

## Before the Building Practitioners Board

	BPB Complaint No. 26898
Licensed Building Practitioner:	Logan Neil Roberts (the Respondent)
Licence Number:	BP 108355
Licence(s) Held:	Design AoP 2

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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	Board Inquiry
Hearing Location	by audio-visual link
Hearing Type:	In Person
Hearing and Decision Date:	24 February 2026
Board Members Present:	
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
	Mr G Pearson, Barrister and Solicitor – Legal Member
	Mr G Anderson, LBP, Carpentry and Site AoP 2

#### Appearances:

Ms A Gavey, Counsel for the Respondent

#### 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 under section 317(1)(b) of the Act.

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## Summary

[1] The grounds raised by the Board Inquiry and investigated at the hearing are not upheld and do not establish grounds for discipline under s 317 of the Act.

## 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<sup>2</sup> were that the Respondent may, in relation to building work at [OMITTED], have

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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> 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.

carried out or supervised restricted building work (design work) in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.

- [4] The Board gave notice that, in further investigating the Respondent's conduct, it would be inquiring into the circumstances of Minor Variation No. 2, approved on 11 December 2024, the advice the Respondent gave in relation to it, and that he may have failed to follow the correct consent change processes with respect to it.
- [5] The Board also gave notice that it would be investigating the LBP who carried out or supervised the associated building work ([OMITTED], matter [OMITTED]) and it would be inquiring into the respective responsibilities and accountabilities for the building consent change process between that LBP and the Respondent for a ceiling diaphragm that may have been constructed without the correct process having been followed and which may not have been constructed in accordance with NZS 3604:2011.

### **Consolidation**

- [6] The Board may, under Regulation 13, consolidate two or more matters into one hearing, but only if the matters are, in the opinion of the Board, about substantially the same subject matter and the consolidation is agreed to.
- [7] The Board sought agreement for the consolidation of this matter with [OMITTED]. The consent of all those involved was forthcoming. The two matters were consolidated.
- [8] The evidence before the Board was therefore common to both matters, although the disciplinary issues differ, and not all of the evidence was relevant to each practitioner. The evidence establishes the following narrative.

### **Evidence**

- [9] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed<sup>3</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.

### **Overview**

- [10] The Board received documentary evidence from the Council file, including the original consented plans, the minor variation documentation, inspection records, and engineering documentation. The Board also received the Registrar's Report and the Respondent's written response and supporting documents in relation to the Board Inquiry. The homeowner, the Respondent and the Licensed Building Practitioner (LBP) who constructed the ceiling diaphragm gave oral evidence.

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

### The Original Design

- [11] The Respondent was engaged as the LBP Designer for additions and alterations to the dwelling at [OMITTED]. His role included preparation of the building consent documentation and acting as agent for the owners in lodging the building consent application. The building consent [OMITTED] was issued on 18 September 2024.
- [12] A significant component of the design was a sloping ceiling diaphragm spanning a substantial area of the dwelling. The original consented design provided for:
- a. a plywood diaphragm forming the primary structural bracing element; and
  - b. a cement-based sheet vee grooved lining installed over the plywood, providing the finished aesthetic surface.
- [13] The aesthetic intent was an expressed grooved lining, with grooves running continuously from the lower edge of the ceiling, up to the apex of the slope, and down the opposing slope. The concealed plywood substrate provided the structural diaphragm action, enabling the outer lining sheets to be installed with continuous vertical alignment of grooves without the need for structural staggering.
- [14] There is no evidence before the Board that the original consented diaphragm design was non-compliant. No issues were raised by the Council in relation to that design at the consenting stage.

