

Before the Building Practitioners Board
At Christchurch

BPB Complaint No. C2-01225

IN THE MATTER OF Under the Building Act 2004 (the Act)
A complaint to the Building Practitioners' Board under section 315 of the Act
AGAINST Carl Sumner, Licensed Building Practitioner No. BP 124596

DECISION OF THE BUILDING PRACTITIONERS' BOARD

Introduction

- [1] [The Complainant] lodged a complaint with the Building Practitioners' Board (the Board) on 20 July 2015 in respect of Carl Sumner, Licensed Building Practitioner (the Respondent).
- [2] The complaint alleged the Respondent has, in relation to building work at [omitted]:
 - (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) carried out or supervised building work that does not comply with a building consent (s 317(1)(d) of the Act);
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act);
 - (d) breached s 314B of the Act (s 317(1)(h) of the Act); and
 - (e) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- [3] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 4 April 2013.
- [4] The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).

[5] The following Board Members were present at the hearing:

| | |
|--------------------|--------------------------|
| Richard Merrifield | Deputy Chair (Presiding) |
| Brian Nightingale | Board Member |
| Mel Orange | Board Member |
| Bob Monteith | Board Member |

[6] The matter was considered by the Board in Christchurch on 27 September 2016 in accordance with the Act, the Regulations and the Board's Complaints Procedures.

[7] The following other persons were also present during the course of the hearing:

| | |
|--------------------|--|
| Sarah Romanos | Board Secretary |
| Carl Sumner | Respondent |
| Richard Tosh | Legal Representative for the Respondent |
| William Hursthause | Expert for the Respondent, Building Surveyor |
| [Omitted] | Witness for the Respondent |
| [Omitted] | Complainant |
| Warren Nevill | Special Adviser to the Board |

Members of the public were present.

[8] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Board Procedure

[9] The "form of complaint" provided by the Complainant satisfied the requirements of the Regulations.

[10] On 17 February 2016 the Registrar of the Board prepared a report in accordance with reg 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint. It included a report from Warren Nevill as a Special Adviser to the Board.

[11] On 10 March 2016 the Board considered the Registrar's report and in accordance with reg 10 it resolved to proceed with the complaint that the Respondent:

- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
- (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

[12] On 12 September 2016 a pre-hearing teleconference was convened by Chris Preston, Board Chair with the Respondent. The hearing procedures were explained and the Respondent's attendance at the substantive hearing was confirmed.

Function of Disciplinary Action

[13] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom¹.

[14] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*²:

Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

[15] It must also be noted that the Board has jurisdiction only with regard to “the conduct of a licensed building practitioner” and with respect to the grounds for discipline set out in s 317 of the Act. It cannot investigate matters outside of those grounds, does not have any jurisdiction over contractual matters and cannot deal with or resolve disputes between a complainant and the person who is the subject of the complaint.

The Hearing

[16] The hearing commenced at 10.20 a.m.

[17] At the hearing the Board was assisted in the presentation of the case by the Counsel for the Registrar who provided an opening summary that was read into the record by the Board Secretary.

[18] Persons giving evidence were sworn in, their evidence was presented and they answered questions from the Board.

Substance of the Complaint

[19] The allegations made by the Complainant included that:

- (a) the concrete foundations were not vibrated as required resulting in foundations cracking and a need for them to be repaired three times;
- (b) a slider in the lounge was too large and the Respondent removed studs supporting a lintel to allow the slider to fit and had the slider shortened and the studs replaced only when concerns were raised;
- (c) some walls were upside down;

¹ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

² [1992] 1 NZLR 720 at p 724

- (d) several walls were not straight;
- (e) the bottom purlin on the roof is not in the correct space and as a result birds get into the roof space;
- (f) other purlins are not correctly or tightly affixed, causing the roof to creak; and
- (g) damaged roofing iron and screws were re-used.

[20] The Respondent was also alleged to have failed to provide a record of work on completion of restricted building work.

[21] Numerous reports were provided in support of the complaint. These included a report from AA House Checks dated 28 February 2014 and a report from Maynard Marks dated 23 October 2015.

Evidence

[22] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*³ where Justice McGrath in the Supreme Court of New Zealand stated:

[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction of the Tribunal”. A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal’s reasonable satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.

[23] The Respondent was engaged as a labour only contractor by [omitted] in relation to the construction of a new home for the Complainant.

