NEW ZEALAND
Registered Architects Board

To: **Board of NZRAB**

From: **Investigating Panel (IP)**

Subject: **Investigation Report to the Board of NZRAB on a complaint or inquiry**

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1 Complaint

NZRAB Complaint Number: 110

Registered Architect(s): 'The Architects'

Complainant: 'The Complainant'

Names of members of the IP:

The Chair (Non architect): Nicole Smith
Architect member: Denise Civil
Architect member: Brendan Rawson

Note:

- The following sections have been removed for the purposes of publishing a summary of the IP report recommendation on grounds for discipline
  - Section 1 – Complaint referred to the IP
  - Section 2 – Background
  - Section 3 – Relevant Registered Architects Rules and Processes
  - Section 4 – Investigation Processes Followed
  - Section 5 – Documentary Evidence Considered by the IP
- The original sentence structures have been altered to accommodate the removal of individual's names and business names.

6. Summary of the issues

6.1. The complainant set out her complaints in the complaint dated 21 June 2020, received by NZRAB on 2 July 2020. The headings of the complaints are as follows:

1. Design work without contract
2. Design & Budget
   a. Size
   b. Budget/Design
   c. The Quantity Surveyor Complaint
   d. Decision to proceed with construction[1]

[1] The IP notes that 2(d) does not include a complaint against the architects and is included by way of an explanation as to the amount that the Complainant had invested in the project as at May 2015 and their decision to continue with the project, despite it being apparent that the build cost would substantially exceed the Quantity Surveyor estimates.

3. Construction
    a. Quality of plans/Contract Administration
    b. Roof and ventilation
    c. Front Door
4. Post Construction – Refusal to sign Practical Completion & Defects Certificate

6.2. In the section of the complaint asking the complainant to detail the impact that the events have had on the complainant, the complainant also detailed concerns about:

1. Internal stairs- steep and unsafe
2. Access in/out of garage & turning circle

6.3. In an email dated 8 October 2020 from NZRAB, the IP set out the additional information it sought from the parties. This included a list of items arising from the Complaint Form. Item 22 on that list was:

> Pg 9 – "*substantial and ongoing changes which increased build time and cost to clients".*

6.4. The IP asked the complainant to provide "*documents relied upon with a breakdown of alleged increased costs versus alleged changes*".

6.5. On 17 November 2020, the complainant provided a document listing 17 items said to fall within the description of items which caused increased build time and cost to clients. The complainant stated that they were only aware of the issues due to the Architects' documentation and correspondence. She therefore stated that the IP could request the Architects' documentation and plans in relation to the changes as she was unable to access "*[Architect firm] correspondence, Architect's Directions from Jan 2017-May 2018, updated plans which were not placed in Dropbox from Jan 2017-May 2018*." She also noted that further supporting information could be found in the Review Report.

6.6. The 17 items listed were as follows:

1. Lower level external door on eastern side moved to northern side;
2. Brivis under floor heating;
3. External steps from western aspect deck
4. Cor-ten rain façade over pod;
5. Ensuite skylight;
6. Front Door;
7. Dining room ceiling;
8. Final Floor Levels;
9. Floorboards changed from batten fixing to concrete;
10. Design changes to precast panels;
11. Non compliant roof/ventilation design;
12. Aluminium joinery;
13. Non compliant alpine stone;
14. Specified Living Flame fireplace not fit for purpose;
15. Internal stairs;
16. Non compliant downlights;
17. Client requested design changes.[2]

[2] It is not clear whether the Complainant are suggesting that the increased build time and costs due to "client requested design changes" are attributable to the Architects.

Complaint 1: Design work without contract

Complaint

6.7. In the Complaint, the Complainant states that

> "*In April 2013* we *signed NZIA AAS 2011 Part A&B and a Fees and Services letter drawn up by [Architect] for the Pre-Design and Concept Design Services for our new home. … The Services & Fees letter (April 2013) provided architectural fees for Pre-Design & Concept Design. If we signed off on a concept design and wished to proceed with the Architects, an Architectural Services and Fees letter for the following would be proposed. … we were still awaiting provisional concept plans when design work outside of the contract was being undertaken.*
>
> *In Feb 2014 when we became aware of design work being undertaken without an Architectural Fees & Services Agreement we contacted John to stop all work.*
>
> *A new contract was signed on 22/03/2014*

6.8. The Complainant states that the Architects did not obtain client approval to proceed to the Preliminary or Developed Design stages and that over 80 hours of preliminary design work and 42 hours of developed design work were undertaken without a Fees & Services Agreement and that the Complainant was invoiced $18,570 for design work without written terms of appointment.

6.9. The complaint states that this is a breach of Rules 49(1) and 58A(1) of the Code of Ethics (applying post 1 January 2018).

Architects' Response

6.10. In the Response, the Architects state that this complaint is not accepted and that at all stages of the Architects' involvement there was an agreement for Architectural services.

6.11. The Architects also note that the Complainant is relying on an obligation in the post 1 January 2018 Rules (for a written engagement contract). Whereas, the applicable rules are those applying prior to 1 January 2018 (clauses 49 and 50) which do not impose an obligation for a written contract.

6.12. The Architects note that the 8 April 2013 Architectural Services and Fee Structure letter and appended NZIA Agreement for Architects Services, covered work up until the end of Concept Design. Concept Drawings were provided at a meeting on 16 August 2013. The notes of that meeting state: "*Fees - Agreed do next stages on current $/HR till [Architect firm] new AAS*".

6.13. The Architects' position is that it continued with work on the Concept Drawings after this meeting on 16 August 2013 (into September 2013) and (as agreed at the meeting on 16 August 2013) continued to progress the project, "*Charging time on an hourly rate basis, until a further fees proposal was agreed*".

6.14. The Architects do not accept that the Complainant asked them to stop work in February 2014, when they became aware of design work being undertaken without an Architectural Fees & Services Agreement. The Architects says that they issued a

new fee proposal to the Complainant on 26 February 2014, for work to the end of the project. On 16 March 2014, there was an agreement to put the project on hold until the detail of a new fees agreement was agreed. A meeting was held on 20 March 2014 and a new fee agreement was put forward on 22 March 2014. The Architects recommenced work once that agreement was confirmed.

Reply – The Complainant

6.15. In a Reply received by the IP on 12 March 2021 headed "*Statement to [the Architects] Response*", The Complainant states that the documents presented to the Complainant at the meeting on 16 August 2013 were "*initial proposed pre-design plans*". She states that the approval given by the Complainant at the meeting was for the Architects to progress from "*Pre-Design to Concept D2 only*" and that "*without prior approval or contract [the Architects] had commenced Preliminary Design D3 in September 2013 and Developed Design D4 in January 2014*".

Analysis

6.16. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence)[3] and also Rule 50 of the pre-1 January 2018 Code (as to Terms of Appointment).

6.17. Rule 50 requires the architect and client to have agreed terms of appointment, but does not require those terms of appointment to be in writing. Also, there is an indication as to the matters that those terms of appointment may cover; but there is no requirement to ensure that those matters are covered in the terms of appointment.

6.18. The letter from the Architects to the Complainant dated 8 April 2013 attaching the 1st Edition of the NZIA Agreement for Architects Services covered work up to the completion of the Concept Design stage. The letter provided that the Complainant's approval would be needed to move beyond Concept Design to the next stages (of Preliminary Design and following).

6.19. The key question is whether, at the meeting on 16 August 2013, the Architects obtained approval from the Complainant to continue with design work, beyond the Concept Design stage, on an hourly rate basis (the position put forward by the Architects). Or whether, there was no such agreement and the reference in the notes to *"Fees - Agreed do next stages on current $/HR till [the Architects] new AAS"* was agreement from the Complainant that the Architects could continue to work on an hourly rate basis up to the stage of completing the Concept Design (the position put forward by the Complainant).

6.20. The Architects letter of 8 April 2013 sets out the "*Stages*" of work to be carried out by the Architects. The first stage is "*Pre-Design Services*" (D1) and the next stage is "*Concept Design*" (D2). The Concept Design stage "*involves the design of the bulk and location of the house and its spaces, looking at how the spaces should ideally*

[3] As set out in the table above, Rule 49 of the pre-1 January 2018 Code is in substance the same as Rule 49(1) of the post 1 January 2018 Code.

be arranged, with initial design direction on the 'look and feel' of the house." The estimate of fees for this first two stages is $9,500.00 to $11,000 plus GST.

6.21. The IP considers that the reference in the meeting on 16 August 2013 to *"Fees - Agreed do next stages on current $/HR till [the Architects] new AAS"* was a record of the agreement from the Complainant that the Architects could continue to work on an hourly rate basis for work beyond the Concept Design stage. There was already an existing agreement (AAS) providing for work on the "*Pre-Design Services*" and "*Concept Design*" stages to be done on an hourly rate basis; therefore, it was not necessary to record that such work could be done on an hourly rate basis and it does not make sense for this wording to refer to those stages (that were already underway) as the "*next stages*".

6.22. Also, the IP notes that, from 30 September 2013, the Architects invoices included reference to Preliminary Design (D3) and then Developed Design (D4) being carried out on an hourly rate basis. No complaint was raised by the Complainant when they received those invoices that work beyond the "*Concept Design*" phase was being carried out.

6.23. It was not until 16 March 2014 that the Complainant asked the Architects to stop work, while the issue of agreeing and documenting the AAS for ongoing work was sorted out. We understand that the Architects paused its work at that time and the contractual issues were negotiated and agreed, resulting in the AAS that was signed by the Complainant on 24 March 2014 and by the Architects on 28 March 2014.

Conclusion

6.24. The IP does not consider that the Architects carried out Design Work without a contract, in breach of the Code of Ethics (Rule 50) applying prior to 1 January 2018. Also, the Architects did not fail to perform their professional work with due care and diligence (Rule 49) due to continuing with Design Work on an hourly rate basis until the new AAS was agreed in late March 2014.

Complaint 2: Design and Budget

(a) Size

Complaint

6.25. The Complainant complains that in breach of Rule 49(1) of the post 1 January 2018 Code of Ethics (the obligation to carry out work with care and diligence) the Architects designed a house that was larger than the size that the Complainant and her husband had indicated they wanted. It was larger than their existing home (which was 352 sq. m), when they were looking to downsize.

6.26. The Complainant also complains that the Architects failed to make the size of the new house clear until June 2015. The Complainant says that was the first point at which they were aware that the new house was to be 378 sq. m.

6.27. Also, the size of the house was misstated on the Building Consent application form (filed in September 2014) which further misled the Complainant as to the size of the new house. If they had known that the new house was 378 sq. m and even larger than their existing house, they would not have signed the Building Consent application and would have instructed the Architects to amend the design to reduce the size of the house or would have pulled out of the Architect contract.

Architects' Response

6.28. The Architects note that the conduct complained of occurred prior to 1 January 2018 and the Code applying prior to 1 January 2018 must be considered. The Architects note that there are no comparable provisions to Rules 58(c) and 58(B) in the earlier Code and therefore their conduct can only be assessed against Rule 49 (Care and Diligence).

6.29. The Architects do not accept that the Complainant ever informed them of a preferred 280 sq. m size for the new house, nor any maximum size either verbally or in writing. The Architects also note that no notice was received from the Complainant at any time asking that the house be made smaller.

6.30. The Architects' position is that the existing house was 376 sq. m (including garaging) and that it had multiple additional rooms (2 extra bedrooms, several extra living rooms and an additional bathroom) when compared to the new house.

6.31. The Architects consider that the Complainant was advised on 30 July 2014 that the house size, as designed at that time, was approximately 373 sq. m, made up of: "*Ground floor, 285 square metres approx., Basement area Study, 33 square meters approx.., and Garage: 55 square metres approx.*" The Architects note that these figures were calculated from the Resource Consent drawings.[4]

6.32. The Architects state that the floor area of the new house is 356 sq. m[5] (36 sq. m in the basement, 266 sq. m on the ground floor and 54 sq. m of garaging) and these figures were emailed to the Complainant on 8 June 2015.

6.33. The Architects acknowledge that the Building Consent (filed on or about 10 September 2014) states that the floor area of the house is 320 sq. m. This is stated to be "*an approximation of the ground floor and basement level areas of the house*".

Reply – The Complainant

6.34. In a Reply received by the IP on 12 March 2021 headed "*Statement to the Architects Response*", the complainant notes that in an email dated 8 June 2015, the Architect stated the definitive size of the new house is 378 sq. m.

6.35. She also states:

> "*Clients provided written and verbal confirmation of sq m house to be approx. 280 sq m and to downsize from our present home. [Architect] had designed our previous home so could access sq m size but did not give clients the size of either house.*
>
> *- 24.03.13. Initial wish list hand delivered to meeting. Discussion re approx. 280 sq m size after clients viewed and considered buying 178 sq m house at 40B Grange Rd. …*

[4] The Architects also note that the size of the house could have been established from the December 2013 Quantity Surveyor Report by looking at the concrete floor areas (leading to a floor area measurement of 372sqm) and from the August 2014 Quantity Surveyor report (leading to a floor area of 382sqm).

[5] The remaining 22 sq m to bring the total up to the 378 sq m referred to by the Complainant is for the verandah.

