

Before the Building Practitioners Board

BPB Complaint No. 26625
Licensed Building Practitioner: Roy Walter O’Driscoll (the Respondent)
Licence Number: BP 124516
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: Hamilton
Hearing Type: In Person
Hearing Date: 10 December 2025
Decision Date: 14 January 2026

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2
Mr C Lang, Building Surveyor and Quantity Surveyor

Appearances:

E Tobeck 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 Findings:

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and (d) of the Act and **has not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent is fined \$2,500 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.

Contents

Summary..... 2

The Charges 3

Evidence..... 3

Negligence or Incompetence 13

 Has the Respondent departed from an acceptable standard of conduct 14

 Was the conduct serious enough 14

 Has the Respondent been negligent or incompetent..... 17

Contrary to a Building Consent..... 17

 Was there building work that differed from the building consent..... 18

 Was the conduct serious enough 18

 Has the Respondent breached section 317(1)(d) of the Act 18

Failure to Provide a Record of Work 18

 Did the Respondent carry out or supervise restricted building work..... 18

 Was the restricted building work complete 18

 Has the Respondent provided a record of work..... 19

 Was there a good reason for the Respondent to withhold his records of work 19

 Did the Respondent fail to provide a record of work 19

Board Decisions 19

Penalty, Costs and Publication..... 19

 Penalty 19

 Costs..... 21

 Publication 21

Section 318 Order..... 22

Submissions on Penalty, Costs and Publication 22

Right of Appeal..... 22

Summary

[1] the respondent carried out building work in a negligent manner in a manner that was contrary to the building consent that had been issued. The Respondent was fined \$2,500 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 investigate² were that the Respondent may, in relation to building work at [OMITTED], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act; and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, it would be inquiring into the issues raised in Appendix A of a report written by [OMITTED], Licensed Building Practitioner, [OMITTED] and those identified in a Building Inspection report dated 21 June 2024.
- [5] After the Board had issued its Notice of Proceeding, the Complainants raised additional issues that they asked the Board to investigate. The Board decided it would not investigate the additional issues on the basis that it would have been a breach of the rules of natural justice to do so.

Evidence

- [6] 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.
- [7] The Respondent was engaged to complete the re-cladding of an existing dwelling with [OMITTED]. The work was carried out under a building consent. The dwelling had complex elevations (as shown in the photograph below), and there was

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.

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

evidence that the existing tri-clad vertical cladding had deteriorated at ground level in places and that the framing had been impacted by water ingress.



- [8] The Respondent started but did not finish the project. His involvement came to an end on or about 18 April 2024. The building work was completed by another Licensed Building Practitioner (LBP). At issue was the extent to which building work under investigation was incomplete versus non-compliant.
- [9] The extent of the Respondent's scope of work was also in issue. The Respondent maintained that he had limited involvement in the internal work and the window installation. Those claims were disputed by the Complainants. The evidence, however, established that they did engage some other contractors to do work during and after the Respondent's engagement.
- [10] The Respondent was assisted by two workers who were not LBPs. They had not worked for him before the reclad job, and there were times when he was remotely supervising their work. The Respondent arranged the designer, engineer and materials, and called for inspections other than the inspection on 21 June 2024 that was called for by the Complainants.
- [11] The 21 June 2024 inspection noted:

E2: Wall Cladding Systems:

Please rectify the following and advise when the work is ready for re-inspection.

