

Before the Building Practitioners Board

	BPB Complaint No. CB25726
Licensed Building Practitioner:	Lance Russell (the Respondent)
Licence Number:	BP 113991
Licence(s) Held:	Carpentry and Site 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	Tauranga
Hearing Type:	In Person
Hearing and Draft Decision Date:	5 October 2022
Final Decision Date:	30 November 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr C Preston, Chair (by audio visual link)
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mrs F Pearson-Green, LBP, Design AoP 2

Procedure:

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

Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b), (d), (da)(ii), (h) and (i) of the Act.

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Summary of the Board’s Draft Decision

- [1] The Respondent has carried out building work in a negligent manner and in a manner that was contrary to a building consent. The Respondent has also failed to provide a record of work on completion of restricted building work, has carried out building work (drainage work) that was outside of his competence and has brought the licensing regime into disrepute by providing a falsified document.

- [2] The Respondent's licence is cancelled for a period of twelve months. He is ordered to pay costs of \$3,500. A record of the disciplinary findings will be recorded on the Public Register for a period of three years. The Board's findings will also be published in the Wrap-Up publication.

The Board

- [3] The Board is a statutory body established under the Building Act.¹ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

The Charges

- [4] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations² to hold a hearing in relation to building work at [OMITTED], Tauranga. The alleged disciplinary offences the Board resolved to investigate were that the Respondent may have:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and/or
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent contrary to section 317(1)(d) of the Act.
- [5] The Board gave notice that, in further investigating the above charges, the Board would be inquiring into the non-compliance matters noted in a council inspection on 28 September 2020 (summarised on pages 80 to 82 of the Board's files, document number 2.1.68 to 2.1.70) and the compliance of decking (photograph on page 88, document number 2.1.76). The Board will also be inquiring into the change process used by the Respondent for changes to the building consent noted in an inspection on 28 January 2020 (page 83, document number 2.1.71).
- [6] The Board also gave notice that it would further investigate whether the Respondent may have:
- (a) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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; and/or

¹ Section 341 of the Act.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

- (b) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out drainage work that he was not competent to carry out; and/or
- (c) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, IN THAT, he may have fraudulently created and submitted an as-built drainage plan for the purposes of obtaining a code compliance certificate (page 101 of the Board's file, document 2.1.89).

Function of Disciplinary Action

[7] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.

[8] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,⁵ Collins J. noted that:

"... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community."

[9] In a similar vein, the Board's investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint's Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁶:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

[10] Finally, the Board can only inquire into "the conduct of a licensed building practitioner" with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

⁶ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.

- [11] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board's inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

- [12] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.
- [13] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Background to the Hearing

- [14] The complaint was received on 22 February 2021. The Respondent was informed of the complaint on 19 March 2021. He was asked to provide a response to it by 20 April 2021. The Respondent did not provide a written response in the time frame provided. On 16 April 2021, he was emailed with a reminder to submit a response, to which he replied on the same date stating he did want to make a response but that he would first like to speak to the Investigator looking at the complaint.
- [15] On 20 April 2021, the Respondent stated he would send a written response that night. A response was not received.
- [16] A brief verbal response was provided on 4 May 2021. The response addressed the record of work allegation but not the other substantive allegations made in the complaint. On 11 May 2021, the Respondent sent photographs of his record of work but did not respond to any of the other allegations.
- [17] The Board considered the Registrar's Report on 1 September 2021. It decided to proceed to a hearing, and it gave notice of the matters that would be further investigated at a hearing.
- [18] A prehearing telephone conference was arranged with the Respondent on 18 November 2021. The Respondent did not attend. A prehearing document was issued. The document noted that the matter would proceed to a hearing on 19 January 2022 in Tauranga. A Notice of Hearing was issued on 7 December 2021.

