

# BUILDING PRACTITIONERS INQUIRY BOARD

## Reasons for Decision

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| <b>Building Practitioner:</b>          | Kassiou Constructions Pty Ltd (ACN: 126 718 803)   |
| <b>Building Practitioner Category:</b> | Building Contractor Residential (Restricted)   |
| <b>Referred by:</b>                    | Director of Building Control   |
| <b>Proceedings:</b>                    | Referral of Inquiry to the Building Practitioners Board in accordance with section 34F(1)(a) & (b) of the <i>Building Act 1993</i> |
| <b>Inquiry Board:</b>                  | Gabrielle Martin (Presiding Member)<br>Natasha Bertinazzi (Member)<br>Greg Thompson (Member)                                       |
| <b>Date of Decision:</b>               | 12 December 2024   |

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### Background

1. On 4 February 2024, the Director of Building Control (**the Director**) referred a matter to the Building Practitioners Board (**the Board**) for inquiry.
2. The matter relates to building works undertaken by Kassiou Constructions Pty Ltd (**Kassiou**). Its registration expires on 4 September 2025.
3. Louis Kassiou is the nominee for the company and both Louis and Ilias Kassiou are directors of Kassiou.
4. Louis Kassiou's building practitioner's registration expired on 6 July 2024. Ilias Kassiou's registration expires on 22 March 2025.
5. Certain Kassiou building works were the subject of an audit by the Director in 2023.
6. This audit included works with the following permit numbers:
  - a. Permit 590/11813/0/5/0 at 7 Clarke Street Bellamack ("Clarke St")
  - b. Permit 590/15348/0/1/0 at 164 Zuccoli Parade Zuccoli ("Zuccoli Pde")
  - c. Permit 590/15499/0/1/0 at 12 Crabeye Street Zuccoli ("Crabeye St")
  - d. Permit 695/04760/0/1/0 at 46 Malachite Road Lloyd Creek ("Malachite Rd")
  - e. Permit (5501/2607/01/10) at 5 Albert Street Muirhead ("Albert St")
7. The audit report identified evidence that:
  - a. contrary to regulation 41HE(2)(a) of the *Building Regulations 1993* (**the Regulations**) Kassiou requested and/or received progress payments, before completion of the stage to which the progress payment related in the building works listed in paragraph 6 a-d; and
  - b. contrary to section 55 of the *Building Act 1993* (**the Act**), the Building Practitioner carried out building work which was not in accordance with the building permit for the works listed at paragraph 6e.
8. Relevantly,
  - a. Regulation 41HE(2) & (3) provide:
    - (2) A prescribed building contractor must not request or receive from the contracting owner:

- (a) a payment for carrying out prescribed building work except as a progress payment after completion of the stage of work to which the progress payment relates, as specified in or under the residential building contract for the work; or
- (b) more than the percentage of the total contracted price that is specified in or under the residential building contract.

Maximum penalty: 50 penalty units.

(3) An offence against subregulation (1) or (2) is a regulatory offence.

b. Section 55 provides:

A person must not carry out building work unless a building permit in respect of the work has been granted and is in force under this Act and the work is carried out in accordance with the permit.

9. And further, that, having investigated the allegations, the Director confirmed there is sufficient evidence to support a finding that Kassiou is guilty of professional misconduct under section 34(1)(b) of the Act which provides:

34(1) On completion of the investigation, the Director must decide:

- (a) whether or not there is evidence that a building practitioner the subject of the investigation has committed an offence against this Act or the Regulations and, if there is evidence, may decide to prosecute the building practitioner for the alleged offence; and
- (b) whether or not there is evidence that a building practitioner the subject of the investigation is guilty of professional misconduct and, if there is evidence, must refer the matter to the Practitioners Board for inquiry.