### Product Substitution and Minor Variation

- [15] During construction, the owner, who is experienced within the building industry, sought a product substitution so that a single, thicker vee grooved cement board product would be used both as the finished lining and as the structural diaphragm element, eliminating the plywood layer.
- [16] The Respondent accepted that proposal, provided that the substituted product could achieve compliance. The evidence indicates that:
- a. the proposed sheet was 9mm (with 2mm grooves, but maintaining a structural sufficiency) fibre cement, thicker than the 4.5mm minimum and having a density of not less than 880 kg/m<sup>2</sup>, referred to in NZS 3604:2011 for ceiling diaphragm applications;
  - b. the product was capable, if properly installed, of forming a compliant diaphragm; and
  - c. the substitution required a change to the consent documentation.
- [17] Consistent with Council expectations, the Respondent prepared and lodged a Minor Variation application. Minor Variation No. 2 was lodged on 4 December 2024 and approved on 11 December 2024.
- [18] The Respondent provided a Certificate of Design Work in support of that variation.

- [19] The Board is satisfied on the evidence that the minor variation process was the appropriate statutory pathway for the product substitution. The Council accepted and approved that process. There is no evidence that the Territorial Authority required a formal amendment rather than a minor variation, nor that the Respondent sought to avoid proper consent processes.
- [20] The Board notes that engineering input was also obtained during the project, including regarding an oversized skylight installation within the ceiling diaphragm and later, specific engineering design documentation for the top mounted alternative ceiling diaphragm solution.
- [21] The evidence establishes that engineers were engaged on the project for structural matters.

#### Scope of the Respondent's Role

- [22] The Respondent's role was confined to design. He was not engaged for site observation and did not provide it.
- [23] The owner had engaged labour-only building services and supplied materials.
- [24] Accordingly, the Board's inquiry is confined to:
- a. whether the design advice and documentation provided by the Respondent were adequate; and
  - b. whether the consenting process, particularly the minor variation, was appropriately managed.

#### Installation Issues

- [25] The Council inspection records, dated 13 February 2025, identify two material installation deficiencies in the diaphragm as constructed:
- a. **Fastener spacing:** Screws were installed at 200mm centres at the perimeter, whereas NZS 3604:2011 required 150mm centres for the diaphragm configuration; and
  - b. **Sheet layout:** The cement sheets were not staggered as required by NZS 3604:2011 for structural diaphragm performance.
- [26] The inspection record expressly required engineering commentary, noting that the installation was not in accordance with NZS 3604:2011, clause 13.5 (Structural Ceiling Diaphragms)
- [27] The evidence also records issues relating to a skylight penetration within the diaphragm area, which required engineering consideration.
- [28] The Board accepts that there were inherent construction and aesthetic tensions in the substituted design. If the cement board were required to act structurally as the diaphragm, compliance with NZS 3604:2011 required:

- a. staggered sheet layout; and
- b. specified fixing centres.

[29] Staggering the sheets would interrupt the visual continuity of the grooved aesthetic, which in the original design had been achieved by placing plywood beneath a continuous aesthetic lining layer. The substitution removed that structural substrate and thereby made sheet layout and fixings structurally significant.

[30] The evidence establishes that the installation did not comply with the required fixing pattern or staggering. However, the Board is satisfied that those deficiencies were matters of construction execution.

*Specificity of the Minor Variation Documentation*

[31] The plans produced in support of the minor variation referred to compliance with NZS 3604:2011 and relevant manufacturer specifications. They did not, however, provide highly prescriptive detailing of fixing centres or explicit sheet staggering diagrams within the plan set itself.

[32] As a result, correct installation required reference to:

- a. NZS 3604:2011 (particularly section 13.5); and
- b. the manufacturer's technical documentation.

[33] The Board accepts that the design documentation assumed application of those standards in the field. The evidence does not establish that the substituted product was inherently incapable of forming a compliant diaphragm. Rather, compliance depended on correct installation in accordance with the standard.

Summary

[34] In summary, the evidence establishes that:

- a. The original plywood-based diaphragm design was compliant and properly consented.
- b. The product substitution to a single-layer cement board diaphragm was processed by way of a minor variation, which was accepted and approved by the Council.
- c. The substituted product was capable, if properly installed, of forming a compliant diaphragm.
- d. The installation failed to meet required fixing centres and sheet staggering requirements.
- e. Those deficiencies arose during construction.

