

ANONYMISED VERSION

BEFORE THE NEW ZEALAND REGISTERED ARCHITECTS BOARD (NZRAB)

IN THE MATTER of the New Zealand Registered Architects Act 2005 (“Act”)

BETWEEN The New Zealand Registered Architects Board

AND Deletion

DATE OF HEARING: 11 June 2020

VENUE: By Zoom video conference

BOARD MEMBERS PRESENT FOR THE DISCIPLINARY HEARING:

- Louise Wright (Chair)
- Murali Bhaskar
- Kimberly Browne
- Rob Hall

The Board members above form a quorum in accordance with section 29 of the Schedule to the Registered Architects Act 2005.

COUNSEL FOR THE BOARD: Matthew McClelland QC

COUNSEL FOR THE ARCHITECT: Sarah-Jane Telford

LEGAL ASSESSOR TO DISCIPLINARY HEARING: Terry Sissons

OTHER PERSONS PRESENT:

- Andrew Symonds (Clerk of the Hearing and Executive Officer New Zealand Registered Architects Board)
- Helen Hoffman (Stenographer)
- Deletion and Deletion

RELEVANT SECTIONS OF THE REGISTERED ARCHITECTS ACT 2005:

Sections 24 - 26

RELEVANT RULES OF THE REGISTERED ARCHITECTS RULES 2006:

Rule 49

DETERMINATION OF THE BOARD

THE COMPLAINT

1. At a hearing of the Board conducted on 11 June 2020, Deletion of XX Architects Limited admitted a charge that he failed to perform his professional work with due care and diligence in breach of Rule 49 of the Code of Minimum Standards of Ethical Conduct for Registered Architects and practised as a registered architect in a negligent or incompetent manner.
2. The notice of complaint alleged that during the period 2014 - 2015 Deletion, registered architect, provided architectural services to A Deletion ("the Clients") for building alterations and extension at a residential home at No X Y Road, W("the Project") in breach of Rule 49 of the Code of Minimum Standards of Ethical Conduct for Registered Architects ("the Code") and/or section 25(1)(c) of the Registered Architects Act 2005 ("the Act") in that he:

The Builder's guarantee

- 2.1 On 8 August 2014 Deletion and the clients executed NZIA Agreement for Architect's Services (AAS 2013 2nd edition short form) ("the Agreement") which provided, inter alia, that Deletion was engaged to provide general contract administration and observation (Stage B7, Contract Administration and Observation).
- 2.2 It was a term of the construction contract between T Builders Ltd and the Clients ("Construction Contract") that the Builder would provide a Master Build Services Ltd 7 Year Guarantee (clause 3.1.18 of the Construction Contract), a Registered Certified Builder Guarantee (clause 3.1.19) and a Weathertightness and Watertightness Warranty (clause 3.1.21).
- 2.3 Deletion failed to ensure or take reasonable steps to ensure that the guarantees specified in the Construction Contract documents were available to the clients with the result that no builder's guarantee was made available to the Clients.

Such conduct being in breach of Rule 49 or, in the alternative, section 25(1)(c) of the Act.

Written brief and review

- 2.4 The Agreement provided that the Clients would provide a statement of brief (Stage B1 - Pre-Design) and that Deletion would review that brief with the Clients (Stage B2 - Concept Design), review that brief with the Clients and update as required (Stages B3 - Preliminary Design, B4 - Developed Design and B5 - Detailed Design and

Occupation), but Deletion:

- (a) failed to obtain a written brief from the Clients; and/or
- (b) failed to take detailed notes or minutes from the meetings with the Clients at the commencement of the project; and/or
- (c) in the absence of a written brief and detailed notes or minutes from the meetings with the Clients, relied on sketch design drawings; and/or
- (d) failed to review and update the brief at each stage of the project as required by the Agreement

Such conduct being in breach of Rule 49 of the Code or, in the alternative, in breach of section 25(1)(c) of the Act.

