

Before the Building Practitioners Board

	BPB Complaint No. 26726
Licensed Building Practitioner:	Tedros Tseguye Frra (the Respondent)
Licence Number:	BP 159957
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry:	Complaint
Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	22 October 2025
Decision Date:	6 November 2025
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
	Mr G Anderson, LBP, Carpentry and Site AoP 2

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.

The Board provided an interpreter to assist the Board and the Respondent.

Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(g) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(b) 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
Exterior Building Work.....	6
Interior Building Work.....	7
Post Hearing Submissions	10
Was the Respondent Supervising the Interior Work?	10
Negligence or Incompetence	11
Has the Respondent departed from an acceptable standard of conduct	11
Was the conduct serious enough	11
Has the Respondent been negligent or incompetent.....	12
Code of Ethics	12
The conduct complained about	13
Was the Conduct Serious Enough.....	14
Has the conduct breached the Code of Ethics.....	14
Board Decisions	15
Penalty, Costs and Publication	15
Penalty	15
Costs.....	16
Publication	17
Section 318 Order	17
Submissions on Penalty, Costs and Publication	18
Right of Appeal	18

Summary

- [1] The Respondent carried out building work on a new entrance to a dwelling and supervised interior renovations. The building work was carried out prior to a building consent being granted and issued. There were compliance issues with the building work. The Board investigated whether the Respondent had breached the Code of Ethics by carrying out and supervising building work that required a building consent prior to one being granted and issued, and whether he had carried out and supervised building work in a negligent or incompetent manner.

- [2] The Board found that the Respondent had breached the Code of Ethics but had not carried out or supervised building work in a negligent or incompetent manner, as the departures from an acceptable standard found were not serious enough to warrant a disciplinary outcome.
- [3] The Board fined the Respondent \$2,500 and ordered that he pay costs of \$2,950. The fine was reduced from \$3,500 based on mitigating factors present. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

- [4] 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
- [5] 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, IN THAT, he may have carried out building work on foundations that was not in accordance with a specific engineered design developed for the building work as noted in Site Observations dated 11 and 19 December 2024 and/or may not have met the minimum structural requirements set out in Clause B1 of the New Zealand Building Code as set out on page 113 of the Board's file; and/or
 - (b) breached clause 10 of the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, IN THAT, he may have carried out or supervised building work that required a building consent without first ensuring that one had been obtained contrary to section 40 of the Building Act.

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] [OMITTED] was contracted to complete a renovation of an existing dwelling. [OMITTED] clients were not in New Zealand when the building work started in or about October 2024, and wanted the work completed in time for their return in early 2025. The [OMITTED], [OMITTED], was not an experienced builder and was not a

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

Licensed Building Practitioner (LBP). He contracted [OMITTED] to do the building work. [OMITTED], the director of [OMITTED], did have a building background, but was not an LBP. He, in turn, contracted the Respondent to carry out the construction of a new entrance way, and he gave evidence that he entered into an arrangement with the Respondent whereby the Respondent would supervise those elements of the remainder of the build that would, if there had been a building consent in place, have been restricted building work (RBW). That Respondent denied any such arrangement.

- [8] Regarding the building consent, the building work commenced on 7 October 2024. The building consent for it, however, was lodged on 15 October 2024 and not granted until 14 January 2025. Because of that, the building work started before the consent was granted and issued. [OMITTED] of [OMITTED] stated that the building work had started before the consent had been issued because the building work needed to be finished before the owners returned to New Zealand. By the time the consent was granted, significant amounts of the building work had been completed.
- [9] The Auckland Council, acting as the Building Consent Authority (BCA), became aware that building work related to a building consent that had been applied for, but not granted, had taken place when an inspection was carried out on 4 February 2025. During that inspection, engineering observations were provided for the work being inspected. Those observations, dated 11 December 2024, indicated that the building work related to Specific Engineer Design (SED) timber beams and concrete footings had already been reviewed and commented on by the engineer. As a result of the discovery, a Notice to Fix (NTF) was issued by the BCA. It noted the following building work that had been completed prior to the consent being issued:
- New foundation, pile and subfloor bearers installed to take new point load.
 - Removal of existing loadbearing walls between the lounge, hallway and dining room.
 - New flooring installed and wall constructed to the lounge area.
 - New structural support framing, loadbearing beams and structural connections installed to the lounge/dining area.
 - New structural floor framing installed for both the first-floor wet area bathroom and ensuite, with new flooring installed.
- [10] Because building work had been carried out prior to the building consent being issued, a Certificate of Acceptance (CoA) had to be sought for that work.

