.[8] 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.[9] If it does not, then a disciplinary finding cannot be made.

<u>Has the Respondent departed from an acceptable standard of conduct</u>

[34] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act[i] as well as the requirement that all building work must

[5] *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.
[6] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[7] 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)
[8] 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"
[9] *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".

comply with the Building Code[10] and any building consent issued.[11] The test is an objective one.[12]

[35] The Board's considerations regarding negligence and incompetence pertained to the Respondent's design work.

[36] Under the definitions in the Building Act, design work forms part of the wider definition of building work and, as such, in respect of section 317(1)(b), it comes within the Board's jurisdiction. In this respect, the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:

> ***3 Design work declared to be building work***
>
> *(1) Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
>
> *(2) Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*

[37] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.

[38] The Board also notes, regarding design work, the provisions of section 14D of the Act, which states:

> ***14D Responsibilities of designer***
>
> *(1) In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
>
> *(2) A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[39] The Board's view was that the Respondent had:

[10] Section 17 of the Building Act 2004
[11] Section 40(1) of the Building Act 2004
[12] *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.

(a) Project 1: conducted himself in an incompetent manner when undertaking his assessment of the project and in a negligent manner when preparing and submitting building consent documentation;

(b) Project 2: whilst the conduct was not at the same level as that in Project 1 and 3, he conducted himself in a negligent and incompetent manner; and

(c) Project 3: conducted himself in a negligent manner in relation to the fire matters and in an incompetent manner in relation to his documentation and his failure to properly research and assess the existing two-story dwelling, attached garage and separate self-contained guest house and the original building consent documentation in relation to C/AS2 of the Building Code.

[40] The Board considered that all applications were incomplete at the time of application, with missing information that had to be requested during consent vetting before the application was accepted for processing. Further, there was an over-reliance on manufacturers' details, with limited, if any, project-specific details included in the applications, especially for the re-clad project. The Respondent should note that standard-manufactured details, while they demonstrate compliance, as drawn by the manufacturer of that specified product, may not apply or cannot be constructed on-site due to the existing structure and design details.

[41] The Board also noted:

(a) a lack of quality assurance processes. The Respondent, prior to submitting the consent documentation, should have assessed the applicability for overall compliance and consistency, especially regarding consultant documentation and his architectural documentation.

(b) a general lack of coordination with details from consultants;

(c) a high number of RFI’s and a lack of learning from previous RFI’s on other projects issued;

(d) a lack of project due diligence and/or site investigations to fully evaluate projects 1 and 3; and

(e) a lack of understanding of the difference between acceptable and alternative solutions, and how to demonstrate a pathway to compliance with the Building Code.

[42] The Board formed the view that without the assistance and guidance of the BCA, the Respondent’s designs would not have been able to have been granted a building consent and that the resulting building work would not have met the requirements of the Building Code.

[43] The Board notes that a designer should not be relying on others to identify and fix their mistakes. A Builder is entitled to rely on a design that has been consented. The introduction of the Licensed Building Practitioner regime was aimed at improving the

skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation[13]:

> *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.*

<u>Was the conduct serious enough</u>

[44] The conduct was serious, and it was sustained over three properties and four building consents. It was not, therefore, a situation where it could be said that the issues with the design work arose as a result of mere inadvertence, carelessness or oversight.

[45] The Board noted a pattern of substandard assessments and due diligence for design projects, including incomplete and inconsistent design documentation, poor quality assurance processes, limited learning from design issues identified in RFIs, and a lack of fundamental knowledge regarding acceptable and alternative solutions. That pattern and extent of the departures from what the Board considers to be the acceptable standard of conduct meant that the conduct exceeded the threshold for disciplinary action by some margin.

<u>Has the Respondent been negligent or incompetent</u>

[46] The Board has decided that the Respondent had carried out design work in a negligent (a failure to meet an acceptable standard) and incompetent (a demonstrated lack of knowledge and skill) manner, the reasons for which have been set out above.

[13] Hansard volume 669: Page 16053

Board's Decision

[47] The Respondent **has** carried out building work (design work) in a negligent and incompetent manner.

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[ii], 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.