- Meeting discussion determining 280 sq m size, $3,000 sqm cost and architectural fees of 10% based on 2011 NZIA information… The cost per sqm was determined as $3,000 sqm when we discussed with [the Architect] the current estimated average house cost (from NZIA source) of $1700 sq m. [The Architect] told us it was closer to $2,500 sqm and our decision of $3,000 sq m reflected his input and allowed extra for unexpected costs. [The other Architect] was present at this meeting …"

6.36. The Complainant also refers to a number of meetings, communications and emails where the Complainant raised the issue of size including:

- an email she sent to the Architects on 8 September 2013 referring to "*downsizing to free up retirement funds*";
- The Complainant also states that "*we asked [the Architect] in Sept 2013 what sqm size were the plans. He stated he could not provide them – the QS could at a later stage…*";
- Emails of 9 and 12 September when the Complainant raised queries about whether the size and complexity of the design could be reduced, for example by removal of courtyards.

Witness Statement

6.37. The witness statement (provided by the Complainant) generally supports the views of the Complainant as to their desire for a down-sized property and the fact that this was expressed to the Architects. However, it is clear that his opinion (in relation to the size of the house) is based on information provided to him by the Complainant and is based on the Complainant's recollection of the meetings that occurred.

6.38. He states that the Complainant, at their first meeting with the Architects on 23 March 2013, tabled their initial brief and discussed their desire to build a new significantly down-sized house (in relation to their existing 6 persons house to 2 persons in the proposed house). He states that they "*discussed the m2 size of the proposed new house, $/m2 construction costs and full architectural service fees at 10% of estimated house construction costs*" and refers to the briefing document provided by the Complainant at the first meeting.

6.39. He also states (paragraph 10.6) "*I find it extraordinary that the house area was not shown on sketch design, Resource Consent and Building Consent drawings nor discussed prior to the Complainant signing the building contract*".

Analysis

6.40. The IP confirms that as the conduct complained of occurred prior to 1 January 2018, the Code applying prior to 1 January 2018 must be considered. However, there is little substantive difference between the Rule 49 "Care and diligence" obligation applying prior to 1 January 2018 and the Rule 49(1) "Skill, care and diligence" obligation applying post 1 January 2018.

6.41. In or about March 2013, the Complainant provided the Architects with a fairly detailed handwritten brief as to what she and her husband were hoping to include in their new house. The document states in part:

- *3 bedroom home, predominantly 1 storey cantilevered over/down into gully.*

- *Passive energy efficient home – solar heating, air con for bedrooms (heatpumps)*

  …
- *Materials- concrete? plaster rendered, stone, rammed earth, metal (i.e. corten, glass, wood.*

- *Form- Modern with overhangs and eaves over all windows. Mix of open and closed spaces. Focus on artwork placement including large s/s sculpture in arid garden. Privacy, Views, Sale Value of 73 King George Avenue.*

- *Lifestyle*

- *3 car garaging with extra storage…*

- *Turning circle and parking extra 2 cars*

- *Long central hallway? Courtyards off it and opening out into more communal spaces… High stud (as in lounge, King George*

  …

6.42. The Architects in their response summarise the initial brief (as set out in the document provided by the Complainant) as:

> *… requested 3 bedrooms, a separate study, 2 separate living rooms, a dining room attached to the kitchen, a separate laundry, 2 bathrooms, a separate wine store room and 3 car garaging.*

6.43. The Complainant states that their desire for a home of approximately 280 sq. m was discussed at the first meeting with the Architects on 24 March 2013. The Complainant also refers to the fact that, at that meeting, the Complainant noted that they had considered buying the property at 40B Grange Road, which was 178 sq. m. The Architects do not accept that the Complainant stated at those early meetings that the preferred size of the new house was 280 sq. m or that there was a maximum size for the new house.

6.44. The IP notes that there are no notes of the meeting between the Complainant[6] and the Architects on 24 March 2013 and that the brief tabled by the Complainant at that meeting does not make any reference to a preferred or maximum floor area for the new house. Nor does it make any reference to downsizing. The letter sent by the Architects after the meeting (on 8 April 2013) does not make any reference to a preferred size for the new house or to downsizing from the existing house. The description of the Architects' understanding of the Complainant's brief is, in part:

> *"You wish to develop a new home on the tennis court of your current house, either for your own use in the short term, or alternatively to be rented out and then for your own use in the longer term.*
>
> *The functional requirements are generally as outlined in your brief and set of magazine photos received 24 March and subsequent photos, plus the emails of 24 March, 28 March and 2 April."*

[6] It is not clear to the IP whether the Complainant and her husband or just the Complainant were at that meeting.

6.45. It is not clear when or if the marketing material in relation to 40B Grange Road was provided to the Architects and there is no indication (in the letter of 8 April 2013) that the Complainant advised the Architects that the property at 40B Grange Road indicated the size of the house they wished to build.

6.46. Based on the documents that have been produced by the parties, there is insufficient evidence to establish that the Architects were informed at the outset of the project that the Complainant wanted their build to be at or under a specific square metre area or that they wanted to have a floor area that was reduced from that of their existing house. The Complainant may well have had in mind that they wanted to downsize from their existing property, but it is not clear that this was translated into an express desire to have a smaller floor area in the new home. Nor is it clear that this desire was expressly stated to the Architects.

6.47. It is clear that issues as to the size and scope of the new house came up once the Architects had prepared the concept design and preliminary design. That issue is considered further below under the discussion of the budget.

6.48. In the Reply document submitted to NZRAB on 12 March 2021, the Complainant sets out her clear recollection of the discussion around floor area and the likely build cost per square metre of $2,500 - $3,000, with architectural fees at 10% of the build cost, based on 2011 NZIA information (this is considered further below). *[The Architects]* categorically refute that this discussion occurred. The Architects state: "*At no stage in [the Architects] 30 plus year careers have they ever suggested likely construction costs to a client; that is what Quantity Surveyors are for*".

6.49. The IP notes that this calculation of a build cost based on a square metre rate of $2,500-$3,000 per square metre multiplied by a specific floor area is not set out in any correspondence between the Complainant and the Architects or in any meeting minutes.

6.50. The emails from the Complainant dated 8 and 9 September 2013 raise the issue of the budget and the need to get clear information on the potential cost of the build. However, those emails do not refer back to any previous discussion on costings and square metre rates based on a particular floor area.

6.51. It is acknowledged by the Architects that the floor area of the new house as set out on the Building Consent application was 320 square metres, when the design for the house at that time was for a floor area of 356 square metres.[7] The Architects describes this as an approximation of the floor area.

6.52. The Architects do not explain why they chose to include an approximation of the floor area in the Building Consent when the actual floor area was known to them. The Architects state that it is their general practice to use approximations of the floor area in a Building Consent application and they refer to previous Building Consents filed for the Complainant where they used approximations.

Conclusion

6.53. The IP does not consider that there is evidence that the Architects breached their obligation of care and diligence (in Rule 49 of the pre-1 January 2018 Rules) by initially designing a house that was larger than the Complainant wanted as there is

[7] With a verandah of 22 square metres.

insufficient evidence that the Complainant was clear as to the size of the house they wanted.

6.54. However, in any residential house build, a registered architect should consider with the client at the outset, the size of the house they want built. This information should be sought in addition to clarifying the number of bedrooms and living areas etc. to be included within the design. The failure to clarify with the Complainant the floor area that they desired and the failure to specify the floor area of the house in the initial designs is an indication of the Architects failing to pay due heed to the budget and design requirements of the Complainant. This is considered further below.

6.55. The IP also considers that it is not best practice to use an approximation of a floor area in a Building Consent application when the actual proposed floor area is known to the architect.

6.56. However, the IP does not consider that it was a breach of the (pre-1 January 2018) obligation of performing professional work with due care and diligence to understate the floor area by 36 square metres. Nor does the IP consider that, by the time the Building Consent was filed on or about 10 September 2014, the Complainant would have been misled as to the floor area of the house, by the area referred to in the Building Consent application. As noted by the Architects, in an email to the valuer on 30 July 2014 (copied to the Complainant) the floor area was estimated at 373 square metres. The Complainant did not query this floor area with the Architects at the time.

(b) Budget/Design

Complaint

6.57. The Complainant complains that their project budget of $2 million including GST ($1.6 million for the house and $400,000 for landscaping, fees and overrun provision) was made clear to the Architects in four emails at the concept stage in September 2013. The Complainant notes that the final build costs ended up being $7,712.08 per square metre, when they did not want to go above $3,000 per square metre.[8] The Complainant also notes that she stressed that she and her husband wanted the design to adhere to their budget and they wanted the specification of materials to be dictated by their budget. Their design brief was "*simplicity without complex architecture".*

6.58. The Complainant considers that the design produced by the Architects and the materials specified meant that the build costs substantially exceeded their budget. They consider that the Architects failed to adhere to their brief and budget and they failed to record and monitor the design against the budget. The Complainant says that the fact that the Architects failed to work to their budget is evidenced in the email from the Architect in May 2015 where it was clear that he was not even aware of the Complainant's budget and what was to be included within that budget.

6.59. The Complainant says that obtaining a report from a quantity surveyor, which suggests that the build can be achieved within the budget, does not exonerate the Architects from their duty to ensure that the build could be achieved within budget.

[8] The Complainant states that: "We had a discussion with [the Architects] based on information by NZIA in 2013 stating mid-range house construction costs were $1,700 sq m. [The Architect] believed costs were closer to $2,500 sq m. We told him we did not want sq m costs to be above $3,000 sq m". As noted above, this discussion is not recorded in any correspondence or meeting minutes.

6.60. The Complainant complains that the Architects were in breach of Rules 49(1), 58(c) and 58B of the post 1 January 2018 Code of Ethics.

Architects' Response

6.61. The Architects note that the conduct complained of occurred prior to 1 January 2018 and the Code applying prior to 1 January 2018 must be considered. The Architects note that there are no comparable provisions to Rules 58(c) and 58(B) in the earlier Code and therefore their conduct can only be assessed against Rule 49 (Care and Diligence).

6.62. The Architects note that the original concept design work was undertaken without any limitations being placed on budget. Nonetheless, the Architects "*designed prudently and competently within our understanding of [the Complainant's] overall brief and didn't 'go to town' despite the clients' erroneous indication that they did not have budget constraints*".[9]

6.63. The Architects also note that the brief they received from the Complainant and their indicated material preferences were not for a "*simple house*" as they now claim: "*Their brief called for courtyards, a large central hallway, accommodating their extensive art collection, a specified number of rooms, a second living area that engaged in and addressed the northern garden, off-form concrete work and later corten cladding; materials that are not economical*". The Architects state that the Complainant expressed her wish to have a "*House of the Year*" of similar kudos to a neighbouring house.

6.64. The Architects response indicates that in estimating construction costs, they rely entirely on input from a QS.[10] The Architects note that the costings from the Quantity Surveyor in December 2013 (with two bedrooms above the garage)[11] and in August 2014 (with all bedrooms on the ground floor) indicated that the design which had been prepared was within the budget that was advised by the Complainant.

6.65. The Architects note that it was not their role to provide a budget breakdown of the house, subdivision costs etc.[12] and that they had no control over financial issues during construction as this was all assessed and certified by the Complainant. The Architects refer to a number of items where the cost increased from the projected cost to the final cost (on a spreadsheet provided by the Complainant during the NZRAB complaint process) and a number of items where the Complainant could have reduced costs during construction but chose not to do so.[13]

[9] Reply, paragraphs 55-56.
[10] Reply, paragraphs 52-54.
[11] In the Reply document dated 21 March 2021 at page 11, the Complainant queries why the "above garage design" is referred to as having been sent to the Quantity Surveyor when that design was rejected by the Complainant in September 2013. Our understanding is that the first Quantity Surveyor estimate was based on the "above the garage" bedrooms having been moved to the ground floor.
[12] Reply, paragraph 63.
[13] Reply, paragraphs 69-72.

6.66. They also note that a great deal of additional construction cost (and re-design work) was due to the existence of tomos[14] under the construction site that had been missed in the geotechnical reports (prepared just prior to the second Quantity Surveyor estimate).[15] The Architects also consider that the construction costs were greater than anticipated as the building tendering/contracting market heated up from the commencement of the project in 2013 and the delayed commencement of construction in early 2016. The Architects also note that the Complainant insisted on using their builder on a charge-up basis (rather than putting the build contract out to tender), despite the Architects' written reservations. The architects imply that this led to increased build costs.

6.67. The Architects also rely on an opinion from another Registered Architect on this aspect of the claim. This Architect (Architect C) was asked (by the Architects) to comment on whether the Architects provided sufficient information to the quantity surveyors to enable costings to be carried out. This Architect notes that for the second Quantity Surveyor estimate, the Architects provided "*27 drawings and notes on finishes but there was no structural or construction details provided*". He also notes that the Quantity Surveyor was provided with "*48 drawings covering the building envelope, this included 10 sheets of construction details, 5 sheets of Structural Details, and 7 sheets of Window & Door Schedule*". Architect C states that he considers that this was sufficient information for both quantity surveyors to have provided an accurate assessment of the likely costs, subject to taking into account the relevant market conditions at the time.

6.68. Architect C also states that he considers that the Architects were entitled to rely on the costings of the quantity surveyors as reflecting the likely construction costs for the house. Architect C's expressed understanding is that "*the QS were engaged directly by the client and instructed accordingly… The architect was not responsible for costs estimates, hence a QS was engaged for that purpose*".