- [19] On 17 January 2022, the Respondent informed the Board Officer that he had been at a COVID location of interest, was isolating himself as a result, and would not be able to attend the hearing. His appearance via videoconference was proposed.
- [20] On 18 January 2022, the Respondent advised the Board Officer that he had not had good experiences trying to attend Zoom meetings before and, as such, would not avail himself of a videoconference attendance. He was asked to provide evidence of a formal notification of the direction for him to isolate. He provided a notification that was for another family member. The matter was adjourned. A new hearing date of 2 March 2022 in Tauranga was set, and the Respondent was given notice of the new hearing date.
- [21] In preparing for the hearing, the Board Officer attempted to contact the Respondent on 23, 24 and 25 February 2022 by phone to confirm his attendance at the hearing. The Board Officer left messages each time. The Board Officer also emailed the Respondent on 24 and 25 February. The Respondent was called and emailed on 28 February. On 1 March, he was sent a text message. No replies were received until 1 March 2022.
- [22] On 1 March 2022, at 2.51 PM, the Respondent sent a text from a number not previously associated with the Respondent to the Board Officer stating:
- Just got your message of your txt. Half our company off so office has had my work phone for last 2 and half weeks and they out too.*
- Cant make tomorrow as I'm isolating as a close contact.*
- [23] The Respondent was asked to provide evidence of a person that he resides with having tested positive for COVID. No evidence was provided.
- [24] The Board decided that it would further adjourn the hearing and, given the Respondent's lack of response to the allegations and engagement in the disciplinary process to date, the nature of the allegations, and the detailed evidence received from the Complainant and other witnesses, to deal with the matters on the papers. Directions as regards filing submissions and further evidence were issued. The Respondent did not engage in an on the papers process.
- [25] The Board then decided, in the interests of natural justice, to revert to an in person hearing process. On 13 June 2022, a prehearing conference was held with the Respondent. The matter was set down for hearing on 4 August 2022, and a notice to that effect was issued. The Board was then advised that the Complainant would be out of New Zealand on the scheduled hearing date, and evidence was provided of the same. As the Complainant was a critical witness, the hearing was adjourned. A new hearing date of 5 October 2022 was set. Again, the Respondent was sent all of the required notices.
- [26] On 30 September 2022, the Respondent was sent an updated hearing file. On Monday 3 October 2022 at 4.45 AM, the Respondent emailed the Board Officer stating that he would not be able to attend the hearing scheduled for that morning.

The Respondent was informed of the correct hearing details as per the notices sent to him. On 4 October 2022, the Respondent replied, stating:

Got days mixed up.

Had Monday booked off.

Not the Wednesday.

Will have to rebook as my employer wants 14 days notice minimum.

- [27] On the day of the hearing, the Board Officer attempted to contact the Respondent. He sent a text stating:

Sorry I'm working under a crane installing joinery at the moment. Just can't go anywhere at the moment.

Apologies again. Will have to submit info in writing.

- [28] The summoned witnesses were present. The Board decided that it would proceed with the hearing. In making that decision, it noted that the Respondent had not, in any meaningful way, engaged in the investigation process and that he had sought adjournments without providing verification of his reasons for those adjournments. The Board was satisfied that the Respondent had been given the required notice of the hearing. The Board also noted the delay in dealing with the matter and that the purposes of the disciplinary regime could be put at risk by further delaying the Board's investigations.
- [29] The Board did, however, decide that it would provide the Respondent with an opportunity to provide evidence and submissions prior to the Board making a final decision. To that end, this decision is issued as a Draft Decision and the Respondent will be provided with an opportunity to respond to it prior to the Board making a Final Decision.

Evidence

- [30] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁷. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [31] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

⁷ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[32] In addition to the documentary evidence before the Board heard evidence at the hearing from:

- | | |
|-----------|---|
| [OMITTED] | Complainant (by audio visual link) |
| [OMITTED] | Complainant |
| [OMITTED] | Building Control Officer (at the time of the matters under investigation) |
| [OMITTED] | Certifying Drainlayer |

Background

[33] The Complainants purchased the property at [OMITTED] in early 2020 and settled on 14 February 2020. At the time of settlement, there were outstanding building issues that had to be attended to, and which were required for a Code Compliance Certificate to be issued for building work undertaken by the vendor under a building consent. The sale and purchase agreement included a clause that detailed building work that was to be completed prior to settlement. On settlement, the work had not been completed, and part of the settlement funds were withheld pending completion. On 13 February 2020, the Respondent signed and issued a Practical Completion Certificate with a proposed settlement date of 14 February 2020.

