

Codewords Issue 89



Codewords

3 APRIL 2019

Welcome to Issue 89 of Codewords.

Last issue I discussed an upcoming consultation on a number of proposed changes to address issues in the building regulatory system.

Very soon we'll be asking for your feedback on changes in the areas of building products and methods, occupational regulation, risk and liability, building levy, and offences and penalties.

[The Building System Legislative Reform Programme consultation \(https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/consultation-on-far-reaching-building-sector-reforms-to-open-in-april/\)](https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/consultation-on-far-reaching-building-sector-reforms-to-open-in-april/) is your opportunity to tell us what you think of the work to date. It's significant and complex. But it's about lifting quality in the building sector so that things go right the first time, and there are fairer outcomes if they go wrong.

Alongside this project, Building System Performance's work programme this year is all about supporting improvements to the building system while ensuring buildings are safe, healthy and durable. There are five priority projects in total, including the Building System Legislative Reform Programme outlined above. The others are:

- **Construction Sector Accord**
Establishing a mutual commitment between government and the construction sector to work together to transform the industry for the success of New Zealand.
- **Building System Strategy**
Developing a Building System Strategy to set a clear direction for New Zealand over the next 10–15 years. The strategy will define the vision, goals and performance framework for how performance will be measured across the building system.
- **Skills Strategy**
The plan was launched on 4 October 2018, and focuses on government and the building and construction sector working together so that skilled people are available to meet the needs of the construction workforce.
- **Building Code Delivery Framework**
Strengthening the management of the Building Code so it is consistently updated, sets clear minimum performance requirements, and allows for sector innovation and best practice.

These priority projects support three outcomes:

- partnering with industry to improve performance
- defining a long-term measurable strategy for the building system
- enabling and supporting the sector to respond to challenges.

This work is needed if we're to make sure the building regulatory system is efficient, future-focused and encourages innovation.

And if you haven't already, you can still provide feedback on the proposed changes under the Building Code biannual update programme. Changes include support for more densified housing solutions and the Healthy Homes requirements, as well as new means of testing claddings.

The consultation is open until 5 April 2019. (<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/second-consultation-of-the-biannual-building-code-update-closes-on-5-april-2019/>)

Enjoy issue 89 of Codewords.

Anna Butler
GM Building System Performance (BSP)
Ministry of Business, Innovation and Employment



Anna Butler
GM, Building System Performance

Building system updates

Consultation on far-reaching building sector reforms to open in April

In early April, MBIE will release a discussion paper detailing proposed reforms for the building sector. The reforms aim to address a number of long-standing problems in the building sector ranging from low productivity and inefficient practices and processes, to skills and labour shortages, to poor health and safety.

During 2018, MBIE met with key stakeholders from across the building sector to understand what is holding the sector back and how it could be more efficient and effective. These discussions helped us get a better understanding of the problems. We found the concerns fall under three common themes:

- Roles and responsibilities are not clear.
- Information is not available when it is needed.
- It is difficult to hold people accountable for the quality of their work.

To address these concerns, MBIE will propose changes in the areas of:

- building products and methods
- occupational regulation, specifically the regimes for licensed building practitioners, engineers, and plumbers, gasfitters and drainlayers
- risk and liability
- the building levy
- offences and penalties.

We want to hear your thoughts on the proposals. Details about how to make a submission will be announced when the consultation opens.

[Subscribe to updates on the building sector reforms](https://confirmsubscription.com/h/r/DEFBF2CA344DF6DB2540EF23F30FEDED)
(<https://confirmsubscription.com/h/r/DEFBF2CA344DF6DB2540EF23F30FEDED>).

Second consultation of the biannual Building Code update closes on 5

April 2019

Have your say on Acceptable Solution and Verification Method updates

The second update in the new biannual Building Code system update programme proposes a package of changes, on which MBIE is seeking comment from you.

Submissions close on the 5th of April. If you haven't yet given us your feedback and want to, you can find the [consultation documents on the MBIE website \(https://www.mbie.govt.nz/have-your-say/statement-of-proposals-for-amending-acceptable-solutions-and-verification-methods-june-2019-update/\)](https://www.mbie.govt.nz/have-your-say/statement-of-proposals-for-amending-acceptable-solutions-and-verification-methods-june-2019-update/).

