

## Before the Building Practitioners Board

	BPB Complaint No. CB25780
Licensed Building Practitioner:	Gilbert Albert Kanon (the Respondent)
Licence Number:	BP116036
Licence(s) Held:	Carpentry and Site AoP 1

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### 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 Draft Decision Date:	28 September 2021
Final Decision Date:	10 November 2021

#### Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)  
Mr D Fabish, LBP, Carpentry and Site AOP 2  
Mr B Monteith, LBP, Carpentry and Site AOP 2  
Mrs F Pearson-Green, LBP, Design AOP 2  
Ms J Clark, Barrister and Solicitor, Legal Member

#### 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.

#### Draft Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(da)(ii) of the Act.

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## Summary of the Board’s Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,500 and ordered to pay costs of \$500.

## The Charges

- [2] On 28 September 2021, the Board received a Registrar’s Report in respect of a complaint about the conduct of the Respondent.
- [3] 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.
- [4] Having received the report, the Board decided that regulation 9 did not apply. Under regulation 10 the Board is required to hold a hearing.
- [5] 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 procedures<sup>1</sup>. 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

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<sup>1</sup> Clause 27 of Schedule 3

legislation<sup>2</sup>. As such, it may depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.

- [6] 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.
- [7] 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 Respondent will be provided with an opportunity to 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.

### **Disciplinary Offences Under Consideration**

- [8] On the basis of the Registrar's Report, the Respondent's conduct that the Board resolved to investigate was that the Respondent had 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)

### **Function of Disciplinary Action**

- [9] 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*<sup>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>4</sup>.
- [10] 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*,<sup>5</sup> 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."*

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

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

<sup>4</sup> [1992] 1 NZLR 720 at p 724

<sup>5</sup> [2016] HZHC 2276 at para 164

## Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [12] The Respondent was engaged to supervise the construction of multiple new residential units at [Omitted], under a building consent. The Respondent's supervision included the supervision of restricted building work for which a record of work must be provided on completion. The Respondent's involvement started on or about 20 January 2020 and came to an end, according to the Complainant, on or about 4 April 2020.
- [13] The Respondent provided a written response to the complaint. He stated that he had drafted a record of work that he would make available when required and that he had not refused to provide a record of work. He also submitted that he was only obliged to provide a record of work for "*all completed works*", noting that the Complainant had stated, in the complaint, that the "project is still not complete". The Respondent stated that he was not aware of the current status of the project.
- [14] The response noted that the Respondent's involvement came to an end when his company (ZCAP Limited) went into administration on 9 March 2021. The company was then put into liquidation on 24 March 2021, and that the contract with ZCAP was terminated by [Omitted]. He stated that, prior to the termination, he was "*at all times I was either directly or indirectly supervising the project*".
- [15] The Respondent went on to note that he had not been asked for a record of work, that he had "next to no" contact from the Complainant. He noted that he was not a party for contractual purposes and that other persons were the designated points of contact and that he did not know if requests had been made of them. The Respondent also referred to the liquidation of his company, noting that he was not aware if any requests were made of those dealing with the liquidation.
- [16] The Respondent also noted that he had contacted the Ministry of Business Innovation and Employment (MBIE) contact centre to inquire whether he was required to provide a record of work. He noted he was on the phone for 26 minutes and was "*advised very clearly that the only time I supply a ROW was if the works were complete*" and that he was "*advised not to submit as we did not complete the works*".
- [17] The Board obtained a recording of the MBIE phone call and had a transcription made. The call was 4 minutes and 15 seconds in duration. During the call, the Respondent noted that a complaint had been made about him by an ex-client about

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

the non-provision of a record of work. The transcript was as follows (R – Respondent, CC – Contact Centre):

- R. *Um I've just had a funny email from an ex-client of mine who's basically accusing me of -- and he reckons he's laid a complaint.*
- CC. *Right, okay.*
- R. *That I won't give him a Record of Works, which is utter bollocks.*
- CC. *Okay, all right. Yeah?*
- R. *I've no idea -- it's the first time they've requested a Record of Works from me, so I don't know -- basically what's happened in the last three months is my company's gone into liquidation, receivership/liquidation.*
- CC. *Oh right. Right, I see, yeah?*
- R. *And the liquidator and the receiver have both told us not to be in contact with anybody. I personally have not had any correspondence with these people and now all of a sudden, he's telling me that he's laid a complaint.*
- CC. *Oh right, okay.*
- R. *I have no problems passing my Record of Works, none whatsoever, but all the work was incomplete. So I can't give a PS3 which doesn't -- well Record of Works --*
- CC. *Right, okay.*
- R. *-- is not a problem, I've done the Record of Works, the Record of Works is ready to go. But I can't do a PS3.*
- CC. *Right, well PS3 is just a Council requirement anyway.*
- R. *Yes, I know. I know that, yes, yeah yeah.*
- CC. *Yeah.*
- R. *Yeah. So I'm not worried about the PS3, what worries me is that he's laid a complaint against me --*
- CC. *Right, okay?*
- R. *-- then I have not been -- they have not been in contact with me at all.*
- CC. *Right, okay. So had you completed the work though or not fully completed?*
- R. *No it's not completed.*
- CC. *Okay, yeah?*