*[OMITTED] vertical oblique not installed as per [OMITTED] specifications cladding to be removed and all flashings / penetration / clearances and junctions to be completed as per consented plans
note not 50 mm below the bottom plate – different cladding junctions incomplete, midfloor junctions / aluminium flashings not installed correctly and new boundary joists to be verified by GDC ENG*

- [12] On or about 1 July 2024, the Complainants obtained a report on the Respondent's building work from [OMITTED], who attended the hearing and gave evidence. The Respondent engaged his own expert, Nicholas Batchelor, a Registered Building Surveyor. He reviewed [OMITTED] report and provided his opinions on the matters raised. He did not attend the site.
- [13] At the hearing, each issue identified in the [OMITTED] report was reviewed with the witnesses present at the hearing. Those witnesses included the two experts, the LBP who carried out remedial work, the Building Control Officer from the Thames-Coromandel District Council, who carried out the 21 June 2024 inspection, a technical consultant from the cladding supplier, [OMITTED], and the LBP designer who obtained the building consent.
- [14] The [OMITTED] report identified 25 issues. A summary of them from the report and the Board's findings on each follows:

Issue 1: Linea weatherboard not extending past the cavity batten and to the face of the corrugated crowns on existing cladding:



- Response:** The Respondent and his expert submitted that it was incomplete work, a flashing would be installed, and it was not a defect.
- Discussion:** The manner in which the work was carried out did not accord with the building consent. The new cladding was 20mm short of where it should have finished. A minor variation would have been required to install a flashing as set out by the Respondent.
- Finding:** The building work had been carried out in a negligent manner and in a manner that was contrary to the building consent issued.
-

Issue 2: Lack of 50mm minimum lap of the cladding over the edge of the floor. RAB is well below the floor and hangs out, exposed below.



Response: Unsure of location or if it's isolated or systemic, but it was agreed that it was a defect.

Finding: Whilst the defect was limited to the north elevation, rework was required and, accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 3: Lack of sealant at the top of the weatherboards

Response: Incomplete work.

Finding: There was insufficient evidence on which to determine whether the sealant had been installed as per the building consent.

Issue 4: The stop ends have been installed and are sitting in place; however, a short vertical cavity batten should then be pushed up against them to prevent them from falling away.

Response: Not a defect.

Finding: The 2022 manufacturer's specification allowed for alternatives regarding how stop ends were installed. The method used was in accordance with one of those alternatives.

Issue 5: Lack of the required 5mm clearance between the weatherboard and the head flashing to allow drainage.



Response: Agreed that it was a defect.

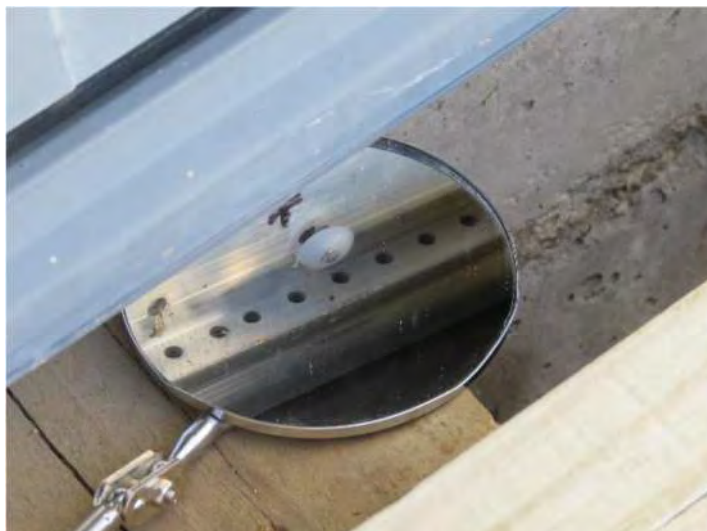
Finding: Defective work that required remediation. Accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 6: The WANZ Bar appears to be under-sized for the overhang of the door and windows.

Response: WANZ bars were supplied by the window manufacturer, and there was insufficient evidence of the alleged defect.

Finding: There was insufficient evidence on which to determine whether the WANZ bar had been installed as per the building consent.

Issue 7: Poor fitting of the WANZ bar fixings.



Response: Agreed that there was a defect and that light nylon anchors had been used incorrectly. Occurred on approximately five window units and one door unit.

