

Before the Building Practitioners Board

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| | BPB Complaint No. CB25456 |
| Licensed Building Practitioner: | Thomas Bird (the Respondent) |
| Licence Number: | BP 130253 |
| Licence(s) Held: | Carpentry |

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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| Complaint or Board Inquiry | Complaint |
| Hearing Type: | On the Papers |
| Hearing and Decision Date: | 18 May 2020 |
| Final Decision: | 15 July 2020 |

Board Members Present:

Chris Preston, Chair (Presiding)
Mel Orange, Deputy Chair, Legal Member
Richard Merrifield, LBP, Carpentry and Site AOP 2
David Fabish, LBP, Carpentry and Site AOP 2
Robin Dunlop, Retired Professional Engineer

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) and (h) of the Act.

Contents

| | |
|--|----|
| Introduction | 2 |
| Regulation 9 Decisions | 3 |
| Draft Decision Process | 3 |
| Function of Disciplinary Action | 4 |
| Evidence | 5 |
| Draft Conclusion and Reasoning | 5 |
| Negligence – Carrying out Building Work without a Building Consent | 6 |
| Working Outside of Competence | 9 |
| Draft Decision on Penalty, Costs and Publication | 10 |
| Penalty | 10 |
| Costs..... | 11 |
| Publication | 12 |
| Draft Section 318 Order | 13 |
| Submissions on Draft Decision | 13 |
| Request for In-Person Hearing | 13 |
| Submissions Made | 14 |
| Final Decision | 14 |
| Final Section 318 Order | 14 |
| Right of Appeal | 14 |

Introduction

- [1] On 18 May 2020 the Board received a Registrar’s Report in respect of a complaint from the *[Omitted]* about the conduct of the Respondent.
- [2] Under regulation 10 of the Complaints Regulations the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies.
- [3] Having received the report, the Board decided that regulation 9 applied to aspects of the complaint but not to the allegation that the Respondent had:
 - (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B(b) of the Act (s 317(1)(h) of the Act).
- [4] Under regulation 10 the Board is required to hold a hearing in respect of those matters.

Regulation 9 Decisions

- [5] The complaint to the Board also contained allegations that the Respondent had:
- (a) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) 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 a certificate of work about any plans and specifications required to accompany the building consent application (s 317(1)(da)(i) of the Act).
- [6] With regard to those allegations, the Board decided that regulation 9 of the Complaints Regulations applied.
- [7] In respect of carrying out restricted building work that the Respondent was not licensed to carry out (section 317(1)(c) the Board consider that the more appropriate charge was that of section 317(1)(h), that the Respondent carried out building work outside of his competence (design work). The Board, therefore, decided that regulation 9(f)(ii) applied, the further investigation of the allegation is unnecessary.
- [8] With regard to contrary to section 317(1)(d) it relates to carrying out building work that does not comply with a building consent. As no consent had issued the matters complained about cannot come within the provisions of the disciplinary charge. As such regulation 9(a) applies, the matter does not come within the grounds for discipline.
- [9] Finally, with regard to section 317(1)(da)(i), failure to provide a certificate of work, the Board notes that as a building consent was not applied for the elements of the offence cannot be satisfied. Once again, regulation 9(a) applies.

Draft Decision Process

- [10] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers is necessary prior to it making a decision. In this respect, the Act provides that the Board may regulate its own procedures¹. It has what is described as a summary jurisdiction in that the Board has a degree of flexibility in how it deals with matters; it retains an inherent jurisdiction beyond that set out in the enabling legislation². As such, it may depart from its normal procedures if it considers doing

¹ Clause 27 of Schedule 3

² *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.

- [11] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers.
- [12] The Board does, however, note that there may be further evidence in the possession of persons involved in the matter or that the Board may not have interpreted the evidence correctly. To that end, this decision is a draft Board decision. The Complainant and the Respondent will be provided with an opportunity to make comment on the Board's draft findings and to present further evidence prior to the Board making a final decision. If the Board directs or the Respondent requests an in-person hearing, then one will be scheduled.

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 Kingdom in *R v Institute of Chartered Accountants in England and Wales*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.
- [14] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁵ Collins J. noted that:

"... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community."

