

Before the Building Practitioners Board

	BPB Complaint No. 26768
Licensed Building Practitioner:	Robert James Grant (the Respondent)
Licence Number:	BP 109549
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:	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	5 November 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr C Lang, Building Surveyor and Quantity Surveyor
Mr S Hammond, LBP, Carpentry, Regulatory Operations Manager

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 Board decided that the Respondent had not committed a disciplinary offence on the basis that the Respondent relied on official information and the conduct did not reach the threshold for a disciplinary finding.

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 investigate² were that the Respondent may, in relation to building work at [OMITTED], have breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, in that he may have breached clause 10 of the Code, which states:
- 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:*
- [4] The Board gave notice that the conduct to be further investigated would be whether the Respondent has breached section 40 of the Act by carrying out building work that required a building consent without first ensuring one was in place, as set out in a Notice to Fix issued by Thames Coromandel District Council (page 87 of the Board's file) and as further described in a Council file note dated 5 February 2025 (starting at page 77 of the Board's file).

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.

Evidence

- [5] 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.
- [6] The matter related to a Notice to Fix (NTF) that was issued by the Complainant, the Thames Coromandel District Council, to the Respondent on 11 February 2025. It noted the following non-compliance:

Two sleepouts have been constructed with an awning between the sleepouts. A deck has been constructed surrounding the two sleepouts and into the awning area.

Sleepouts - to be exempted from a building consent the sleepouts had to meet all of the requirements of the Building Act 2004, Schedule 1, clause 3B. As constructed, they do not meet clause 3B (1) as the sleepouts are not detached buildings as they are both attached to the awning structure. They do not meet clause 3B (1)(b)(i) as it is more than 1 metre from the supporting ground to the floor level of the sleepouts at 1.6m when the maximum is 1 metre to the floor level from the supporting ground. They do not meet clause 3B (1)(b)(iv) as they are not in connection with a dwelling.

There is no dwelling on this site. They do not meet clause 3B (2) as the sleepouts are not their own height from the legal boundaries and the utility, which is a residential building. The west side is approximately 1.5m to the boundary and the east is between 1.6 - 1.8m from the boundary. the distance from the utility to the sleepouts is 0.8m. The height of the sleepouts is 2.7m. The sleepouts are closer than their own measure in height (2.7m) from the legal boundaries and residential buildings. The construction of the sleepout required a building consent and one was not obtained for this building work

Enclosed Awning - A metal awning with a louvre slat roof (20m²) has been fitted against the consented utility building and the two sleepouts. This awning structure has been fully enclosed with sliding doors to the front (north) and two sliding doors to the rear beside the utility. An awning up to 30m² is exempt from a building consent (Schedule 1 Clause 16A). However, an awning is an open roofed structure, not a fully enclosed structure. The awning structure with the enclosed walls is not exempt from a building consent and a building consent was required, and one was not obtained.

Deck - the deck surrounds the two sleepouts and extends out to the north of the group of buildings (Sleepouts and awning). The northeast corner is 1.8m above the ground and the northwest corner in 1.6m above the ground. It is possible to fall more than 1.5m from the front of this deck. Under the Building

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

Act 2004, Schedule 1 clause 24, a deck is exempt when it is not possible to fall more than 1.5m. A building consent was required to construct the deck, and one was not obtained.

In summary, the construction of the group of buildings being the two sleepouts, enclosed awning and the deck, required a building consent and one was not obtained.

- [7] The NTF set out that the building work breached section 40 of the Act and that either the building work had to be removed, or an application for a Certificate of Acceptance (CoA) had to be made. A CoA has since been applied for and was, at the time of the hearing, in the process of being assessed.
- [8] The NTF arose from a staged development that the Respondent was undertaking on a plot of land he owned. He had obtained a building consent for a utility room, which had been constructed. The Respondent's intention was to then establish sleepouts and to use them as holiday accommodation, and to allow him to get a feel for the land and a perspective of where to build a residence on it.
- [9] The Respondent gave evidence that it was common practice in the region for unconsented sleeping accommodation to be established in conjunction with a utility room under the exemptions in Schedule 1 of the Act, and that the Territorial Authority would overlook the requirement for there to be an existing dwelling on the site.
- [10] The evidence from Territorial Authority employees who worked within the Authority's Building Consent Authority (BCA) was that there were no published policies regarding sleepouts, but that a compliance policy was maintained. Under it, NTFs were only issued for the most serious cases of non-compliance.
- [11] The Respondent did not consider that the building work required a building consent other than for issues regarding height from the ground and distance to a boundary. With respect to height from ground, his evidence was that the building work would have been compliant but for the ground being washed out and that it would have been made compliant by building the ground-level backup. In terms of the sleepouts, his view was that they were separate buildings, and the louvre awning over them did not make them one building.
- [12] The Respondent also submitted that he had been led to believe that the building work did not need a consent because the person who had been inspecting the consented building work had given him such advice and had not raised any issues with what he was doing when other work was being inspected. The BCA intervention and the NTF arose after a different Territorial Authority staff member raised the issues during a resource consent inspection. At the hearing, the BCA inspector who allegedly gave the advice denied that he had given any such advice. The building consent inspection records associated with that inspector's site visits did not record

any advice or issues with the other building work, but the associated photographs did show that the work on the sleepouts was ongoing at that point.