### **Consideration of the Issues**

10. In summary, the owners of the buildings under construction at 6a, 6b, 6c, and 6d were all invoiced by Kassiou for the completion of the framed stage when the required works had not been completed.
11. It is noted that the Regulations provide that the *frame stage* is completed when “a building frame is completed”, not just the walls upon which the frame sits (regulation 41HA(2)).
12. It is commonly the view of building certifiers that the building frame is not completed until all framework, including floors, walls and the roof, has been completed.
13. Kassiou failed to complete the building works in accordance with the due date of their contracts and caused significant financial loss to the owners.
14. Kassiou's conduct has had a detrimental impact on the owners of the buildings which were the subject of the audit. They paid for the frame stage when the building work was not completed.
15. In relation to the building works at Albert St, Kassiou undertook works which were not in accordance with the Building Permit contrary to section 55 of the Act. The works undertaken related to footings which were a “structural” change to the footings.
16. This alleged breach relates to changes to the “in force” Building Permit without applying for an amended building permit before carrying out the changes.

### **Building Practitioner’s Position - Summary**

17. Louis Kassiou was not involved in the audit at all.
18. Ilias Kassiou cooperated with the audit and the investigation.
19. Although correspondence was sent to both Louis and Ilias Kassiou, only Ilias authored the responses.

20. Louis Kassiou did not personally respond to the Inquiry Board's correspondence directed to him nor appear at any of the Inquiry Board Hearings. He was, for a short time, represented by an interstate law firm but the law firm advised it no longer represented him.
21. Ilias Kassiou appeared at an early Directions Hearing of the Inquiry Board. He explained that he was only able to communicate with Louis Kassiou through a third party and that he believed that Louis Kassiou had moved interstate to work. He also indicated that he intended to wind up the company.
22. Ilias Kassiou was excused from attendance at any further hearings.
23. In relation to the early issuing of invoices (early Invoicing), Ilias Kassiou submitted in correspondence in the audit that;
 

*"In the last 15 years we have always issued the frame stage invoice once the blockwork is completed. ... Frame stage is when all walls are up in accordance with the plan. This was the case prior to sending the invoice to the client."*<sup>1</sup>
24. In relation to the change to the footings not in accordance with the in force building permit, Ilias Kassiou said in correspondence during the audit;
 

*"We generally only do amendments at the end of the build as this is cheaper than doing it multiple of times. This is even more important now due to the extreme build price rises."*<sup>2</sup>
25. Essentially, Kassiou denies any breach of regulation 41HE(2)(a) or section 55 of the Act.

**Building Practitioner's defences to each Allegation are as follows:**

26. RE: Early invoicing at the frame stage
  1. The regulations do not specify what the frame stage is.
  2. We have been issuing frame stage invoices once the walls were up for the last 15 years.
  3. This is the first complaints (*sic*) we have received.<sup>3</sup>
27. RE: Change to footings without amending the building permit
  1. It is too expensive to amend the building permit during the construction.
  2. It is cheaper to obtain verbal consent from the certifier and wait until the end of the build to issue an amended building permit.
  3. The fixings (\*) were supposed to be the same as our display home at the time and we noticed the details were incorrect. We made the adjustment as we had told the client external design was the exact same as our display home.
  4. This was a minor alternation and did not affect the structure or integrity of the home it was a change to the aesthetics of the porch.<sup>4</sup>

(\*) "fixings" was used by Ilias Kassiou in reference to the footings being altered.

<sup>1</sup> R1-Document 3 Att D letter 11.09.23 p.1

<sup>2</sup> R1-Document 3 Att E letter 27.10.23 p.3

<sup>3</sup> See Building Practitioner's Response to Draft Audit on 11.09.23 Pp 1&2 (R1.3 att D) (Ilias Kassiou).

<sup>4</sup> Building Practitioner's Response to Draft Audit on 27.10.23 p.3 at (R1.3 att E) "2. Alleged Breach of Section 55" (Ilias Kassiou).

## Director of Building Control - Submissions<sup>5</sup>

28. The early invoices were issued and paid on the following dates:

|              | ISSUED     | PAID       |
|--------------|------------|------------|
| Clarke St    | 14/11/2022 | 18/11/2022 |
| Zuccoli Pde  | 09/12/2021 | 18/02/2022 |
| Crabeye St   | 19/04/2022 | 22/04/2022 |
| Malachite Rd | 28/05/2022 | 31/05/2022 |

29. A site inspection of Clarke St on 14 August 2023 found that there was no roof frame and therefore the frame stage was incomplete.

