

## Before the Building Practitioners Board

	BPB Complaint No. CB25794
Licensed Building Practitioner:	Robert Liddle (the Respondent)
Licence Number:	BP110396
Licence(s) Held:	Carpentry

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### Penalty Decision of the Board under section 318 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Napier
Hearing Type:	In Person
Hearing Date:	24 May 2022
Substantive Decision Date:	13 June 2022
Penalty Decision Date:	15 August 2022

#### Board Members:

Mr M Orange, Deputy Chair, Barrister (Presiding)  
Mrs F Pearson-Green, LBP, Design AOP 2  
Ms J Clark, 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 Findings:

The Respondent **has** committed disciplinary offences under section 317(1)(b) and 317(1)(d) of the Act.

The Respondent **has not** committed disciplinary offences under sections 317(1)(i) or 317(1)(da)(ii) of the Act.

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### Summary of the Board’s Penalty Decision

- [1] The Respondent has carried out or supervised building work in a negligent manner and in a manner that was contrary to a building consent. He is fined \$4,000 and ordered to pay costs of \$5,000. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

### The Charges

- [2] This penalty decision arises out of the Board’s substantive decision in which it found that the Respondent had committed the following disciplinary offence(s):
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act)
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act)
- [3] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [4] In its substantive decision, the Board set out its indicative position as regards penalty, costs and publication and invited the Respondent to make written submissions on those matters.
- [5] On 19 July 2022, the Board received the Respondent’s submissions. It has considered them and made the following decisions.

### Penalty

- [6] The Board’s initial view was that a fine of \$4000 was the appropriate penalty for the disciplinary offence.

- [7] Legal counsel on behalf of the Respondent submitted that:
- (a) *“the selection of the correct starting point is critical to the fairness of the sentencing process”* and that the Board’s starting point of \$5,000 was high compared to other recent Board decisions on the same grounds of discipline.
  - (b) the Respondent’s actions were not deliberate or intentional and, as such, were at the moderate level of seriousness, where the starting point should be \$3,000 to \$3,500
- [8] A number of mitigating factors were also submitted, including changes in the way the Respondent and his team reviewed building consent plans, improved supervision practices, an unblemished record, an apology to the Complainant, and the toll of the whole process on the Respondent.
- [9] Other fact-specific matters were submitted as mitigation, such as the alleged process the Respondent went through in determining the method of lifting the superstructure and the reasoning for using shorter M12 bolts.
- [10] The Respondent accepted the outcome in respect of a number of issues – the need for minor variations for the shorter M12 bolts and substituted products, the absence of a system to check the plumb and squareness of the walls and the failure to adequately supervise the installation of the vertical starter bars.
- [11] The Board considers that the matters raised by the Respondent, as set out in paragraphs 9 and 10 above, do not amount to mitigating factors. Rather, they are further explanation and/or acceptance of the outcome of the Respondent’s actions.
- [12] The Board must, however, turn its mind to whether there are any mitigating factors present that it was not aware of at the time it proposed an indicative penalty. In this case, they were the changes the Respondent has made to his practices.
- [13] The level of fine the Respondent submits as appropriate is those that are imposed by the Board for matters which are in the mid-range of seriousness. The findings in this matter are more serious and reflect the repeated lack of reference to the consented plans, both initially in respect of the floor height, and subsequently for the remedial work. The suggested fine is not appropriate in such circumstances.
- [14] Having considered the submissions received, the Board has decided to uphold its initial view.

**Costs**

- [15] The Board’s initial view was that \$5,000 in costs was appropriate.
- [16] Counsel for the Respondent submitted that costs of \$3,500, which is the half-day rate were more appropriate. The Respondent said that the complexity of the hearing was largely due to the Complainant’s approach, which included several expert reports and a large number of documents, much of which was unnecessary for the complaint and not referred to by the Board. He further submitted that the matter could have been dealt with on the papers without a hearing.

- [17] The Board’s position is that the hearing was, under the legislative provisions it operates under, required, and warranted. A full day was necessary.
- [18] Having considered the submissions received, the Board has decided to uphold its initial view.

### **Publication of Name**

- [19] The Board’s initial view was there were no good reasons to further publish the matter beyond the statutorily required note in the Register of Licensed Building Practitioners.
- [20] The Respondent has accepted that this publication was appropriate. It is confirmed.

### **Errors in Board’s decision**

- [21] Counsel for the Respondent suggested that there were errors in the Board’s substantive decision in paragraphs 19, 49 and 58. These all relate to the way in which Revision E of the Engineer’s drawing is referred to and the description of the information it contains.
- [22] The Board does not consider that the issues raised are errors but, for clarification, it will amend the paragraphs as set out below.

- [23] In respect of paragraph 19 of the Board’s substantive decision

*“Revision E (Document 2.1.1276) required a height of 500 - 750mm and this became the stamped consented plan (Document 4.4). This stated...”*

To read instead -

*“Revision E of the Engineers documents included set-out detail (document 2.1.1276) and required a height of 500 – 750mm and this became part of the stamped consent. The stamped consent stated ( Documents 4.4)...”*

- [24] In respect of paragraph 49 of the Board’s substantive decision

*“He was also required to be adequately familiar with the consented building plans and should have been aware of or familiar with final Rev E, which set out the finished floor level and the amended building consent ,which required a Surveyor’s certificate (Document 2.1.1276).”*

To read instead-

*“He was also required to be adequately familiar with the consented building plans including the amended building consent and should have been aware of all requirements and consent conditions which required a Surveyor’s certificate”*

- [25] In respect of paragraph 58 of the Board’s substantive decision

*(in particular, the failure to comply with the finished floor level in Rev E of the consented drawings (Document 2.1.1276),”*

To read instead-

*(in particular, the failure to comply with the finished floor level in the consented drawings (Documents 4.4))*

### **Confidentiality**

[26] The Respondent's counsel requested confidentiality in respect of two details in his submission. The matters in these paragraphs have not been referred to in any detail in this decision and the Board orders that if the Respondent's submission is released to any person paragraphs, 23(d)(ii) and (iv) must be redacted.

### **Conclusion**

[27] The Board sees no reason to amend the indicative orders. Accordingly, the penalty costs and publication orders are affirmed as per the section 318 Order below.

### **Section 318 Order**

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

**Penalty:** Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$4,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$5,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

**In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.**

[29] 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.

### **Right of Appeal**

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

Signed and dated this 22<sup>nd</sup> day of August 22.



**Mr M Orange**  
Presiding Member

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**i Section 318 of the Act**

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

**ii Section 330 Right of appeal**

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

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

*An appeal must be lodged—*

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