

Before the Building Practitioners Board

	BPB Complaint No. 26767
Licensed Building Practitioner:	Kerrin Luke Simpson (the Respondent)
Licence Number:	BP 124289
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	18 February 2026
Decision Date:	4 March 2026

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

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 not** committed a disciplinary offence.

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Summary

- [1] The Respondent supervised restricted building work relating to renovations and additions to a residential dwelling under a building consent. Changes were made during the build, and a building consent inspection was missed. Consent change processes were the responsibility of the designer, and because of that, and because the conduct did not reach the Court-directed threshold for the Board to make a disciplinary finding, the Board decided that the Respondent had not breached sections 317(1)(b) or (d) of the Act.
- [2] The Board also decided that the Respondent had provided a record of work in a timely manner and had not, on that basis, breached section 317(1)(da)(ii) of the Act.
- [3] The remaining charges were a breach of the Code of Ethics and alleged disreputable conduct. In relation to them, some of the conduct under investigation, which related to the provision of a contract and the prescribed checklist and disclosure, took place

before the Code came into force, so the Board did not have any jurisdiction, and the remaining conduct, and the surrounding circumstances, were such that the Board decided it would not make a finding.

The Charges

- [4] 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
- [5] The disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act;
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act;
 - (d) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act; and
 - (e) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act.
- [6] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, the Board would be inquiring into:
- (a) whether the Respondent provided adequate supervision;
 - (b) a failure to obtain a pre-clad Building Consent Authority (BCA) inspection that was mandated in the Building Consent;
 - (c) a failure to meet the conditions of the approved Resource Consent;
 - (d) a failure to address failed and/or outstanding items raised in BCA inspection 4 April 2023 that noted "No further inspections can be carried out until all 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.

above issues have been approved by the council” (page 3410 of the Board’s file);

- (e) the compliance issues raised by the BCA inspection reports as set out in an inspection dated 23 March 2023 (page 3398 of the Board’s files);
- (f) a failure to ensure building consent changes were in place for changes to products specified in the building consent as set out in a BCA inspection dated 10 March 2025 and 4 April 2023 (pages 3440 and 3410 of the Board’s files), and RAB and cladding changes;
- (g) positioning of LVL beams above a stairwell and whether it was correctly bearing the associated load, as set out by [OMITTED], CPEng (page 4146 of the Board’s files);
- (h) a failure to ensure correct floor levels and head clearance for a staircase met building consent requirements, as set out in a BCA inspection report dated 10 March 2023 (page 3381 of the Board’s file); and
- (i) compliance of the substituted cladding system installation, including associated flashings.

[7] The Board gave notice that, in further investigating the Respondent’s conduct under section 317(1)(g) of the Act, the Board would be inquiring into whether the Respondent may have breached clause 10 of the Code, the Board decided it would investigate:

10. You must comply with the law

(1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*

- (a) *the Building Act 2004;*
- (c) *the Building (Residential Consumer Rights and Remedies) Regulations 2014:*

[8] The specific matters to be investigated under Principle 10 were alleged failures to comply with:

- (a) section 362D of the Act and regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014 (the Consumer Regulations) with respect to the alleged failure to provide the prescribed disclosure information and checklist; and
- (b) section 362F of the Act and regulation 6 of the Consumer Regulations in respect of the alleged failure to provide a written building contract.

[9] Finally, in further investigating the Respondent’s conduct under section 317(1)(i) of the Act, the Board gave notice that it would be inquiring into whether the Respondent may have misappropriated materials that the Complainant had paid for.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed³. Under section 322 of the Act, the Board has relaxed rules of evidence, which allow it to receive evidence that may not be admissible in a court of law.
- [11] The Respondent's company was contracted to carry out renovations and an addition to a residential dwelling. The Respondent did not provide the prescribed disclosure information and checklist, or a written building contract, as required by sections 362D and 362F of the Act and regulations 5 and 6 of the Consumer Regulations, before the building work started in Early April 2022. A contract was provided in October 2022, well after the work had started.
- [12] The Board was investigating the failure to provide the above documentation with respect to the Code of Ethics. However, because the Code did not come into force until 25 October 2022 and the conduct under investigation occurred prior to that date, the Board could not further investigate those issues.
- [13] A design for the building work had been developed and a building consent obtained by an Architectural Designer holding a Design AoP 2 licence (the Designer). The Designer had engaged a surveyor to determine on-site levels. Exterior levels were taken, and the design was based on them. As the building work progressed, it became apparent that there was a variance between the external and internal floor levels, requiring adjustments to the design, including an amendment application to the approved Resource Consent.
- [14] The Designer, who stated he was responsible for managing changes to the building consent, including those for product changes and substitutions, gave evidence that he decided it would be best to do a retrospective building consent amendment for all of the changes at once at the end of the project, rather than deal with the issues as they arose.
- [15] The Respondent supervised the building work. He assisted with the set-out and then remotely supervised two trade-qualified foremen that he had worked with for a number of years. He stated he attended the site on a semi-regular basis early on in the build and less so toward the end of his company's engagement. He outlined how his company uses Builder Trend to manage jobs, and that he reviewed photographs and videos of the work within that system as it progressed, and that he would go over the work with his foremen at his workshop or by phone. He stated he was always available if needed and that, based on past experience with his workers, he had a high level of trust in their capabilities. The evidence before the Board indicated that there were no serious issues with the quality of the building work, and the Building Control Officers (BCOs) who gave evidence at the hearing attested to that.