[24] The Board appointed a Special Adviser who completed a report dated 3 December 2015. The Special Adviser gave consideration to the AA House Checks and Maynard Marks reports in his own report. The Special Adviser identified and summarised the following alleged deficiencies:

³ [2009] 1 NZLR 1

| Situation | Reason | Extent | Compliance |
|-------------------------|---|--|--|
| Foundation Work | Alleged lack of compaction of foundation concrete | Isolated areas apparent although this may have been more widespread as is currently plastered over | Areas observed fail to comply with expectations of the Building Consent, Specifications (Concreter), NZS 3604 cl2.6 7 likely 4.5, and NZS 3109 cl7.6 and BRANZ Bulletin 372 |
| Roof Structure | Lower purlin incorrectly placed | Likely to roof perimeter, particularly at northwest corner | Fails to comply with expectations of the Building Consent, detail 01 sht 14 consented plans, E2AS1 fig 45 and manufacturer's details and notated requirements |
| | Single upper purlin installed | Roof ridge areas | Fails to comply with cross sectional dwg sht 11 and detail 16 |
| | Inadequate purlin/roof truss attachments | Widespread | Fails to comply with acceptable trade practice, consented drawings, NZS table 10.10 |
| Timber Framed Walls | Walls exceed alignment tolerance levels | Particularly in living kitchen passage areas | Fails to comply with expectations of the Building Consent, NZS 3604 table 2.2 and acceptable trade practice |
| Entrance Roof Structure | Out of alignment, poor level of trade practice | Entrance porch | Fails to comply with expectations of the Building Consent, table 2.2, E2AS1 expectations and acceptable trade practice |
| Brick veneer cladding | Out of alignment, poor level of trade practice | Widespread including sills of floor level joinery | Fails to comply with NZS 4210 table 2.2 Maximum tolerances, Building Consent, Consented drawings detail 06 sht 15, Performance requirements of Compliance Document E2, E2AS1 (figs 73c & 73d) expectations and acceptable trade practice |
| Interior finishing | Doors etc out of alignment | Widespread including door installation | Fails to comply with acceptable levels of trade practice |

- [25] The Respondent provided a comprehensive response to the complaint by way of his legal adviser on 12 February 2016.
- [26] At the hearing the Special Adviser spoke to his report and noted minor corrections to it.
- [27] The Complainant spoke to his complaint noting that the various reports and the non-compliance spoke for themselves.

[28] The Respondent produced a table of work he claimed was not carried out by him and several character references. Additional photographs were also produced. The additional documentation was admitted into evidence. The table noted:

| Work | Involvement |
|------------------------------|---|
| Sub trades | No organisation or supervision of other trades |
| Foundations | No digging of foundations |
| Floor Slab | No hard fill or sand binding No concrete placement |
| Roofing | Not the fascia, gutters, downpipes, roof flashings, roofing underlay or roofing Not the chimney (nothing connected with the fireplace) |
| Garage Door | No work |
| Brick work and wall cladding | No work |
| Inside | No insulation, gib fixing, plumbing/drainlaying, kitchen, showers, floor coverings |

[29] The Special Adviser's summary table at paragraph [24] above was used as a reference and witnesses were questioned in relation to it. The following evidence is that which was given in addition to the documentation presented to the Board in the complaint file.

Foundation

[30] With regard to the foundation the Respondent accepted there was some poor quality aspects. He stated the concrete was poured without the use of a pump as there was truck access around the entire foundation. It was vibrated as normal ensuring the concrete around the steel was vibrated. The foundation was deeper than shown on the plans and this was done to ensure solid bearing. He noted that the plumbing penetrations were the work of the plumber who used knockouts. He was not involved in the sealing of the pipe penetrations.

[31] The Respondent accepted the foundations may not have been vibrated enough in some locations. The Special Adviser and the Respondent's Expert agreed that, provided the concrete had been vibrated around the steel as described, it would be structurally sound and the issue would therefore be of a cosmetic nature only.

Roof Structure

[32] The Respondent gave evidence that he used 90mm x 3.15mm nails which were supplied and that fixings were done as per NZS3604. Some nails missed wooden elements when being shot with a nail gun but additional or preplacement nails were installed where this occurred to ensure the NZS3604 requirements were met. Nails that did miss were left in situ.