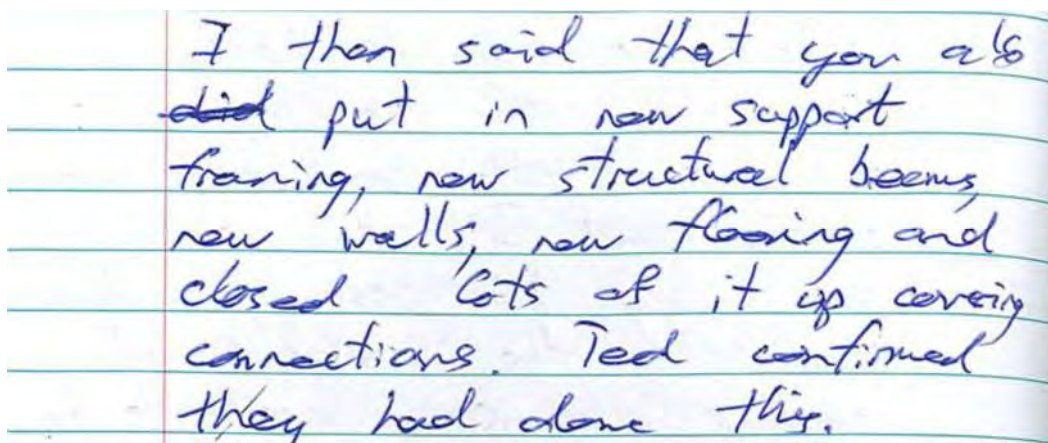
- [11] The Complainant, a complaints assessor at the Auckland Council, investigated the unconsented building work. He phoned the Respondent on 11 February 2025 and recorded notes of his interview. The following are excerpts from the interview.

2-29pm Call Tedros [REDACTED]
 Confirm that he knew consent
 was ^{only} issued in Jan.
 I asked and confirmed he
 was working there.
 [REDACTED] - PM wanted them to
 continue.
 [REDACTED] - one of his builders.
 Not an LBP.
 Confirmed he is supervising
 [REDACTED]
 Confirmed he knows consent
 start without consent.
 [REDACTED] instructed him to carry
 on - consent coming soon

And

I asked Ted why he had
 started working prior to the
 consent and he advised
 because [REDACTED] told them to -
 he said consent would be
 issued soon and they didn't
 do much work anyway.
 I said not much work - you
 put in foundations, new pile &
 subfloor bearers. Ted confirmed
 this.

And:



I then said that you also did put in new support framing, new structural beams, new walls, new flooring and closed lots of it up covering connections. Ted confirmed they had done this.

- [12] On the basis of the interview and the Complainant's investigations, which were summarised in a report provided to the Board, a complaint was made.
- [13] The issues for consideration at the hearing included whether the Respondent had carried out building work on the new entrance to the dwelling before the building consent was granted, and the extent to which the Respondent was supervising persons carrying out building work on the interior of the dwelling that was not compliant.

Exterior Building Work

- [14] Regarding the exterior work, the Respondent had priced it and had been paid 50% of the contract price in advance. In terms of when the work was carried out, in an email to the BCA dated 16 February 2025, the Respondent stated:

I was contracted by the owner of [OMITTED], who is overseeing this project, to complete the front entrance work at the aforementioned address. Attached, you will find the initial drawings (Pages A06, A11, A17) from Art of Architecture Limited, detailing the front entrance, along with a copy of my invoice. The invoice includes a request for a 50% deposit, which has been paid by [OMITTED].

To the best of my knowledge, the building consent had not been issued by the Auckland City Council (ACC) as of 13 February 2025. As such, I have not commenced any work on my portion of the project. My Licensed Building Practitioner (LPB) number is consistently included on all quoting and pricing documentation.