Reply – The Complainant

6.69. In her reply, the Complainant notes that a further indication that the Architects did not take into account the Complainant's clearly stated budget is that, in the AAS agreed in April 2014, the Architects have removed two of the critical schedules in the standard form AAS Agreement – Schedule C relating to Fees and the General Conditions in Schedule D.

6.70. She repeats her claim that she discussed with the Architects the NZIA information as to build costs per square metre and the cost of building on their subdivided property. She refers to the two emails of 8 and 9 September 2013 which document the Complainant's concerns over design and budget and their concern that there were excessive design suggestions being put forward by the Architects. She also refers to the subsequent emails of 12, and 16 September 2013 confirming the Complainant's clear requests to reduce size and cost and for options to have a simpler building concept.

6.71. The Complainant considers that there were 25 clear statements specifying cost and budget between 28 May 2013 and 16 September 2013 including two emails (of 8 and 9 September 2013) which state that the project budget was $1.6 million for the house, subdivision, driveway, boundary walls, some hardscaping with a $2 million total budget for project, fees, landscaping, all in, moved in.

[14] Shafts formed by the action of water on volcanic rock.
[15] The Architects' Response paragraph 65.

6.72. The Complainant also rejects the suggestion that the reason for the construction cost being so far above their budget was due to engaging her builder on a charge-up basis.

6.73. She notes that by the time they were engaged in the build, the Architects were charging for redesign costs whenever a charge was suggested to reduce costs. She implies that such changes may not have actually reduced costs given the need to pay for additional design work.

6.74. The Complainant also responds in relation to the items listed by the Architects as increasing the overall build cost from the projected cost to the final cost and the items where the Architects suggest the Complainant could have reduced costs during construction but chose not to do so.

6.75. The Complainant relies on the comments of another Registered Architect (Architect D). Architect D's view is that the Architects knew (or should have known) that given the standard and complexity of the house they had designed, it could not be built for $1.327m (the GST exclusive amount for the first Quantity Surveyor estimate). He considers that this brings into question the Architects' briefing of the Quantity Surveyor and the estimate (and the mismatch between the estimate and what had been designed) should have been discussed with the Complainant. Architect D considers that the same problems are apparent in the second Quantity Surveyor estimate (and he queries why it was completed in August 2014, when if it had been delayed by a few weeks, the Quantity Surveyor could have had substantially more detailed drawings to work from).

Analysis

6.76. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence).[16] There are no equivalent provisions in the pre-1 January 2018 Code to Rules 58(c) and 58B of the new Code.

6.77. The house that was designed for the Complainant ultimately cost substantially more to build than their stated budget.[17] It is clear that there are a number of factors that contributed to the cost of the build being well over the Complainant' budget. This IP has to consider whether there was any failure on the part of the Architects to exercise due care and diligence in the design of the house, that contributed to those cost overruns.

6.78. When the Complainant first approached the Architects, they did not have a stated budget for their new house. They had a fairly detailed idea of the rooms that they wanted in the house and some indications of the overall look and feel that they wanted to achieve. The work of the Architects in carrying out pre-design services and in preparing the concept design was done on an hourly rate basis (with an indication that the estimated fees for that body of work would be from $9,500 to $11,000 plus GST). The Architects presented a concept design to the Complainant

[16] As set out in the table above, Rule 49 of the pre-1 January 2018 Code is in substance the same as Rule 49(1) of the post 1 January 2018 Code.

[17] The information provided by second QS firm is that the final build cost was $3,173,440.31 (including GST), but not including the costs of the Architects or of other consultants).

in August 2013 (with the house on 3 levels, including bedrooms upstairs above the garage).

6.79. The design presented by the Architects was considered with the Complainant at a meeting in August 2013 and was commented on in a number of subsequent emails from the Complainant, still with no mention of budgetary constraints.

6.80. That changed in September 2013. On 8 September 2013, The Complainant directly and clearly raised the issue of the Complaint's budget as follows:[18]

> *"Finally the dreaded dollars. Obviously a QS will give us costings but it is an issue that can also be addressed in concept designs wherever possible. We were a little disappointed at the estimated market sale price put on our home – it was $500,000 less than we thought… obviously we hope to get more but have to accept their prices as the bottom line. 1.6 million is in our comfort zone (with $400,000 for the expected over runs, landscaping etc.) Going above final figure/moved in $2 million become a major financial problem for us defeating the idea of downsizing to free up retirement funds. Obviously having different pavilions rather than one building with rooms running off central hallway is much more expensive – but we love the design so keeping in mind our financial restraints, we would appreciate any simplification of design that could lower costs without detracting too much aesthetically."*

6.81. The budget constraint is confirmed in an email the next day (9 September 2013) which states even more clearly the Complainant's concerns about the cost of building the house on the basis of the concept design. The email acknowledges that the Complainant did not state their budget at the outset as they wanted to explore design without strict financial restraints:

> *"But the reality is we have an absolute budget with no room to move on it. As well as the per sq metre costing of the build we will also have driveway and changes to our present home (rock walls, reconfiguring back area etc.) so our 1.6 million (with ? $200,000 extra and $200,000 for other work mentioned above.) will blow out to $2 million anyway (or more!) which is our upper limit…*
>
> *I know you state the QS will give us costings but it is obvious that we are already probably over the $2 million mark on the house alone so is spending more money on concept plans which we will be forced to reject the right way to proceed as this is money down the drain.*
>
> *How early in the plans can a QS give his costings? It is time to look at the alternative – a simpler concept, one building with rooms running of a central gallery and opening onto a north facing deck. The savings financially may mean we can save the pod and it can still be stunningly simple – I feel the current concepts cost are due to its complexity and since we can't afford this do we return to a simpler design with one outside area over the gully. …*
>
> *Could you let us know where we go from here – this initial concept is obviously too expensive for [us] so why proceed? Do you draw up a simpler, less expensive concept, preserving the pod as its feature knowing this will come in under budget? This is actually in our initial brief – a stunningly SIMPLE*

[18] Although there is a more oblique reference to budget constraints in the brief provided in March 2013 which refers to "*Sale Value [the house]"*

design which will give us financial security and these are the two non-negotiable requirements."

6.82. This theme of wanting a simpler design for the new house and the financial constraints on the Complainant was repeated in further emails from the Complainant to the Architects on 12 and 16 September 2013. The emails included various suggestions as to how rooms could be reconfigured with a view to reducing costs. At this stage, the design work of the Architects was being carried out on an hourly rate basis. The Complainant noted in her email of 16 September 2013 "*we would rather pay to get best concept plan with best possible outcome from QS*".

6.83. Given these clear statements from the Complainant, the Architects were obliged to focus on designing a house that could be constructed within the Complainant's stated budget and on considering what options there were to achieve this, as instructed by the Complainant in September 2013.

6.84. There is very little indication in the contemporaneous correspondence or in the evidence that has been put forward by the Architects to this IP, that the Architects focussed on or engaged with the Complainant's stated budget. The email of 14 May 2015 from the Architect to the Complainant (as highlighted by the Complainant in her complaint), some 20 months after the Complainant explicitly stated her budget limitations (where he queries what is included within the Complainant' budget of $2m) is a clear indication of the Architects' failure to focus on the Complainant's budget. Nor were any downsizing options ever provided by the Architects.

6.85. The position of the Architects is that they had no responsibility, at any stage, to assess the cost of building the house that it had designed and that it could (and had) moved all of that responsibility to the QS. If the QS report came back indicating that the build cost was "*within budget*" then the Architects had met its obligations and had exercised appropriate care and diligence.

6.86. This IP does not accept that the Architects are entitled to adopt that position. While it is in accordance with standard practice to seek input from a QS to obtain an indication on likely costings; this does not mean that an architect can ignore budget and cost questions and rely completely on the input of the QS. Particularly where the input of the QS is being sought at the outset of the project, when there are still many variables and unknowns and substantial contingencies were required.

6.87. It was also incumbent on the Architects to be clear with the Complainant as to the likely floor area of the proposed house, taking into account the Complainant's brief as to the rooms (and the sizes of those rooms) that they wanted in the new house. A broad brush potential total build cost (for the house alone) could have been determined, using square metre rates known at that time based on the spatial requirements specified by the Complainant.

6.88. Nor can the Architects avoid responsibility for the failings in the Quantity Surveyor estimates by claiming that it was the Complainant that retained and instructed the Quantity Surveyor. That appears to be the basis upon which Architect C considers that the Architects were entitled to rely on the costings from the Quantity Surveyor, without further analysis or investigation. Regardless of whether the Complainant were paying the Quantity Surveyor directly (or through the Architects) it is clear that the information on which the Quantity Surveyor estimates were based, came from the Architects.

6.89. In this case, the communications from the Complainant (in September 2013 and subsequently) made it clear that the Complainant was asking the Architects to modify the design to allow the Complainant to stay within their stated budget.

6.90. The Complainant expressly stated that they were concerned that the initial design put forward by the Architects was overly complex and could not be built within their (now expressed) budget. This series of emails in September 2013 (which also referred to a desire to downsize from their existing home)[19] put the Architects on notice that the design needed to be simplified and the size of the house as designed, needed to be reduced. The Complainant considered that the design (as at September 2013) was "*already over $2m for the house, so will need to move away from current concept as too expensive*". The clear instruction on 9 September as to the $2m budget ($1.6m for house, subdivision, siteworks, driveway and some landscaping - including GST) was completely ignored or misunderstood by the Architects.

6.91. The Architects should have met with the Complainant in or about September 2013 (and prior to instructing a QS) to discuss changes that could be made to the design to reduce the cost of the build (and to obtain the Complainant's agreement to the cost of any additional design work that would be needed for that redesign). The Complainant asked for this assistance on a number of occasions. That work was not done by the Architects and there is no clear indication as to why those requests from the Complainant were ignored.

6.92. Instead, the Architects continued with the original plan to send the concept design (with very few changes post September 2013) to a QS for an initial construction cost estimate.

6.93. The Quantity Surveyor December 2013 report stated a total GST exclusive build price of $1,193,498 ($1,377,522.70 including GST).[20]

6.94. There is no indication (in the contemporaneous correspondence or in the response provided by the Architects) that this estimate was discussed in any detail with the Complainant. Given the concerns that had been raised with the Architects about achieving the build within their budget, it was a failure to exercise due care and diligence for the Architects not to discuss the Quantity Surveyor estimate with the Complainant.

6.95. The IP notes that the first Quantity Surveyor estimate includes a list of fairly standard exclusions (amounts that are likely to be incurred on a build but are not generally included in a QS estimate, such as Consents and Local Authority fees and Professional fees and furniture and window treatments). However, the estimate also excludes fittings and equipment (including appliances), landscaping and external site and boundary walls, which would generally be included in an estimate; their exclusion should have been specifically highlighted to the Complainant.

6.96. The Architects should have gone through the Quantity Surveyor estimate in detail to identify those elements of the build that were excluded, those that were effectively placeholder figures (given a lack of information for the QS to work from) and those that were broad estimates.

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[19] Email from the Complainant to the Architects dated 8 September 2013.

[20] We have not been provided with the brief that was provided to the Quantity Surveyor at that time. The IP acknowledges that the communications with the QS were sent over 6 years prior to this Complaint being filed and it is possible that documentation has been deleted or lost.

6.97. This IP considers that if that exercise had been carried out, it would have been apparent to the Architects and the Complainant that the build cost for the proposed design would be far higher than the estimated sum of $1,377,522.70 (including GST) in the first Quantity Surveyor estimate.

6.98. The Architects should also have checked with the Quantity Surveyor (and highlighted to the Complainant) the assumptions that had been made for provisional sums such as $15,000 for the plumbing and gas reticulation, $30,000 for electrical services, $10,000 for the drainage system (this is particularly low given the site is rock) and $2,500 for the external stairs.

6.99. Also, in the estimate, there is no project contingency for the build itself. The contingency of 10% that is included is an allowance made by the Quantity Surveyor for possible discrepancies in the estimate due to the lack of information, as it is early on in the design and planning of the project.

6.100. A percentage of 5% is allowed for the contractor's margin. This seems too low considering the complexity of the design and the ground conditions. The IP also notes that the rates for a lot of the elements in the first estimate were lower than might have been expected for a build of that complexity in Auckland. This should have been queried with the Quantity Surveyor before the report was finalised and provided to the Complainant.

6.101. It appears that there was a further meeting in early October 2013 at which the Architects presented concept plans for consideration. We have not been provided with copies of those plans. In an email dated 28 October 2013, the Complainant advised the Architects that she was very pleased with the plans and she raised a number of queries about the use of some of the space.

6.102. If (as is claimed by the Architects) the Complainant was giving contrary indications about the quality of house that the Complainant wanted to achieve[21] when set against their budget, then it was the Architects' professional obligation to discuss that gap in expectations with the Complainant. The Complainant specifically stated that they had concerns that the design put forward by the Architects could not be achieved within their budget. It is clear that the Architects made no real efforts to engage with those concerns and redesign the house with the Complainant's budget as a firm constraint on what could be built, despite clear instructions from the client to do so.