[34] The Respondent resided with the vendor prior to the sale and had carried out the consented building work. He signed the building consent application dated 27 March 2013 as the owner, including signing the required declarations made as part of the application. He was not a legal or beneficial owner of the property. The Respondent was recorded as the contact person on the application.

[35] The Complainants gave evidence that, following the issue of the Practical Completion Certificate, the Respondent had returned intermittently to the property to complete some of the unfinished works. On 15 July 2020, the Complainants stated they had a meeting with the Respondent at the property to discuss the unfinished works. They stated that the Respondent represented that he would complete all outstanding work and would apply for a Code Compliance Certificate within four weeks. The work did not progress.

[36] On 18 and 23 September 2020, Mr [OMITTED] reviewed the building work on the basis that a Code Compliance Certificate had been sought. He noted multiple items of non-compliance. The Respondent was present at the first inspection. Mr [OMITTED] was asked to provide the paperwork required for a Code Compliance Certificate. On 24 September 2020, the Council issued a notice under section 95A of the Building Act giving reasons for its refusal to issue a Code Compliance Certificate.

[37] The Complainants stated that they have since engaged their own contractors to complete the outstanding works and are still working toward obtaining a Code Compliance Certificate. They summarised their interactions with the Respondent as the Respondent making promises but failing to deliver on them.

Drainlaying

[38] Inspection notes of 28 September 2020 noted:

*Failed: Exterior - Drainage away from buildings and cesspits
cesspits not noted at final inspection – recheck required*

Failed: Exterior - Drainage

*Rodding eye not noted at final inspection - assume at this stage that it is
under the deck - require drainage as built to confirm*

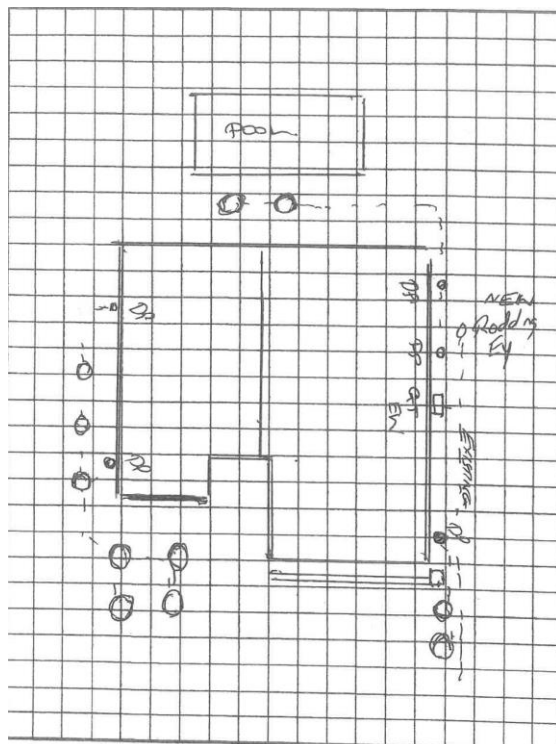
*Failed: Exterior - Gullies above ground level/sealed/relief gully ORG too high -
needs lower rise to gully trap*

Passed: Exterior - Vent Pipes - Location in relation to windows/openings

*50mm terminal vent installed. Drainage as built indicates at least 1:60 fall so
this is OK.*

[39] Mr [OMITTED] noted that drainage work, other than that completed by Mr [OMITTED], had not been inspected as part of the ongoing review of the consented building work during the build.