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

- [16] What arose during the build and what was being investigated in relation to the building work were compliance issues with building consent processes. First, a required building consent inspection was missed. The Building Consent Authority (BCA) records showed repeated references to a missed pre-wrap inspection. The Respondent, who was receiving copies of the BCA inspection records, maintained that they were given a pre-clad pass during a plumbing inspection. His assertion was not borne out by the BCA records. He stated he may have documentation that could verify his assertion. He was given time to provide such documentation but did not do so. The BCA witnesses testified that the BCA inspector who conducted the plumbing inspection was not qualified to conduct a pre-clad inspection. Also, photographs of the building work taken at the time of the plumbing inspection showed that some cladding had already been installed.
- [17] BCA records also showed that various changes to what had been approved in the building consent during the build, including product substitutions and changes, were not authorised through a minor variation or amendment prior to their completion. The Respondent gave evidence that he consulted with the Designer and or Engineer prior to the changes being made, and that the Designer was responsible for processing the changes with the BCA. The Designer accepted that evidence and, as previously noted, his intention was to make a retrospective amendment that captured all changes made during the build.
- [18] Before the building work was complete, a contractual dispute arose over the value of the remaining work. That dispute has been litigated through an adjudication under the Construction Contracts Act. The dispute is ongoing. As a result of the dispute, the Respondent's company left the site in early November 2024, but the Respondent maintained that, notwithstanding the dispute and having vacated the site, he was willing and prepared to return to complete the build if the dispute had been resolved.
- [19] On 24 February 2025, the Respondent provided a Record of Work (RoW) for the Restricted Building Work (RBW) that he had supervised. An updated RoW was provided on 13 April 2025, and a complaint was made the following day. The complaint included a failure to provide a RoW. The Complainant raised an issue with the adequacy of the RoW regarding the installation of a membrane on a deck, which he stated was preventing him from being able to obtain a Code Compliance Certificate (CCC). The BCA witnesses noted that a CCC cannot be withheld due to a lack of a RoW.

Negligence or Incompetence

- [20] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of

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

the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [21] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹
- [22] Looking at the conduct under investigation, the Board noted that the Designer accepted responsibility for the building consent processes for changes to the consent, and evidence showed that the Respondent was consulting with or taking instructions from him and/or the Engineer prior to the changes being made.
- [23] Once a building consent has been granted, any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with: a minor variation under section 45A of the Act, or an amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used. The critical difference between the two options is that building work under a building consent cannot continue if an amendment is required. In this matter, there was clear evidence that changes required an amendment.
- [24] A question for the Board is whether the Respondent had an obligation, as a Licensed Building Practitioner (LBP), to ensure that the building consent amendment had been granted prior to the building work taking place.

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

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

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

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

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

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

[25] In *Tan v Auckland Council*¹² the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

[26] Justice Brewer in *Tan* also noted:

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

[27] The *Tan* case related to the prosecution of the project manager of a build. The project manager did not physically carry out any building work. The High Court, on appeal, however, found that his instructions to those who did physically carry out the work amounted to “carrying out” for the purposes of section 40 of the Act.

[28] The Board considers that the Court in *Tan* was envisaging that those who are in an integral position as regards the building work, such as an LBP, have a duty to ensure a building consent (or an amended building consent) is in place prior to building work being carried out. It follows that failing to do so can fall below the standards of care expected of an LBP.

[29] The same applies to obtaining building consent inspections. As noted by the High Court in *Tan*, inspections ensure the BCA can check that the building work complies with the consent and the Building Code. The evidence clearly established that a pre-clad inspection was not obtained, and the work had progressed past that point, so the BCA was denied that opportunity. It follows that the Respondent’s conduct has fallen below an acceptable standard.

