Before the Building Practitioners Board

	BPB Complaint No. 26633
Licensed Building Practitioner:	Peter Edward John McKay (the Respondent)
Licence Number:	BP 122614
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:	Auckland
Hearing Type:	In Person
Hearing Date:	27 August 2025
Decision Date:	13 September 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
Ms E Harvey McDouall, Registered Architect

Procedure:

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

Disciplinary Finding:

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

The Respondent is fined $2,800 and ordered to pay costs of $2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

[1] The Respondent carried out building work (design work) in a negligent manner and breached the Code of Ethics for Licensed Building Practitioners. He is fined $2,800 and ordered to pay costs of $2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

[2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.[1]

[3] In this matter, the disciplinary charges the Board resolved to further investigate[2] were that the Respondent may, in relation to building work at [OMITTED], have:

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[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.

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

(b) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act.

[4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into whether design work was carried out or supervised to an acceptable standard and, in particular, whether items raised in Requests for Information (RFIs) should have been addressed during or as part of the design process before an application for a Building Consent was lodged in respect of:

(a) coordination with the engineer, including ensuring information provided by the engineer was incorporated into the Building Consent documentation and that engineering details were approved by the engineer;

(b) structural elements of the design that did not comply with Clause B1 of the Building Code, noting that aspects of the design did not accord with NZS 3604:2011, an Acceptable Solution and a compliant Alternate Solution had not been provided;

(c) an external wall that may not have complied with Clause C3 of the Building Code because it was within 1.0 m of a boundary;

(d) conflicting details and a lack of documentation that did not reflect or adequately reflect the on-site situation and which did not comply with Clause E2 of the Building Code or E2/AS1 an Acceptable Solution for compliance regarding:

(i) a membrane roof

(ii) detailing of timber and aluminium windows installation for direct fixed and cavity cladding; and

(iii) direct fixed and cavity cladding details and cladding clearances; and

(e) insulation details that did not comply with Clause H1 of the Building Code or H1/AS1 an Acceptable Solution for compliance;

(f) generally conflicting details, references, and notations within the documentation;

(g) a general failure to deal with RFI's items in a timely and adequate manner.

[5] In further investigating the Respondent's conduct under section 317(1)(g) of the Act, the Board gave notice that it would be inquiring into the Respondent's conduct with respect to the following Code of Ethics provisions:

(a) Clause 10 (you must comply with the law) in respect of an attempt to contract out of the Consumer Guarantees Act;

(b) Clause 13 (you must explain risks to your client) and clause 14 (your duty to inform and educate client) with respect to an email from the Respondent to his client dated 28 June 2024 (page 100 of the Board's file) and advice that building work could proceed without a Building Consent and without insurance; and

(c) Clause 19 (you must behave professionally) with respect to the Respondent's engagement with the BCA during the Building Consent process.

Evidence

[6] 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.

[7] The Respondent, a Design AoP 2 Licence holder, was engaged to carry out design work for an alteration and addition to an existing dwelling, and to apply for a building consent for the proposed building work.

[8] On 25 June 2021, the Respondent presented a fee proposal and contract.[4] The contract, which the Respondent had used since the early 1990s, contracted out of the Consumer Guarantees Act 1993 (CGA). The specific clause stated:

> *The Consultant shall perform the Services as described in the attached documents. The Client and the Consultant agree that the Services are acquired for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.*

[9] The Complainants were not in business, so the CGA could not be contracted out of. The Respondent accepted that the clause could not stand, and stated that he had not intentionally tried to contract out of the CGA and that he had since amended his terms and conditions.

[10] On 28 June 2024, the Respondent wrote to the Complainants. The email implied that he had made a building consent application when he had not. The Respondent also gave advice regarding starting building work prior to the building consent being issued. He wrote:

> *In terms of your project insurance issues, the first 2-3 weeks on-site will generally be initial preparations, demolition of the external structures and internal; linings, fittings, etc. to the rear section of the house that concerns the renovation area. This allows us to book ahead for the manufacture of the steel structures and setting up for foundations and the like, which are critical to the success from there on. This period generally poses very little risk to the*

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

[4] There was an extended gap in the design work because of Covid and other matters.