- [15] In his response to the complaint, the Respondent stated:

I have dug foundations for front entrance only, while awaiting the consent for the front entrance. Once the consent was received, I started to install the reinforcing steel for foundations and prior to council inspection.

- [16] The definition of building work in the Building Act includes sitework.⁴
- [17] The Respondent's evidence both at and prior to the hearing regarding when he carried out the building work was inconsistent, with dates varying between work starting in October 2024 through to not carrying out any work until January 2025.
- [18] The Board considered that the documentary evidence received, the evidence of [OMITTED] and [OMITTED], and the extent to which the work had been completed when it was inspected by an engineer on 31 January 2025, which was after the building consent had been granted, established that the Respondent had, on the balance of probabilities, started the building work before the Building consent was issued.
- [19] In general, regarding the Respondent's evidence, the Board found, because of the inconsistencies in his evidence, that he was not a reliable witness. Notwithstanding the variances in dates, the Board was satisfied, based on other evidence before it, that building work on the new entrance, including the installation of structural steel for new foundations, had been carried out by the Respondent before the building consent was issued.
- [20] At the hearing, the Respondent accepted that he had mistakenly carried out building work on the exterior of the dwelling before the building consent was issued. In post-hearing submissions, the Respondent retracted that acceptance.
- [21] The Board also received evidence regarding the compliance of the foundations for the new entrance way. The Respondent had, rather than using mesh on chairs, installed a grid of reinforcing steel. The Respondent had also changed the foundation design from that detailed by the engineer, to make it different and better. The engineer required that he remove his solution, construct the foundations as per the Construction Details provided on 7 February 2025, and install mesh as per the SED.

Interior Building Work

- [22] Both [OMITTED] and [OMITTED] gave evidence that the Respondent was the person who was supervising those aspects of the interior building work that would be restricted building work under the building consent. They stated that the Respondent had been engaged because they required an LBP for certain aspects of the build. [OMITTED] stated that an arrangement had been reached whereby the Respondent would be paid for his supervision, but that no payments had been made because building work had not been completed. He stated that he had WhatsApp correspondence confirming the arrangements. He agreed to provide those messages, noting he would need assistance to do so. He could not be contacted after the hearing, but the Board accepted that he had relevant messages that outlined the relationship between him and the Respondent for supervision services. It made that assessment on the basis of its reliability findings with respect to the evidence

⁴ Section 7 of the Act.

received from both [OMITTED], which it found to be reliable, and the Respondent, who was found not to be reliable.

- [23] The Complainant had, as part of his investigations, spoken with [OMITTED] on 18 February 2025 to establish the Respondent's role in relation to the interior work. His notes recorded:

[OMITTED] said that Teddy (the Respondent) had agreed to do the beams and foundation work for them as well but this was to be supervision and charge up.

[OMITTED] advised that Teddy began work on site on the 07.10.2024 and had provided a quote for the front entry on the 28.11.2024.

I then asked who [OMITTED] was? [OMITTED] stated it was [OMITTED] and he works for himself with Teddy supervising him as he's not an LBP either.

- [24] The Complainant then, on the same day, contacted the Respondent again. The Respondent retracted his earlier admission that he was the supervising LBP. The complainant's interview notes recorded:

12:46pm Call Tedros (Teddy) on [OMITTED]. I announced who I was and said I was trying to clarify what he'd done on site as he'd emailed [OMITTED] and this was different what he'd told me last week.

Teddy said no, he was only going to do the entry work. I said that this was not what he'd said last week and that he had done other foundations and beams etc too. I said as the LBP doing or supervising then he is responsible. Teddy agreed that he is an LBP. He then said that [OMITTED] had told him he has to zip, zip, zip, and not say anymore. He said they'd had a meeting and [OMITTED] told him he didn't want him to say anymore.

I stated that I'd just spoken with [OMITTED] and he'd confirmed that Teddy priced the entry but also did beams and foundations work or supervision for this. Teddy then said he'd started this but then stopped because the engineer was not happy?