- [33] The Respondent stated the work on the lower purlin where it was incorrectly placed was done by another contractor. Evidence was also heard as to how the method of install would have allowed for fascia install.
- [34] As regards the single purlin at the ridge line where a double purlin was shown the Respondent stated he installed a purlin along the fixing line as required but not the second purlin. The Special Adviser and the Respondent's Expert did not see the need for the extra purlin and advised it was not a requirement under NZS3604 and would be classed as a minor variation under s 45A of the Act.
- [35] In terms of the gaps between trusses and frames it was accepted that these were beyond the tolerances and would not close even if clamped and screwed. Blocking could be used to remediate. The Special Adviser did not consider that shrinkage was the cause. The Respondent stated he was willing to attend to remediation.

Framed Walls

- [36] The Respondent stated that pre-cut frames were supplied and they set out and erected them. He advised that some of the frames were supplied with a damp proof course (DPC) on the top rather than the bottom which is not uncommon with pre-cut frames. DPC was installed on the bottom prior to the frames being erected to fix this and the DPC on the top was left as it was. The Special Adviser confirmed this would have little, if any, impact on the structure.
- [37] As regards the straightness of the walls the Respondent stated that Bainbridge Homes who were responsible for the supply and delivery of the frames did leave them in the weather for some time before they were needed. String lines, blocks, straight edges and bracing were used during the install and maltoid was used as packing. Walls were straightened prior to the plasterboard being installed by subcontractors.
- [38] The Respondent and his expert advanced that some of the horizontal and or vertical bowing could have been caused by shrinkage, insulation under the plasterboard, rubbish collecting at the base of plasterboard during installation or that the measurements taken by the Special Adviser were misleading due to a short straight edge being used. The Special Adviser noted that the walls had a corresponding slope on the reverse side of the wall.

Brickwork

- [39] The Brickwork was completed by a subcontractor who was not under the control or direction of the Respondent.

Interior Finishing

- [40] The Respondent accepted that he installed doors and that some were out of alignment but contended that he would have attended to this prior to completion but was prevented from being able to go back and remediate.
- [41] As regards the lounge slider the Respondent stated he was doing what he was instructed by Bainbridge Homes.
- [42] He did not fix the door hardware.

Negligence and Contrary to a Consent

- [43] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v*

*Far North Council*⁴. Judge McElrea provided guidance on the interpretation of those terms:

[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.

[44] In my view a "negligent" manner of working is one that exhibits a serious lack of care judged by the standards reasonably expected of such practitioners, while an "incompetent" manner of working is one that exhibits a serious lack of competence.

[46] The approach I have adopted recognises that the terms "negligent" and "incompetent" have a considerable area of overlap in their meanings, but also 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.

[44] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*⁵ as regards the threshold for disciplinary matters:

[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.

[45] As regards the building, in accordance with a building consent the process of issuing a building consent and the subsequent inspections under it ensure a building is constructed in accordance with the building consent and that there is independent verification of this and that the building work will meet any required performance criteria in the Building Code. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must be submitted as a variation to the consent before any further work can be undertaken. It is also an offence under s 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.

[46] In *Tan v Auckland Council*⁶ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

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

[47] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.

⁴ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁵ [2001] NZAR 74

⁶ [2015] NZHC 3299 [18 December 2015]

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- [48] Looking at the work that is in question, the Board notes that there were areas where the workmanship of the Respondent and/or that which was undertaken under his supervision was substandard and/or did not comply with the building consent. In particular the foundations, the missing ridge purlin, bowing walls, gaps between trusses and frames and miss-aligned doors. The Board also noted that the foundations were cosmetic, the ridge purlin was superfluous to structural integrity and the gaps between trusses and frames and the door alignment issues could be easily rectified.
- [49] In all the circumstances whilst the Board considers there were aspects of negligence (not incompetence) in the Respondent's work and or supervision, the Board does not consider it met the seriousness threshold as set out above. The same applies as regards building work which was contrary to a consent. There was work that was not in strict accordance with the building consent but they were changes that would have been considered to have been minor under s 45A of the Act. More importantly the departures were not seriousness enough to warrant a disciplinary outcome.

Record of Work

- [50] There is a statutory requirement under s 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁷.
- [51] Failing to provide a record of work is a ground for discipline under s 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had "good reason" for not providing a record of work on "completion" of the restricted building work.
- [52] The statutory provisions do not stipulate a timeframe for the licensed person to provide a record of work. The provisions in s 88(1) simply state "on completion of the restricted building work ...".
- [53] In the current case the Respondent by way of his response to the complaint has acknowledged his failure to provide a record of work and has stated it was an oversight.
- [54] Unlike disciplinary charges under s 317(1)(b) and (d) of the Act (negligence or incompetence and contrary to a consent) there is no seriousness threshold when considering a record of work. The Board considers it to be a strict liability offence with it being open to the Respondent to prove a defence of good reason. This being the case the disciplinary charge is made out when there are no good reasons provided as to why the record of work was not provided.
- [55] The Respondent should note that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. The obligation is also to provide it to the owner not the main contractor. Whilst this may be common practice in the industry, the licensed building practitioner who completes the work can put themselves at risk if the main contractor withholds the same.