- f. The Respondent was not responsible for supervision of the build and had no contractual site control.
- g. The design documentation relied upon compliance with NZS 3604:2011 and manufacturer specifications rather than prescribing every fixing detail on the face of the drawings.
- h. The Respondent, Homeowner, on-site Carpentry LBP and project Engineer had all be part of the email chain correspondence over the product substitution and reference to compliance with NZS3604.

[35] The Board's assessment therefore turns on whether, in light of that evidence, the Respondent's design and consenting conduct departed from an acceptable professional standard.

### **Negligence or Incompetence**

[36] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>4</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>5</sup> test of negligence.<sup>6</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>7</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>8</sup> If it does not, then a disciplinary finding cannot be made.

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

[37] 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<sup>9</sup> and any building consent issued.<sup>10</sup> The test is an objective one.<sup>11</sup> The Board must assess the Respondent's conduct against what a

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<sup>4</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>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</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>7</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>8</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>9</sup> Section 17 of the Building Act 2004

<sup>10</sup> Section 40(1) of the Building Act 2004

<sup>11</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.

body of responsible, competent LBP designers would regard as proper practice in the circumstances (the Bolam principle).

[38] Even if a departure is established, the Board must also determine whether the conduct fell seriously short of the standard reasonably expected of a licensed building practitioner.

[39] The ground is confined to design conduct.

#### The Original Diaphragm Design

[40] The evidence establishes that the original design comprised a plywood diaphragm forming the structural bracing element, with a cement-based grooved lining fixed over it to achieve the intended aesthetic.

[41] There is no evidence that this design was deficient. It was consented by the Territorial Authority. No concerns were raised during the consent process. There is no expert evidence suggesting that the original diaphragm configuration failed to meet NZS 3604:2011 or other relevant standards.

[42] The Board is satisfied that the original design met the standard expected of a competent Design AoP 2 LBP.

#### The Product Substitution and Minor Variation Process

[43] The owner sought a product substitution so that a thicker cement board would perform both the aesthetic and structural functions, eliminating the structural plywood layer.

[44] The Respondent accepted that substitution, provided it could achieve compliance. The evidence shows that:

- a. a Minor Variation application was prepared and lodged;
- b. a Certificate of Design Work was provided; and
- c. the Minor Variation was approved by the Council on 11 December 2024.
- d. The approved Minor Variation documentation was available to all parties via the BCA online consent portal.

[45] The Board accepts that, in practice, product substitutions of this nature are commonly processed by way of minor variation rather than formal amendment, provided the change does not fundamentally alter the nature of the consented design. There is no evidence that the Council considered the process inappropriate.

[46] Application for a minor variation and approval by the TA prior to implementing a product substitution is required under the Building Act. The Respondent followed that process. There is no evidence that he sought to bypass or undermine the consenting regime.

- [47] The Board therefore finds no departure from the requirements of the Building Act in relation to the consenting pathway adopted.

#### The Structural Viability of the Substituted Cement Board

- [48] The substituted product was 9mm fibre cement. The evidence establishes that, if installed in accordance with NZS 3604:2011 (including correct fixing centres and sheet staggering), it was capable of forming a compliant ceiling diaphragm.
- [49] There is no evidence before the Board that the design concept – namely, using fibre cement sheeting as the diaphragm element – was inherently unsound. Nor is there evidence that a responsible body of designers would regard such a configuration as unacceptable.
- [50] The subsequent engineering involvement, including PS1 and construction monitoring documentation, further indicates that structural professionals were engaged and that the diaphragm could be engineered to compliance.
- [51] The Board is not satisfied that the design decision to eliminate plywood and rely on a compliant fibre cement diaphragm fell outside the range of acceptable professional judgment.