[40] Included with the application for a Code Compliance Certificate was the following As Built Drainage Plan. It was purported to be from [OMITTED] of [OMITTED]. It included his Certifying Drainlayer registration number:

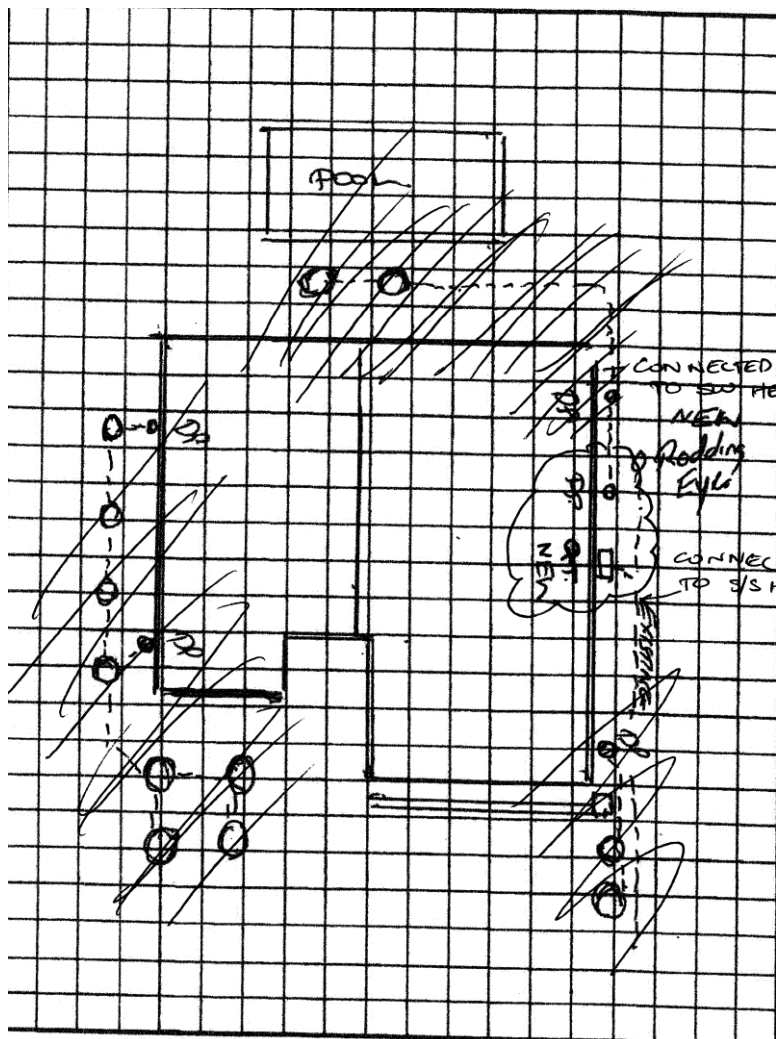


[41] Prior to the hearing Mr [OMITTED] filed a signed statement with the Board. it stated:

The drainage work completed by myself at [OMITTED] is highlighted in red bubble below. What is crossed out in red in the asbuilt has not been installed by myself, or drawn on the asbuilt by myself.

The work completed consisted of installation of a new gully trap for pool backwash, connected to the existing sewer drain that was capped under existing deck. I also installed a downpipe connection under deck and connected to an existing stormwater line that was falling towards the pool area.

- [42] The marked-up As Built that Mr [OMITTED] provided follows. At the hearing, Mr [OMITTED] confirmed that he had only completed the area denoted in the cloud, that the As Built he provided the Respondent only contained details relating to the clouded area, and that he had not supervised or authorised the Respondent or any other person to carry out any drainage work under his registration or to alter his As Built plan. Mr [OMITTED] believed that the As Built Drainage Plan that he had provided the Respondent had, without his knowledge or consent, been altered prior to it being submitted to the Council.



- [43] Mr [OMITTED] also expressed his opinion that the drainage work was obviously not that of a competent drainlayer in that the work had not been completed in accordance with E1 of the Building Code or to any of the applicable standards and because the workmanship was substandard.
- [44] The Complainants gave evidence that they had employed a forensic drainlayer and that the drainage work had been redone and that this included the installation of compliant soak holes and the installation of new drains.