Code of Ethics

- [13] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.⁴ 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 regimes⁵ for some time, and the Board has taken guidance from decisions made in other regimes.
- [14] The Code also differentiates between Licensed Building Practitioners 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, but the work did relate to a property that he owned, so the work was not for a client.
- [15] 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*,⁶ 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, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*
- [16] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,⁷ the test was stated as:

[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.

⁴ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

⁵ Lawyers, Engineers, Architects and Accountants, for example

⁶ [1992] 1 NZLR 720 at 724

⁷ [2001] NZAR 74

The Conduct

[17] The issue under consideration is whether the Respondent has breached the Building Act by undertaking building work without a building consent. If he did, then that breach could, in turn, be considered a breach of clause 10 of the Code of Ethics.

[18] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.⁸ The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken⁹ and that the consented work is then assessed against the consent issued through scheduled inspections.¹⁰ In *Tan v Auckland Council*,¹¹ the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

[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.

[19] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken.

[20] As noted, there are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those who seek to rely on an exception to show that the building work comes within that exception.

[21] The Respondent accepted that aspects of the building work required a building consent, but submitted that the sleepouts were individual buildings and, as such, they came within an exemption. The exemption relied on (clause 3B of Schedule 1), however, requires that a sleepout be used in conjunction with a dwelling. The Act does not define the term dwelling. The term is, however, used extensively throughout it, and it is clear from how it is used that it means a habitable building more suitable for being lived in by a single household or family than for any other purpose. There is no such building on the site, and the utility room that was being constructed did not fit within that definition.

⁸ Refer sections 40, 41 and 42A of the Act.

⁹ Section 49 of the Act.

¹⁰ Section 222 of the Act.

¹¹ [2015] NZHC 3299 [18 December 2015]

- [22] Given the above, it could be said that the Respondent, by proceeding with the building work without a building consent, has breached section 40 of the Act, which states that all building work must also be carried out in accordance with a building consent:

40 *Buildings not to be constructed, altered, demolished, or removed without consent*

- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

- [23] The Board did accept, however, that the Respondent may have relied on advice from a person in the employ of the BCA. Notwithstanding, the Respondent, as an LBP, should have known better, and whilst ignorance of the law is not a defence, ignorance based on erroneous advice from an official can be. In *Wilson v Auckland City Council (No 1)*,¹² the appellant was convicted of having carried out building work pending the grant of a building consent. On appeal, it was argued that the council had a policy of permitting building prior to obtaining consent, although the council denied this. The Court commented that the defence of officially induced error could not be discounted as forming part of New Zealand criminal law, although it held that there was no factual basis for that defence in the case. In *Tipple and Gun City Limited v Police*¹³ Holland J found that where a person committed a crime believing it to be lawful on the grounds of “officially induced error”, it was in the public interest as well as being just that that person should not be held criminally liable.
- [24] The Board considers that the Respondent was given and relied on official advice that the work he was undertaking did not require a building consent. In this respect, even if formal advice was not given, the fact that no action was taken when other work was being inspected was in itself an implied statement that the work did not offend regulatory requirements.
- [25] The Board also notes, regarding the requirement for a dwellinghouse to be associated with sleepouts, that there may have been an informal policy allowing such activity to take place in the region. That, of itself, does not excuse the conduct, but it does, in association with the possible reliance on official advice, cast it in a different light.

¹² [2007] NZAR 705 (HC)

¹³ (1994) 11 CRNZ 132

Was the Conduct Serious Enough

- [26] In *Tan v Auckland Council*,¹⁴ 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.

- [27] As noted, however, the conduct needs to be considered within the context of the official advice the Respondent may have relied on and the perception that a utility room would meet the requirements of a dwellinghouse. Given those factors, the Board has decided that the conduct did not reach the threshold for the Board to take disciplinary action. In making its decision, the Board has also taken into account that the work was not carried out for a paying client but rather for the respondent's own use.
- [28] The Respondent is cautioned as regards future conduct. If he is in any way unsure, he should make enquiries before commencing building work to ascertain whether a building consent is required, and he should get that advice in writing.

Board Decision

- [29] The Respondent has not committed a disciplinary offence.

Signed and dated this 12th day of December 2025.



Mr M Orange
Presiding Member

¹⁴ [2015] NZHC 3299 [18 December 2015]