Finding: Defective work that required remediation. Accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 8: Spacing of the fixings through the WANZ BAR exceeds the maximum 300mm c/c.



Response: Agreed defect.

Finding: Defective work that required remediation. Accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 9: The back flashing is behind the cavity batten and should be on the face of the cavity batten.
A u-shaped flashing has yet to be installed around the ends of the Horizontal profile steel cladding.

Response: Incomplete work and insufficient evidence.

Finding: The Board was satisfied that a minor variation was being sought to allow for a change to an over flashing. Whilst the minor variation should have been sought before the work was started, the Board did not consider that the Respondent had acted in a negligent manner.

Issue 10: The uPVC Closer stops short of the corner. I observed this is an issue in multiple locations.

Response: Agreed defect.

Finding: Whilst it had been agreed that there was a defect, the Board considered that the issue was minor and that a disciplinary finding in relation to it was not necessary.

Issue 11: The required 35mm above the apron flashing is absent. The apron flashing drains water into the wall cavity. No diverter installed. It is also not clear how the horizontal flashing is finished in behind the weatherboards.



Response: It was agreed that there was a lack of cladding to apron flashing clearance and that there was no visible gap at the bottom edge of flashing. It was submitted that the work below the corrugated curved roofing to the wall cladding was unfinished.

Finding: The building work was not as per the building consent, and there were two defects. The first was a lack of a 35mm clearance. The second was a failure to install a diverter. Remedial work was required. Removal of cladding was required to complete remedial work. The building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 12: Flashing around the end of the wall is incomplete.

Response: Incomplete building work and a lack of plan details.

Finding: Incomplete. No disciplinary findings are made.

Issue 13: A number of issues to consider. Back flashing missing where the soffit becomes a vertical wall and internal corner, lacks a back flashing. A detail required from the architect. Saddle flashing designed to turn out over the top of the internal (Right side) of the wall and ensure diverters and junction out over the external corner.

Response: Incomplete building work.

Finding: Incomplete. No disciplinary findings are made.

Issue 14: Lack of an eave Flashing.

Response: Incomplete building work.

Finding: Incomplete. No disciplinary findings are made.

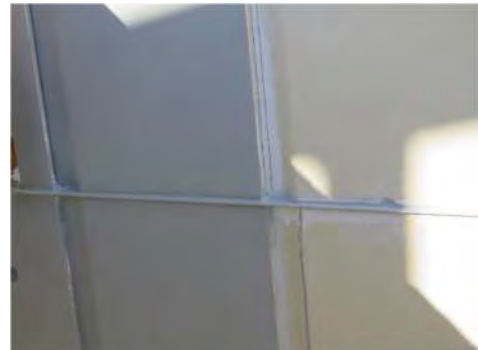
Issue 15: Gaps in horizontal joins. No h-uPVC flashing.



Response: Incomplete building work. A flashing is required.

Finding: Whilst a flashing was required, the cladding was installed in a negligent manner because a board was too short. Had the correct length of board been installed, a flashing may not have been required. Removal of cladding was required to complete remedial work.

Issue 16: Horizontal flashing junction is non-compliant with the technical literature.
Lack of drainage gap and gap to allow for thermal expansion and contraction actions in the building materials.
Location of the horizontal joint over joist at floor level is not located correctly.



Response: It was agreed that the clearance between the bottom edge of the cladding and flashing, and it was noted that horizontal joints are required for tangential shrinkage, but it was submitted that the building had most likely undergone all the shrinkage that would occur over its life. The Respondent explained that he had discussions with the Complainant who did not want to see joints.

Finding: A 15 mm gap was required at the floor level flashing and had not been allowed for. As such, remedial work was required. Accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 17a: SED required to reconnect the deck.

Response: Incomplete building work and engineering design required.

Finding: The Board accepted that the respondent was engaging with an engineer, and whilst he should not have progressed the work as far as he had prior to that engagement, the Board decided that he had not committed a disciplinary offence because he had sought professional advice.