Changes to Consented Plans

- [45] Inspection notes of 18 September 2020 noted:

Several changes have been made to the consented plans and a set of comprehensive asbuilt plans are required from the designer to reflect all changes including, parapet roof area above existing garage. Balustrade construction from solid wall to glass balustrade. Block wall to basement reducing window height and associated tanking detail (producer statement required). Extension of rumpus room over patio area.

Door location to dressing/office master bedroom is and location of door has changed.

Feature aluminium louvres to front and rear not installed.

- [46] The Complainants stated that the original architect as drawn up As Built plans to reflect the changes that had been made during the build for submission to the Council. Mr [OMITTED] stated that the Council were prepared to accept the changes as minor variations, including the closing in of a patio area which formed a rumpus room.

Section 95A Notice

- [47] The section 95A notice expanded on the detail in the site notes made during inspections and stipulated the following matters that required remediation. It stated:

Following the site inspection and subsequent peer review process, Council could not be 'satisfied on reasonable grounds' that the building works comply with the NZ Building Code, or that the building is performing as intended.

The issues identified (but not limited to) are detailed below; the brackets at the end of each item refer to the building code clause they relate;

- [48] Matters that were relevant to the issues that the Board gave notice that it would further investigate were:

3. *Cladding issues (E2)*

- a) *There are several large areas of cedar cladding which have not been nailed - these areas are to be fixed in accordance with the manufacturer's specifications.*

- b) *Scribers are missing to the both sides of the slider to the rumpus room.*
- c) *The painted scribers to the white painted cladding have only been primed and require a top coat.*
- d) *The soaker flashings require fixing as per the manufacturer's specifications.*
- e) *Two soakers missing .from the post to the upper deck- pool side.*
- f) *Soakers require to bottom boards where wing wall penetrates deck.*
- g) *Holes to be made good to-pipe penetrations including gas supply, hot water system pipes to front elevation under deck.*
- h) *Cladding to ground clearance to post to front garden is insufficient should be 150mm from bottom of cladding to finished ground level.*
- i) *Several areas of cedar weather board required a recoat immediately to maintain durability. Outside of the CCC application we strongly recommend that maintenance is carrier out to all cladding with new paint/stain.*
- j) *Spreaders to the downpipes where discharging over lower roof do not comply as they do not have the required holes or end caps - please refer to figure 20 of E2/AS1.*

4. *D1 access*

- a) *The steps to the front entrance are uneven in height and area trip hazard. There are several ways to achieve compliance and we suggest that you discuss the proposal with council prior to carrying out work to ensure that compliance will be achieved.*
- b) *Handrail (x2) to stairs are not fully graspable and the support blocking creates a hazard to fingers.*

5. *Deck construction*

- a) *The deck to the front entrance is outside the scope of NZS3604 and does not appear to have adequate support and fixing.*

[49] Mr [OMITTED] confirmed the matters noted above. He stated that his inspections started off as a Code Compliance Certificate inspection but that it was quickly apparent that the building work was not in a state where it could be assessed as compliant. As a result, a more forensic inspection of the building work was carried

out and that it was the cumulative effect of the failings that resulted in the Section 95A Notice. The inspection records were supported by photographs of the work commented on.

Record of Work

[50] A record of work dated 15 October 2020 was provided to the Investigator on 11 May 2021. As at the date the complaint was made, the Complainants had not received a record of work. Nor had the Territorial Authority (Council). The Complainants stated that repeated requests for a record of work were made, and they noted that the record of work that was eventually provided did not cover all of the restricted building work that had been undertaken.

Response to the Complaint

[51] The only response to the complaint and allegations was recorded by the Investigator following a telephone conversation. The notes recorded:

There was never a contract written up with new owners. He will have paid his subcontractor bills by 20th May 2021. He claims he did send through his ROW to the current owners late last year. I asked him to send it again as they claim they have not received it. He claims that the current owners will not allow him to enter the property to complete anything. The outstanding works to be completed as stated in the final inspection on are minor. He claims that subcontractors are currently visiting the site working completing outstanding matters.