The most significant changes proposed are the introduction of a means of testing claddings on buildings up to 25 metres in height, and requiring mechanical ventilation in certain areas in housing. MBIE welcomes your feedback on the proposed changes, which you can read about in the [BC Update \(https://www.building.govt.nz/about-building-performance/news-and-updates/all-news-and-updates/consultation-on-amending-acceptable-solutions-and-verification-methods-june-2019-update/\)](https://www.building.govt.nz/about-building-performance/news-and-updates/all-news-and-updates/consultation-on-amending-acceptable-solutions-and-verification-methods-june-2019-update/).

The Higher Density Eight (HD8)

Biannual Building Code system update

The Building Code is being optimised to support higher density housing solutions. Currently, the majority of Acceptable Solution and Verification Method compliance pathways are generally focused on low density dwellings, and higher density building designs are often outside the scope of these compliance pathways.

The design of higher density housing differs from traditional stand-alone (low density) housing due to the common walls, spaces between household units (lobbies and other common areas), internal rooms and the height of the buildings. This means that more specialists are required for the design and build of these houses, which can make the consenting processes more complex and create uncertainty for building professionals and building consent authorities.

The Building Code clauses being prioritised for change are collectively known as the 'HD8' and are described below. The aim with all of these is to make changes that facilitate higher density housing by either amending the clause or increasing the scope of the Acceptable Solutions and Verification Methods.

B1 Structure and B2 Durability

The Code clause for structural stability requires buildings, building elements and site work to withstand the combination of loads and physical conditions they are likely to experience throughout their lives. Current Acceptable Solutions are limited to three storeys and outside of this require considerable input from a structural engineer. Specific compliance pathways focused on higher density housing need to be considered.

The Code clause for durability ensures that a building will continue to satisfy the performance requirements of the Building Code throughout its life. For higher density buildings, additional challenges for safe maintenance are presented due to height and access difficulties. Clarity on the requirements for durability and safe, economic maintenance is needed.

C1–6 Protection from fire

These clauses are related to protecting people from fire in and around buildings, limiting fire spread and helping firefighting and rescue. Higher density housing typically requires more complex fire solutions. A specialist fire engineer may be required to ensure that escape routes are easy to access, to address fire separation at height and to manage longer escape travel distances. Streamlined compliance pathways for higher density housing need to be considered.

E2 External moisture

Preventing moisture entering the building envelope is critical for building performance. Some parts of

current Acceptable Solutions are restricted to three storeys, and beyond this may require a façade engineer to be involved in the design of the building. Extending the scope of Acceptable Solutions needs to be considered.

E3 Internal moisture

This Code clause has specific functional and performance requirements that prevent flooding or overflow between households. It also considers internal moisture control and condensation. The solutions need to be reviewed to provide clarity regarding overflow between units, and account for new construction methods for managing moisture in roof cavities.

G4 Ventilation

This Code clause sets performance requirements for adequate ventilation and air flow in buildings. For higher density housing, the use of natural ventilation such as openable windows to the exterior of the building may not be suitable. Mechanical ventilation systems for the household units or building need to be considered to address situations of shared ventilation.

G6 Airborne and impact sound

This Code clause ensures minimal noise transfer in higher density situations. A review is needed to clarify the scope of current requirements and also consider whether they should take into consideration environmental factors, for example roads and airports.

G7 Natural light

The Building Code requires habitable spaces like bedrooms to have access to daylight and visual awareness of the outside; this can be an issue for higher density housing where there may only be one or two external walls. Compliance pathways need to reflect more complex situations.

H1 Energy efficiency

The Building Code and cited Standards are currently unclear on the best way to calculate the thermal insulation and efficiency of higher density housing for common building elements (walls and floors) between household units. Reviewing the scope of the Acceptable Solutions and Verification Methods will help to clarify this.

BEAL CodeMark product certification body accreditation revoked

Building Controls Update 245

BEAL Certification Services Ltd is no longer a Product Certification Body for CodeMark New Zealand.

On 21 February 2019, JAS-ANZ issued a notice to revoke the accreditation of BEAL Certification Services Ltd (BCS) as a Product Certification Body (PCB).