> *divine. If you feel comfortable with proceeding with these weeks in the meantime if the consent hasn't been released, I'm sure that you can arrange to commence these operations regardless.*

[11] The Respondent maintained that no structural elements would have been demolished and that the proposed work would have come within Schedule 1 of the Act. The Respondent stated that only 300-600mm of gib board would be removed, a hole cut was to be in the floor, and the Complainants were to remove the deck. The Complainants understood that the intention was to demolish the back of the house and that the building consent was only weeks away from being issued. The Complainants checked with their insurer prior to agreeing to any demolition work on the house being undertaken, and were advised that they should not allow work to start without a building consent because they would not be insured. At that point, the Respondent had not lodged the consent with the Council.

[12] On 9 July 2024, the Respondent submitted the building consent application, which was formally accepted for vetting 10 July 2024. The complainants stated they had not seen the finalised application before it was submitted. The Building Consent Authority (BCA) raised five vetting RFI items. The application was formally accepted by the BCA on 15 July 2024.

[13] On 17 July 2024, the first request for information (RFIs) was issued by the BCA. It asked for a missing drainage plan and details on how a soak hole would have the capacity to deal with stormwater runoff.

[14] On 9 August 2024, a further RFI was issued. It raised issues with the design work, including issues regarding engineering details, roofing and the fire rating of a wall that was close to a boundary. The RFI raised a total of 24 items, none of which were minor or trivial in nature. Two further RFIs were issued. They included items raised in the first that had not been addressed or had not been fully or adequately addressed.

[15] On 19 August 2024, the Respondent emailed the BCA asking that he be called to discuss the building consent application. He wrote:

> *Can you please call me a soon as you can to discuss what needs to happen next to get the consent application for [OMITTED] (BCO10384620} across the line as the repeated delays in gaining your attention to this matter is far from acceptable, considering the standard of the original documentation that was supplied, along with the information that has been promptly forwarded to you directly as well as through the required on-line portal following any requests for further information.*
>
> *This application was officially accepted for processing on Tuesday 9 July and is now 30 working days into processing time including today according to my calculations.*
>
> *These unacceptable delays are costing everyone concerned with this project monetary losses due to these delays by Auckland Council. Do I need to follow*

> *up this matter with someone senior to yourself, or do we need to consider the unfortunate option of looking into legal action to get the required completion of this consent application? Neither I, nor my clients wish to pursue these forms of action as we would rather that the affair was resolved in a reasonable and considerate manner.*
>
> *Can you please advise me of what action you are willing to take to complete this processing promptly, or what alternative actions might be preferrable to achieve completion of this consent to allow construction to commence as required.*
>
> *Your prompt attention to this matter will be appreciated by all concerned. We all feel that we have been more than reasonable with our level of patience to date and look forward to a prompt response. We look forward to your prompt response, regards*

[16] The email was sent despite the BCA having issued a comprehensive list of RFIs to the Respondent, many of which had not been addressed. In this respect, it is noted that on 5 September 2024, the Respondent was corresponding with the engineer (*[OMITTED]*) who had carried out Specific Engineered Designs (SED) to obtain further design details, and that it was not until 9 September 2024 that the Respondent replied to the third RFI. When he did respond, he apologised "for the time taken to align everyone concerned and produce the amended documentation as requested".

[17] On 23 August 2024, the third RFI was issued by the BCA and on the same date Mr Jason Kent, the Team Lead Project Assessment at the BCA, wrote to the Complainants following a discussion with them about their project. In Mr Kent's email he noted:

> *I see there are approximately half-a-dozen items remaining to be adequately resolved for this application to be approved. Through reviewing the project information submitted for this application & the RFI process to date, it is evident the designer has not been able to reasonably coordinate the Architectural drawings to the supporting literature or the Engineer scope of design works in an accurate or consistent approach.*
>
> And
>
> *Through this application the designer has not been able to provide that assurance of achieving building code compliance, thus resulting in the application not being 'approved' at this time.*
>
> *I can appreciate from your perspective, as the owners, the costs, potential stress or confusion you may have encountered through this process. It appears as you have taken responsible steps to engage appropriate professionals to ensure the building work can be completed in an acceptable manner. I've seen the correspondence from the designer which attempt to*