6.103. The second Quantity Surveyor estimate was "*based on the firm's Architects drawings A210 A211 A250 to A252, A260, A300, A301, A400, A401 to A405 all dated 28/07/14 and Structural drawings SK1 to 3, and verbal clarifications advised by [Architectural Graduate] at [Architect Practice]*."[22]

6.104. While there were some emails from the Architectural Graduate referring to the groundworks that would be required, it is not apparent whether the Quantity Surveyor was provided with the Soil and Rock geotechnical investigation report that was produced in June 2014. The emails from the Architectural Graduate did not place

[21] Being a "House of the Year" type house with a cantilevered design and space for the Complainant's art collection.
[22] See the preamble to the Second Quantity Surveyor Estimate dated 15 August 2014.

sufficient emphasis on the extensive retaining and ground works that would be required given the design with the pod extending into the gully.[23]

6.105. The second estimate valued the build cost at the GST exclusive amount of $1,344,814 ($1,464,909.10 including GST).

6.106. The second Quantity Surveyor estimate was based on obtaining a minimum of four competitive fixed price lump sum tenders. By August 2014, the Complainant had advised the Architects that they wished to retain their builder on a charge-up basis.[24] The Architects should either have asked the Quantity Surveyor to revise the estimate based on using a specified builder on a charge-up basis or they should have highlighted, for the Complainant, this incorrect assumption being used by the Quantity Surveyor.

6.107. The second Quantity Surveyor estimate includes the same exclusions as the first report. It again included an estimation contingency of 10%, but also no build contingency. A percentage of 10% is allowed for the contractor's margin. This is more realistic. However, the estimate dropped the percentage allowance for Preliminary & General from 10% to 7%, despite being aware that the project was going to be run on a cost-plus basis on a difficult site. Estimate 2 is more detailed than the previous estimate in that it identifies specific structural members - these are noted on the Architects drawings, but the drawings are still very outline in nature and lack amplification. Some drawings have key-note keys but there is no evidence that the Quantity Surveyor received the Architects key-note summary - or even a concise outline specification, both of which were needed to be able to somehow navigate a way around the drawings.

6.108. The second estimate also has provisional sums for many items where the QS has had to make assumptions. These were generally on the light side of the expected value and there were no notes to explain how these sums were derived. The provisional sum for the stairs had been reduced from $11,550,00 to $4,600.00, the electrical services had been reduced from $30,000.00 to $20,000.00 and the sanitary plumbing had been reduced from $42,400.00 to $35,300.00. The reason for the reduction in the sanitary plumbing is because the estimate had allowed only for installation of sanitary fixtures, the fixtures themselves being noted as a principal supply item (which should have been listed in the exclusions but was not). The reasons for the other reductions from the first estimate are unknown.

6.109. The IP notes that it was immediately apparent to the Complainant's Builder (in December 2014) that the second Quantity Surveyor estimate (prepared in August 2014 with a GST inclusive build cost of $1,464,909.10) was too low, and that is why

[23] The investigations by Soil and Rock established that the ground under the tennis court (where the new house was to be located) was made up of basalt rock, covered with non-engineered fill. The report is based on plans from the Architects dated 9 May 2014. The report noted the importance of stability at the northern end of the site where the "pod" was proposed to be cantilevering out into the gully. Therefore, this area would bear the load of the leading edge of the dwelling. Due to the state of the rock at that point, the report notes "care must be taken when excavating the slope and stabilization measures will have to be considered to ensure the factor of safety of the slope is maintained for the support of the structure".

[24] Email from the Complainant to the Architects dated 8 November 2013. On 13 December 2013, the Architects provided the Complainant with a four page letter setting out the difference between "Fixed Price" versus "Charge-Up" building contracts. On 8 July 2014, the Architects wrote to the Complainant enclosing a draft building contract with their builder on a charge-up basis

he suggested to the Complainant that they obtain a new estimate.[25] The fact that the Quantity Surveyor estimates had substantially undervalued the total build cost, should also have been apparent to the Architects who had, by that time, been involved with the project since early 2013.

Conclusion

6.110. When the Complainant advised the Architects in September 2013 that their budget was limited to $2 million "all in-moved in", it should have been apparent to the Architects that a rework of the design was required. The fact that the design was too complex for the build to be achieved within budget was apparent to the Complainant and she raised this with the Architects. It appears that her concerns were largely ignored by the Architects.

6.111. The IP considers that the Architects failed to exercise due care and diligence (as was required pursuant to Rule 49 of the pre-1 January 2018 Code of Ethics) as they failed to take into account the Complainant's specified budget and failed to redo the design to ensure that the build could be completed within that budget.

(c) The Quantity Surveyor complaint – dishonest and negligent

Complaint

6.112. The complaint under this heading is largely directed at [one of the two architects]. The Complainant in their complaint assert that the Architect was dishonest and negligent as he blamed the Quantity Surveyor for underestimating the build costs. This is said to be a breach of Rules 49(1), 58(c), and 47.

6.113. The complaint also details concerns with the way that the Quantity Surveyor was briefed, the information that was supplied to the Quantity Surveyor and the quality of the plans that were supplied to the Quantity Surveyor to prepare the two estimates.

6.114. According to the Complainant, the Architect claimed that the cost blowout was "*all the Quantity Surveyor's fault*" as the Quantity Surveyor had made major errors and had completed their report before receiving final information from the Architect firm. The Complainant states that it is because of these claims by the Architect that she made a complaint to the QS Disciplinary Board against the Quantity Surveyor. However, the Disciplinary Board did not consider that there was any breach of the standards and the estimate was prepared on the basis of the Architects' brief and drawings provided to the Quantity Surveyor. The complaint was dismissed.

6.115. The Complainant states that the information provided to the Quantity Surveyor by the Architects was generally inadequate, incomplete and changing.[26]

6.116. In her complaint under heading 2(c), the Complainant sets out two questions for the "*NZRAB tribunal*". These questions relate to the adequacy of the plans supplied to the Quantity Surveyor in December 2013 and August 2014. The IP addresses issues with the briefing of the Quantity Surveyor in the discussion of this Complaint 2 and

[25] Email from SF to the Complainant dated 18 December 2014. Page 1 of the Statement of the builder

[26] She notes that even if the information was provided to the Quantity Surveyor by the Architects' Architectural Graduate, [one of the Architects] was copied on those communications and had overall responsibility for briefing the Quantity Surveyor.

addresses issues in relation to the quality of the drawings prepared by the Architects under Complaint 3(a) below.

Architects' Response

6.117. The Architects note that the conduct being called into question occurred prior to 1 January 2018 and it is therefore the earlier version of the Code that must be considered and, in particular, the comparable provisions at Rule 49 and 54. The Architects note that there are no comparable provisions in the earlier Code to Rule 58(c) of the new Code and that provision should not be considered.

6.118. It is difficult to be clear as to exactly what the Architects' response is to this complaint. The Architects appear to claim that the information provided to the Quantity Surveyor was sufficient and that the information provided for the second estimate was very detailed with 80-90% of the Building Consent documentation package having been completed.

6.119. The Architects also state that they did not blame the Quantity Surveyor for the cost blow-out or complain about the Quantity Surveyor in the statement provided to the Complainant for use in their complaint to the QS Disciplinary Board.

6.120. Having said that, the Architects do suggest that the Quantity Surveyor reports were based on some incorrect assumptions that were contrary to the information provided to the Quantity Surveyor by the Architects.

6.121. The Architects also say that the accuracy of the Quantity Surveyor's estimates is the Quantity Surveyor's responsibility and the Quantity Surveyor should have asked for more information from the engineer if they needed it or should have included additional qualifications in their second estimate if information was missing which meant they could not properly complete their costing. The Architects also suggest that the Quantity Surveyor was in error to have completed the estimates on the basis of "*a minimum of four competitive fixed price lump sum tenders*" as the Architects had advised the Quantity Surveyor that the project was to be done on a charge-up basis.

6.122. The Architects also states that "*the clients (not the Architects) did commission and instruct the Quantity Surveyor to do these reports*".

Reply – The Complainant

6.123. In her reply, the Complainant confirms that the only reason she laid a complaint about the Quantity Surveyor was due to the statements made to her by one of the Architects. Her view (prior to hearing from the Architect) was that the difference in the QS reports was due to the Architects having failed to adhere to their brief. It was only after speaking to the Architect that she considered that the fault might be with the Quantity Surveyor.

6.124. The Complainant also confirms that it was the Architects that chose the Quantity Surveyor and that briefed them. The Complainant was not copied into those briefings.

Analysis

6.125. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the

Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence)[27] and Rule 54, which is the equivalent provision to Rule 47 in relation to acting with honesty and fairness. The Architects are correct that there is no comparable provision to Rule 55(c), relating to the obligation to ensure that delegated work is appropriately supervised and completed to a competent standard.

6.126. Although there is no equivalent provision to Rule 55(c) in the pre-1 January 2018 version of the Rules, the obligation to perform professional work with due care and diligence encompasses a duty to ensure that work for which a registered architect is responsible, is of the appropriate standard (even where aspects of the work have been delegated). Although the communications from the Architects with the Quantity Surveyor were largely carried out by the Architectural Graduate, the Architects had overall responsibility to ensure that the information supplied to the Quantity Surveyor (and obtained from the Quantity Surveyor) was appropriate and adequate for the Complainant's project.

6.127. The Architects' position that it was the Complainant that commissioned and instructed the Quantity Surveyor (implying that the Architects have no responsibility for the thoroughness or accuracy of the estimates) has already been rejected by this IP. It was the Architects that selected the Quantity Surveyor and it was the Architects that briefed the Quantity Surveyor for the preparation of the estimates. If the Quantity Surveyor failed to take that information into account or interpreted that information incorrectly, then that should have been checked by the Architects. This is particularly true where the error was clear on its face (for example, the failure to take into account the Complainant's plan not to put the build out to tender, as they were planning to retain their builder on a charge-up basis).[28]

6.128. It is not possible for this IP to assess whether the information provided to the Quantity Surveyor for the preparation of its first estimate was adequate or accurate. There is no clear evidence from the Architects of what was provided. It is clear that the estimate was prepared at an early stage in the process and that it included a number of broad-brush figures and estimates to allow for that lack of information.

6.129. As for the second Quantity Surveyor estimate, there does appear to have been a lack of care and diligence in the process of briefing the Quantity Surveyor, including in gathering information from other professionals and ensuring that the information was appropriately taken into account by the Quantity Surveyor (in particular the information from Soil and Rock and from the engineer).

6.130. As noted above, this IP considers that it should have been clear to the Architects, when it received the second Quantity Surveyor report, that the amount allowed for by Quantity Surveyor for the build was insufficient for an architecturally designed house of that complexity, being built in Auckland (and particularly in Mt Eden with its often difficult subsoil conditions).

6.131. Also, as noted above, on receipt of the Quantity Surveyor estimates, the Architects had an obligation to go through those reports with the Complainant and to explain

[27] As set out in the table above, Rule 49 of the pre-1 January 2018 Code is in substance the same as Rule 49(1) of the post 1 January 2018 Code.

[28] It is not clear what point the Architects are making in its response when it states that the Quantity Surveyor used industry standard terminology in stating that the estimates were on the basis of "a minimum of four competitive fixed price lump sum tenders". That error should have been noted by the Architects at the time.

the exclusions and contingencies. If that had occurred, the Architects would likely have noted (and highlighted to the Complainant) that both the Quantity Surveyor estimates assumed that the project would be put out to tender.

6.132. With regard to the claim that the Architect breached the obligation of honesty and fairness by criticising the Quantity Surveyor, the IP does not consider that there has been a breach of Rule 54 by the Architect. As the reports from the QS's were so different, it is not surprising that there was a view that the Quantity Surveyor may have been wrong in its estimate. It is possible that this view was expressed to the Complainant at the meeting in mid- 2015.

6.133. The email that the Architect provided to the Complainant on 10 December 2015 does not put all of the blame on the Quantity Surveyor. It comments on the difference between the information provided to each QS by the Architects and states that even with less information, the Quantity Surveyor could have prepared an accurate estimate if it had built in appropriate contingencies.

6.134. The IP also has some concerns about the directions given to the second QS firm for the preparation of its estimates. An email dated 27 August 2019 from this QS firm to the Complainant notes that they (QS firm) was briefed by the Architects to exclude all site works and landscaping from their estimate and the external stairs from the deck. It would appear that he did so contrary to his instructions and without discussing or notifying the Complainant. The Architects' response is that this is not correct as the issue was raised by the Architectural Graduate in an email dated 21 April 2015 to the QS firm. The email from the Architectural graduate does not clarify what instructions were given by the Architects to the second QS firm. However, what it does show is that the Architects were aware in April 2015 that those costly elements of the project were not included in the QS firm's estimate but should have been and it is unclear to the IP why they weren't. While the issue was raised with the QS firm, there is no evidence that this issue was ever resolved or that the Complainant were advised these costs had been removed from the estimate or more importantly, the effect on their overall declared maximum budget if these exclusions were somehow quantified and added to the estimate.

6.135. The fact that these costs were not in the second QS firm's estimates meant that the Complainant were misled as to the likely cost to complete their project. It shows a lack of care and diligence on the part of the Architects that this issue was not clarified with the second QS firm and an updated estimate obtained and provided to the Complainant.

Conclusion

6.136. The IP does not consider that either of the Architects acted in breach of the pre-1 January 2018 Code of Ethics (Rule 54 – Honesty and Fairness) in relation to comments about the work of the Quantity Surveyor. There is insufficient evidence that the Architect placed all of the blame on the Quantity Surveyor for the difference between the first Quantity Surveyor reports and the second firm's QS reports, as claimed by the Complainant.