BCS is no longer a PCB for CodeMark New Zealand and cannot in any capacity:

- Accept or process any applications from product manufacturers or suppliers seeking CodeMark certification of a product
- Manage any complaints about a CodeMark product certificate or the certified product
- Undertake audits of a CodeMark product certificate or CodeMarked product
- Revise, reissue or suspend any existing CodeMark product certificates.

CodeMark product certificates issued by BCS remain valid and can be accepted as evidence that the product complies with the New Zealand Building Code. Building consent authorities can rely on CodeMark certificates until such time a certificate is suspended or withdrawn.



The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for providing advice on the validity of the CodeMark product certificates that BCS has issued, and has started a review of all BCS-issued certificates.

Check the MBIE product certificate register to check the status of CodeMark certificates. The MBIE product certificate register is the only legally-recognised product certificate register. Other registers, including the BCS register, should not be relied upon.

View the MBIE [Product certificate register \(https://www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/codemark/product-certificate-register/\)](https://www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/codemark/product-certificate-register/)

If you have a complaint or are concerned about the validity of a CodeMark product certificate that BCS has issued, please contact products@mbie.govt.nz (<https://www.building.govt.nzmailto:products@mbie.govt.nz>).

Subscribe to Building Controls Updates (<https://www.building.govt.nz/about-building-performance/news-and-updates/subscribe/>)

Fire performance of external wall cladding systems

Building Controls Update 244

Significant high-rise fire events globally have increased our understanding of how fire spreads within modern facade systems.

Working with industry experts, MBIE has developed guidance about how external cladding systems should be tested for fire spread performance. The guidance is a temporary solution as we progress towards incorporating the appropriate changes into the Acceptable Solutions and Verification Methods.

Meanwhile the guidance will help industry to achieve the compliance requirements of the Building Code, taking into account the overall risks associated with the building use, occupant vulnerability, escape height and fire safety systems in the building.

MBIE would like to thank BRANZ and Auckland Council for providing their expertise in developing the guidance.

Read the new guidance [Fire performance of external wall cladding systems \(https://www.building.govt.nz/building-code-compliance/c-protection-from-fire/c-clauses-c1-c6/fire-performance-of-external-wall-cladding-systems/\)](https://www.building.govt.nz/building-code-compliance/c-protection-from-fire/c-clauses-c1-c6/fire-performance-of-external-wall-cladding-systems/) on the building performance website.

Subscribe to Building Controls Updates (<https://www.building.govt.nz/about-building-performance/news-and-updates/subscribe/>)



Rapid building assessment online courses launch

Three new courses on conducting a rapid building assessment are now freely available online.

The rapid building assessment process is one part of the emergency management plan that territorial authorities may use as part of their response to any emergency.



The courses are for:

- chartered professional engineers (structural and geotechnical), senior building officials and senior architects who have completed face-to-face training offered through the Ministry of Business, Innovation and Employment; and
- chartered professional engineers (structural and geotechnical), building officials, senior architects and emergency support staff seeking introductory awareness training.

There are three courses currently available:

- *Introduction to rapid building assessment* is about the rapid building assessment process and the role of the assessor. The course takes about 30 minutes to complete.
- *Rapid building assessors in the field* looks at how to assess buildings and what it's like working as part of the assessment team. The course takes about 40 minutes to complete.
- *Tier 2 refresher* covers leading the assessment team and learning to optimise teamwork and cooperation. It also takes about 40 minutes to complete.

Anyone involved in managing buildings in an emergency will find these courses useful. Please note that completing these courses doesn't automatically qualify you to become a registered rapid building assessor.

You can find the courses on learning.building.govt.nz (<http://learning.building.govt.nz>)

How to log in

You will need to log in using your RealMe account and register your details the first time you do a course.

If you don't have a RealMe username and password, select Login and choose to create one. You are only required to do the standard login, which doesn't require endorsement.

LBP knowledge link

LBP Registrar update (Codewords 89)

We are a good way into a busy 2019. I hope that you are back to full operation.



It is clear that the industry is extremely busy with the continuing record levels of consents being issued. These times can be challenging and call for ongoing attention to the fundamentals essential for quality delivery.

In this issue, our first article highlights the responsibilities of LBPs working under labour-only contracts. Some think this type of contract reduces their regulatory obligations. However, as an LBP, there are some obligations that apply regardless of what kind of contract you have.

This myth-busting two-part series will cover some of the common mistakes that can arise when being complacent under a labour-only contract. Part one explores the difference between liability and accountability and what your non-negotiable responsibilities are regarding building consents.