Conclusion and Reasoning

[52] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
- (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 (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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) (s 317(1)(da)(ii) of the Act);
- (d) breached section 314B(b) of the Act (s 317(1)(h) of the Act); and
- (a) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act)

and **should** be disciplined.

[53] The reasons for the Board's decisions follow.

Negligence

[54] Negligence is the departure by a licensed building practitioner whilst carrying out or supervising building work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁸ test of negligence which has been adopted by the New Zealand Courts⁹.

[55] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test¹⁰. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[56] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹¹. The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹².

[57] The Board notes that the purposes of the Act are:

3 Purposes

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:*

⁸ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

(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.*

- [58] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code¹³ and be carried out in accordance with a building consent¹⁴. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.
- [59] The evidence before the Board was that, when the building work was noted as being complete on 13 February 2020 by way of the Respondent's Practical Completion Certificate and the request for a Code Compliance Certificate inspection on 28 January 2021, the consented building work was neither complete nor compliant. The Section 95A Notice issued by the Council noted numerous serious non-compliance issues with respect to both the Building Code and to the building consent issued. The Respondent has not responded to the matters raised in Council inspection notes and the Section 95A Notice other than to state that they were minor. They were not. They were significant and serious. They compromised the integrity and the safe and healthy functioning of the dwelling. The Respondent had not identified nor dealt with those matters.
- [60] The Respondent should note that Council's role (as the Building Consent Authority) is to check that the building work has been carried out in accordance with the building consent. It is somewhat inevitable that a Council will identify compliance issues that require remediation. It will not always follow that a licensed building practitioner will be negligent because they issue failed inspections. What needs to be considered by the Board are factors such as:
- (a) whether there is any form of system or process to identify quality and/or compliance issues;
 - (b) the extent and seriousness of the non-compliance;
 - (c) whether there is a pattern of continued non-compliance; and
 - (d) what steps are taken when non-compliance issues are raised.
- [61] The Board considers that licensed building practitioners should be aiming to get building work right the first time and not to rely on the building consent authority to identify compliance failings and to assist them to get it right. Moreover, when compliance failings are identified, the Board would expect prompt action to be taken and that they would not repeat the same failings. In this respect, during the first reading of changes to the Act around licensing,¹⁵ it was noted by the responsible Minister:

¹³ Section 17 of the Building Act 2004

¹⁴ Section 40(1) of the Building Act 2004

¹⁵ 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.

- [62] 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 legislation¹⁶:

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.

- [63] 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—*

¹⁶ 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.*

[64] 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 and that if there are issues that they will be dealt with and learnt from.

[65] There was no evidence before the Board that the Respondent had identified, acknowledged or dealt with the issues. Rather he looked to trivialise them.

[66] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁷ the Court's noted, as regards the threshold for disciplinary matters, that:

[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.

[67] Given the above factors, the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Contrary to a Building Consent

[68] Under section 40 of the Act, all building work must be carried out in accordance with the building consent issued. Section 40 provides:

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.*

[69] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and

¹⁷ [2001] NZAR 74

that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act.

- [70] Once a building consent has been granted, any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with; by way of a minor variation under section 45A of the Act; or as an amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used. The critical difference between the two options is that building work under a building consent cannot continue if an amendment is applied for.
- [71] If changes are made to what is stipulated in the building consent, and the correct process for the change is not used, then the building work can be said to have not been completed in accordance with the building consent. Unlike negligence contrary to a building consent is a form of strict liability offence. All that needs to be proven is that the building consent has not been complied with. No fault or negligence has to be established¹⁸.
- [72] Changes had been made to the building consent without any form of process for those changes being used. In particular the closing in of a patio to form a rumpus room was a significant change and whilst the Council accepted it as a minor variation the Board doubts it would have met the definition of a minor variation and that it was more likely required an amendment. Irrespective, the changes made to the consent prior to a minor variation being approved mean that the offence under section 317(1)(d) has been committed. Further, the failure to adhere to the building consent with respect to how the building work on the cladding and on access and decking issues as noted in the Section 95A Notice, are clear breaches of section 317(1)(d) of the Act.