6.137. The IP does consider that there are a number of shortcomings and failings in relation to the dealings of the Architects with the first and second QS firms quantity surveyor reports. As it has not been possible to assess all of the information that was provided to both QS firms when they were asked to prepare their estimates, it is not possible to assess whether the Architects deliberately misled the Quantity Surveyors as to what was to be included within the estimates. However, the key failing, in relation to

the QS estimates, was that the Architects did not go through those estimates in detail with the Complainant, so that the Complainant could understand what costs were not included within the estimates. That failing is considered further below under complaint 3(a).

6.138. Given the lack of information about the process of briefing the Quantity Surveyors, the IP does not consider it would be appropriate to conclude that there was a breach of the Code of Ethics under this complaint.

(d) Decision to proceed with construction

6.139. As noted above, this section of the complaint is an explanation of why the Complainant decided to continue with construction in May 2015, despite having received QS reports from the second QS firm that made it clear that the build could not be completed within their budget.

6.140. The Complainant states that, although it is NZRAB's position that it is not their role to award compensation, she considers that there is clear advice to architects that if an architect is at fault, an apology and fee refund should be considered. The Complainant therefore requests a partial refund from the Architects for the fees paid relating to the Architects' error as to the size of the building on the BC application and relating to one of the Architect's complaint against the Quantity Surveyor.

6.141. The Complainant considers that due to the Architects' actions, they were denied the opportunity to pull out of the project at BC application and pre-construction stages.

Conclusion

6.142. The Complainant is correct that it is not the role of the NZRAB to direct that an architect pay compensation to a client that has been affected by failings on the part of an architect. The NZRAB does not have the power to direct compensation to be paid and this IP therefore does not comment on the Complainant's request for compensation.

Complaint 3 - Construction

(a) Quality of plans/Contract Administration

Complaint:

6.143. The Complainant complains that throughout construction there were issues with the quality of the plans and the Architects' instructions. The Complainant notes that they paid $206,048.04 for the plans provided by the Architects and those plans were inadequate with many critical design elements non-compliant or incomplete. The Complainant considers that the Architects breached Rules 49(1) and 58 and 58B of the Code of Ethics (as applying post 1 January 2018).

6.144. The Complainant states that despite concerns raised by their builder and the Council inspectors throughout the build, the Architects failed to undertake comprehensive reviews and ensure the drawings were complete, complied with the Building Code and were able to be used to construct the building from the plans provided to the builder, without substantial and ongoing the changes which increased build time and costs.

6.145. The Complainant cites a number of examples of problems with the plans including inconsistencies and lack of detail as follows:

- 26/08/16 – Site minutes accepting "*issues with dimensions/drawing information that was causing construction issues… [the Architects] will issue a summary of the changes with drawing revisions to [the Builder] directly*".

- 07/12/2016 – Design meeting agenda from client to builder and the Architects "*[Builder] to discuss both specific and ongoing issues and delays obtaining clarity re plans. There are increasing problems with Council inspectors querying the plans with what has been built. It was emphasized by [Client lawyer] that all design changes had to be updated immediately so there is clarity for all parties (builder, client, architect, council) re liability*."

- Non-compliant design included en-suite skylight, Corten steel rain façade, external stairs, internal stairs and vehicle manoeuvring.

- Second QS firm update to bank on 19/07/17 – re design issues: "*The large increase in labour can be attributed largely to the Architect with overly complicated, unclear and incorrect details which have also caused significant delays to the completion date of the project.*"

6.146. The Complainant also relies on the Review Report which documents over 230 omissions, absence of detail, non-compliance or errors in the plans and specifications.

6.147. The Complainant notes that despite these concerns being raised by their builder and the Council, the formal Architects Directions (AD) to the builder ceased from December 2016 until Practical Completion in May 2018 (17 months).

6.148. The Complainant's view is that the incomplete and inadequate design led to increased costs of approximately $250,000 (largely made up of an increase in the labour costs of the builder and sub-contractors).

6.149. This part of the complaint also raises concerns about the H1 Energy Efficiency Compliance Calculation. The Complaint notes that multiple incorrect data entries by the Architects, resulted in a Building Performance Index of 2.09, which fails NZBC clause H1. The Complainant state that a BPI of 1.55 or lower is required to demonstrate compliance with NZBC clause H1.

Architects' Response

6.150. The Architects note that the conduct complained of occurred prior to 1 January 2018 and the Code applying prior to 1 January 2018 must be considered. The Architects note that there are no comparable provisions to Rules 58 and 58(B) in the earlier Code and therefore their conduct can only be assessed against Rule 49 (Care and Diligence).

6.151. In essence, the response of the Architects is that the designs that were provided to the builder for construction (being the Building Consent documentation together with the agreed commitment to do "*13 additional details*")[29] were sufficient for a

[29] As set out in the 22 March 2014 Fees and Services proposal letter. The further details to be completed are described as "Interior details of sliding doors, stairs, internal WC window, wall / floor / ceiling junctions, plus selected exterior details".

competent builder to complete the build. The Architects says that allowance needs to be made for the fact that there will need to be minor adjustments and changes to the design to reflect situations that arise during the build (such as having to use different materials or site-specific conditions). The Architects consider that it was entitled to charge for those minor adjustments and changes that might be needed. The Architects state that where there were any inconsistencies or errors in the plans, they were amended by the Architects in a timely fashion, at no cost.

6.152. The Architects' position is that while it is not unusual for clarification of designs to be required during construction, more changes than usual were required during this build due to:

- The builder having his own way of doing certain aspects of the build, which did not match to the plans provided (with the plans provided by the Architects being based on the "*industry standard*");
- The need to use different products to those that had been specified in the Building Consent documentation (for example, due to manufacturers halting manufacture or changing the product design – e.g. the ensuite skylight aluminium glazing bar system, the Alpine Stone fixing system and the Corten steel rain façade system);
- Items being changed by the Complainant due to budget decisions;
- Aspects of the design changing due to decisions of the Complainant (such as moving the external stairs to the gully garden).

6.153. The Architects also notes that the agreement was that they would be paid on an hourly rate basis for Contract Administration and Observation of the contract which would involve "*our input during construction, administering the contract, observing the contractor carrying out the construction work, responding to the contractors email/phone queries, and any site visits during construction that may be required*".

6.154. The Architects note that during construction the Complainant insisted that many issues and details should have been included as part of the Building Consent package produced under the fixed fee and therefore could not be charged as part of the contract administration hourly rate chargeable time. The Architects consider that issues arising on site are normal and part of the contract administration process and should have been chargeable. As the Complainant refused to pay for what the Architects considered to be additional chargeable services, the Architects stopped "*performing services that would not be paid, including providing additional details. This included the Architects ceasing to issue formal Architect's Directions to the building contractor*." [30]

6.155. The Architects also state that the Complainant chose to reduce the agreed number of site meetings and refused to pay for the additional design work that was needed. The Architects set out a list of the invoices that the Complainant queried and refused to pay in full. The Architects state that during the construction phase, their services were being constrained to the point of being partial services. The Architects state that despite these difficulties, they did not retire from the project as they considered they were still performing a useful role, albeit a limited and uncomfortable one.

6.156. The Architects also rely on the opinion of Architect C in response to this complaint. His view is that the drawings "*appear to be well structured, providing significant dimensioning and technically competent. In addition, there was a comprehensive*

[30] Response, para 111.

industry standard MasterSpec covering all trade disciplines".[31] He considers that the documents were "*comprehensive and met the standard of what … a reasonably competent architect in 2013/14 would produce… The Architects' details were appropriate for the design and detail required for a house of this quality*".

6.157. Architect C also considers that the complaint raised in the Review Report that the Architects used a dedicated legend page of notes covering materials and finishes, which was then referenced back to the other drawing sheets, to be unwarranted. He acknowledges that this requires the legend sheet to be available when viewing the other drawings. He considers it to be a common practice among architects to have a legend sheet, although sometimes parts of legends are repeated on relevant drawing sheets for convenience.

6.158. Architect C does not comment on the way in which the Architects administered this contract during the construction phase. However, he does note that given the limited number of site visits, he considers that it was appropriate for the Architects to refuse to sign the Practical Completion certificate. That issue is considered further below.

6.159. In response to the complaint about H1 compliance, the Architects note that it has had this issue reviewed by an engineering firm, who concluded that the house was above the required standard.[32] The Architects note that the calculation relied on by the Complainant was based on the Building Consent documentation, which did not account for the changes to glazing that occurred during construction.

Reply – The Complainant

6.160. The Complainant's position is that there is a large volume of evidence that establishes that the plans were incomplete, inadequate and non-compliant. She refers in particular to the statements of the builder that he faced difficulties with the plans on a weekly and sometimes daily basis.

6.161. She considers that the agreement entered into was for the Architects to provide a set of drawings that was sufficient to enable the house to be built. It was [one of the two Architects] that had stated that the Building Consent documentation, together with the 13 additional details, would meet that requirement. Subsequently, the Architect took the position that any further details or drawings required by the builder, would be chargeable.

6.162. The Complainant refers to the findings in the Review Report that the design was incomplete and did not comply in all areas with the requirements of the New Zealand Building Code (NZBC). She notes that the Review Report also states that there are missing, incorrect, incomplete and conflicting details and information to many areas on the drawings and that it is impossible to follow the drawing details and specification and construct this building to comply with the NZBC without obtaining significant altered additional details, clarification and manufacturers' information.

6.163. The evidence of the builder is that there were weekly and sometimes daily phone calls to the Architects in which he expressed difficulties with the drawings. Problems with the drawings included for example that grid lines were in the plan view but were not on the elevations or sections. He also notes that the Architects did not send directions for most of the build (or site minutes) and he had difficulty getting the

[31] Architect C Report, para 19.

[32] The report of the engineering firm dated 3 December 2020 is not numbered and is labelled Ref: 5875 rev B.

changes that were discussed on site, updated on the plans. If they were updated, the updates were often incomplete such as on one plan only. The builder rejects the suggestion that the need for the changes on the plans was due to his build preferences.

6.164. In relation to billing, the Complainant's position is that invoices were paid in full and on time. The issue with invoicing was due to double billing by the Architects as they were trying to bill on an hourly rate basis for additional work that should have been included in the fixed fee design work. She notes that the Architects did not expressly advise that it was halting Architect's Directions. In any event, she does not accept that the Architects was entitled to refuse to issue any further Architect's Directions on the basis that the Complainant was refusing to pay for work being done by the Architects

6.165. The Complainant also rely on the evidence of Architect D in relation to this complaint. Architect D considers it is likely that the Complainant was charged for work during the construction phase that should have been carried out under their fixed fee agreement. He considers that their agreement was that the builder would be provided with a construction set of documents. However, the drawings issued to the builder were not a "For Construction" set but were the drawings stamped by the council as the Building Consent approval set, dated 28 October 2014.

6.166. Architect D also refers to the issues with the grids not appearing on the cross sections. He considers that it should have been a simple and straight forward exercise to remedy this issue, but the Architects did not respond to the builder's repeated requests. There were also problems with dimensions and levels that conflicted.

6.167. He considers that the Architects did not respond to the concerns raised by the Complainant and the builder in a timely way and did not fulfil its obligations to the standard of a competent architect at the time.

6.168. The Complainant does not appear to comment on the H1 Energy Efficiency Calculation in her reply. The only comment on this issue is in the report of Architect D. He does not reference the engineering firm report and states, "*This situation took a long time to resolve and caused undue stress to the Complainant who expected an "energy efficient" house*".

Analysis

6.169. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence).[33] While there are no directly equivalent provisions in the old rules to Rules 58 and 58B of the new rules, there is an overriding obligation in section 25(1(c) of the Act, not to practice in a negligent or incompetent manner.

6.170. The IP considers that the Architects have not exercised due care and diligence in the way that it managed the construction phase of the project. The IP also considers that the drawings and specifications prepared by the Architects were not up to the

[33] As set out in the table above, Rule 49 of the pre-1 January 2018 Code is in substance the same as Rule 49(1) of the post 1 January 2018 Code.

standard that would be expected of a competent architect for a complex build of this nature on a difficult site.

Comments on Contract Administration

6.171. With regards project management, a competent architect exercising due care and diligence would:

- Establish and confirm the lines of day-to-day communication between the Architect, the client and the building contractor and others;
- Establish a process for Requests for Information to be issued by the builder and for directions to be issued by the architect, copied to all parties;
- Have an online system for recording and storing documents, including a system for establishing the most up to date version and agreed the changes;
- Have an agreed system for the control and recording of variations;
- Have an agreed timetable of site meetings (with specified agendas) and an agreed form for the recording of site meetings and actioning matters agreed at the site meetings.

6.172. It is apparent to the IP that the Architects took a very informal approach to its communications and information management, particularly during the construction phase.

6.173. Even where it is agreed that the client will take the site meeting minutes (as occurred on this project) and record costs as they are incurred, that does not absolve a Registered Architect of his or her responsibility to oversee and manage the communications and to ensure that decisions taken at and between site meetings are accurately recorded and carried out.

6.174. In the absence of proper site minutes and directions to the contractor it is not possible for this IP to assess whether the Architects reviewed and commented on samples of each work procedure proposed by the builder, or conducted the appropriate level of review of shop drawings and samples. There is no specific evidence that the Architects reviewed critical work components prior to closing–in/finishing or that they reviewed and commented upon finished works as each critical work component was completed.