Project administration and observation

2.5 The Agreement provided inter alia:

- (a) *“Observation: the process of visiting the site at intervals agreed with the client, to observe the Contract Works have generally been built in accordance with the architect’s documents”;*
- (b) *“Administration: the management by the architect of the construction contact between the client and the contractor, on behalf of the client, including issuing instructions and variations as required”;*
- (c) *“Observation is a critical part of the architect’s service and is required to complement site supervision undertaken on a continuous basis by the contractor”.*

2.6 The Construction Contract provided at clause 3.1.34:

- (a) *“Site meetings: hold site meetings when required by the owner. The contractor’s representative and site supervisor to attend such meetings. Inform subcontractors and others when their presence is required. Meetings will normally be held: fortnightly”.*

2.7 Deletion failed:

- (a) to make detailed formal site observation records;
- (b) to carry out any site observation for an approximately five month period;
- (c) To complete formal site administration process including site directions, variation orders, site meeting minutes and other formal site communications as required under the Construction Contract;
- (d) when assessing payment claims, failed to carry out a visit to the site to check on progress.

Such conduct being in breach of Rule 49 of the Code or, in the alternative, in breach of section 25(1)(c) of the Act.

Tender process

- 2.8 Failed to follow the client's instructions to put the proposed building works out to competitive tender with more than one builder.
- 2.9 Recommended to the Clients that they accept the tender from T Builders Ltd ("the Builder") and in doing so either:
- (a) failed to disclose to his clients circumstances that created or could be construed as creating a conflict of interest of interest;
 - (b) failed to exercise unprejudiced and/or unbiased judgement.

Such conduct being in breach of Rule 49 of the Code or, in the alternative, in breach of section 25(1)(c) of the Act.

THE EVIDENCE

3. The agreed summary of evidence produced at the hearing records that the Clients engaged Deletion to provide architectural services for building alterations and extensions to their residential home at No X Y Road, W ("the Property"). They entered into a formal Agreement for Architect's Services (AAS 2013 2nd edition, short form) on 8 August 2014 ("the Agreement") which provided that Deletion would undertake full architectural services including: preliminary design; developed design; detailed design and documentation; contract procurement; and contract administration and observation.
4. The Clients spent time living between New Zealand and France and were in France from late April to mid-October 2014. Before departing for France, they had several meetings with Deletion to discuss the project. Deletion prepared preliminary sketch drawings which he showed to the Clients. The Clients' initial instructions to Deletion were "*verbal and very detailed*". However, Deletion failed to retain notes or minutes from the meetings with the Clients at the commencement of the project. Deletion did prepare preliminary sketch drawings which he showed to the Clients, who approved them.
5. Deletion then prepared the design and documentation and applied for the building consent, but he did not receive from the Clients a Statement of Brief nor did he provide a written return brief.
6. Under the Agreement (Stage B1 - Pre-Design; clause D2.1) the clients were required to provide a Statement of Brief including budget and time schedule. The "*Brief*" is defined in the Agreement as "*the written statement by the client summarising their expressed requirements, preferences and priorities, in sufficient detail for the architect to carry out the Agreed Services*".