- R. *I can do a partial Record of Works for the work that we've done, and I've — it's done, it's ready to go, but like I said, I've not been contacted by anybody.*
- CC. *Yeah?*
- R. *I am being told by my lawyers that I have to follow what the receivers and liquidators are telling me to do.*
- CC. *Right, yeah.*
- R. *They've told me not to do anything, and don't even be in contact with them. And yet today I get an email from him basically stipulating I'm laying — I've laid a complaint.*
- CC. *All right, okay.*
- R. *Well 1), you've never been in contact with me. 2), you've never asked me for it and 3), I have no problems, I'll even upload it tonight onto the website, which is not a problem, but you know what I mean?*
- CC. *Yeah. Well, you don't need to upload it to the website. Well it would really come down to I supposed if you'd completed the work, that you should have provided the Record of Work, but if you haven't, then it's a bit more, you know, subjective whether you should have.*
- R. *Yes exactly, that's exactly what we are — what I'm trying to say and I'm happy to supply it for the work that I've done, and I've written comments in it, this was completed, this wasn't completed, all that sort of stuff I've done.*
- CC. *Mmm, yeah, yeah.*
- R. *So but it's an absolute — and I've got photos of pretty much every stage I'm at. Weathertightness was not achieved; so therefore I shouldn't be held liable for that.*
- CC. *Right.*
- R. *If that makes sense? Because I didn't complete it.*
- CC. *Well when the — I see, yeah, yeah. So when the LBP Board receives a complaint, they will write to you and give you an opportunity to respond, okay?*
- R. *Okay.*
- CC. *Yeah.*
- R. *Yep.*

- CC. *And then they would make a decision whether to uphold the complaint or not.*
- R. *Okay. So basically at the moment it's don't worry about anything?*
- CC. *Mmm, yeah, that's right, just go through the steps if the person has actually made a complaint, so that means they have to fill out a form and then you'd be given the option to dispute, you know, the complaint, yeah.*
- R. *Yeah, yeah, okay.*
- CC. *Yep, all right, all the best with that anyway.*
- R. *Okay. Thank you.*
- CC. *That's great (inaudible) --*
- R. *Bye then.*
- CC. *Thank you.*

[18] The Respondent, in the response to the complaint noted, as regards completion:

*The complaint, if understood correctly, is in regard to the supply of the record of works but as mentioned above I have not had any requests for this from [Omitted] or [Omitted]. Also mentioned above the LBP board directly confirmed that this paperwork was to be supplied ones the work was completed. When the administrator took over control of the site the following applied:*

1. *New Structure Work - works was incomplete.*
2. *Carpentry Work – Works was incomplete.*
3. *Foundations Work – Work was incomplete: however, part of these works was done by others with their own LBP on record with PBC.*
4. *Roofing – Work was incomplete: however, works done by others with their own LPB on record with PBC.*
5. *Bricks and Block Works – Works was incomplete; however, works done by others with their own LPB on record with PBC.*

[19] The Respondent also stated:

*The client was informed that terminating the contract could give them some issues with the ROW. In order to submit the ROW we would need to be kept informed as to the status of the project by [Omitted] or the engineer so we could supply the required paperwork when needed – which did not happen.*

[20] As at the date of the Board's considerations, the Respondent had not provided a record of work.

### Draft Conclusion and Reasoning

- [21] The Board has 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.
- [22] The finding only relates to the Respondent's failure to provide a record of work for that which he supervised. As regards the other Licensed Building Practitioners noted in paragraph [18] herein, each is responsible for their own records of work.
- [23] Turning to the Respondent's conduct, there is a statutory requirement under section 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 work<sup>7</sup>.
- [24] Failing to provide a record of work is a ground for discipline under section 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.
- [25] The Board discussed issues with regard to records of work in its decision C2-01170<sup>8</sup> and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [26] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [27] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states "on completion of the restricted building work ...". As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*<sup>9</sup> "... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work".
- [28] As to when completion will have occurred is a question of fact in each case. In most situations,<sup>9</sup> issues with the provision of a record of work do not arise. Contractual

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<sup>7</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>8</sup> *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

<sup>9</sup> [2018] NZHC 1662 at para 50

disputes or intervening events can, however, lead to situations where completion has occurred, notwithstanding that the full scope of envisaged works has not been completed.