Our second article tackles MBIE's response to the growing number of new building products available on the market and the risk of poor quality control. An investigation process has been set up to consider complaints of building products that do not comply with the New Zealand Building Code. The article outlines the purpose of investigations and the part you can play to expose problem building products.

In early April, MBIE will release a discussion paper detailing proposed building sector reforms. You will have the opportunity to have your say on proposed changes that may affect you. The discussion paper seeks to address long-standing issues within building industry through legislation relating to building products and methods, risk and liability, the building levy, and offences and penalties. The paper will also propose changes to occupational regulation, including the Licensed Building Practitioners scheme. Check out our article to learn more about the consultation and subscribe to updates.

Thanks for reading, until next time.

Wayne Burroughs
Registrar Building Practitioner Licensing

Your duty in labour-only contracts

We discuss liability as opposed to accountability when it comes to labour-only contracts.



In the first of a two-part series highlighting common misunderstandings about the responsibilities of a Licensed Building Practitioner (LBP) under a labour-only contract, we discuss liability as opposed to accountability and building consents.

There has been an increase in complaints made

Article is relevant to LBP licence classes: All

to the Building Practitioners Board about licensed building practitioners (LBPs) not fulfilling their obligations under labour-only contracts.

LBPs have responsibilities and obligations

There is a myth that LBP's responsibilities are lessened in labour-only contracts. This is not true. You cannot contract out of your responsibilities and obligations as an LBP – they are set regardless of the type of contract you are working under.

The Board has also noted that a power imbalance may exist between an employer and employee, however, as an LBP, you are still responsible for your own conduct.

This means that, even if your employer has instructed you to do something, you are personally accountable to the Board for your actions as an LBP. Your licence could be put at risk if you act dishonestly to benefit your employer.

Liability vs accountability

When a homeowner signs a contract with a contractor, there will be a contractual liability between the two parties. This means the contractor must provide the goods and services as agreed, and the client must pay for them. Failure by either party could lead to court action where the party in breach may be found liable for their role in the contract.

You might not have a contractual arrangement with the client but rather with another contractor while under a labour-only contract. In this situation, you are probably only liable to the contractor who engaged you for the work you do for them.

However, as an LBP, you are always accountable to the Board for your conduct. If you fail to maintain standards, the homeowner can lay a complaint to the Board.

The Board can then discipline you regardless of who you are contracted to. This is because the Board does not deal with payment or contractual disputes and instead determines whether the LBP has met their obligations specified in the Act.

Comply with building consents

In many cases, as an LBP on a labour-only contract, you will not be directly responsible for managing the building consent application. All LBPs, however, have a responsibility to ensure that a building consent is obtained (if one is required) before commencing work and to build to the agreed consent. The Board expects LBPs to understand the building consent process and to hold themselves to a high standard throughout the compliance process.

Complaints show main problems

The Board's Annual Report 2018 noted numerous complaints relating to LBPs not complying with the consenting processes. The complaints highlighted the following failures:

- Carrying out building work without first checking that a building consent has been issued.
- Deviating from the building consent.
- Failing to obtain confirmation for a minor variation or amendment before continuing work.

If something isn't right with the building consent, alert the homeowner and refrain from starting or continuing work until the issue is resolved. While it may not be your responsibility to obtain the building consent, you will be responsible if you do any building work that does not comply with a building consent, if one is required.

You are the expert so use your judgement

Homeowners are not experts in the building process and may sometimes fail to fully understand their obligations regarding building consents. LBPs are the building and construction experts and are in a better position to identify a lack of adherence to the consenting process.

It is important that you use your own judgement rather than trusting that the homeowner has it right or that you won't be held accountable for any non-compliant work.

In the next issue, part two will look at your responsibility to produce quality work and an accurate

record of work (ROW).

Quiz

1. There is a dispute between the client and your main contractor over the quality of the build. You were working under a labour-only contract. Which of the following is true?

- You are liable, no matter what.
- You will be liable but only if you completed a ROW for the work.
- You are accountable to the Building Practitioners Board for your work.

2. There is no building consent for a piece of work you are about to undertake, and the work is not exempt under Schedule 1 of the Building Act 2004. What should you do?