I stated that this is totally different to what he had told me last week on the 11.02.2025, when I'd spoken to him. Teddy said he's not good at English over the phone so he put it in writing in the email to explain. I asked about [OMITTED] and if he is supervising him? He said [OMITTED] doesn't work for him. I said, no, but he's not an LBP and you told me you supervise him.

Teddy said he didn't want to talk anymore. I then said has this all changed because the NTF has been issued? I stated that I'd told him last week that the NTF was coming and that we were also looking to lay a complaint with the LBP Board. I advised that we're still looking to do this.

Teddy said ok, but I don't want to talk. I said that's ok, we will lay the complaint and you can talk to the board. I then ended the call.

- [25] The Respondent, at the hearing, submitted that he had been confused during the first phone interview when he admitted to being the supervising LBP and that he is not adept at phone conversations, with English being his second language.
- [26] [OMITTED] was interviewed by the Registrar's investigator in relation to the Respondent's involvement in the building work. The investigator noted the interview as follows:

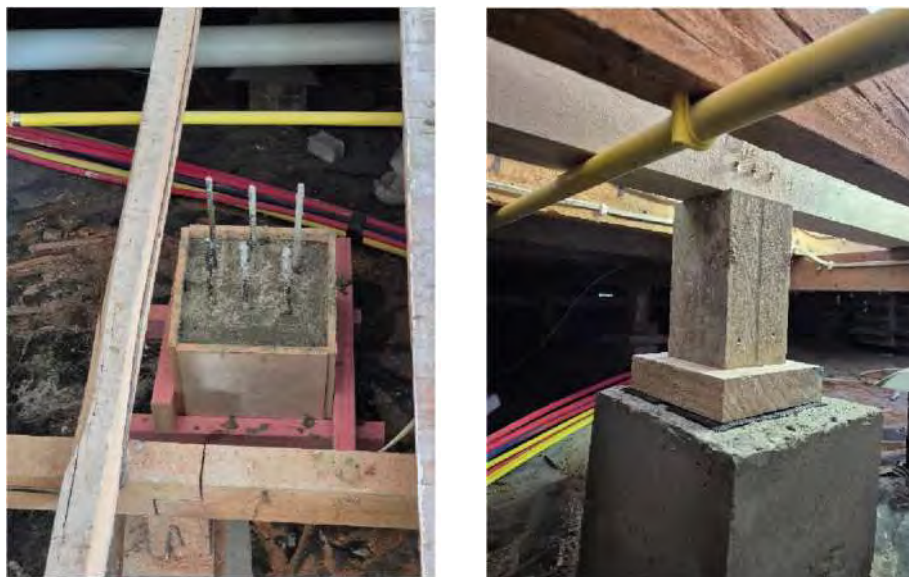
[OMITTED] called back. He confirmed that he was the main contractor for the project. As his team does not have any LBPs, he engaged Tedros Frra to supervise the work. The client was in China and this is a big job for his company. He and his team worked along with Tedros and were taking instructions from him about how the work should be done.

[OMITTED] confirms that Tedros removed the loadbearing wall and installed the beams. As Sasho is not an LBP, he did not realise there was a problem with starting the work before the building consent was issued. He thought that because they had the plans and the engineer supervised the work, it was ok to start while waiting for the consent. Tedros was guiding his team while doing the work. He was the only LBP on site.

Then there was a Council inspection and they found out they should not have done the work without a consent. There is a big problem now as the client is back from China and is living in the house. He cannot use the front entrance as the work was stopped by the council and the "new consent" is taking a long time.

- [27] The Board received evidence at the hearing, including a photograph of the Respondent, that established that he was at the building site on 11 December 2024 when the engineer carried out observations. The Respondent accepted that he had been there but stated that whilst he had been called and asked to attend, he had only been there to give friendly advice. That statement was at odds with other statements made by the Respondent and with the other evidence that was before the Board from the other witnesses.
- [28] At the hearing, the Respondent denied that he had been engaged to provide supervision, stated that there were no contractual arrangements for anything other than the exterior work, and that he had only given friendly advice regarding the internal work. The Respondent was not previously known to either [OMITTED] or [OMITTED].
- [29] The Board considered that the Respondent's earlier statements to the Complainant accurately reflected his involvement in the work and that the later statements were not reliable.