30. Inspection certificates provided to the auditor by Kassiou for Zuccoli Pde, Crabeye St and Malachite Rd revealed that the timing of the block wall inspection indicated that the roof frame was not completed when Kassiou issued an invoice for payment of works up to and including the installation of the roof trusses and roof.

31. As at 9 July 2024,

- an occupancy certificate had not been granted for Clarke St. Works were completed by a new building practitioner;
- an occupancy certificate had been granted for Zuccoli Pde;
- an occupancy certificate had been granted for Crabeye St. The frame stage was completed by Kassiou;
- an occupancy certificate had been granted for Malachite Rd. The frame stage was completed by Kassiou.

32. There was an inordinate delay in the completion of these four builds.

33. Kassiou admitted that it undertook work not in accordance with the in force building permit at Albert St<sup>6</sup> and that it was the usual course of action for building works because they “generally only do amendments at the end of the build”.

34. On 13 May 2021, a certifier notified Kassiou that the footings were not consistent with the Building Permit.

35. The corrective building works were undertaken and a section 40 certificate of compliance from a structural engineer was issued which appeared to cover the variation between the build and the original permit. An occupancy certificate for Albert St was issued on 27 June 2024.

36. The Director submitted that Kassiou’s lack of understanding of its obligation under the Act and Regulations demonstrates a lack of competence to perform its functions to the standards which are required as a registered Building Practitioner in the Northern Territory

37. The Building Practitioners Board (NT) issued a Code of Practice on 22 March 2017 pursuant to its functions provided at section 14(1)(f) of the Act.

38. Relevantly, Obligation 1 of the Code provides:

### **Compliance with Legislation**

Registered building practitioners must ensure they comply with all relevant and applicable legislation related to the work they undertake.

It is expected that all practitioners will have knowledge, familiarity and understanding of the legislation that applies to the categories for which they are registered.

In the event of inconsistency between this policy and the operation of a statute or regulation, this policy will apply except for inconsistency.

39. This accords with section 34S(a) of the Act which states that a building practitioner is guilty of professional misconduct if an Inquiry Board finds that the practitioner has committed an offence against the Act or the Regulations.

<sup>5</sup> See Referral by Director, Building Control to the Building Practitioners Board of Inquiry on 2 February 2024

<sup>6</sup> ie building works at paragraph 6 e

## Director of Building Control - Submissions on Penalty

Re: Issuing of invoices prior to completion of frame stage

40. The evidence demonstrates a pattern of conduct over time where Kassiou has issued invoices prior to the completion of the frame stage in contravention of regulation 41HE(2)(a) of the (*Regulations*).
41. The maximum fine under regulation 41HE is 50 penalty units.
42. The early issuing of the frame stage invoices for the four-building works was deliberate conduct.
43. Kassiou did not complete the works in two of the properties required for completion of the frame stage.
44. As such, Kassiou's conduct is not consistent with the Act and Regulations.
45. These failures to complete building works are not errors a competent building practitioner would make.
46. The Director reviewed the status of each of these building works involving the "early invoicing". The cost of the remedial work and the cost of completing the frame stage is unknown. He concluded that the costs to the owners would most likely have been higher than if the works were completed without a break.
47. The Director submitted that the fine for these offences should be imposed at the higher end of the range of offending because:
  - a. The conduct occurred on multiple occasions;
  - b. Each owner was required to pay earlier than they should have, and this exposed them to the financial risk that Kassiou may not complete the work;
  - c. In the case of two owners, the work was not completed by Kassiou; and
  - d. The Director, Ilias Kassiou, said that the practice of early invoicing had been going on for 15 years.
48. Kassiou admitted to the alteration to the footings at Albert St without first amending the in force building permit. This was also a situation where the requirements of legislation were ignored for the sake of expediency and keeping costs down. The practice of leaving the issuing of an amended building permit had been going on for years.
49. Ultimately, the footings were made compliant with the Building Code.
50. However, this is a clear and deliberate breach of section 55 of the *Building Act 1993*.
51. A breach of section 55 is a serious matter because of the departure from the building permit regime and that, in this case, it related to the structural integrity of the construction.
52. The offending directly relates to the system of the building permit process for ensuring compliance with the Act and Regulations.
53. The Director found the changes to the footings at Albert St were a more substantial breach of section 55 than a trivial or minor variation of the Building Permit and that the breach by Kassiou was deliberate but not reckless.
54. He submitted that the breach sits in the mid-range, not the lower end of offences under section 55 of the Act.
55. The Director referred to three cases in his submissions.
56. Where breaches are a serious matter, the Board has imposed a reprimand and 1 civil penalty (see *NQ Sheds and Patios 2019 Building Practitioners Inquiry Board (7 May 2019)*). In that decision, the Inquiry Board found the conduct was deliberate rather than reckless or negligent.
57. In *Habitat Pty Ltd [2024] Building Practitioner Inquiry Board, 6 June 2024* as a comparative decision. That case involved 4 breaches of section 55, one said to be in the mid-range and the other three at the lower end of seriousness, fines of 10 and 15 penalty units were imposed for each alleged breach.