- Start work, as the main contractor assures you the consent is on its way.
- Don't worry about it – it is the responsibility of the homeowner.
- Refuse to start work until you have seen the consent.

3. True or false – homeowners should have all the required knowledge for a build, so you can just follow orders.

- True, nothing to worry about as they'll face the consequences.
- False, you are the expert and need to make sure you meet your responsibilities.

Check answers (<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/your-duty-in-labour-only-contracts/quiz-answers-learning-opportunities-and-tools-for-lbps/>)

New products, new compliance challenges

The ever-growing range of building products on the market comes with concern that not all are what they claim to be or even meet New Zealand Building Code requirements. What is MBIE doing to address this issue?



Article is relevant to LBP licence classes: All

MBIE has a mandate to monitor the building product market and investigate complaints when products don't comply with the Building Code.

MBIE monitors and investigates

Monitoring the market can establish whether there is a widespread problem with a product that could affect a significant number of buildings should it continue to be supplied and used in building work.

An investigation by MBIE might result in:

- a formal warning or ban issued on the use of the product
- guidance issued to the industry
- more education provided to those involved in manufacturing, supplying, specifying or installing building products.

Tell us if you have concerns

If you have a complaint about a building product or are concerned that a building product doesn't comply with the Building Code, you can get in touch with MBIE.

If the complaint is about false or misleading information or unsubstantiated claims, MBIE may refer the complaint to the Commerce Commission if it falls within its jurisdiction.

The MBIE products team works alongside other teams within MBIE such as Trading Standards, which ensures safe products, accurate measurement and quality fuel, and other government organisations and licensing boards such as WorkSafe, the Ministry of Health and the Plumbers, Gasfitters and Drainlayers Board.

Supply information and evidence

Often product complaints lack enough specific detail or evidence, which makes it difficult for MBIE to get a clear picture of the problem or take further action.

For MBIE to investigate a complaint, the following information is required:

- The name of the building product.
- Where it was purchased or who it was supplied by, if this is known.
- Compliance information available for the product from the manufacturer or supplier, such as test reports, assessments or calculations, claims of compliance and technical information.
- The reasons why you believe the product does not comply with the Building Code.
- Evidence of failure, such as photographs or locations where the product was used.
- Information you think supports an investigation.

Please send the information and the complaint to products@mbie.govt.nz (<https://www.building.govt.nzmailto:products@mbie.govt.nz>) or post to:

Building System Assurance – Products
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6011

All information received by MBIE is public information and, if requested, the details of your complaint may have to be released to other individuals or organisations under the Official Information Act 1982.

To find out more about product assurance, visit www.building.govt.nz and search for 'product assurance'.

Quiz

1. MBIE's job in relation to new building products is to:
 - a. Assess every new building product on the market to see if it complies with the Building Code.
 - b. Investigate complaints from others that a building product does not comply with the Building Code.
 - c. Investigate misleading advertising of building products.
2. If a complaint to MBIE does not have a lot of detail or evidence:
 - a. It will be difficult for MBIE to take action on the complaint and it may not be investigated further.
 - b. An investigator can fill in missing details and evidence.
 - c. It doesn't matter, the burden of proof is on the supplier to provide evidence that the complaint is wrong.
3. As the result of a complaint regarding a building product, MBIE can:
 - a. Order the supplier to refund everyone who has bought the product.
 - b. Ban the product to protect other people from using it.
 - c. Fine the supplier for false advertising.
4. Who can make a complaint to MBIE about a building product?
 - a. Only someone who has purchased the product themselves.
 - b. LBPs who are experts on that type of building product.
 - c. Anyone.
5. If you lay a complaint with MBIE about a building product, who can see the details of the complaint?
 - a. Only MBIE staff.
 - b. Complaints sent to MBIE fall within the definition of official information and, if requested, MBIE may have to release details about the complaint to other individuals or organisations where appropriate under the Official Information Act 1982.
 - c. All complaints automatically go on the MBIE website for anyone to see.

Check answers (<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/new-products-new-compliance-challenges/quiz-answers-new-products-new-compliance-challenges/>)

LBP with over 40 years' experience still committed to the industry

There are three things Kevin Thompson is passionate about – motorcycles, playing music, and the LBP scheme.



"The scheme creates accountability", says the Christchurch-based carpentry LBP.