- [29] One such situation is where it is clear the licensed building practitioner will not be able to carry out any further restricted building work on a site. This may occur for a variety of reasons. Regardless of the reasons in such a situation, even though the intended work has not been completed, the licensed building practitioner's restricted building work under the building consent has, in effect, been completed as they will not be carrying out any further restricted building work.
- [30] That is what occurred in the present situation. The Respondent has submitted that the building work was not complete. Whilst that may have been the case, his involvement in the building work had come to an end, and he was not going to return to carry out any further restricted building work and, from a contractual perspective, was not able to as his business had been liquidated and the contract for services had been terminated. When the contract was terminated, the obligation to provide a record of work arose. That was or about March 2021. A record of work has not been provided since. On this basis, the Board finds that the record of work was not provided on completion as required, and the disciplinary offence has been committed.
- [31] The Respondent should note, in this respect, that a record of work can capture not only what has been done but also that which is incomplete. By providing adequate detail within his record of work, the Respondent could have afforded himself a degree of protection against future liability by limiting the record to only that which he had completed.
- [32] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a "good reason" for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists, then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits, but the threshold for a good reason is high.
- [33] The Respondent has noted that no requests were made of him for a record of work. 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 Respondent was required to act of his own accord and not wait for others to remind him of his obligations. An absence of requests is not a good reason.
- [34] The Respondent has also stated that he relied on advice provided to him by MBIE. The advice was received after a complaint had been made and was sought in the context of a complaint having been made about the non-provision of a record of work. On reviewing the record of the call, the Board notes that the Respondent was not given the advice he claimed to have been given. Moreover, even if he had been given such advice, it came after the failure to provide a record of work had occurred,

not prior to it. As such, there would not have been any reliance on it when the obligation to provide arose. Again, there is no good reason.

- [35] The Respondent also referred to the advice given by others that he should not provide a record of work. That advice, if given, was erroneous. More importantly, it was not provided by a person in an official capacity, and, as such, any reliance on it does not create a good reason.

### **Draft Decision on Penalty, Costs and Publication**

- [36] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [37] 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

- [38] 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*<sup>10</sup> 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.*

- [39] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>11</sup> 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.
- [40] Record of work matters are at the lower end of the disciplinary scale. The Board’s normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. There are no aggravating nor mitigating factors present. As such, the Board sees no reason to depart from the starting point. The fine is set at \$1,500.

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<sup>10</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>11</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

## Costs

- [41] 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.”
- [42] 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<sup>12</sup>.
- [43] In *Collie v Nursing Council of New Zealand*,<sup>13</sup> 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.*

- [44] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>14</sup> the High Court noted:

*[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*

*[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*

- [45] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [46] 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

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<sup>12</sup> *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.

<sup>13</sup> [2001] NZAR 74

<sup>14</sup> CIV-2011-485-000227 8 August 2011

for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

### Publication

[47] 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 Act<sup>15</sup>. 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.*

[48] 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.

[49] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>16</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>17</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>18</sup>. 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*<sup>19</sup>.

[50] 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 interest<sup>20</sup>. 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.

[51] Based on the above, the Board will not order further publication.

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<sup>15</sup> Refer sections 298, 299 and 301 of the Act

<sup>16</sup> Section 14 of the Act

<sup>17</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>18</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>19</sup> *ibid*

<sup>20</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### **Draft Section 318 Order**

[52] 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 \$1,500.

**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(l)(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 the Respondent being named in this decision.**

[53] 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**

[54] The Board invites the Respondent 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.

[55] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **9 November 2021**.

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

[57] 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.

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

### **Request for In-Person Hearing**

[59] 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.

[60] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **9 November 2021**.

[61] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

### **Right of Appeal**

[62] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>ii</sup>.

Signed and dated this 18<sup>th</sup> day of October 2021.



**Mr M Orange**  
Presiding Member

**This decision and the order herein were made final on 10 November 2021 on the basis that no further submissions were received**

Signed and dated this 29<sup>th</sup> day of November 2021.



**Mr M Orange**  
Presiding Member

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### **<sup>i</sup> 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:*

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- (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.