7. The Agreement provided that at Stage B2 - Concept Design, Deletion would review the Brief with the Clients. This did not occur. The Agreement also provided that Deletion would review the Brief with the Clients and update that Brief as required at Stages B3 - Preliminary Design, B4 - Developed Design and BS - Detailed Design and Occupation, but this did not occur.
8. Part B - Scope of Services provided at Stage B6 - Contractor Procurement, that Deletion as architect would prepare documents for submission for tender and that *“at the end of this stage negotiations can be entered into to select a contractor”*. Pursuant to this term Deletion was required to undertake tenderers pre-selection and issue notices to tenderers, receive tenders and make recommendations to the Clients.
9. The Clients instructed Deletion that, in accordance with the terms of the Agreement, the project be put out to competitive tender. This did not occur. Rather, Deletion only provided the tender documents to T Builders Ltd to price. No other tenders were sought by Deletion.
10. T Builders provided Deletion with a price. T Builders Ltd's price for the contract works was \$498,960.00 (inclusive of GST).
11. The Clients were in France at the time that Deletion selected the contractor T Builders Ltd. There was no discussion between the Clients and Deletion as to why the tender documents were only provided to one contractor, or why they should only be provided to T Builders Ltd. The Clients believe that Deletion was insistent that T Builders Ltd was the company that should be engaged to carry out the project works and felt that Deletion *“manoeuvred”* them so that they would engage T Builders Ltd.
12. The Clients signed the construction contract with T Builders Ltd when they were in France and posted it back to Deletion, at the same time noting their surprise that there had only been one tender sought.
13. Under the terms of the Agreement Deletion was engaged to provide general contract administration and observation (Stage B7 - Contract Administration and Observation). Clause D18 of the Agreement defines *“administration”* as:

“The management by the Architect of the construction contract between the Client and the Contractor, on behalf of the Client, including issuing instructions and variations as requested”.
14. *“Observation”* is defined in clause D18 of the Agreement as being:

'The process of visiting the site at intervals agreed with the Client to observe that the Contract Works have generally been built in accordance with the Architect's documents'.

15. Stage B7 - Contract Administration and Observation records:

"Administration of the construction contract is undertaken by the Architect and this usually includes Observation of the contract works to verify that the construction is generally in accordance with the Architect's documents.

*Observation is a **critical** part of the Architect's service and is required to complement site supervision undertaken on a continuous basis by the contractor".*

16. Clause 3.1.34 of the Construction Contract provided:

Site meetings: hold site meetings when required by the owner. The contractor's represented and site supervisor to attend such meetings. Inform subcontractors and others when their presence is required. Meetings will normally be held fortnightly".

17. Stage B7.3 provides:

"Contract Observation: undertake as required/agreed. Materials - review for general compliance with materials listed. Work - review for general compliance with Architect's documents ..."

18. Deletion made site visits at approximately 2 - 3 weekly intervals from September 2014 to 13 November 2014. He took photographs of the construction work at 19 September 2014, 15 October 2014 and 13 November 2014 which showed the alteration at the stage of up to being framed and partially clad.

19. There is no evidence of site visits or records from 13 November 2014 until 14 April 2015 when the construction was near completion. Deletion did see the clients on Thursday 15 January 2015.

20. The site observation records taken by Deletion were informal and comprised of limited notations and some site photos. There were little formal site administration processes including site directions, variation orders, site meeting minutes and other formal site communications as required under the Construction Contract. Variations were documented in correspondence and on progress payment certificates. Three payment claims were

assessed and approved with no corresponding visit to the site to check on progress.

21. Had Deletion complied with his obligations under the Agreement including carrying out regular site observations and adequate site administration, he may have identified a number of errors in the design, items included in the Brief and in the Construction Contract specifications which were not included. For example, there was no access provided under the house and the lights above the shower were not waterproof; the heat pump and TV aerial were specified in the Construction Contract documents, were not excluded in the tender submission and should have been provided but were not.
22. Under the Construction Contract T Builders Ltd was to provide a Master Build Services Ltd 7 Year Guarantee (clause 3.1.18), and a Weathertightness and Watertightness Warranty (clause 3.1.21). Deletion failed to ensure that the Master Build Guarantee was provided by T Builders Ltd. The following Weathertightness Warranties were provided:
 - (a) Windows and Door Solutions warranty- aluminium joinery;
 - (b) Nebulite windows and door solutions - balustrades;
 - (c) Dribond certificate and manufacturers guarantee for waterproofing membranes;
 - (d) Colorsteel Endura warranty - residential warranty;
 - (e) Butynol, upstairs deck warranty agreement;
 - (f) Schedule G1 of NZIA agreement executed by T Builders Limited on 16 September 2014.
23. The agreed summary concluded with the following signed statement:

I, DELETION, admit the facts as set out in the agreed summary of facts, admit particulars 1 - 9 of the Notice of Complaint¹, admit that my conduct as particularised in the Notice of Complaint amounts to a breach of Rules 48, 49 or 52 of the Code of Minimum Standards of Ethical Conduct for Registered Architects 2006 and section 25(1)(c) of the Registered Architects Act 2005 and that such conduct is deserving of disciplinary sanction.