"The building industry is busy at the moment, so it's a good thing the LBP scheme is in place as it ensures there is a reference point for people to know what is restricted building work and who can do it. And with the scheme's skills maintenance requirements, you know an LBP has kept up with the latest changes to the Building Code."

Kevin is currently a Building Controls Officer for the Christchurch City Council, putting his 40-plus years of experience in the industry, mostly in residential housing, to good use.

"I started building at 17 as an apprentice carpenter with the Māori Affairs Trade Training Scheme, followed by successive years of self-employment in New Zealand and Australia and finally ending up in the South Island."

Following the earthquakes, Kevin headed to Christchurch to assess the skills needed for the Canterbury rebuild within the Built Environment Training Alliance (BETA), before returning to Dunedin.

Within two years, he had joined the Christchurch City Council as a Building Inspector, before taking up his current role of Building Controls Officer in 2017.

"I get to see the onsite LBP side of things when I attend inspections, and part of the requirements for processing a consent is to figure out what is restricted building work. Being an LBP helps with that.

"My time as an inspector in Christchurch highlighted the need for old-school tradespeople to get familiar with the difference between NZS3604 and the Building Code through regular upskilling. When I get a call from a client seeking building advice, I know where to find the right section to show the customer what the Building Code requires.

"The LBP scheme has been around since 2004 and it's good to see younger tradespeople embracing what it means to be a LBP."

Licences cancelled for criminal behaviour

If a licensed building practitioner gets a criminal conviction it may be grounds for discipline by the Building Practitioners Board.

The Board may take action if the offending meets the following two criteria:

- the offence is punishable by imprisonment of a term of six months or more, and
- the offence reflects adversely on the person's fitness to work as a licensed building practitioner (LBP)

Section 317 of the Building Act (the Act) provides further details on the grounds for discipline.

Sometimes these criminal offences are related to the work carried out by the (LBP). On other occasions, however, the crime is committed off the job, yet it is so serious that it shows the individual is not fit to work as an LBP.

The two cases below illustrate both of these scenarios.

Lidong Xie (C2-01935)

Lidong Xie has been bankrupt twice, once in 2004 and again in 2010.

While still bankrupt, Mr Xie received approximately \$1.5 million in earnings through his business dealings and, rather than pay his creditors, he gambled that money. He then tried to board a flight to China before being arrested by police at Auckland Airport. He was brought before the District Court due to his behaviour while bankrupt, and was sentenced to a total of three years and four months' imprisonment.

Mr Xie deliberately ignored his obligations as a bankrupt individual and continued to actively run a business and front his building operation. His gambling incurred significant credit, but instead of paying his suppliers he continued to gamble, causing his victims substantial losses. He also concealed money and assets from the Official Assignee.

The judge noted there were no mitigating factors other than the plea of guilty, and was not satisfied that Mr Xie demonstrated any remorse.

The Board found Mr Xie should be disciplined under Section 317(1)(a) of the Act for his criminal behaviour. They also found Mr Xie had brought the LBP scheme into disrepute. As a result, he had his licence cancelled and cannot reapply for a minimum of five years. Mr Xie was also ordered to pay \$1000 towards the costs of the hearing.

Due to the seriousness of Mr Xie's offending, the Board decided to publicise this decision.

Joseph Ennis (CB24924)

The District Court in Auckland convicted roofing LBP Joseph Ennis of one charge of rape and sentenced him to seven years and eight months in prison.

The Board found that his ability to commit such a serious crime made Mr Ennis an unfit person to work as an LBP. Notes from the sentencing indicated that Mr Ennis defended the charge and misled the police during the investigation. The offending was noted by the judge as premeditated and deliberate, and there was a lack of genuine remorse shown by Mr Ennis.

Due to the seriousness of this offending, the Board has cancelled Mr Ennis's licence and ordered that

he cannot reapply for 10 years. He has also been ordered to pay \$500 towards the costs of the Board inquiry. The cost of the inquiry was reduced because the decision was based on documentation and no witnesses were required. The Board also deemed it necessary to publicise this decision in the interests of the general public and the building profession.

What we can learn from these decisions

Unlike other licensing regimes, the LBP scheme does not assess the character of an applicant when granting a licence (what is commonly referred to as a 'fit and proper person' requirement). The Act, however, gives the Board the ability to assess the character of existing LBPs under Section 317(1) (a). It does not matter if the criminal offending happened before a person got a licence – the Board can still cancel an LBP's licence if their criminal behaviour shows they are not fit to work as an LBP.