> *provide escalations & complaints, however, much of the raised concerns appear unsupported or unfounded.*
>
> And
>
> *I would urge you to stress to the designer the importance to take the responsible time & consideration to carefully review the entire drawing package to ensure it is accurately coordinated to supporting documents, professional designs (Structural Engineering) & manufacturer or proprietary products. Providing a hasty or fast response to the possible last opportunity of RFI's may increase opportunity of an oversight or error to occur.*
>
> *If this last round of the RFI process cannot be reasonably resolved, then we may consider the Refusal process.*

[18] As noted, on 9 September 2024, the Respondent replied to the third RFI. On the same date, the Complainants received advice from another designer who expressed concerns with how the Respondent had addressed insulation and thermal bridging in general and, more specifically, in the ceiling cavity. The specific issue was that the required ventilation gap between the roof cladding and the insulation had not been maintained throughout the length of the ceiling cavity, which could have caused issues with moisture accumulation. That designer gave evidence at the hearing that, with some redesigning, he was able to satisfy Clause H1 Building Code compliance requirements.

[19] On 13 September 2024, the BCA notified the Respondent that the building consent application had been refused because the owner had withdrawn it. The Complainants noted in their complaint that they "had lost all confidence in his (the Respondent's) ability to produce accurate and reliable plans". The Complainants also noted the extended time frame taken to try to obtain a building consent, which did not accord with the time frame the Respondent had given them.

[20] After the building consent was refused, the Complainants engaged another designer who carried out further design work, submitted a new building consent application, and, according to the Complainants, obtained a building consent within a short period of time and without any significant RFIs being raised.

[21] At the hearing, the Board reviewed the Respondent's design experience. The Respondent noted that most of his work was in relation to residential alterations and additions. The Respondent was also asked about his quality assurance process, which he summarised as his reviewing each sheet of the design in detail. He did not use any form of peer review.

[22] Also, at the hearing, the Board reviewed design details that were not compliant or had not been completed to an acceptable standard by the Respondent. Those details were in addition to those raised by the BCA in the RFIs. Design deficiencies, errors and omissions explored by the Board included inconsistent roof pitches and different sizes for PFCs, bottom plates, bearers and piles over different drawings, inconsistent

fixing details and the lack of foundation pad details for portal frames, detailing and notations that were unrelated or not project specific, and Resource Consent conditions that were not adequately included and specified within the building consent documentation. The Respondent accepted the deficiencies, errors and omissions and described them as mistakes. They were not picked up prior to the submission of the building consent application, notwithstanding the quality assurance process he used. The Respondent, when challenged, stated that if he does miss something or not get it right, it would be raised at the RFI stage.

[23] The Respondent's general position was also that the issues raised in the RFIs and by the Board were caused by typos, some of which resulted from copying details from other designs and reusing them for the Complainants' design. The Respondent gave evidence that he sought advice from the Council regarding the fire-wall being closer than 1 metre and submitted a file note to support his statement. The Respondent also noted that he was caring for an elderly parent at the time and that he had to complete design work under time pressure. He accepted that, in hindsight, he was most likely not in a position to do the design work at the time and should have handed the work off to someone else. The Respondent accepted that he had not given the design work the level of care and attention required to develop a design to an acceptable standard.

Negligence or Incompetence

[24] 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 find 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.

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[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".

Has the Respondent departed from an acceptable standard of conduct

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

[26] The Board's considerations regarding negligence are with respect to the Respondent's design work. 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".

[27] The Board also notes 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.*

[28] Also, as the designer, the Respondent submitted a Certificate of Design Work (CoDW) with the building consent application, which stated that the design work complied with the Building Code.

[29] Looking at the Respondent's design work, there was clear evidence that it fell below an acceptable standard. The RFI correspondence alone established this. Moreover, further examples of unacceptable design work were investigated at the hearing. Those issues, if taken alone, would also have been sufficient to make a finding of negligent design work.