LEGAL PRINCIPLES – LIABILITY

24. Before the Board can impose a penalty on Deletion it must be satisfied that he has breached the code of ethics contained in the rules and/or has practised as a registered architect in a negligent or incompetent manner.
25. The burden of proof is on the Board. It is for the Board to establish the complaint against

¹ Particulars 1 – 9 are set out at paras 2.1 to 2.9 above.

Deletion and to provide the evidence that proves the facts upon which the complaint is based. In professional disciplinary cases the appropriate standard of proof is the civil standard, i.e. proof to the satisfaction of the Tribunal on the balance of probabilities, rather than the criminal standard of proof.

26. Rule 49 of the Code provides that a registered architect must perform his or her professional work with “*due care and diligence*”. Neither the Act nor the Code defines due care and diligence. Although the phrase appears in various pieces of legislation and Codes of Conduct for various professions it has not been judicially defined. The Merriam-Webster Dictionary defines due diligence as the care that a reasonable person exercises to avoid harm to other persons or their property.

27. In the Boardworks International Chapter “*Those inescapable Directors’ Duties*” there are the following comments under the heading “*Acting with due care and diligence*”:

“... whether or not a director acted with due care and diligence is a matter of judgement. In essence this duty focuses on the amount of skill, experience, expertise and integrity brought by the director to his or her role. ... The test then would be whether or not the person acted in a reasonable manner given their knowledge and the expectations held of any person in the same position”.

28. In *HMRC v Kearney* [2010] S.T.C. 1137 Arden, LJ explained the test for “*due care and diligence*” in the following terms:

”[27] ... lack of care means lack of concern, whereas diligence means a failure to apply oneself to the issue ... it is not possible to define all the circumstances that will meet ... the requirement to exercise due care and diligence. In part what is due care and diligence in any set of circumstances will depend on the obligations of the person being considered”.

29. Whether a person has exercised due care and diligence is usually evident from the factual circumstances of the case.

30. The Act does not define “*negligent or incompetent manner*”. In previous disciplinary proceedings the Board has adopted the following passage from the judgment of Gendall J in *Collie v Nursing Council of New Zealand* HC, Wellington Registry, AP300/99, 5 September 2000, in which his Honour was required to consider the meaning of malpractice or negligence, as provided in section 2 of the Nurses Act 1977. At paragraph [21] and [23] he noted:

“[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness. That sort of test must still apply to the malpractice/negligence definition in s2(a) of the Act.

[23] Clearly it envisages conduct in the performance of the nurse's usual professional duties if it amounts to “malpractice or negligence”. That requires, in line with authorities and the accepted view, that the negligence or malpractice be of a serious degree and such as to be substantially below the standards expected of a nurse.”

31. There is a similar term in section 317 of the Building Act 2004 which provides that a licensed building practitioner may be subject to disciplinary findings if he/she *“has carried out or supervised building work ... in a negligent or incompetent manner”*. This term was considered on appeal by McElrea DCJ in *Beattie v Far North District Council*, District Court, Whangarei, CIV-2011-088-313, 14 November 2012. At para [46] his Honour concluded:

“The approach I have adopted recognises that the terms 'negligent' and 'incompetent' have a considerable area of overlap in their meanings, but a/so have a different focus - negligence referring to a manner of working that shows a lack of reasonably expected care, and incompetence referring to a demonstrated lack of the reasonably expected ability or skill level.”