6.175. The IP accepts that there was a tension between the client's desire to reduce the costs incurred on architectural services during the construction phase and the Architects' ability to adequately manage and oversee the construction phase. However, it is for the architect to explain to the client what is needed (and the time that needs to be incurred) to ensure that documents are managed and properly organised, that plans are updated and that changes are recorded.

6.176. Pursuant to the Agreement for Services entered into in March 2014, the Architects agreed to provide, in Stage 7, Observation of the Contract Works, including regular site visits to level OL3. If the architect is retained to provide contact administration and observation at that level (on an hourly rate basis), then it needs to provide such services. If there is a disagreement as to whether the client will pay for that work, the architect either needs to provide the service (and claim for its fees in the usual way), or, if the client states that they do not accept that they are liable to pay, the architect will need to consider whether to withdraw from the project.

6.177. The architect cannot decide that, because the client is being difficult about what it is prepared to pay for, the architect will provide partial services. In particular, the architect cannot unilaterally decide to halt the issuing of formal directions to the builder and to refuse to complete designs, when they are called for by the builder and the client, where the agreement is for full service.

Comments on the Quality of the Plans

6.178. The house designed for the Complainant is not straight-forward. It is a complicated design with multiple skewed pitched roofs, over an angled floor plan. With a complex design, it is necessary for the architectural drawings to be clear, detailed and consistent, to ensure that what has been designed, can be understood and built on site.

6.179. The IP has considered the "Building Consent" and "For construction" A3 drawings received from the Architects. Both sets of drawings provided to NZRAB are incomplete as they are missing the window and door schedules (A600-606) and internal elevations (A700-A707). Some of the drawings use a scale of 1/25 (there is no consistency), which is not a standard architectural scale.

6.180. The drawings are not straightforward to read and understand. The drawings have a multiplicity of construction information shown over the same drawing which makes them hard to decipher, particularly with the other information on the drawings, both drawn and written. The keynote system (described as the "legend" on sheet A001) is only on the front of the set and, when considering any other drawing, it is necessary to reference back to sheet A001.[34] This approach could probably be used for a simple repetitious build, but in the IP's opinion it is not suitable as a referencing system for a design as complex as the Complainant's project.

6.181. Sheet A001 is incomplete as there are references to manufacturers' information which is not included in any of the drawings or in the specification.

6.182. The order of the drawings is not logical and the drawings are not well coordinated and the assembly information is not integrated with the structural information, which is shown as a series of A4 hand-drawn sketches (from the structural engineer) at the rear of the set. The assembly information lacks the necessary amplification (e.g. dimensions, grids, notations) that are needed to build from – for example the sections lack spring heights which are needed to position the structural steel. There are a number of clashes on the drawings, incorrect referencing to drawings that do not exist, incorrect details or details that cannot be built[35] and over dimensioning.[36] Some of the individual drawings have extraneous or unnecessary information shown on them instead of important information that should be there.[37]

6.183. The dimensions are very cluttered (even at A1 page size) and the dimensions all lack tolerance and the overlay of grids adds additional complexity and confusion.

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[34] The drawings use alpha-numeric symbols with descriptions, quite a few of which are not complete as to finish which makes the set even harder to read.
[35] See the Review Report.
[36] The dimensioning is in some cases incomplete and in some cases there are additional dimensions that are unclear and would have caused confusion and delay on site (as it would have been unclear which dimensions to use).
[37] See the Review Report.

6.184. While there are plumbing plans, no plumbing or drainage schematics have been provided to the IP as part of the plans and the foul water and surface water wastes are not shown on the sections. There are also a number of missing schedule drawings such as sanitary fittings, electrical and tapware.

6.185. The detailing is, at best, schematic which would mean that the builder would be making assumptions about locations and levels in the absence of further confirmation. Key heights and other dimensions are not shown, nor are the grids from the floor plans which are needed to locate and position the details and construction and component items. The details are hard to understand with the remote keynote system.

6.186. The IP concurs with the finding in the Review Report summary that:

> *"…the design is incomplete and does not comply in all areas with the requirements of the NZBC. There are missing, incomplete and conflicting details and information in many areas on the drawings and specification. It is impossible to follow the drawings and specification and construct this building to comply with the NZBC in every area without obtaining significant altered/additional details, clarification and manufacturers information*."

6.187. The IP considers that the building set of drawings produced for the builder to build from were well below the standard that should be met by a competent architect meeting its obligation to act with due care and diligence and it was not possible to build the house without considerable further detail and clarification.

6.188. The IP does not agree with the Architects characterisation as to what the Architects had agreed to provide within Stage 6. The Response states that "*[*the Architects'] *fixed fee contract was for Building Consent documentation and then 13 additional details*". The Response quotes from Architect's obligations under Stage 5 (fixed fee) and then skips to Stage 7 (chargeable on an hourly rate basis). The missing step is Stage 6, under which the Architects agreed to provide on a fixed fee basis "*specific elements not required for a Building Consent application"* including:

> *B: Amendments to the building consent drawings and specifications so that a "For Construction" set of documents for the House Building Contract can be issued to the House Building Contractor. Please note that this "For Construction" set will cover the same aspects detailed for the "Building Consent" set, not interior elevations, cabinetry etc. noted in item C to G below.*[38]

6.189. The Complainant had therefore contracted for the Architects to provide a "For Construction" set of documents to the builder. It was clear that this set of documents would require additional detail and clarifications from the Building Consent set of documents. However, it appears that the Architects sought to charge the Complainant for that additional work when the missing details and the ambiguities in the drawings were pointed out by the builder (and those missing details did not fall within the 13 additional details specified by the Architects).

6.190. The IP also considers that it was not in accordance with the obligations of care and diligence to refuse to issue further Architect's Directions, on the basis that there was a disagreement as to what work was to be paid for as additional work and what work

[38] Letter from the Architects to the Complainant dated 22 March 2014.

was to be included within the fixed fee. In accordance with the obligation of care and diligence, the Architects were (at a minimum) required to consult with the Complainant about whether it would issue further Architect's Directions and to give the Complainant (at a minimum) notification that it would, after a notice period, cease issuing Architect's Directions.

6.191. That would have meant that the Complainant would have been able to make an informed decision as to whether to terminate the contract with the Architects (and retain additional architectural assistance during the build phase). The approach adopted by the Architects meant that the Complainant received only partial assistance from the Architects; but it was not made clear to the Complainant that this is what was occurring.

6.192. As discussed further above, the approach of the Architects of ignoring the Complainant's requests for assistance, refusing to complete missing designs and refusing to remedy existing designs by providing critical information needed to build from, in a timely manner, caused excessive delays and difficulties and meant that the Architects fell well below the care and diligence obligation.

6.193. In relation to the H1 issue, the Architects do not concede that it made any errors in the calculations. It appears that [the engineering firm and the consultants who produced the review report] have reached different conclusions as to the H1 calculation, as the engineering firm worked off as-built information, that was not detailed on the as-built drawings. Using the as-built information means that the building does not fail the H1 requirement in the NZBC.

6.194. Although there is no apparent failure in the finished design, the IP considers that this indicates that the initial design did not specify the required final glazing and that the change was not updated on the drawings (a task that should have been completed by the Architects).

Conclusion

6.195. The IP considers that the Architects have not exercised due care and diligence in the way that it managed the construction phase of the project and that this is a breach of Rule 49 of the pre-1 January 2018 Code of Ethics.

6.196. The IP also considers that the drawings and specifications prepared by the Architects were not up to the standard that would be expected of a competent architect for a complex build of this nature on a difficult site and that this was a breach of section 25(1)(c) of the Registered Architects Act 2005.

(b) Roof and ventilation

Problems with the roof – noise and ventilation

Complaint

6.197. The Complainant complain that there were problems with the roof as it lacked adequate ventilation and that there were problems with noises from the roof.

6.198. When the problems with the noise from the roof were raised in December 2016, the Architects' position was that there were no problems with the roof design. Also, the Architects did not accept that there were any issues with the roof ventilation when that was raised as a concern in the [roofing] report in March 2017.

6.199. The Complainant notes that, in April 2018, their lawyer contacted the Architects and requested urgent completion of the additional ventilation design for the roof. The lawyer provided the summary of the Review Report which stated that the design did not provide adequate ventilation as required by the Building Code.[39] The Complainant notes that inadequate ventilation can lead to a build-up of moisture, causing mould and degradation of building elements. The Complainant notes that the Architects did not respond to their lawyer.

6.200. The complaint is directed at [one of the two Architects]. The Complainant states that the Architect's actions/inaction were deliberate and negligent and that he was in breach of Rules 49(1), 58 and 58B of the Code of Ethics. The Complainant also notes that receiving a Building Consent and Code of Compliance for the build is no defence if the design is non-compliant.

Architects' Response

6.201. The Architects note that the conduct complained of occurred prior to 1 January 2018 and the Code applying prior to 1 January 2018 must be considered. The Architects note that there are no comparable provisions to Rules 58 and 58B in the earlier Code and therefore their conduct can only be assessed against Rule 49 (Care and Diligence).

6.202. In response to the noise issue, the Architects state that it is clear from the roofing report that the fault with the roof noise rests with the roofing manufacturer, the roofing contractors and the building contractors. The Architects note that "*at the time*"[40] the roofing contractor referred to the same issue occurring on at least two other roofs. The Architects note their understanding that the roofing contractors and the building contractors came to a financial agreement with the clients and laid a new roof that is now satisfactory.

6.203. The Architects also rely on the report of Architect C which notes that the issues with the noisy roof were remedied by the roofing manufacturer replacing the Cavibat ventilation strips with castellated plywood. He understands that this was needed due to poor bracket installation and compressing of the Cavibats. He considers that the issue was not with the Architects' documentation, but rather with poor workmanship on the part of the specialist roofing contractor.

6.204. In response to the ventilation issue, the Architects note that there is a ventilation path zone above the ceiling insulation and below the purlins for the flow of air. The Architects note that this may not have been apparent to the roofing consultants as the insulation had not been installed at the time they did their inspection.

6.205. In relation to concerns about a lack of ventilation in the roof over the Laundry to Bedroom 2, the Architects state that soffits were installed by the building contractor in April 2018, after the roofing report and the roof ventilation report were issued. The Architects state that the roof as designed and installed has adequate ventilation for the conditions (being in Auckland) as there is ventilation under the profiled metal, with the loose fitting apron or ridge flashing having a 2 to 5 mm gap per the Metal Roofing Cladding Code of Practice and there is also ventilation at the gutter end of the roofing (through the crests of the profiled metal). There is further ventilation due

[39] In particular, NZBC E3.1 and NZMRWCCop, version 2.2/2012.
[40] It is assumed that this is a reference to the visit of the Architects to the site in December 2016.

to the specification and installation of Cavibats in certain areas and also the soffit vents.

6.206. The Architects note that the potential for moisture build up that has been claimed by the Complainant has not occurred. The Architects also note that the roof design was given Building Consent approval and CCC by the Council, confirming it is compliant with the NZBC.

6.207. In relation to the roof ventilation issue, it is notable that Architect C does not provide any express support for the design approach of the Architects. He simply describes the approach taken by the Architects and comments that the Architects are unaware of any condensation/mould issues evidence on the ceiling surfaces. He notes that if condensation/mould had been an issue, he would have expected it to manifest itself within the first two years of occupation.

Reply - The Complainant

6.208. In her reply, the Complainant acknowledges that the roof noise issue rests with the roofing manufacturer. It appears that the reason she has referred to the roof noise issue is that the roofing manufacturer has refused to replace the roof (and have only made a more limited payment compared to other owners that they have settled with), citing inadequate architect design as a contributing factor. This means that the roof has not been replaced (as claimed by the Architects). The Complainant states that they cannot afford to replace their roof and remedy the ventilation and installation issues.

6.209. The Complainant also refutes the Architects' claims that appropriate soffit vents were specified and installed. She sets out a chronology of correspondence and communications in relation to the need for venting in the soffits and notes that the only ventilation design provided by the Architects was a square drawn on one plan named EV (eaves vent).

6.210. The builder states that the roof framing detail was constructed in accordance with the plans, as best as could be interpreted. He notes that no soffit vents were installed as they were not detailed and were not provided after requests for soffit vent sizing and frequency. Architect D notes that future damage to the roof structure, due to inadequate ventilation, may not become apparent for many years.

Analysis

6.211. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence).[41] While there are no directly equivalent provisions in the old rules to Rules 58 and 58B in the new rules, there is an overriding obligation in section 25(1(c) of the Act, not to practice in a negligent or incompetent manner.

6.212. It does not appear that the Complainant is arguing that the problems with the roof noises are due to failings by the Architects (that was the indication in the Complaint as initially filed). The IP does not consider, based on the information provided by the

[41] As set out in the table above, Rule 49 of the pre 1 January 2018 Code is in substance the same as Rule 49(1) of the post 1 January 2018 Code.

Complainant, that the Architects can be held responsible for the refusal of the roofing manufacturer and installer to replace the roof.[42]

6.213. With regards the ventilation issue, it is apparent that the Architects concede that vents are required in the soffits of the main roof to ensure adequate ventilation. The Architects' response is deliberately obtuse as to whether the design, as provided to the builder, originally provided for soffit vents to be installed. This IP accepts the evidence of the builder that the design did not include provision for soffit vents to be installed (and it should have) and that the Architects refused to provide the necessary details for construction of the vents, when the issue was raised with them.