- [30] When the internal work was inspected by the engineer, compliance issues were noted in site inspections carried out on 11 and 19 December 2024. Foundation pad and connections were not as per the engineer's design. The following photographs show the non-compliant building work and, in particular, connections that were not compliant with the minimum structural requirements set out in Clause B1 of the New Zealand Building Code:



Post Hearing Submissions

- [31] On 24 October 2025, the Respondent submitted a written statement. The statement contradicted the evidence the Respondent had given at the hearing, including that he had only done foundations for the exterior entrance and installed reinforcing on 13 January 2025. The Respondent set out that he did not realise the seriousness of the Board's hearing, that he was emotional during the hearing and had problems expressing himself, and, in the submission, he stated he was able to now express himself with more accuracy. He again stated that he was only involved in the exterior entry work and that he had no involvement, other than getting friendly advice, in relation to the interior work.

Was the Respondent Supervising the Interior Work?

- [32] The Board has noted the inconsistency in the evidence presented to it regarding the Respondent's involvement in the interior building work. The Board's decision is that the Respondent was, on the basis of the evidence before it, on the balance of probabilities, supervising the internal building work. In coming to that decision, the Board has preferred the evidence of [OMITTED] and [OMITTED]. As noted earlier in his decision, the Board found the Respondent's evidence to be unreliable and at odds with the documentary evidence before it.

Negligence or Incompetence

- [33] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁵ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁶ test of negligence.⁷ To 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.⁸ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁹ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [34] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code¹⁰ and any building consent issued.¹¹ The test is an objective one.¹²
- [35] The compliance issues with the new entrance related to the way the Respondent had formed the foundations footings and installed reinforcing steel for the foundation floor slab. The interior issues related to pile foundations and non-compliant connections. In both instances, the building work did not comply with the SED issued by the engineer.

Was the conduct serious enough

- [36] The compliance issues were at the lower end of the seriousness scale and, in the Board's opinion, did not reach the threshold for a disciplinary decision to be made. In this respect, the Board has applied the following test outlined in *Collie v Nursing Council of New Zealand*:¹³

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁷ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

⁹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] “Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness”.

¹⁰ Section 17 of the Building Act 2004

¹¹ Section 40(1) of the Building Act 2004

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

¹³ [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.

- [37] And that in *Pillai v Messiter (No 2)*,¹⁴ an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, stated:

... 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.

- [38] In summary, whilst there were departures from an acceptable standard, those departures did not fall into the categories of conduct noted above.

Has the Respondent been negligent or incompetent

- [39] The Respondent has not carried out building work in a negligent or incompetent manner and has not breached section 317(1)(b) of the Act.

Code of Ethics

- [40] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.¹⁵ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes¹⁶ for some time, and the Board has taken guidance from decisions made in other regimes.

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

- [42] The disciplinary provision in the Act simply states, “has breached the code of ethics”. Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,¹⁷ Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

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

¹⁴ (1989) 16 NSWLR 197 (CA) at 200

¹⁵ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

¹⁶ Lawyers, Engineers, Architects and Accountants, for example

¹⁷ [1992] 1 NZLR 720 at 724

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

- [43] The Board also notes that the courts have applied a threshold test to disciplinary matters, which is the same as that for negligence or incompetence that have been noted in this decision, and it has applied those tests.

The conduct complained about

- [44] The issue for determination is whether the Respondent breached clause 10 of the Code of Ethics by carrying out or supervising building work that required a building consent without first ensuring that one had been obtained, contrary to section 40 of the Building Act.
- [45] The Board has already established that, before the building consent had been issued, the Respondent did carry out work on the new entrance to the dwelling and did supervise building work on the interior of the dwelling.
- [46] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.¹⁸ The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken¹⁹ and that the consented work is then assessed against the consent issued through scheduled inspections.²⁰ In *Tan v Auckland Council*,²¹ the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

- [47] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken.
- [48] As noted, there are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those who seek to rely on an exception to show that the building work comes with that exception.

¹⁸ Refer sections 40, 41 and 42A of the Act.