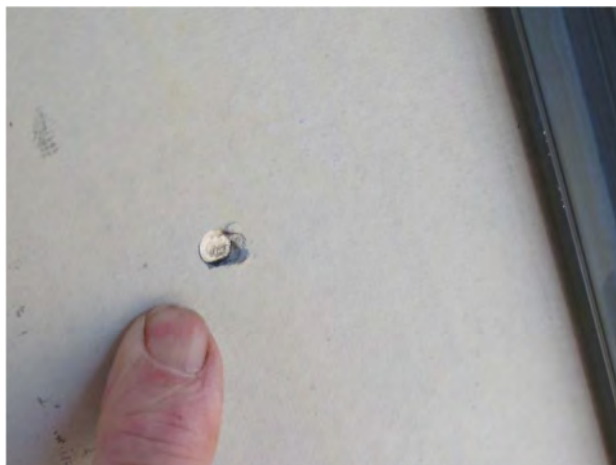
Issue 17 b As per 16 above

Issue 18: The window and door frames have been installed without the foam bond breaker. Lacks the 5mm gap.

Response: Incomplete and easily rectified.

Finding: Whilst the work was not compliant, it was limited to one window and, as such, was minor and did not necessitate a disciplinary finding.

Issue 19: Poor nailing and incorrect nail type.



Response: Unsure if isolated or systemic. Post-hearing evidence was provided together with a submission that stainless steel nails were used.

Finding: The Board was satisfied, based on the evidence of the person who removed the cladding, that the incorrect nail fixings had been used. It follows that the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 20: RAB hangs too low.
Cladding lap over the floor edge is 20mm when it should be 50mm.



Response: Agreed defect.

Finding: Defective work that required remediation. Accordingly, the building work was not in accordance with the building consent and had been carried out or supervised in a negligent manner.

Issue 21: It appears some timber has not been treated with two coats of frame saver.

Response: Incomplete building work and not part of his scope of works.

Finding: Incomplete. No disciplinary findings are made.

Issue 22: U shape flashing to wrap around the ends of the profile steel is incomplete.

Response: Incomplete building work.

Finding: Incomplete. No disciplinary findings are made.

Issue 23: Jamb width is too small.

Response: Unsure whether the issue was isolated or systemic. Disputed who had carried out the work.

Finding: There was insufficient evidence on which to determine who had carried out or supervised the building work.

Issue 24: Airseals around the windows and doors are missing.

Response: Incomplete building work.

Finding: Incomplete. No disciplinary findings are made.

Issue 25: The horizontal sheet join is not flashed in accordance with the technical literature.

Response: Agreed defect. Removal of cladding was required to complete remedial work.

Finding: Whilst the work was not compliant, it was limited to one window and, as such, was minor and did not necessitate a disciplinary finding.

Issue 26: Gib Brace has been compromised.

Response: Did not carry out work. Completed by others

Finding: No disciplinary findings are made.

Issue 27: The Cladding has not been properly clipped together at all the vertical joints.

Response: Bump in framing, it was a re-clad, frames were not straightened. Sealants installed by others.

Finding: There was insufficient evidence on which to determine who had carried out or supervised the building work.

[15] Regarding the Respondent's record of work, he stated that he relied on legal advice that he did not have to provide it because the work was not complete.

Negligence or Incompetence

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

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

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

Has the Respondent departed from an acceptable standard of conduct

- [17] 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 Code⁹ and any building consent issued.¹⁰ The test is an objective one.¹¹
- [18] The Board found that some, but not all, of the issues raised in [OMITTED] report had not been carried out or supervised by the Respondent to an acceptable standard. Those were the issues: 1, 2, 5, 7, 8, 11, 15, 16, 17b, 19, and 20.
- [19] Counsel made submissions at the hearing and provided a written closing submission. In general, it was submitted that a large portion of the defects arose out of the fact that the work was incomplete and that many of the defects related to a lack of flashings that had not been ordered or paid for. The general tenor was that had the respondent been able to return and install the flashings, the work would not have been defective. Some defects were acknowledged, but it was submitted that his conduct did not reach the threshold for a disciplinary finding.