- [15] In a similar vein, the Board's investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint's Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁶:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

⁶ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

- [16] Finally, the Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.
- [17] The above commentary on the limitations of the disciplinary process are important to note as, on the basis of it, the Board’s inquiries, and this decision, focus on and deal with the serious conduct complained about.

Evidence

- [18] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁷. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [19] The complaint related to the construction of a detached pole shed and then a one-bedroom minor dwelling without building consents. The complaint was made by the *[Omitted]* who become aware of the building work when carrying out an inspection on another property on 27 November 2019.
- [20] The Respondent initially advised the *[Omitted]* that there was insufficient time in which to make a building consent application. Subsequent enquiries by the *[Omitted]* showed that construction had been ongoing for approximately 3 months when it came to the BCA’s attention. The shed was substantially if not fully complete, and the minor dwelling was well progressed with a roof installed.
- [21] The Respondent claimed that he carried out the building work so as to provide accommodation for his family following the sale of their home. He stated that following the sale of his home, the accommodation that had been arranged fell through and that he could not afford the cost of renting or of storing belongings. He further stated that he could not afford the costs of plans and that he did not have the time available to get plans.
- [22] The Respondent accepted he had not followed the correct process and apologised for his actions. He stated he would not carry out building work for a client without a building consent.
- [23] Certificates of Acceptance have been issued for the two buildings. The Respondent noted that there were no compliance issues with the building work that was undertaken.

Draft Conclusion and Reasoning

- [24] The Board has decided that the Respondent **has:**

⁷ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act); and
 - (b) breached section 314B(b) of the Act (s 317(1)(h) of the Act);
- and **should** be disciplined

[25] The reasons for the Board's decisions follow.

Negligence – Carrying out Building Work without a Building Consent

[26] The Board's decision relates to the failure to obtain a building consent for the building work.

[27] The starting point is that all building work must be carried out in accordance with a building consent. Section 40 of the Act provides:

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

[28] It was, on the basis of those provisions, open to the Complainant to prosecute the Respondent for a breach of section 40 of the Act.

[29] Turning to building consents, they are granted under section 49 of the Act. A building consent can only be granted if the provisions of the Building Code will be satisfied. Section 49 provides:

49 Grant of building consent

- (1) *A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.*

[30] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code⁸. In

⁸ Under section 17 of the Act all building work must comply with the building code. The building code is contained in Schedule 1 of the Building Regulations 1992 (the Building Code).

doing so the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act as set out in section 3:

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[31] In *Tan v Auckland Council*⁹ 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.

[32] Justice Brewer in *Tan* also noted:

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

[33] The *Tan* case related to the prosecution of a project manager. The project manager did not physically carry out any building work. The High Court on appeal, however, found that his instructions to those who did physically carry out the work amounted to “carrying out” for the purposes of section 40 of the Act.

[34] In this instance, the Respondent is both the owner, on whom the primary obligation lies, and the builder who, in accordance with *Tan*, also carries a responsibility

⁹ [2015] NZHC 3299 [18 December 2015]

- [35] There are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. One exception under section 41(1)(c) is building work that has to be carried out urgently. The Respondent alluded to urgency in his submission to the [Omitted] that he did not have time to apply for a building consent. The exception would not, however, apply as it can only be used where the work has to be carried out urgently “for the purpose of saving or protecting life or health or preventing serious damage to property”.
- [36] The Respondent has accepted that he should have obtained a building consent before carrying out the building work. There is no dispute in this respect. It is clear that he should have.
- [37] The question for the Board to consider is whether, at the time the building work was undertaken by the Respondent, he knew or ought to have known that a building consent was required for what was being undertaken and if so whether the Respondent has, as a result of the failing, been negligent.
- [38] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*¹⁰ test of negligence which has been adopted by the New Zealand Courts¹¹.
- [39] The New Zealand Courts have stated that the assessment of negligence in a disciplinary context is a two-stage test¹². The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [40] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purposes of the Act¹³ which are outlined above. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁴.

¹⁰ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹² *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹³ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹⁴ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- [41] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁵ the Court's noted, as regards the threshold for disciplinary matters, that:

[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.