[30] 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

[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.

knowledge of those involved in residential construction. The following was stated as the intention of 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.*

[31] It did appear to the Board that the Respondent had not reviewed his design work in detail before submitting it for a building consent, and that he may have been relying on the BCA rather than on his own quality assurance processes. It was clear that the design work had not been completed to a standard where it was ready to be submitted for a building consent. In particular, the design should not have been submitted until the design items noted in paragraph [4] above had been adequately addressed.

[32] The Board did accept that the Respondent may have made inquiries about the fire-rated wall, but noted that, as a Design AoP 2 License holder, he should have known what would or would not be compliant.

[33] Given those factors, and taking into consideration the evidence before it regarding the deficiencies, errors, and omissions in the Respondent's design work, which ultimately led to the Respondent's building consent application being abandoned by the Complainants, the Board finds the Respondent has carried out building work (design work) in a negligent manner.

[34] The Board also finds that the Respondent did not respond to or deal with RFIs in a timely manner. In this respect, it is to be noted that the BCA had to reissue the same RFI issues on multiple occasions and that the Respondent's failure to attend to what had been raised in them led to the complainant's abandoning his building consent application.

[13] Hansard volume 669: Page 16053

[35] The Board considered whether the design failings amounted to incompetence instead of negligence. Based on his statements, the Board noted that the Respondent had extensive experience in the type of design work undertaken. The Board therefore decided that the substandard design work resulted from a departure from acceptable standards instead of a lack of knowledge and skill. In making that finding, the Board took into account the Respondent's submission that he was, at the time, distracted by his personal circumstances.

Was the conduct serious enough

[36] The conduct was serious. This was not a case of mere inadvertent error, oversight, or carelessness. There was a pattern of substandard design work and a lack of care and attention by the Respondent. Further, the Respondent did not acknowledge his design failings when confronted with them at the RFI stage. Nor did he deal with them expeditiously and he transferred blame for his own failings onto the BCA.

Has the Respondent been negligent or incompetent

[37] The Respondent has carried out building work (design work) in a negligent manner.

Code of Ethics

[38] The Code of Ethics for Licensed Building Practitioners (LBPs) was introduced by Order in Council.[14] It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes[15] for some time, and the Board has taken guidance from decisions made in other regimes.

[39] The Code also differentiates between LBPs who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.

[40] The disciplinary provision in the Act simply states, "has breached the code of ethics". Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board,*[16] Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

> *Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling,*

[14] Building (Code of Ethics for Licensed Building Practitioners) Order 2021
[15] Lawyers, Engineers, Architects and Accountants, for example
[16] [1992] 1 NZLR 720 at 724

> *as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*

[41] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. They are the same as those stated for negligence.

The conduct under investigation

[42] There were three areas of conduct that were under investigation. The first was related to an attempt to contract out of the CGA. The second was to the Respondent's advice regarding starting work without a building consent, and the third was to his interactions with the BCA.

CGA

[43] Dealing first with the CGA issue, the Board accepts that there was no intention to attempt to contract out of the CGA. It was clear that the Respondent was using a pro-forma contract that had not been reviewed for a considerable period of time and that he was unaware of what the offending clause was attempting to do. As such, the Board will not further consider the issue, as it is a minor transgression that would not reach the threshold for further consideration.

Starting Without a Building Consent

[44] The same cannot be said of the Respondent's advice that the building work could commence without a building consent or insurance. Whilst the Respondent's evidence was that the envisaged work fell within Schedule 1 of the Act and was not structural, the Board preferred the evidence of the Complainants who, as a result of the Respondent's advice, made enquiries with the insurer. The impression the Complainants gained from their interactions with the Respondent was that parts of the dwelling would be demolished to allow work to get underway once a consent had been issued. The Board finds that it is more likely than not that was the advice the Respondent gave. The Board also notes that, when the building consent was issued, demolition work was included. That meant it then fell outside of the Schedule 1 exemptions.

[45] As the Complainants found out when they contacted the insurer, had work commenced without a building consent, they would not have been insured. Moreover, they would have been in breach of section 40 of the Act, which states that building work, including demolition work, cannot be undertaken without a building consent unless an exemption applies. The Board does not consider that any exemptions would have applied if demolition of any part of the structure of the home had been undertaken.