Board Decision

- [56] The Board has decided that Respondent has not:

⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act); or
- (b) carried out or supervised building work that does not comply with a building consent (s 317(1)(d) of the Act).

[57] The Board has also decided that the Respondent has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act) and should be disciplined.

Disciplinary Penalties

[58] The grounds upon which a Licensed Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act¹.

[59] The Board's Complaints Procedures allow the Board to either set out the Board's decision on disciplinary penalty, publication and costs, or to invite the Respondent to make submissions on those matters.

[60] As part of the materials provided to the Board for the Hearing the Respondent provided submissions which were relevant to penalty, publication and costs and the Board has taken these into consideration.

[61] Given the nature of the disciplinary offending, the mitigation already heard and the level of penalty decided on the Board has decided to dispense with calling for further submissions. The Respondent will, however, be given an opportunity to comment on the level of penalty, costs and on publication should he consider there are further matters which the Board should take into consideration.

[62] As stated earlier the purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct.

[63] The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*⁸ has commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to uphold professional standards:

[27] *Such penalties may be appropriate because disciplinary proceedings inevitably involve issues of deterrence. They are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.*

[28] *I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

[64] The Board notes that the only matter before it in respect of penalty is the record of work charge. On the basis of the principles above the Board considers a fine of \$500

⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

is appropriate. The Board's normal tariff for a record of work offence is \$1,000 but this has been reduced on the basis of the mitigation heard.

Costs

- [65] Under s 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [66] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case. The judgement in *Cooray v The Preliminary Proceedings Committee*⁹ included the following:

"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure. In other cases, where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment."

- [67] The judgment in *Macdonald v Professional Conduct Committee*¹⁰ confirmed the approach taken in *Cooray*. This was further confirmed in a complaint to the Plumbers, Gasfitters and Drainlayers' Board, *Owen v Wynyard*¹¹ where the judgment referred with approval to the passages from *Cooray* and *Macdonald* in upholding a 24% costs order made by the Board.
- [68] In *Collie v Nursing Council of New Zealand*¹² where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate. It is not hard to see that the award of costs may have imposed some real burden upon the appellant but it is not fixed at a level which disturbs the Court's conscience as being excessive. Accordingly it is confirmed.

- [69] The Board notes the matter was dealt with at a hearing. Ordinarily costs for a hearing would be in the order of \$2,000 but the Board this has been reduced to \$500 being the amount the Board normally imposes toward the costs and expenses of, and incidental to, the inquiry by the Board for a record of work matter which is heard on the papers. In this way the Respondent has been treated the same as a licensed building practitioner who appears only on a record of work matter.

Publication of Name

- [70] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as required by the Act.

⁹ HC, Wellington, AP23/94, 14 September 1995

¹⁰ HC, Auckland, CIV 2009-404-1516, 10 July 2009

¹¹ High Court, Auckland, CIV-2009-404-005245, 25 February 2010

¹² [2001] NZAR 74

[71] The Board is also able, under s 318(5) of the Act, to order publication over and above the public register:

In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.

[72] As a general principle such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

[73] The Board does not consider any further publication is required.

Penalty, Costs and Publication Decision

[74] For the reasons set out above, the Board directs that:

Penalty: Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$500.

Costs: Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register and him being named in this decision.

Submissions on Penalty Costs and Publication

[75] The Board invites the Respondent to make written submissions on the matters of disciplinary penalties, costs and publication up until close of business on 15 November 2016.

[76] If no submissions are received, then this decision will become final.

[77] If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

[78] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 21st day of October 2016



Richard Merrifield
Presiding Member

i Section 318 of the Act

(1) *In any case to which section 317 applies, the Board may*

- (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
- (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
- (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
- (d) *order that the person be censured:*
- (e) *order that the person undertake training specified in the order:*
- (f) *order that the person pay a fine not exceeding \$10,000.*

(2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*

(3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*

(4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*

(5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.”*

ii Section 330 Right of appeal

(2) *A person may appeal to a District Court against any decision of the Board—*

- (b) *to take any action referred to in section 318.*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*