Read these and other past decisions in full on the [LBP website \(https://www.lbp.govt.nz/\)](https://www.lbp.govt.nz/)

Notable decision against a designer

The Building Practitioners Board recently issued a substantial penalty against Matthew Biddle, a designer from Tauranga.

Mr Biddle (C2-01932) was found to have:

- carried out work in an incompetent manner, and
- brought the LBP scheme into disrepute.

Mr Biddle was engaged by a homeowner to develop plans and specifications for an alteration to an existing dwelling, and submit them to the council to obtain a building consent.

Mr Biddle considered his plans and specifications complete and ready to be submitted for a building consent. After receiving full payment, he did not lodge a building consent application as agreed. The homeowner, unable to get a response from Mr Biddle, proceeded to lodge his design documents with the council themselves. The council requested further information for multiple items.

The Board considered that Mr Biddle's design was incomplete and both the design and specifications lacked site-specific detail. There were aspects that would not have met compliance requirements and were not buildable. On this basis, the Board found that Mr Biddle had been incompetent.

Mr Biddle told the Board he had not applied for the building consent due to personal and financial circumstances, including the liquidation of the company that he was using to trade.

The Board stated that Mr Biddle was dishonest and took funds without an intention to complete the agreed services. Mr Biddle admitted that he lied to the complainants about applying for the building consent and then ignored all further communications from them. It was the Board's stance that Mr Biddle's conduct was serious and brought the LBP scheme into disrepute.

The Board cancelled Mr Biddle's licence and ordered that he may not reapply for 18 months. The Board also ordered him to pay \$3000 in costs towards the inquiry and determined that this decision would be published.

What we can learn from this decision

Poor onsite quality assurance and a failure to carry out a competent site investigation for the design plans led to Mr Biddle being disciplined. The homeowner has not only lost funds and time but has now had to engage another designer to start the design process from the beginning.

Being truthful in your business decisions is important not only for your reputation and that of your business, but also for maintaining your licence.

This decision and other past decisions can be read in full on the [LBP website \(https://www.lbp.govt.nz/\)](https://www.lbp.govt.nz/)

Recent determinations

Learn more about determinations

A determination is a binding decision made by MBIE that provides a way of solving disputes or questions about the rules that apply to buildings, and how buildings are used.

Most determinations centre on a decision made by a council, for example refusing to issue a building consent. Also, a determination may consider whether building work complies with the Building Code. Previous determinations may provide some guidance for councils and others faced with similar problems.

You can read previous determinations in the [determinations register \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/).

Previous issues

Codewords issues are available for two years after their publish date. If the issue you are looking for is older, please [contact us \(https://www.building.govt.nz/about-building-performance/contact-us/\)](https://www.building.govt.nz/about-building-performance/contact-us/).

Issues for 2019



Codewords Issue 89

3 APRIL 2019

In issue 89 of Codewords, find out how to have your say on significant legislative reform for the building sector. The LBP knowledge link looks at labour-only contracts and product compliance, and recent Building Practitioners Board decisions.

[\(https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/\)](https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/)

Issues for 2018



Codewords Issue 87

4 DECEMBER 2018

This issue includes recent LBP disciplinary decisions, technical knowledge on built-up members in place of solid timber, lessons learned from the demolition of Statistics House, and recent determinations.

(<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-87/>)



Codewords Issue 86

28 SEPTEMBER 2018

This issue looks at recent LBP disciplinary decisions, immediate pool areas, technical knowledge on top plate connections, how quantity surveying principles can help with pricing jobs, a new risk advisory group, and technical reviews of councils.

(<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-86/>)

Issues for 2017



Codewords Issue 81

28 NOVEMBER 2017

This edition covers rapid land assessment workshops, builders' responsibilities and records of work. It also recaps two recent BC Updates on updated unreinforced masonry guidance and a revised scope for C/VM2.

(<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-81/>)



Codewords Issue 80

28 SEPTEMBER 2017

Information on the teams moving from BSP to Market Services and reports of poor grouting practice. Also includes Part 3 in the exempt building work series and a recent Building Practitioners Board decision.

(<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-80/>)

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