<u>Penalty</u>

[50] 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.[14] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[15]

(a) protection of the public and consideration of the purposes of the Act;[16]

(b) deterring the Respondent and other Licensed Building Practitioners from similar offending;[17]

(c) setting and enforcing a high standard of conduct for the industry;[18]

(d) penalising wrongdoing;[19] and

(e) rehabilitation (where appropriate). [20]

[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 cases[21] and applying the least restrictive penalty available for the particular offending.[22] In all, the Board should be looking to impose a fair, reasonable, and

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[14] 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]

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

[16] Section 3 Building Act

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

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

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

[20] *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

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

[22] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty [23] that is consistent with other penalties imposed by the Board for comparable offending.[24]

[52] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.[25]

[53] Because the Board's findings included that the Respondent had been incompetent, it considered that a penalty that dealt with the Respondent's competence was required. Currently, the Respondent holds a Design Area of Practice 2 License. His design work, which relied heavily on Acceptable Solutions (even when they would not achieve compliance with the Building Code), was more in line with design work associated with a Design Area of Practice 1 Licence, and the Board considered that his overall competence aligned with a Design Area of Practice 1 Licence. Given those factors, the Board has decided that it will order a restriction on the Respondent's licence to restrict him to a Design Area of Practice 1 licence until such time as he satisfies the Registrar that he is capable of carrying out and supervising Category 2 Buildings. This may be done by way of a reassessment for a Design Area of Practice 2 licence.

Costs

[54] 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.[26]

[55] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.[27] The starting point can then be adjusted up or down, having regard to the particular circumstances of each case.[28]

[56] 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 complex. Adjustments are then made.

[57] Based on the above, the Board's costs order is that the Respondent is to pay the sum of $4,150 toward the costs of and incidental to the Board's inquiry.

[23] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[24] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[25] 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.
[26] *Collie v Nursing Council of New Zealand* [2001] NZAR 74
[27] *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011
[28] *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.

Publication

[58] 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,29 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.

[59] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.30 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.31

[60] Based on the above, a summary of the decision will be published. The Respondent will not be named or identified in that publication.

[61] The Respondent should also note that the Board has not made any form of suppression order.

Section 318 Order

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

Penalty: **Pursuant to section 318(1)(c) of the Building Act 2004, the Respondent's licence is restricted to carrying out or supervising of design work authorised under a Design Area of Practice 1 Licence and the Registrar is directed to record the restriction in the of Register of Licensed Building Practitioners by noting his licence as a Design Area of Practice 1 Licence.**

The restriction is to remain in place until such time as the Respondent satisfies the Registrar that, on the balance of probabilities, he meets the requirements to hold a Design Area of Practice 2 Licence.

Costs: **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $4,150 (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. The Registrar is also directed to publish an article summarising the

[29] Refer sections 298, 299 and 301 of the Act

[30] Section 14 of the Act

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

decision. The Respondent is not to be named or identified in the article.

[63] 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

[64] 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 **25th of March 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

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

Signed and dated this 4th day of March 2026.

Mr M Orange
Presiding Member

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[i] ***Section 3 of the Act***
This Act has the following purposes:
(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
(i) people who use buildings can do so safely and without endangering their health; and
(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
(iii) people who use a building can escape from the building if it is on fire; and
(iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:
(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

[ii] ***Section 318 of the Act***

(1) In any case to which section 317 applies, the Board may

(a) do both of the following things:

(i) cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and

(ii) order that the person may not apply to be relicensed before the expiry of a specified period:

(b) suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:

(c) restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:

(d) order that the person be censured:

(e) order that the person undertake training specified in the order:

(f) order that the person pay a fine not exceeding $10,000.

(2) The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).

(3) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.

(4) In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.

(5) In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."

[iii] ***Section 318 Disciplinary Penalties***

(1) In any case to which section 317 applies, the Board may—

(a) do both of the following things:

(i) cancel the person's licensing and direct the Registrar to remove the person's name from the register; and

(ii) order that the person may not apply to be relicensed before the expiry of a specified period:

(b) suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:

(c) restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:

(d) order that the person be censured:

(e) order that the person undertake training specified in the order:

(f) order that the person pay a fine not exceeding $10,000.

(2) The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).

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

[iv] ***Section 330 Right of appeal***
(2) A person may appeal to a District Court against any decision of the Board—
(b) to take any action referred to in section 318.

Section 331 Time in which appeal must be brought
An appeal must be lodged—
(a) within 20 working days after notice of the decision or action is communicated to the appellant; or
(b) within any further time that the appeal authority allows on application made before or after the period expires.