Was the conduct serious enough

- [20] The Board's view was that the conduct did reach the threshold set out by the courts for a disciplinary finding to be made.
- [21] First, the Board notes that issues arose when the Respondent was not on-site and was supervising the building work. The term supervise is defined in section 7 of the Act. The definition states:

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

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

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

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

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

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

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

[22] When considering the required levels of supervision, the Board looks at factors such as the type and complexity of the building work to be supervised; the experience of the person being supervised; and the supervisor's experience in working with the person being supervised and their confidence in their abilities. The Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

[23] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992¹². The definition of supervision in that Act is consistent with the definition in the Building Act, and as such, the comments of the court are instructive. In the case, Judge Tompkins stated at paragraph 24:

“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

[24] Looking at the supervision factors and at the level of non-compliance of the building work that was both carried out and/or supervised by the Respondent, the Board formed the view that the respondent's conduct was not mere inadvertent error, oversight or carelessness. There was a pattern of work that did not meet building compliance requirements, and which required rectification.

[25] Regarding being able to return and complete or rectify the work, the Board considers that Licensed Building Practitioners should be aiming to get building work right the first time and not to rely on others to identify compliance failings. In this respect, during the first reading of changes to the Act around licensing¹³ it was noted by the responsible Minister:

¹² *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

¹³ Hansard volume 669: Page 16053

In February this year the Minister announced measures to streamline and simplify the licensed building practitioner scheme. A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

- [26] The introduction of the Licensed Building Practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation¹⁴:

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.

- [27] Section 3 of the Act, which sets out the Act's purposes, notes that the Act includes the purpose of promoting the accountability of builders. Section 14E of the Act encapsulates the statements in Hansard noted above. It sets out that:

14E Responsibilities of builder

- (1) *In subsection (2), builder means any person who carries out building work, whether in trade or not.*
- (2) *A builder is responsible for—*
 - (a) *ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates:*
 - (b) *ensuring that building work not covered by a building consent complies with the building code.*
- (3) *A licensed building practitioner who carries out or supervises restricted building work is responsible for—*

¹⁴ Hansard volume 669: Page 16053

- (a) *ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act;*
and
- (b) *ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.*

[28] It is within this context that the Board considers that the acceptable standards expected of a reasonable Licensed Building Practitioner includes taking steps to ensure building work is carried out competently and compliantly as and when it is carried out.

[29] Based on the above, the Board found that the conduct met the seriousness threshold.

Has the Respondent been negligent or incompetent

[30] The Respondent has carried out and supervised building work in a negligent manner. The Board accepted that the Respondent had the knowledge and skills required to carry out the building work in an acceptable manner and was not, therefore, incompetent.

Contrary to a Building Consent

[31] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁵ Once issued, the building work must be carried out in accordance with the building consent.¹⁶ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁷ Inspections ensure independent verification that the building consent is being complied with.

[32] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁸ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁹ If it does not, then a disciplinary finding cannot be made.

¹⁵ Section 49 of the Act

¹⁶ Section 40 of the Act

¹⁷ Section 222 of the Act

¹⁸ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁹ *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".

Was there building work that differed from the building consent

- [33] As previously noted, the Board found that some, but not all of the issues raised in [OMITTED] report, had not been carried out or supervised by the Respondent to an acceptable standard. Those were the issues: 1, 2, 5, 7, 8, 11, 15, 16, 17b, 19, and 20. Those same items were contrary to the building consent that had been issued.

Was the conduct serious enough

- [34] For the same reasons set out above in relation to negligence, the Board has found that the conduct met the threshold required for a disciplinary finding.