58. Much lower penalties of only 1 penalty unit were imposed for breaches of section 55 in *Geoffrey Martin* [2021] Building Practitioner Inquiry Board (21 January 2021) *NQ Sheds and Patios* [2019] Building Practitioners Inquiry Board (7 May 2019).
59. The maximum civil penalty under section 34T of the Act is 800 penalty units for a corporation.
60. The Director submitted that a global penalty under section 34T of the Act in the mid-to-high range was appropriate rather than individual penalties for the two groups of offending.

### **Action by the Building Practitioners Board**

61. It is noted that the Board suspended the registration of Kassiou and Louis Kassiou on 19 June 2024.
62. The grounds of suspension for both the company and the nominee were that they had ceased to comply with the qualifications or other requirements of their applications for re-registration.

### **Decision**

63. Louis Kassiou is the nominee of Kassiou Constructions Pty Ltd and he abandoned that role.
64. It was left to Ilias Kassiou to respond to the audit and investigation and later, the Inquiry Board.
65. Ilias Kassiou explained to the Inquiry Board that Louis Kassiou had moved interstate to work and he was only able to communicate with him through a third party.
66. The Inquiry Board acknowledges that Ilias Kassiou did his best to complete the builds where possible.
67. The owners of the “early invoices” matters were left in the lurch for a long time waiting for the building works to progress to the Certificate of Occupancy being issued.
68. These offences were committed in two of the penalty unit periods of 2021/2022 and 2022/2023.<sup>7</sup> Most of the “early invoices” were issued in the 2021/2022 period. (The penalty unit for the period 2021/2022 is \$157.00. The penalty unit for the period 2022/2023 is \$163.00)
69. The Owner of 5 Albert St was not significantly inconvenienced by the changes to the footings.
70. However, Kassiou’s adopted practice of not applying for an amended building permit until the near completion of works flies in the face of what is expected of an experienced and competent building practitioner in the Northern Territory.
71. Owners must feel assured that under the Act and Regulations, (which require building practitioners engaged to competently carry out building works) the building works will meet all structural and safety requirements and that they will be charged a fair and reasonable price for the build.
72. It would appear from the evidence that, a long time ago in the history of Kassiou, unlawful short cuts to building practices became the norm.
73. There is no allowance in the Act or Regulations for payment prior to works being completed for a stage, like the frame stage of a building.
74. Likewise, there is no allowance in the Act or Regulations for saving up amendments to one amended building permit at the end of the build after the changes have been made.
75. These building practices are unlawful under the Act and Regulations.
76. Relevantly, regulation 41HA (2) provides for the stages of standard progress payments. The “Frame Stage” is when the building’s frame is completed.