THE BOARD'S DETERMINATION – LIABILITY

32. Having considered the Investigating Committee's report, the agreed summary of facts, Deletion's admission of the charge and of the particulars and the legal principle set out above, the Board is satisfied that Deletion has breached Rule 49 of the Code by failing to perform his professional work with due care and diligence and has breached s 25(1) (c) of the Act by practising in a negligent manner. The Board is therefore satisfied that there are grounds for disciplining Deletion.

PENALTY – LEGAL PRINCIPLES

33. The disciplinary penalties that may be imposed for a breach of the Code are set out in section 26 of the Act. They are:

“26 Disciplinary penalties

- (1) *In any case to which section 25 applies, the Board may—*
 - (a) *do both of the following things:*
 - (i) *cancel the person's registration and remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be re-registered before the expiry of a specified period:*
 - (b) *suspend the person's registration for a period of no more than 12 months or until the person meets specified conditions relating to the registration (but, in any case, not for a period of more than 12 months) and record the suspension in the register:*
 - (c) *order that the person be censured:*
 - (d) *order that the person may, for a period not exceeding 3 years, practise only subject to any conditions as to employment, supervision, or otherwise that the Board may specify in the order:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person must pay a fine not exceeding \$10,000.*
- (2) *The Board may take only 1 type of action in subsection (1) in relation to a case, except that—*
 - (a) *it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (c) or (e); or*
 - (b) *it may order that a person be censured in addition to taking the action under subsection (1)(d) or (e) or (f).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 25 applies, the Board may order that the person must pay costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to notifying the action taken by the Board in the register, the Board—*

- (a) *must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the action and the reasons for it; and*
- (b) *may publicly notify the action in any other way that it thinks fit.”*

34. The principles that normally apply in considering what penalty or penalties are appropriate are set out in the decision of the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*² as follows:

- (a) *The Tribunal’s first consideration requires it to assess what penalty most appropriately protects the public. Part of the function of protecting the public involves the Tribunal setting penalties that will deter other health professionals from offending in a similar way.*
- (b) *When assessing what penalty to impose the Tribunal must be mindful of the fact that it plays an important role in setting professional standards.*
- (c) *Penalties imposed by the Tribunal may have a punitive function.*
- (d) *Where it is appropriate, the Tribunal must give consideration to rehabilitating the practitioner recognising that health professionals and society as a whole make considerable investments in the training and development of health practitioners.*
- (e) *The Tribunal should strive to ensure that any penalty it imposes is comparable to other penalties imposed upon health professionals in similar circumstances*
- (f) *It is important for the Tribunal to assess the practitioner’s behaviour against the spectrum of sentencing options that are available. In doing so the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.*
- (g) *The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.*
- (h) *Finally, it is important for the Tribunal to assess whether the penalty it is proposing to impose is fair, reasonable and proportionate in the circumstances presented to the Tribunal. Imposing a penalty involves issues of finely balanced judgement. It is not a formulaic exercise.*

² *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

PENALTY – COUNSEL’S SUBMISSIONS

35. Mr McClelland submitted that neither cancellation nor suspension of registration are appropriate penalties in this case and that Deletion should be censured under s 26 (1) (c) of the Act. A censure would support the maintenance of proper professional standards.
36. Counsel also sought an order under s 26 (1) (d) that Deletion undertake his next five yearly competence review in the first quarter of 2021 via a face-to-face review and that the Evaluation Panel be provided with a copy of the Board’s decision and the Investigating Committee’s report on the complaint.
37. The basis for this requirement is said to be that Deletion is in a small practice and is reasonably isolated and there is a risk that the conduct which has been established might continue into the future, hence the need for a focused competence review. Such a review would promote behavioural change.
38. Ms Telford agreed that censure is warranted but opposed the making of an order under s 26(1)(d). She submitted that the primary purpose of professional disciplinary proceedings is to protect the public, to maintain the public confidence in the integrity of the profession and to uphold proper standards of behaviour and that deterrence is also a factor. In summary the appropriate penalty should adequately reflect the principles of deterrence, protection of the registered architects regime and protection of the public.
39. Ms Telford submitted that aspects of the facts are disputed and went so far as to suggest that email correspondence established a variation to the Agreement in relation to the tender process.
40. Counsel compared the facts of the present case to the facts in previous disciplinary cases that have come before the Board and submitted that the circumstances in the present case are significantly less serious than the circumstances that arose in those cases and that Deletion’s conduct is at the lower end of the scale.
41. She submitted that Deletion has undergone a competence review since this complaint arose and has learned from this process and actively taken steps to improve his and his practice’s processes in light of the complaint including:
 - (a) recording written design briefs and updating them as they progress through the typical stages of design and documentation;
 - (b) establishing in-house record sheet for site visits (independent of site