[46] Under clauses 13 and 14 of the Code of Ethics, an LBP has an obligation to discuss risks and to inform and educate their client. The advice that the Respondent gave that building work could commence without a building consent and insurance breached those clauses of the Code. He did not adequately explain the risks in order

to inform and educate his client regarding the implications of commencing without consent.

Interactions with the BCA

[47] Clause 19 of the Code states that an LBP must act professionally and treat their colleagues respectfully. It was clear from the Respondent's interactions with the BCA that he breached clause 19. In particular, the Respondent's threats and the tone of his communications with the BCA when it was not at fault were unacceptable. In essence, the Respondent was demanding action from and was blaming delays on the BCA when, in fact, it was his own delinquency and design failings that were to blame.

Was the conduct serious enough

[48] Again, the conduct was serious. Regarding the building consent and insurance, the Respondent, as a design professional who has been in the industry for a considerable period of time, ought to have known better. In terms of his interactions with the BCA, it was unacceptable that the Respondent was taking aim at the BCA when he was at fault, and it was not an isolated event. There was a pattern of unacceptable interactions with the BCA and our general tenor of entitlement.

Has the conduct breached the Code of Ethics

[49] The Respondent has breached clauses 13, 14 and 19 of the Code of Ethics.

[50] The Respondent has not breached clause 10 of the Code of Ethics.

Board Decisions

[51] The Respondent has breached sections 317(1)b) and (g) of the Act.

Penalty, Costs and Publication

[52] 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.

[53] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[54] 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.[17] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[18]

(a) protection of the public and consideration of the purposes of the Act;[19]

(b) deterring the Respondent and other LBPs from similar offending;[20]

(c) setting and enforcing a high standard of conduct for the industry;[21]

(d) penalising wrongdoing;[22] and

(e) rehabilitation (where appropriate). [23]

[55] 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[24] and applying the least restrictive penalty available for the particular offending.[25] In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty [26] that is consistent with other penalties imposed by the Board for comparable offending.[27]

[56] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.[28]

[57] In this matter, the Board adopted a starting point of a fine of $3,500. It had considered suspension or training orders, but decided that those types of penalties were not warranted because of the Respondent's personal circumstances at the time. The Board's view was that a starting point of a fine of $3,500 reflected the seriousness of the disciplinary offending, whilst also taking into consideration that it was the Respondent's first appearance before the Board.

[58] The Board considered that the Respondent's personal circumstances at the time were a mitigating factor. The Board decided to reduce the fine by 20% to $2,800 in recognition of that factor.

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[17] 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]

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

[19] Section 3 Building Act

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

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

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

[23] *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

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

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

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

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

[28] 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.

Costs

[59] 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 LBPs should not be left to carry the financial burden of an investigation and hearing.[29]

[60] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings[30]. The starting point can then be adjusted up or down with regard to the particular circumstances of each case[31].

[61] 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 moderately complex. Adjustments are then made.

[62] Based on the above, the Board's costs order is that the Respondent is to pay the sum of $2,950 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with at an in-person hearing. It is significantly less than 50% of actual costs.

Publication

[63] 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 LBP scheme as is required by the Act,[32] 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.

[64] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[33] 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.[34]

[65] Based on the above, a summary of the decision will be published. The Respondent will not be named in that publication. The publication is to be carried out by the Registrar. An article is to be published in the Wrap Up, which is an LBP newsletter. The publication is to focus on the requirement for designers to apply a quality assurance process before submitting a design for building consent and on the need to ensure that engineering details are accurately reflected in architectural designs.

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

[30] *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

[31] *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.

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

[33] Section 14 of the Act

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

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

Section 318 Order

[67] 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 $2,800.**

Costs: **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,950 (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 to publish an article in accordance with the Board's directions. The Respondent is not to be named or identified in it.

[68] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel an LBPs licence if fines or costs imposed as a result of disciplinary action are not paid.

Submissions on Penalty, Costs and Publication

[69] 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 **Friday, 17 October 2025**. 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

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

Signed and dated this 26th day of September 2025.

Mr M Orange
Presiding Member

[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).

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(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.