¹⁹ Section 49 of the Act.

²⁰ Section 222 of the Act.

²¹ [2015] NZHC 3299 [18 December 2015]

- [49] No exemptions applied to the building work that the Respondent carried out and supervised, and the evidence clearly established that there was an intention to obtain a building consent, and that the Respondent was aware that a consent was being sought and had not yet been granted. Further, even if he had not been aware, the Respondent, as an LBP, should have known that the type of building work being undertaken required a building consent and had made inquiries to ensure one was in place by requesting a copy of the building consent before carrying out or supervising any of the building work.
- [50] Given the above, because the Respondent proceeded to carry out and supervise building work that he knew or ought to have known required a building consent without one, there has been a breach of section 40 of the Act. It follows that the Respondent has breached the Building Act and, in turn, breached clause 10 of the Code of Ethics.

Was the Conduct Serious Enough

- [51] In *Tan v Auckland Council*,²² the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

- [52] This was not a case where it was a marginal call as to whether a building consent was required. The envisaged building work was substantial, and it should have been clear to any LBP that a building consent was required and had not yet been granted. Notwithstanding, the Respondent has proceeded to carry out the work without one.
- [53] Further, as noted, if the Respondent was in any way unsure, he should have made enquiries before commencing building work. In this respect, there is no evidence that the Respondent took any steps.
- [54] Given the above, whilst the Respondent was one of many who ignored the requirement for a building consent to be in place, he had a greater duty as an LBP, and the conduct was not a case of mere inadvertence, error or oversight. Accordingly, the Board finds that the conduct was serious and that it meets the threshold for disciplinary action.

Has the conduct breached the Code of Ethics

- [55] The Respondent has breached clause 10 of the Code of Ethics.

²² [2015] NZHC 3299 [18 December 2015]

Board Decisions

[56] The Respondent **has not** breached section 317(1)(b) of the Act.

[57] The Respondent **has** breached section 317(1)(g) of the Act.

Penalty, Costs and Publication

[58] 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.

[59] The Board heard evidence during the hearing 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

[60] 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.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴

- (a) protection of the public and consideration of the purposes of the Act;²⁵
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁶
- (c) setting and enforcing a high standard of conduct for the industry;²⁷
- (d) penalising wrongdoing;²⁸ and
- (e) rehabilitation (where appropriate).²⁹

[61] 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 cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and

²³ *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]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

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

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *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

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³

- [62] 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.³⁴
- [63] In this matter, the Board adopted a starting point of a fine of \$3,500, an amount that is consistent with other decisions the Board has made and which reflects the seriousness of the conduct, which was in the lower to mid band of seriousness.
- [64] There were mitigating factors. First, the Respondent was not the main contractor. Others contributed to and may have been more at fault, but they are persons over whom the Complainant BCA, not the Board, has jurisdiction to take action under Section 40 of the Act. Due to the mitigating factors, the Board has decided to reduce the fine by \$1,000, resulting in a total fine of \$2,500.

Costs

- [65] 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.³⁵
- [66] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down with regard to the particular circumstances of each case³⁷.
- [67] 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.
- [68] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,950 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with at an in-person hearing. It is significantly less than 50% of the actual costs.

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

³⁴ 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.

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *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.

Publication

- [69] 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,³⁸ 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.
- [70] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ 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.⁴⁰
- [71] 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 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

- [72] For the reasons set out above, the Board directs that:
- | | |
|---------------------|---|
| Penalty: | Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,500. |
| 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(I)(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. |
- [73] 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.

³⁸ Refer sections 298, 299 and 301 of the Act

³⁹ Section 14 of the Act

⁴⁰ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [74] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Friday, 12 December 2025**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 21st day of November 2025.



Mr M Orange
Presiding Member

ⁱ **Section 3 of the Act**

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development;*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ⁱⁱ **Section 318 of the Act**

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

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

iii Section 318 Disciplinary Penalties

- (1) *In any case to which section 317 applies, the Board may—*
 - (a) *do both of the following things:*
 - (i) *cancel the person’s licensing and direct the Registrar to remove the person’s name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (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.*

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- (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.*