Conclusion

6.214. The IP considers that the Architects breached Rule 49 of the pre-1 January 2018 Code of Ethics as the Architects showed a lack of care and diligence in the roof design by failing to include soffit vents and the Architects compounded these errors by refusing to provide amended designs when the lack of ventilation (and the need for soffit vents) was noted by the builder.

(c) Front Door

Complaint

6.215. The Complainant complains that at a meeting on 16 December 2016, they asked the Architects why the design for the front door area had not been completed in the two years since the Building Consent had been approved (the completion of the design would need to deal with the structural and weather tightness concerns that had been raised by the Builder and the Council). The Complainant says that [one of the Architect's] stated he would not complete the design. The design of the front door was finally completed by [the other Architect] in February 2018.

6.216. The Complainant states that this is a breach, by [one of the Architects], of Rule 49(1) of the Code of Ethics.

Architects' Response

6.217. The Architects note that the conduct complained of occurred prior to 1 January 2018 and the Code applying prior to 1 January 2018 must be considered, therefore the relevant provision is Rule 49.

6.218. The Architects' position is that details of this door were outside the Architects fixed fee brief and the Complainant refused to pay for the additional design required for the sill, jamb and head details of this door. However, ultimately the Architects did provide the design (once details were received from the manufacturer).

Reply – The Complainant

6.219. The Complainant confirms her complaint that the design of the front door was incomplete and inadequate structurally and in regard to water tightness. The failure

[42] There is insufficient evidence to establish that the roofing contractor has only provided a limited settlement payment to the Complainant, due to concerns about the design of the roof.

to complete the design (for 3 ½ years after Building Consent was obtained) led to increased build costs to resolve the issue and meant that the Complainant did not have a proper front door for two months after they moved in.

6.220. The Complainant sets out a summary of the communications and correspondence between the builder and the Architects about the further detail needed from the Architects for the door manufacturer and for the Council.

6.221. The Complainant rejects the suggestion that the design of the front door was outside the Architects brief, noting that it is in every door and window schedule. She also notes that she paid extra for the entry threshold design work on 26 and 28 February 2018.

6.222. The builder notes that the original plans showed the front door opening outwards with no sill. He notes that this was changed at some point as it seemed odd to have the front door opening outwards. The change to opening inwards meant that the weather tightness bar could not be installed and there would need to be a change to allow the door to clear the carpets on the inside. The builder also wanted further information as to the door lintel and how the door would connect to the concrete panel. As it was ultimately not possible to obtain those details from the Architects, the door manufacturer "*constructed a complete unit with hardwood sill to comply with the building code and adhere to the drawn flashing details*".[43]

6.223. Architect D notes that the drawings for the front door are in conflict, with the main floor plan showing the door opening inwards and the detail on sheet A507 showing the door opening outwards. He notes that the Architects failed to respond to the issues raised by the builder in August 2016 (seeking details for the door) and by the Council in March 2018 (raising a water ingress issue).

Analysis

6.224. The IP confirms that, as stated by the Architects, the applicable Code of Ethics is that applying prior to 1 January 2018. The IP must therefore assess whether the Architects have acted in breach of Rule 49 of the pre-1 January 2018 Code (as to performing professional work with due care and diligence).

6.225. The IP does not accept that the design of the door was outside of the Architects' fixed fee brief. The Architects should have detailed the door as part of the fixed fee. As noted by the Complainant (and as is standard in a house design) the front door was included in the door and window schedule. The IP accepts the builder's evidence that the door was initially designed as opening outwards. As noted by the builder, that is an unusual design for a front door and changing it to opening inwards could be viewed as correcting a design error.

6.226. The evidence is consistent that the Architects failed to engage in a timely manner with regards to completing the design and detailing of the front door and dealing with the water tightness concerns raised by the Council.

Conclusion

6.227. The IP considers that the Architects did not act with due care and diligence in relation to the front door issues, in particular, in relation to the failure to respond to the

[43] Builder Statement, page 5.

requests to provide detailing for the door and was therefore in breach of Rule 49 of the pre-1 January 2018 Code of Ethics

Complaint 4 – Post Construction – Refusal to sign Practical Completion and Defects Certificate

Complaint

6.228. The Complainant complain that, in breach of Rules 47, 49 and 58B, the Architects refused to sign the Practical Completion and Defects Certificates for their new home.

6.229. The Complainant state that the builder sent the Architects the "*Contractor's advice of achieving Practical Completion*" on 3 May 2018. He also spoke to [one of the Architects] who stated that she would sign the Practical Completion certificate, after checking with [the other Architect]. However, [the first Architect refused to sign the Practical Completion certificate. The Architects' stated that this refusal was on the basis of advice from the NZIA.

6.230. The Complainant say that this advice from the NZIA was based on the misunderstanding that the Architects were not commissioned to (and did not) undertake full observation and that they were only allowed on site by client invitation. The Complainant's position is that the contract with the Architects was for full observation during the construction phase. They say that this is what was in the contract and this was not changed. Nor were there ever any complaints from the Architects that they had access issues.

6.231. The Complainant say that, in accordance with their contract with the Architects, the Architects are obliged to sign the Practical Completion and Defects Liability certificates.

Architects' Response

6.232. The Architects note that while the refusal to issue an unqualified Practical Completion Certificate occurred post 1 January 2018, the actions leading to this refusal commenced and mainly occurred prior to 1 January 2018 and therefore the Code applying prior to 1 January 2018 must be considered with the relevant provisions being Rules 49 and 54.

6.233. The Architects' position is that, on a project of this nature and duration, approximately 98 site visits should have occurred. As discussed with the Complainant in December 2015, the proposal was that fortnightly site visits would be appropriate. However, the Complainant (who had decided to take on the role of Project Manager) chose to limit the Architects' site observation as a cost saving measure. The Architects say that while the original contract contemplated that they would issue a Practical Completion certificate, the Complainant elected to reduce their on-site role during construction significantly below that originally contemplated, in an effort to reduce costs. Site visits were limited to those called for by the Complainant and attendances to consider specific items as requested by the Complainant or the builder.

6.234. The Architects say that there were only 20 sanctioned site meetings during the construction period (they say that the construction period was 32 months)[44] and 13

[44] We note that for six months (from mid January 2016 to the middle of 2016) no actual construction of the house was occurring. The builder states that the actual build was from mid 2016 to the end of 2017, Builder Statement, page 2.

visits to discuss specific issues that the builder had highlighted and 3 defects inspections at the end of the project (observable surface inspections). This reduction in site meetings meant that the Architects considered they had inadequate knowledge of the on-site construction to be able to certify practical completion. The Architects note that they offered (in a letter dated 13 September 2018) to sign a Practical Completion certificate in a more limited form, customised to the extent of the observation it had been allowed to undertake, referring to "*limited periodic construction observation services*". However, the Complainant did not respond to this offer.

6.235. Architect C accepts the assumption that 98 site visits would have been expected for a full service observation on this project. He notes that there were only 33 site visits and that the Architects role in financial administration was also eliminated. Architect C states that, in his view, the offer of a limited Practical Completion certificate was the only competent thing for the Architects to do in these circumstances.

6.236. The Architects also noted that it was not prepared to sign off on the Defects List as there remained two items (re hot water pressure in the second bathroom and a crack in the gallery ceiling) that needed to be dealt with. The Architects note that on 3 December 2018, the builder advised by email that the property had passed its final inspection and that the Complainant had applied for a Code Compliance Certificate. The Architects therefore did not consider that it was necessary for it to expose itself to unwarranted risk by signing an unqualified completion certificate in circumstances where it had not undertaken its usual extent of observation on all aspects of construction.

Reply – The Complainant

6.237. The Complainant does not accept that there was any change from the agreed contractual arrangement that the Architects would provide full observation. She notes that the builder considered that Full Observation was carried out by the Architects and he was unaware of any changes to the contract. She notes that it was still the Architects' position that they were doing full observation in its email to the Complainant in December 2016.

6.238. Architect D notes that it is possible for parties to modify the observation role of the architect under their contract. However, if this occurred and the Architects had felt that this was going to compromise them providing the Practical Completion certificate, then they should have said so at the time. (It appears that he does not accept that there was a modification of full observation as, he notes that if it is assumed that the construction period was 18 months, which equates to 72 weeks - then a fortnightly visit would be 36 visits and the Architects did 38 visits.) He considers that subsequently refusing to provide a Practical Completion certificate is a breach of contract. The same applies to the Defects Liability certificate.

6.239. The builder notes that the construction period was from mid-2106 to the end of 2017 (he does not include the period of "*getting out of the ground*"). In 2018, they were installing the cabinetry and sealing the floors. The work that remained to be done was the front door entry (which also delayed the internal doors), the Corten Steel façade, and guttering/soffits.

6.240. The builder states that the Architectural Graduate and/or [one of the Architects] came on site regularly (especially through concrete work, framing and closing in) for architects' observation. The builder walked over the site with the Architects' site representatives, looking at what had been done and discussing the work ahead. He

spoke with the architects weekly, sometimes daily, so he believes that they always knew his schedule. He notes that he was not informed that there was any change to the observation contract.

6.241. With regards to the Complainant's involvement in project management, he considers that she simply helped with administration and with the QS spreadsheet. He runs his own builds and either he or his foreman are always on site and he considered that he was the manager of the construction aspects of the project.

6.242. In relation to the defects certificate, the Complainant notes that the Architects did not notify that its refusal to sign the Defects Certificate was due to two minor items. She notes that the builder is submitting a statement and is requesting that the Architects sign his Defects Certificate.

6.243. The builder notes that the Architects did not advise that there were two small items on the Defects list that meant that they were not prepared to sign the Defects Certificate. He notes that the hot water pressure issue has been fixed. The small crack in the gallery ceiling (that the Complainant have decided to live with) is not due to a building defect, it is due to the lack of control joints in the design. The builder considers that the Architects should sign the Practical Completion and the Defects Certificate so that his company can be certain it has fulfilled its contractual obligations to the Complainant.

Analysis

6.244. The IP confirms that as most of the conduct complained of occurred prior to 1 January 2018, it is appropriate to assess the Architects' conduct against Rules 49 and 54 of the earlier version of the Rules. However, from 1 January 2018 onwards, the Architects were also subject to the client communication obligations in Rule 58B of the revised rules, including the obligation to advise the client in a timely manner of any significant issues that arise, or are identified, at any time during the commission.

6.245. Both parties accept that the applicable contract setting out the Architects' obligations during the construction period, was that entered into in March 2014 and that the contract provided for the Architects to provide Full Observation and to issue a Practical Completion certificate at the end of the project. The Architects position is that although the contract provided for full observation, in reality they were not allowed to undertake full observation as the Complainant curtailed their site visits and made them seek permission to visit the site, which led to a *de facto* amendment to the agreement, so that it was the changed to partial observation.

6.246. The parties have different views as to how many site visits would be needed for full observation, with the Architects suggesting 98 visits were required (supported by Architect C and the Complainant considering that the 38 site visits that occurred were sufficient to allow full observation.

6.247. The IP considers that the period during which site meetings should have been occurring on a fortnightly basis (being the period agreed between the parties and based on the standard practice within the industry) was once the build was "*out of the ground*" as referred to by the builder. This was in about mid-2016. At that point, the Architectural Graduate advised the Complainant (by email dated 3 June 2016) that site visits should occur fortnightly. By email on 12 August 2016, she raised her concern with the Complainant that fortnightly meetings were not happening. The

Complainant replied on 14 August 2016, setting out her concerns about the cost of unnecessary meetings.

6.248. The Architectural Graduate, in an email dated 15 August 2016 (entirely appropriately) explained to the Complainant the importance of having regular site meetings from that point forward (as the project was moving beyond the groundworks stage to the house construction stage). She also noted that if the parties were to move to a more limited arrangement, that would have to be documented and agreed.

6.249. The IP accepts that there were a number of difficult communications with the Complainant during the construction phase about who was needed at site meetings and the extent to which input from the Architects was an additional the charge to be paid on hourly rate basis (being management of the project and dealing with issues arising on site) or input that should have been included within the earlier fixed fee stages (being input to correct errors and ambiguities and missing details in the plans that had been supplied).

6.250. The Architects have not identified any documentation or correspondence where it advised the Complainant that it considered that the contract was moving to partial observation and inviting the Complainant to allow additional site visits (or, in the alternative, to amend the contract to partial observation). The possibility that this might occur was raised in the Architectural Graduate's email of 15 August 2016 and the Complainant agreed to more regular site visits. From the perspective of the Complainant, the contract was as signed in March 2014.

6.251. There was a proposal from the Architects in December 2016 to move to a monthly fee (which, if accepted, might have reduced the disputes about what was within the fixed fee for and what was not). However, that proposal was not accepted by the Complainant and the terms of the contract signed in March 2014 continued to apply.

6.252. The IP considers that the Architects committed to providing Full Observation in the contract entered into in March 2014. The Architects failure to provide a Practical Completion certificate on the basis that it had not been able to carry out the necessary number of site visits and had not been able to inspect the closing-in of various elements of the work demonstrates a failure to exercise care and diligence in the provision of services to the Complainant. If the Architects considered that the contract was moving to partial observation due to the actions of the Complainant and the builder, then the Architects had a duty to raise that with the Complainant and explain the consequences. It is not reasonable to reach the end of a project and then raise complaints about lack of access.