#### Specificity of the Minor Variation Documentation

- [52] The more difficult issue concerns the level of detail provided in the minor variation drawings.
- [53] The Minor Variation Application Form noted 9mm Innova Duragroove lining as diaphragm (NZS3604) and relevant manufacturer specifications were included, but did not specify, in detail:
- a. explicit fixing centre diagrams; or
  - b. specific sheet staggering layouts for the diaphragm area.
  - c. Reference to NZS3604:2011
- [54] Correct installation required reference to NZS 3604:2011 clause 13.5 and manufacturer's technical data.
- [55] The Council inspection records later identified that:
- a. screws were installed at 200mm centres rather than the required 150mm;
  - b. sheets were not staggered; and
  - c. a skylight penetration required engineering evaluation.
- [56] The question under *Bolam* is not whether greater specificity might have reduced the risk of error, but whether failing to include that specificity amounted to a departure from accepted professional practice.
- [57] The Board accepts that in residential design practice:

- a. designers commonly reference NZS 3604:2011 for ceiling diaphragm compliance.
- b. construction detailing of fixing patterns and sheet layouts is frequently governed by the standard rather than exhaustively reproduced in drawings; and
- c. installers are expected to comply with the standard.

[58] Competent LBPs practising under Design AoP 2 licences could reasonably consider that reference to NZS 3604:2011 and manufacturer specifications was sufficient, particularly where the product was capable of compliance if properly installed.

[59] This was not a situation where the design was silent as to structural performance. Rather, compliance was contingent upon proper execution in accordance with the standard.

[60] The evidence indicates that the deficiencies arose because:

- a. the fixing centres were incorrect; and
- b. the sheets were not staggered.

[61] Those are matters of construction execution. The Board does not accept that every failure of installation converts into designer negligence.

#### Caution

[62] While the Board considers that more prescriptive detailing may have provided greater clarity, it is not satisfied that the absence of such detailing falls outside the range of reasonable professional judgment for the purposes of section 317(1)(b) of the Act.

[63] The threshold for an adverse disciplinary finding is high. The Board's function is to determine whether conduct falls seriously short of the standards expected of a licensed building practitioner. That threshold is distinct from questions of optimal design practice, contractual expectations, or whether an alternative approach might have reduced the risk of construction error.

[64] The Board nevertheless observes that where aesthetic outcomes are dependent upon structural configuration, and compliance depends upon strict adherence to particular fixing patterns or sheet layouts, designers should consider whether such requirements ought to be expressed explicitly in the drawings rather than relying solely on limited and implied reference to NZS 3604:2011. Doing so may reduce the risk of misinterpretation and avoid foreseeable construction error.

#### Supervision and Site Control

[65] The Respondent was not engaged to provide site observation during the build. The owner engaged labour-only building services and supplied materials.

[66] The Board's jurisdiction in relation to this Respondent is confined to design conduct.

[67] Absent evidence that he instructed non-compliant installation, the Board cannot attribute workmanship failures to design negligence.

#### Conclusion on Negligence

[68] Applying the Bolam principle, the Board is not satisfied that the Respondent's conduct departed from the standard expected of a reasonably competent Design AoP 2 LBP.

[69] Specifically:

- a. The original design was compliant.
- b. The product substitution was processed through an approved minor variation.
- c. The substituted product was capable of compliance.
- d. The installation deficiencies were matters of execution.
- e. The level of detail in the drawings, while not highly prescriptive, was not outside the range of acceptable professional practice.

[70] Even if a more conservative designer might have retained the plywood substrate or produced more detailed fixing diagrams, professional negligence is not established merely because a different approach could have been taken.

[71] The Board therefore finds that the Respondent has not been negligent or incompetent within the meaning of section 317(1)(b) of the Act.

#### **Board Decisions**

[72] The Board has carefully considered all of the evidence and submissions.

[73] The Board is not satisfied that the Respondent carried out or supervised restricted building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Building Act 2004. The grounds of discipline are therefore not established.

[74] As no disciplinary offence has been made out, the Board makes no order under section 318 of the Act.

Signed and dated this 20<sup>th</sup> day of March 2026.



**Mrs F Pearson-Green**  
Presiding Member

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