Record of Work

- [73] 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 work.¹⁹
- [74] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [75] The Board discussed issues with regard to records of work in its decision C2-01170²⁰ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be

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

¹⁹ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²⁰ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.

- [76] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [77] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*²¹ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [78] As to when completion will have occurred is a question of fact in each case.
- [79] In most situations’ issues with the provision of a record of work do not arise. The work progresses, and records of work are provided in a timely fashion. Completion occurred in February 2020 when the Respondent issued a Practical Completion Notice. There is no evidence that a record of work was provided until one was given to the Investigator in May 2021, which was well after the Respondent stated the building work was complete in his Certificate of Practical Completion. On this basis, the Board finds that the record of work was not provided on completion as required, and the disciplinary offence has been committed.
- [80] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists, then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits, but the threshold for a good reason is high.
- [81] In this instance, there was an ongoing dispute. The Board has repeatedly stated that a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, nor by contractual disputes. Licensed building practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine.
- [82] The Respondent should also note that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations.

²¹ [2018] NZHC 1662 at para 50

Misrepresentation or Outside of Competence

[83] There are two types of disciplinary offence under s 314B. The first relates to representations as to competence (314(a)). The second relates to carrying out or supervising building work outside of a licensed person's competence (s 314(b)). It is with respect to the latter that the Board has made its finding.

[84] Section 314B(b) of the Act provides:

*A licensed building practitioner must—
(b) carry out or supervise building work only within his or her competence.*

[85] The evidence indicates that the Respondent carried out drainage work. The Respondent has not refuted the allegation. The drainage work had to be replaced as it was substandard and non-compliant. On this basis, it was clear to the Board that the Respondent had carried out drainage work that he was not competent to do.

Disrepute

[86] The disrepute disciplinary provision in the Act is similar to legislation in other occupations, including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111²² and discussed the legal principles that apply.

[87] The Board, in C2-01111, considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above, there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example, in the High Court held in *Davidson v Auckland Standards Committee No 3*,²³ a company director, who, in the course of his duties as a director was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time. However, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example, dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.

[88] Similarly, in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants²⁴, convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.

²² Board decision dated 2 July 2015.

²³ [2013] NZAR 1519

²⁴ 24 September 2014

[89] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is “disrepute”. The Oxford Dictionary defines disrepute as “the state of being held in low esteem by the public”,²⁵ and the courts have consistently applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*²⁶, the Court of Appeal held that:

*the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*²⁷

[90] As to what conduct will or will not be considered to bring the regime into disrepute, it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect, it is noted disrepute was upheld in circumstances involving:

- criminal convictions²⁸;
- honest mistakes without deliberate wrongdoing²⁹;
- provision of false undertakings³⁰; and
- conduct resulting in an unethical financial gain³¹.

[91] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act, although provision for one is made. What is clear from the cases though, is that unethical or unprofessional conduct can amount to disreputable conduct.

[92] In this matter the Board finds that the Respondent provided a falsified As Bult Drainage Plan for the purposes of obtaining a Code Compliance Certificate and that the Respondent has brought the regime into disrepute by doing so. In short, the Respondent falsely represented that a qualified and authorised drainlayer had carried out drainage work when one had not and that the drainage work was compliant when it was not. In doing so, he attempted to deceive the Council. Such conduct is not to be condoned, and it is conduct that lowers the reputation of Licensed Building Practitioners and the public’s opinion of them.