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<sup>7</sup> See paragraph 26

77. Regulation 15A (1) provides that the inspection stage for the Frame Stage is conducted before concealing the framework for floors, walls, roof or other building elements. This inspection focusses on the structural integrity of the framework before it is hidden from view.
78. Notably, this frame stage information is repeated on each of the *Tick of Approval* Building Permits issued for the four “early invoice” properties (and also for 5 Albert St).
79. Regulation 41HA(2)(a) obliges a Building Practitioner not to request or receive progress payment before completion of the stage of work to which the payment relates. Kassiou’s conduct contravened regulation 41HA(2)(a) in all four “early invoice” properties and this was the company practice for at least 15 years.
80. Kassiou and its directors ought to have known that the frame stage is only completed when the blockwork is filled, the roof trusses are up, and the roof is on.
81. In relation to the building works at 5 Albert St, section 55 of the Act places responsibility on a building practitioner (in this case, Kassiou) to ensure that building works are undertaken in accordance with the approved in force building permit.
82. Any offence against section 55 of the Act is a regulatory offence which is an offence of strict liability.
83. Kassiou and its directors ought to have known this.
84. That offence was committed in or around November 2020. (The penalty unit for the period 2020-2021 is \$158.00)
85. The NT Building Practitioners Board Code of Conduct issued on 22 March 2017 obliges all registered building practitioners to ensure they comply with all relevant and applicable legislation that applies to the categories for which they are registered.

### **Professional Misconduct**

86. Section 34S(a) of the Act provides that a building practitioner is guilty of professional misconduct if, on completion of an inquiry, the Inquiry Board is satisfied on the balance of probabilities that the practitioner committed offences against this Act.
87. The Board finds, on the evidence, that Kassiou committed four offences under regulations 41HE(2)(a) & (b), concerning the “early invoicing” as alleged, and also contravened section 55 of the Act.
88. In both types of offending, Kassiou admitted that it was its usual practice to issue “early invoices” and carry out building works without amending the in force building permit leaving it to the end of the build to issue an amended building permit.
89. Kassiou has demonstrated an insufficient level of understanding of the Act, its Regulations and the Code of Conduct.
90. The Board is satisfied on the balance of probabilities that Kassiou Pty Ltd, through its directors, is guilty of professional misconduct pursuant to section 34S(a) of the Act.

### **Penalties**

91. Pursuant to section 34T, the Act provides for disciplinary action, the Board may take any of the following actions in relation to the practitioner:
  - (a) reprimand the practitioner;
  - (b) require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;
  - (c) require the practitioner to give an undertaking to do, or not to do, a specified thing:
    - (i) at any time or during any period; or
    - (ii) at a specified time or during a specified period;
  - (d) require the practitioner to pay to the Territory a civil penalty not exceeding:

- (i) if the practitioner is an individual – 160 penalty units; or
  - (ii) if the practitioner is a corporation – 800 penalty units;
  - (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
  - (f) cancel the practitioner's registration.
92. The Board must have regard to the seriousness of the breaches and mitigating factors submitted by the Building Practitioner.
  93. The Board agrees with the Director that there should be one global penalty under section 34T of the Act.
  94. The breaches were substantial in nature due to a lack of understanding of the Act its Regulations and the Code of Conduct. There was also the admission of long-standing non-compliance with the Act and the Regulations by Kassiou.
  95. Consumer protection is paramount under the legislation and the Board is cognisant of this when issuing any penalty.
  96. The maximum penalty unit for a corporation is 800 penalty units under section 34(d)(ii) of the Act.
  97. The Inquiry Board notes the case law referred to by the Director. Those cases only concerned one property and not several properties with breaches extending back some fifteen years.

#### Penalty range for “Early Invoicing”

98. The Inquiry Board has determined that the breach concerning the “early invoicing”, and the long-held misunderstanding of what constitutes the frame stage, is in the mid to high range of offending, especially that it involved four owners who were seriously inconvenienced by Kassiou’s conduct.

#### Penalty for section 55 Breach

99. This breach was also a serious breach because it was deliberate and the building practice of only issuing an amended building permit at the end of the build the long-held misunderstanding of the requirements of section 55 of the *Building Act 1993* and the building permit regime.
100. The offending is in the mid to high range.

#### Penalty

101. In light of the three different penalty periods for these breaches, the Board has determined that it is appropriate to issue a civil penalty to the building practitioner because the most offences occurred in the period 2021/2022 (ie \$157.00).
102. The offending calls for the imposition of a penalty in the mid to high range.
103. The circumstances of all the offending are such that the issuing of a reprimand is appropriate.