- [42] It was clear to the Board that the Respondent was fully aware of the need for a building consent and that he simply chose, as a matter of expedience, to ignore those requirements. If it were not for the *[Omitted]* happening upon the noncompliance, it may well be that the buildings would have continued to sit outside of the Building Act compliance regime. There may have been personal reasons for why the Respondent carried out the building. They do not excuse the behaviour. Nor does the fact that the building work has since been accepted as meeting Building Code requirements. The simple fact is that the building consent process goes to the heart of the compliance regime within the Building Act. Circumventing or ignoring it puts the objectives of the Act, which include keeping people safe and healthy, at risk.
- [43] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Working Outside of Competence

- [44] As regards working outside of one's competence 314B(b) of the Act provides:

A licensed building practitioner must—

(b) carry out or supervise building work only within his or her competence.

- [45] In the context of the Act and the disciplinary charge under section 317(1)(h) and 314B(b) a licensed building practitioner must only work within their individual competence. If a licensed building practitioner undertakes work outside of their licence class¹⁶ then they can be found to have worked outside of their competence if they do not have the requisite skill set, knowledge base or experience.
- [46] In the present case, the Board notes that the Respondent did not obtain, as part of the building process, a design for the minor dwelling from a suitably qualified person. He stated that he "could not afford the costs of plans and that he did not have the time available to get plans".
- [47] If the Respondent had obtained a building consent (as he should have) then he would, as part of the consenting process, have had to submit plans that had been

¹⁵ [2001] NZAR 74

¹⁶ Note that to carry out restricted building work outside of a licensed building practitioners licence class is a disciplinary offence under s 317(1)(c) of the Act.

developed by a licensed building practitioner with a design licence along with a certificate of work. The reason for this requirement is that design work is restricted building work¹⁷. It can, therefore, only be carried out by an appropriately licensed person.

- [48] Because a building consent was not obtained and plans were not developed by the Respondent, the Board cannot make a finding that he carried out restricted building work that he was not licensed to carry out under section 317(1)(c) of the Act.
- [49] Notwithstanding the Respondent did determine the construction methodology that was used for the minor dwelling. In doing so, he has effectively determined the design. Given that he does not hold a design licence, the Board has found that he has carried out building work outside of his competency.

Draft Decision on Penalty, Costs and Publication

- [50] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [51] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [52] 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. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁸ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[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.

¹⁷ Section 7 of the Act states that the definition of building work "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:

3 Design work declared to be building work

- (1) Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.
(2) Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.

¹⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [53] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁹ the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [54] The matters before the Board are serious. As noted above the building consent process is fundamental to ensuring the Building Code is complied with and the purposes of the Building Act are achieved. The Board also notes that the decision to not obtain a building consent was a calculated one. On the basis of these factors, the Board adopted a starting point of a fine of \$4,500.
- [55] The Respondent has accepted responsibility, has been cooperative and has shown remorse. A certificate of acceptance has been granted. The Board also notes the personal circumstances that lead to the Respondent taking the actions that he did. The Board considers that these are mitigating matters that can be taken into account. On the basis of them the Board has decided to reduce the fine to \$3,000.

Costs

- [56] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”
- [57] 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 case²⁰.
- [58] In *Collie v Nursing Council of New Zealand*²¹ 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.*
- [59] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar’s Report and in the Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such the Board will order that costs of \$500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

¹⁹ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

²⁰ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²¹ [2001] NZAR 74

Publication

[60] 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 is required by the Act²². The Board is also able, under section 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.

[61] 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.

[62] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁶.

[63] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁷. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[64] Based on the above, the Board will order further publication. The publication will be by way of an article in Code Words which will focus on the requirement for all building work to be consented unless an exception to the requirement can be established. The Respondent will not be named in the article.

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Draft Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,000.

Costs: Pursuant to section 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 section 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision. The Respondent will not be named in that publication.

[66] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

Submissions on Draft Decision

[67] The Board invites the Respondent and the Complainant to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[68] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **29 June 2020**.

[69] If submissions are received, then the Board will meet and consider those submissions.

[70] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[71] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

[72] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.

[73] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **29 June 2020**.

Submissions Made

[74] The Board received a submission from the Respondent on 28 June 2020. The Respondent accepted his wrongdoing and apologised.

Final Decision

[75] Given the above, the Board affirms its draft decision and penalty.

Final Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,000.

Costs: Pursuant to section 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 section 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision. The Respondent will not be named in that publication.

Right of Appeal

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

Signed and dated this 16th day of July 2020



Chris Preston
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.*