²⁵ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

²⁶ [2012] NZCA 401

²⁷ [2012] NZAR 1071 page 1072

²⁸ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

²⁹ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

³⁰ *Slack, Re* [2012] NZLCDT 40

³¹ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

- [93] The Courts have stated that the threshold for disciplinary complaints of disrepute is high, and the Board notes that when the disciplinary provision was introduced to Parliament, the accompanying Cabinet paper noted:

This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.

- [94] The conduct was serious, and it warrants a finding of disrepute.

Decision on Penalty, Costs and Publication

- [95] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

- [96] The Board received evidence relevant to penalty, costs and publication 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

- [97] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*³² commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [98] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*³³. The High Court, when discussing penalty stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the

³² HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

³³ [2012] NZAR 481

seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

- [99] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [100] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,³⁴ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [101] The Respondent has multiple serious disciplinary offences. The Board adopted a starting point of cancellation of his licence on the basis that the seriousness of the offending outweighs the retention of his licence in question and cancellation will protect the public from future conduct.
- [102] The Respondent's approach to the matters is an aggravating feature. In *Daniels v Complaints Committee*,³⁵ the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way. Whilst not belligerent, the Respondent has not meaningfully engaged in the process.
- [103] In mitigation, the Board notes that the work was not for a paying client. Notwithstanding, the manner in which the work was carried out and the manner in which the Respondent has conducted himself may be reflective of his general attitude, and the Complainants have been left to deal with the issues that the Respondent has created.
- [104] Taking all of the above factors into account, the Board considers that a cancellation of the Respondent's licence is not only warranted to punish the Respondent but also required to deter others from such conduct and to protect the public. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work which is integral to the safe and healthy functioning of a home. The Respondent's conduct has put those objects at risk. Cancellation will also ensure that the Respondent's competence is reevaluated under the Licensed Building Practitioners Rules 2007 if and when he seeks to obtain a new licence.
- [105] Accordingly, the Board will cancel the Respondent's licence and order that he may not apply to be relicensed for a period of twelve (12) months.

³⁴ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

³⁵ [2011] 3 NZLR 850.

Costs

- [106] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”
- [107] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case³⁶.
- [108] In *Collie v Nursing Council of New Zealand*,³⁷ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [109] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,³⁸ the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [110] 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 based on the High Court decisions above are then made.
- [111] Based on the above, the Board’s costs order is that the Respondent is to pay the sum of \$3,500 toward the costs of and incidental to the Board’s inquiry. The amount is less than 50% of actual costs, especially when the various adjournments are taken into consideration.

³⁶ *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.

³⁷ [2001] NZAR 74

³⁸ CIV-2011-485-000227 8 August 2011

Publication

[112] 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 Act³⁹. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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.

[113] As a general principle, such further public notification 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. This is in addition to the Respondent being named in this decision.

[114] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990⁴⁰. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction⁴¹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive⁴². The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*⁴³.

[115] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest⁴⁴. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[116] Based on the above, the Board will order further publication so that the public is informed and other practitioners can learn from the matters and the Board's findings. The publication will be by way of an article in the Ministry of Business Innovation and Employment's Wrap Up publication.

³⁹ Refer sections 298, 299 and 301 of the Act

⁴⁰ Section 14 of the Act

⁴¹ Refer sections 200 and 202 of the Criminal Procedure Act

⁴² *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

⁴³ *ibid*

⁴⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

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

Penalty: Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of twelve [12] months.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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(I)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

[118] 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 Draft Decision

[119] The Board invites the respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[120] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **29 November 2022**.

[121] If submissions are received, then the Board will meet and consider those submissions.

[122] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[123] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

- [124] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required, then one will be scheduled, and a notice of hearing will be issued.
- [125] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **29 November 2022**.
- [126] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

- [127] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱ.

Signed and dated this 4th day of November 2022



M Orange
Presiding Member

This decision and the order herein were made final on 30 November 2022 on the basis that no further submissions were received

Signed and dated this 8th day of December 2022



M Orange
Presiding Member

ⁱ **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
- (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*

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

ii Section 330 Right of appeal

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

Section 331 Time in which appeal must be brought

An appeal must be lodged—

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