meetings) to record and formalise the process of making site visits in accordance with the obligations under the contract including taking photos of on-site of progress each visit; and

- (c) holding a schedule of warranties and checking compliance, typically as a special condition of the contract to achieve practical completion.

- 42. Counsel submitted that Deletion is now 62 years of age; has had a blameless professional career over 38 years; and that his failings in this case are an isolated incident brought about by relationship problems with the complainants, whom he maintains were extremely difficult to deal with. Given these factors counsel submitted there is a very low risk that Deletion would make these mistakes again and that an early review face-to-face is not necessary to promote behavioural change.

PENALTY – BOARD’S DETERMINATION

- 43. We agree that neither cancellation nor suspension of registration is called for in this case and we note that the Board did not seek the imposition of a fine or an order that Deletion undertake any specified training in addition to the order under s 26(1) (d).

- 44. Having considered all of the facts in this case and the penalties imposed in other cases we find that the penalty of censure is the least restrictive that may reasonably be imposed. We have reached this conclusion because:

- (a) the admitted breaches are significant, albeit at the lower end of the scale;
- (b) a censure will support the maintenance of proper professional standards;
- (c) censure is broadly consistent with prior cases; and
- (d) an order under s 26 (1) (d) is not required having regard to Deletion’s good record to date, the review which he has recently undergone, and the steps he has implemented to ensure that the failings identified during the investigation of this complaint will not reoccur.

- 45. In reaching our decision on penalty we have relied on the facts set out in the Agreed Summary of Facts and have put to one side any consideration of “disputed” facts or submitted facts which contradict the Agreed Summary.

COSTS – COUNSEL’S SUBMISSIONS AND BOARD DETERMINATION

46. Both parties agreed that Deletion should be ordered to make a contribution to the costs and expenses of and incidental to the inquiry by the Board. The Board seeks a contribution of something less than 50%. Ms Telford submits that a contribution of 25% should be ordered because Deletion admitted guilt and accepted the charge, thereby saving the Board time and cost. It was not suggested that Deletion would be unable to meet a costs order.
47. A contribution of 50% towards the costs of the investigation of complaints and prosecution of charges has been the usual starting point in this jurisdiction. We consider that 50% is a reasonable starting point having regard to the fact that, to the extent that costs are not recovered from the practitioner concerned, they fall upon the profession as a whole.
48. Deletion's admission of the charge, the particulars and the facts set out in the Agreed Summary and his agreement to have the hearing by video conference rather than face to face has saved the Board considerable expense and has spared the complainants the stress and inconvenience of a defended hearing.
49. Taking all matters into account we consider that a contribution of 33% is fair and reasonable.

PUBLIC NOTIFICATION

50. Section 26 (5) provides that:

In addition to notifying the action taken by the Board in the register, the Board

- (a) must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the action and the reasons for it; and*
- (b) may publicly notify the action in any other way that it thinks fit.*

51. The "*action taken by the Board in the register*" is a reference to s 21 of the Act which provides that the public register maintained by the board must record any disciplinary penalty imposed on a registered architect in the last three years.
52. Mr McClelland did not press for publication beyond the mandatory notification under s 26 but submitted that publication would be consistent with the principles of openness and transparency of disciplinary proceedings; accountability of the disciplinary process; public interest in knowing the identity of a registered architect charged with a disciplinary offence; the importance of freedom of speech; and avoiding the unfair impugning of other registered architects.