### Orders

104. The Orders are in these terms:
  - a. The Building Practitioner is reprimanded;
  - b. In relation to the four breaches of regulation 41HE(2)(a) of the *Building Regulations 1993* and the breach of section 55 of the *Building Act 1993*, a civil penalty of 600 penalty units is imposed pursuant to section 34T (d)(ii) of the Act.

### Publication of Decision

105. The Inquiry Board acknowledges that some parts of the building industry will try to cut corners to keep costs down and maintain the speedy progression of building works forsaking compliance with the Act and Regulations



106. Pursuant to section 34R(2) and (3) of the Act, after the Building Practitioner has been notified of this decision, it is recommended that the Building Practitioners Board publish a copy of the decision in whatever manner it considers appropriate.

## Recommendation

107. Further, the Inquiry Board recommends that the Board issue clear guidelines as to what building works must be achieved for each stage of the Build.
108. The Director considers including the directors and nominees of a building practitioner company when referring matters concerning a company's building practice for inquiry to the Board.
109. The Board consider these reasons and decision and consider whether it would be appropriate for Ilias Kassiou to be under a period of supervision until the Board is satisfied with his level of competency and capacity to comply with all relevant and applicable legislation which applies to the categories for which he is registered.

## Review of Decision under the Act

110. Section 35 of the Act provides that the *Northern Territory Civil and Administrative Tribunal* (the Tribunal) has jurisdiction to review decisions made under the Act:
- (1) The Tribunal has jurisdiction to review a decision (a **reviewable decision**) specified in Schedule 5.
  - (2) An **affected person**, for a reviewable decision, is a person specified in Schedule 5 for the decision.

Note for section 35:

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review of the decision and other relevant matters in relation to reviews.*

111. Relevantly, Schedule 5 of the Act provides at Items 9 and 10:

9. A decision of the Inquiry Board under section 34P(1)(a) that a building practitioner is guilty, or is not guilty, of professional misconduct
10. A decision of the Inquiry Board under section 34P(1)(b) to take, or to not take, an action against a building practitioner under sections 34T or 34U

112. Section 35(3) of the Act provides that, you, as an affected person, may apply to the Tribunal for review of a reviewable decision. This is a reviewable decision under the Act.
113. The *Northern Territory Civil and Administrative Tribunal Rules 2016* set out the procedure for applying to the Tribunal for review of this decision and other relevant matters in relation to reviews.
114. Rule 5 provides:
- (1) This rule applies to an application commencing a proceeding in the Tribunal's original jurisdiction or review jurisdiction (an **initiating application**).
  - (2) A person wishing to commence a proceeding (the **applicant**) must file an initiating application in the approved form with the Tribunal.

*Note for subrule (2), the current approved form for an initiating application is Form 1.*

115. An application to commence a proceeding for the review of a reviewable decision must be filed within 28 days after the decision was notified to the applicant pursuant to section 93(3) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (the NTCAT Act).

116. Section 94(1) of the NTCAT Act provides for the procedure to make an application:

4. (1) An application to commence a proceeding in the Tribunal must be:
  - (a) filed with the Registrar; and
  - (b) made in accordance with the relevant Act, this Act and the rules; and
  - (c) accompanied by the fee prescribed by regulation.
- (2) A proceeding in the Tribunal commences when the application is accepted under section 95.

117. Section 95 of the NTCAT Act provides:

- (1) On receipt of an application to commence a proceeding under section 94(1), the Registrar may accept the application or refuse an application to commence a proceeding.
- (2) The Registrar may accept an application to commence a proceeding on conditions.
- (3) The Registrar must refuse an application to commence a proceeding if:
  - (a) it is made by a person not entitled to make it; or
  - (b) it is made after the time limit before which the application is required by the rules or the relevant Act; or
  - (c) it does not otherwise comply with the Act or the relevant Act.
- (4) The Registrar must accept or refuse an application if directed to do so by the Tribunal.
- (5) The Tribunal may direct the Registrar to accept or refuse an application:
  - (a) if requested to do so by the Registrar; or
  - (b) if the Registrar has refused an application – on application by the applicant.



Gabrielle Martin  
Presiding Member  
Building Practitioners Inquiry Board

12 December 2024