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

- [35] The Respondent has carried out and supervised building work in a manner that was contrary to the building consent.
- [36] The Board notes the commonality between the findings under sections 317(1)b) and (d) of the Act, and it will treat them as one disciplinary offence when it considers the appropriate penalty.

Failure to Provide a Record of Work

- [37] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.²⁰
- [38] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work²¹ unless there is a good reason for it not to be provided.²²

Did the Respondent carry out or supervise restricted building work

- [39] The Respondent was engaged to carry out and/or supervise building work on a re-clad of an existing residential dwelling under a building consent. His work included restricted building work.²³

Was the restricted building work complete

- [40] The Board has found that, in previous matters, when a Licensed Building Practitioner's involvement in a building project is complete and is clear that they will not be able to carry out any further restricted building work, the work is then considered complete, and a record of work is due. That point in time arose in or about April 2024. Then or soon thereafter was when a record of work was due.

²⁰ Section 88(1) of the Act.

²¹ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²² Section 317(1)(da)(ii) of the Act

²³ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Has the Respondent provided a record of work

[41] The Respondent did not provide a record of work on completion.

Was there a good reason for the Respondent to withhold his records of work

[42] The Respondent set out that the reason why he did not provide a record of work when it was due was because of legal advice he had received that, because all of the building work that was to be undertaken had not been completed, completion under section 88 of the Act had not occurred.

[43] Whilst that advice was incorrect, the Board has accepted that it was relied on, and the Board has decided that it will not make a disciplinary finding but will caution the Respondent regarding future conduct. Should he find himself in circumstances where he cannot continue with the restricted building work, he should, without delay, provide a record of work to the owner and the Territorial Authority.

Did the Respondent fail to provide a record of work

[44] The Respondent has not committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

Board Decisions

[45] The Respondent **has** committed disciplinary offences under sections 317(1)(b) and (d) of the Act.

[46] The Respondent **has not** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

Penalty, Costs and Publication

[47] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[48] 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

[49] 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.²⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁵

- (a) protection of the public and consideration of the purposes of the Act;²⁶
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁷
- (c) setting and enforcing a high standard of conduct for the industry;²⁸
- (d) penalising wrongdoing;²⁹ and
- (e) rehabilitation (where appropriate).³⁰

[50] 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 cases³¹ and applying the least restrictive penalty available for the particular offending.³² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³³ that is consistent with other penalties imposed by the Board for comparable offending.³⁴

[51] 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.³⁵

[52] In this matter, the Board adopted a starting point of a fine of \$3,500. The amount was based on the seriousness of the disciplinary offending, and it is consistent with other penalties imposed for similar conduct by the Board.

[53] The Board considered that the Respondent's health may have impacted how the building work was carried out and supervised, and that the issues may, in part, have been contributed to by poor design documentation. Whilst the Respondent should have sought clarification on design issues when they arose, the Board does consider that they are, nevertheless, a mitigating factor. Taking the mitigation into consideration, the Board has decided to reduce the fine to \$2,500.

²⁴ *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]

²⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁶ Section 3 Building Act

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

²⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³⁰ *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

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁵ 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

- [54] 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 Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁶
- [55] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁷. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁸.
- [56] 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.
- [57] 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. The amount is the scale amount for a moderately complex in-person hearing and is significantly less than 50% of actual costs.

Publication

- [58] 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 Licensed Building Practitioners' scheme as is required by the Act,³⁹ 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.
- [59] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.⁴⁰ 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.⁴¹
- [60] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other

³⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁸ *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.

³⁹ Refer sections 298, 299 and 301 of the Act

⁴⁰ Section 14 of the Act

⁴¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

[61] 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 to pay a fine of \$2,500

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.

[62] 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.

Submissions on Penalty, Costs and Publication

[63] 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 **Wednesday, 11th March 2026**. 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

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

Signed and dated this 18th day of February 2026.



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*

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- (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).*
 - (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.*