6.253. The IP considers that the advice from representatives of the NZIA was not based on a correct understanding of the contractual arrangements entered into between the parties and that advice is therefore not relevant to the IP's analysis of the complaint.

Conclusion

6.254. The IP acknowledges that during the construction phase of this project there were difficulties and disagreements as to what was within the scope of the fixed fee work and what the Architects could charge for on an hourly basis. Those difficulties and disagreements may have meant that the Architects did not attend the site and inspect the works as often as they may have wanted to, on a normal full observation contract.

6.255. However, the agreement with the Complainant, as entered into in March 2014, was that the Architects would provide full observation. That contract was not amended or terminated. The Architects were therefore obliged to provide observation to the level that had been agreed.

6.256. It was a breach of section 25(1)(c) of the Registered Architects Act 2005 and Rule 49 of the pre-1 January 2018 Code of Ethics to only provide partial observation (and to refuse to sign a Practical Completion certificate) when the contract provided for Full Observation.

Internal Stairs

Complaint

6.257. In the section of the Complaint that queries "*What impact have these events had on you?*", the Complaint raises a concern about the "*internal stairs*" and states that they are unsafe and non-compliant and that they do not comply with the Complainant's design request. The Complainant states that they asked to have lower riser height and greater tread depth than the standard council requirements, due to mobility concerns.

6.258. The Complainant notes that the Architects measured the stairs in their existing house and confirmed that this request would be incorporated into the design. However, this requirement was not met. The stairs were redesigned due to an initial non-compliant side-winder design, and that redesign resulted in the stairs being less than the minimum recommendation in the Acceptable Solutions to the NZBC. This is confirmed in the Review Report which also notes an incorrect design of the handrail. The Complaint notes that the stairs are used multiple time on a daily basis and the Complainant considers them to be unsafe due to their steepness.

6.259. The Complaint does not identify which Rules of the Code of Ethics (or sections of the Act) the Complainant say have been breached by the Architects in relation to the internal stairs.

Architects' Response

6.260. The response of the Architects is less than clear. The Architects note that they were advised by the Complainant that the downstairs area, referred to as "*[the] Pod*" would mainly be used by the Complainant's husband and the Complainant would go down there infrequently due to her [health conditions].

6.261. The Architects appear to state that, in any event, the internal stairs as originally designed would have met the Complainants requirements as to not being too steep. However, a building inspector did not accept the design of the stairs (in particular the winders) and the stairs had to be redesigned. This was prior to the stairs being fabricated, but after the building enclosure was completed. The redesigned stair therefore had a riser height of 201mm and tread length of 250 mm, giving a 203 mm going.[45] The Architects note that the higher riser was necessary to "*pass below the concrete slab floor above at the stair 'pinch point'* ".

6.262. The Architects note that the stairs in the existing house (as calculated from the 1993 drawings) had risers of 178 mm, goings of 258 mm and treads of 278 mm.

[45] The going is the depth from the front to the back of the tread of a step, less any overlap with the next tread above.

6.263. The Architects' position is that the stair complies with the NZBC as it is a "Minor Private Stair" which allows a maximum riser height of 220 mm and a minimum tread length of 220 mm.

6.264. With regards the handrail, the Architects appear to accept that the handrail is set 5 mm closer to the wall than the allowable measurements. However, the Architects note that the handrail was accepted on-site by the building inspector and a CCC was granted for the house.

Reply – The Complainant

6.265. The Complainant does not accept that the downstairs area was only for her husband. She notes that she asked for the stairs to be less steep than the stairs in their existing house (which she confirms have been measured at 180 riser and 280 tread).

6.266. The Complainant also notes that the addition of the sidewinder which was included in the Building Consent drawings (which was rejected on-site by the building inspector) was changed from the drawings approved by the Complainant in July 2014, without the Complainant's knowledge.

6.267. She also rejects the suggestion that these can be defined as a "*minor private stair*" as they are used frequently to access the downstairs rooms, one of which is a living room.

6.268. The builder notes that he passed on the concern of the building inspector to the Architects (which related to the relation of the first stair to the door opening) and left it to the Architects to rectify or discuss with the Council.

6.269. Architect D considers that the stairs as built are not fit for purpose (being too steep) and are in breach of the Complainant's instructions.

Analysis

6.270. It appears to be accepted that the Complainant wanted any internal stairs in their house to be less steep than those in their existing house. Whether or not the stairs (as built) were accepted by a building inspector or comply with a particular provision of the Building Code is therefore not the issue. It is clear that the stairs are steeper than had initially been agreed. This issue was raised by the Complainant's lawyer (on instruction from the Complainant) in a letter dated 13 February 2017[46] where he states: "*I am told that it has transpired that the design for the internal stairs are non-compliant and have to be re-drawn*".

6.271. The stairs were then redesigned by the Architects, but did not take into account the Complainant's expressed requirement for the stairs not to be steeper than the stairs in their existing house.

Conclusion

6.272. The IP agrees with Architect D's conclusion that the stairs are in breach of the Complainant's instructions, being steeper than the stairs in the existing house. This

[46] Part of Attachment to the further information provided by the Complainant on 12 March 2021; the letter is misdated 13 February 2016.

showed a lack of due care and diligence, in breach of Rule 49 of the Code of Ethics applying prior to 1 January 2018.

Issue re Driveway/Garage Access

Complaint

6.273. In the section of the Complaint that queries "*What impact have these events had on you?*", the Complaint raises a concern about access in and out of the garage and the turning circle. The Complaint notes that the driveway is 100m long and is steep and winding and the Complainant therefore wanted generous access, parking and turning spaces as it is difficult to back down the driveway. The Complainant asked that their cars be measured. They note that the Architects confirmed that this request would be accommodated in the design and advised that the design was compliant.[47]

6.274. However, the Complainant says that the design infringes the vehicle manoeuvring control (Rule 12.8.1.3) of the District Plan with a 5.4m space (which is less than the District Plan requirement of 5.9m) and takes three manoeuvres for a small car to exit the garage and the property in a forward direction. It is only possible to park one car (not two) if they want to use the turning circle and larger cars/delivery vans have to back into the neighbour's property or back down the drive.

6.275. The Complaint does not identify which Rules of the Code (or sections of the Act) the Complainant say have been breached by the Architects in relation to the garage access issue.

Architects' Response

6.276. The Architects note that the space on site is limited and the Complainant requirements for the house took up a great deal of the available space, making car manoeuvring space limited. The final design was approved by the Complainant and was a balance between the space needed for the house and manoeuvring space.

6.277. The Architects note that the Resource Consent clearly states that the garage access is restricted and that multiple manoeuvres will be required. The Architects say that the Complainant was aware of this and it was discussed and agreed during the design phases. The Architects also note that the door was widened during the construction phase from 4.8m to 5.2m to assist manoeuvring.

6.278. The Architects also suggest that blockwork walls (that the Architects had no control over) on the edge of the property may affect the turning space. The Architects also suggest that when the property was subdivided, it may have been appropriate to seek a right of way to turn on the original property.

6.279. Architect C, in support of the Architects, notes that the Resource Consent refers to the need to undertake several manoeuvres to exit the garage and driveway and this was seen to be reasonable given the available space. Architect C suggests that the Complainant should have raised this with the Architects at the time. He also refers to the potential issue with the blockwork walls.

Reply – The Complainant

[47] Emails from the Architects dated 20 and 21 May 2014.

6.280. The Complainant rejects the suggestion that this was a question of a trade-off between the size of the house and the manoeuvring space. The Complainant had not asked for such a large house, they had asked for manoeuvring space. She states that by the time the Resource Consent was granted in July 2014, the Complainant were unable to do anything to resolve the situation. She also notes that there are no "*blockwork walls*" affecting the turning space as claimed by the Architects.

Analysis

6.281. The desire to having sufficient turning space was a clear and expressed requirement of the Complainant. It was raised right at the outset of the project. After the first meeting, the Complainant sent an email (dated 17 August 2013) and commented on the concept plans that the "*Garage is too tight on boundary side.*" She noted that they wanted plenty of room to back out and turn from the side nearest the boundary.

6.282. The IP notes that the vehicle tracking curves are only shown on the small scale A100 A drawing (prepared in or about March 2014) and show tight manoeuvring into and out of both sides of the garage. They are not shown on the larger scale A211A drawing; if they had been shown on that drawing, that may have alerted the Complainant to the fact that there was limited manoeuvring space.

6.283. The issue of the garage and turning space was addressed by the Architectural Graduate in an email to the Complainant on 20 May 2014. She stated that she, "*Forgot to mention the cars shown on the site plan are huge (90% size, 5.5m long) so will fit much more easily than they appear on the plan*".

6.284. There is no indication that the fact that there would be reduced manoeuvring space and that several vehicle manoeuvres would be required (and that parks outside the garage could not both be used) was made apparent to the Complainant prior to obtaining the Resource Consent. Even once the Resource Consent was obtained, the Architects did not specifically point out to the Complainant that the manoeuvring space had been compromised due to the size of the house.

6.285. By the time the Resource Consent was obtained in July 2014, the Developed Design was complete and the Building Consent drawings were well underway. As discussed above, the Architects seemed to be fixed on the floor plan and design that it had prepared. The Architects failed to acknowledge that a redesign was needed (to allow for the budget to be achieved and to achieve other aims such as the manoeuvring space outside the garage).

Conclusions

6.286. The IP notes that the Complainant asked, right from the outset, for sufficient car parking and turning space to be incorporated in the design. The IP considers that the failure to allow for the manoeuvring space requested by the Complainant, was another failure on the part of the Architects to exercise due care and diligence, in breach of Rule 49 of the Code of Ethics applying prior to 1 January 2018.

Additional Items adding cost to the Project

6.287. As noted above, the Complainant also listed 17 items (in response to a query from the IP) that were said to be examples of drawing and design failures that needed to be changed or remedied on site and which led to increased build time and cost to the Complainant.

6.288. The 17 items listed were as follows:

1. Lower level external door on eastern side moved to northern side;
2. Brivis under floor heating;
3. External steps from western aspect deck
4. Cor-ten rain façade over pod;
5. Ensuite skylight;
6. Front Door;
7. Dining room ceiling;
8. Final Floor Levels;
9. Floorboards changed from batten fixing to concrete;
10. Design changes to precast panels;
11. Non compliant roof/ventilation design;
12. Aluminium joinery;
13. Non compliant alpine stone ;
14. Specified Living Flame fireplace not fit for purpose;
15. Internal stairs;
16. Non compliant downlights;
17. Client requested design changes.

6.289. Items 6, 11 and 15 have already been considered above. Item 17 does not appear to be a reference to changes caused by failures of the Architects.[48]

6.290. The IP notes that in her Reply dated 12 March 2021, the Complainant has added two additional items, being (18) "*Redesign to window areas*" and (19) "*Fence southern boundary*". The IP notes that Architects have not had an opportunity to respond to these additional complaints. They have therefore not been considered by the IP.

6.291. The IP has considered the detailed changes between the parties as to where fault lies in relation to the remaining listed items.

6.292. The IP has concluded (particularly under heading 3(a) above – Quality of the plans/Contract Administration) that there were failings and breaches of the obligations in the Code of Ethics, on the part of the Architects. As it is not within the remit of powers of this IP to determine whether compensation is due to the Complainant for those failings, the IP has not sought to determine where fault lies in relation to each of the "*additional cost*" items listed by the Complainant.

6.293. However, the information provided by the Complainant (and the responses of Architects) add to the picture of designs that:

- Did not take into account (or had not ascertained) the product manufacturers specifications (ensuite sky-light, Corten steel rain façade);
- Did not conform to health and safety requirements (the external stairs from the deck);
- Did not take into account the site conditions (the lower level external door);
- Did not conform to standard industry practices (floorboard fixings, skillion roof ventilation); and

[48] It is not clear whether the Complainant are suggesting that the increased build time and costs due to "client requested design changes" are attributable to the Architects. In the reply of the Complainant filed on 12 March 2021, this complaint is redefined as a complaint about the "*Redesign of downpipes, rainheads and guttering*". The IP notes that the Architects have not had an opportunity to respond to this additional complaint. It has not been considered by the IP.

- Were insufficiently detailed (flooring levels).

7 Conclusion

The IP has decided to include in its report a recommendation to the Board of NZRAB under rule 66 (2) that there are grounds for disciplining the Architects under section 25 of the Act in relation to breaches of:

- Rule 49 (A registered architect must perform his or her professional work with due care and diligence) in relation to:
    - Complaint 2(b) – Budget and Design
    - Complaint 3(a) – Quality of Plans and Contract Administration
    - Complaint 3(b) – Roof and Ventilation
    - Complaint 3(c) – The Front Door
    - The Internal Stair Issue
    - The Driveway/Garage Access Issue

- Section 25(1)(c) (practising as a registered architect in a negligent or incompetent manner) in relation to:
    - Complaint 3(a) – Quality of Plans and Contract Administration
    - Complaint 4 – The Refusal to sign the Practical Completion and Defects Certificate

The original, full IP report was signed by the IP Chair on 2 July 2021.