Was the conduct serious enough

[30] Regarding the building consent changes, the Board has decided that the conduct did not reach the threshold for a disciplinary finding. The reason is that the Respondent had engaged with the Designer, who was taking responsibility for processing those changes. Notwithstanding, the Respondent should not have proceeded with the work until such time as he had approved building consent change documentation (minor variation or amendment) on site. Technically, because he did not, he was supervising building work that breached the building consent. In this respect, the Respondent should note section 89 of the Act, which states:

¹² [2015] NZHC 3299 [18 December 2015]

89 Licensed building practitioner must notify building consent authority of breaches of building consent

- 0(1) *A licensed building practitioner must, if he or she is of the view that any building work carried out under a building consent does not comply with that consent, notify—*
- (a) the territorial authority in whose district the building is situated; and*
 - (b) the owner.*
- (2) *The notification must—*
- (a) state that the licensed building practitioner is of the view that building work carried out under the building consent does not comply with that consent; and*
 - (b) state how the building work does not so comply; and*
 - (c) be given as soon as practicable after the licensed building practitioner forms that view.*

[31] Notwithstanding, the Board has decided that the conduct fell into the category of inadvertence, error or mistake as outlined in *Collie*.¹³

[32] The same applies to the failure to obtain a pre-clad inspection. In making that decision, the Board also noted that the related building work was later passed by the BCA.

[33] The Respondent should, however, take care in future to ensure that strict compliance with the building consent is maintained and that any changes are processed prior to the related building work being carried out.

[34] The Respondent is also cautioned regarding his supervision. Whilst it was adequate in this instance, remote supervision may not always be appropriate. In circumstances where he is less familiar with the on-site builders, or it is building work that the builders are not familiar with, direct supervision may be required.

Has the Respondent been negligent or incompetent

[35] The Respondent has not breached section 317(1)(b) of the Act.

Contrary to a Building Consent

[36] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁴ Once issued, the building work must be carried out in accordance with the building consent.¹⁵ Building consents also stipulate the number and type of inspections the issuing authority will carry out

¹³ *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".

¹⁴ Section 49 of the Act

¹⁵ Section 40 of the Act

during the build.¹⁶ Inspections ensure independent verification that the building consent is being complied with.

- [37] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁷ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁸ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

- [38] The failure to obtain a pre-clad inspection and the changes to the building consent that occurred, as outlined above, were instances of non-compliance with the building consent.

Was the conduct serious enough

- [39] For the reasons set out in relation to negligence and incompetence, the Board decided that the conduct was close but did not reach the required threshold.

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

- [40] The Respondent has not breached section 317(1)(d) of the Act.

Failure to Provide a Record of Work

- [41] A Licensed Building Practitioner must provide a RoW for any RBW that they have carried out or supervised to the owner and the Territorial Authority (TA) on completion of their restricted building work.¹⁹
- [42] There is a statutory requirement under section 88(1) of the Building Act 2004 for an LBP to provide a RoW to the owner and the TA on completion of RBW,²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work

- [43] The Respondent supervised building work on renovations and additions to a residential dwelling under a building consent. The supervised work included RBW

¹⁶ Section 222 of the Act

¹⁷ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁸ *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".

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

because it formed part of the primary structure and external moisture management system of a residential dwelling.²²

Was the restricted building work complete

[44] The building work came to an end in November 2024, but the Respondent stated he was willing to continue, subject to contractual disputes being resolved.

Has the Respondent provided a record of work

[45] The Respondent provided a RoW in February 2025 and another in April. Given those circumstances, the Board decided that the Respondent had provided a RoW within a reasonable period of time of completion.

Did the Respondent fail to provide a record of work

[46] The Respondent did not fail to provide a RoW and has not breached section 317(1)(da)(ii) of the Act.

Code of Ethics

[47] As noted, the Code of Ethics came into force on 25 October 2022. The conduct relating to a contract, checklist and disclosure took place prior to then, so the Board cannot make a finding in relation to it.

Has the conduct breached the Code of Ethics

[48] The Respondent has not breached section 317(1)(d) of the Act.

Disrepute

[49] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions²³;
- honest mistakes without deliberate wrongdoing²⁴;
- provision of false undertakings²⁵; and
- conduct resulting in an unethical financial gain²⁶.

[50] The Courts have consistently applied an objective test when considering such conduct.²⁷ The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.²⁸

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

²³ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

²⁴ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

²⁵ *Slack, Re* [2012] NZLCDT 40

²⁶ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

²⁷ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

²⁸ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

[51] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,²⁹ that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious for the Board to make a disciplinary finding.³⁰

The conduct complained about

[52] The conduct was related to misappropriation of materials. Having reviewed the Construction Contracts Act adjudication decision and noting that the issues are being litigated elsewhere, the Board decided not to make any findings in relation to that conduct.

Board Decision

[53] The Respondent has not committed a disciplinary offence.

Signed and dated this 5th day of March 2026.



Mr M Orange
Presiding Member

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.*

²⁹ *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.

³⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74