53. Ms Telford opposed public notification and drew attention to previous cases where publication was not ordered. She submitted that the adverse effects of publication on Deletion's reputation would outweigh any public interest factors. If there is a lesson for practitioners faced with similar circumstances in the future that the Board believes can be constructively conveyed through release of the decision then an anonymised report will suffice. By publishing its decision without identifying details the board will be seen to have properly addressed the complaint and provided standards and guidance for the profession while ensuring that Deletion's reputation is not unnecessarily damaged because of breaches at the lower end of the spectrum.
54. Ms Telford asked us to accept that Deletion's mental health has being severely impacted by the disciplinary process and that publication would further aggravate his mental state. While we accept that dealing with a complaint and subsequent disciplinary process is stressful we are not prepared to take into account the claimed impact on a practitioner's mental health in the absence of evidence from a duly qualified medical practitioner.
55. Nevertheless, we agree with Ms Telford that public notification under s 26 (5) is not called for in this case as:
- (a) the public register maintained by the Board, which will contain a record of the censure imposed on Deletion for the next three years, will meet the public interest in knowing which registered architects have been the subject of disciplinary proceedings and will avoid any unfair impugning of other registered architects; and
 - (b) an anonymised summary of the case on the Board's website will meet the educative needs of the profession and show the accountability of the disciplinary process.

DECISION

56. For the reasons set out above the Board makes the following orders:
- (a) Deletion be censured under s 26(1)(c) of the Act; and
 - (b) Deletion contribute 33% of the costs of, and incidental to, the inquiry by the Board under s 26(4) of the Act.

57. While no order for public notification is made under s 26 (5) (b) we expect that, in the usual way, the Board will publish an anonymised summary of the case on the Board's website.
58. The Board voted on the above findings and this is separately recorded in a Board draft minute as attachment 1.

DATED at Arrowtown this 12 th day of June 2020

A handwritten signature in black ink, appearing to read 'Louise Wright', with a double dot at the end of the signature.

.....
Louise Wright
New Zealand Registered Architects Board

Attachment 1

Board Minutes

Date: 11 June 2020

Venue: Zoom video meeting

Board members: Louise Wright (Chair), Kimberly Browne, Murali Bhaskar, Rob Hall
In attendance: Andrew Symonds (EOPP), Terry Sissons

This Board meeting was called to conduct a disciplinary hearing as allowed for under Registered Architect Rules 2006 Rules 72 to 78.

This followed an Investigating Committee decision under delegated authority that there was a case to answer against Deleted and that therefore a disciplinary hearing was required.

The hearing was duly conducted. Deleted was represented by Sarah-Jane Telford. The charges in the Notice of Complaint were prosecuted by Matthew McClelland.

Following the amendment of the Notice of Complaint, the admission of the charge; and consideration of the Investigating Committee's report and the agreed summary of facts, the Board determined as in the resolution below:

Resolutions:

1. That the Disciplinary Hearing, constituted as a meeting of the NZRAB Board under Rule 73 determines that there are grounds for disciplining Deleted under section 25(1)(b) namely a breach of Rule 49 and section 25(1)(c) of the Registered Architects Act 2005.
2. That the Board makes the following orders:
 - (c) Deleted be censured under s 26(1)(c) of the Act; and
 - (d) Deleted contribute 33% of the costs of, and incidental to, the inquiry by the Board under s 26(4) of the Act.

While no order for public notification is made under s 26 (5) (b), in the usual way the Board will publish an anonymised summary of the case on the Board's website.

Carried

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Marc Woodbury
DEP BOARD CHAIR

Date: 12 June 2020