

Before the Building Practitioners Board

	BPB Complaint No. 26746
Licensed Building Practitioner:	Michael Mckinnon (the Respondent)
Licence Number:	BP 130670
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

Complaint or Board Inquiry	Board Inquiry
Hearing Location	by audiovisual link
Hearing Type:	In Person
Hearing Date:	30 October 2025
Decision Date:	17 November 2025
Board Members Present:	

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Pearson, Barrister and Solicitor, Legal Member
Mr C Lang, Building Surveyor and Quantity Surveyor

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.

Disciplinary Finding:

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

The Respondent **has not** committed disciplinary offences under sections 317(1)(b) or (d) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent provider subcontracted services on a new residential build. He was, in the early stages of the build, the supervising Licensed Building Practitioner, and he carried out and supervised work on the framing and building wrap. The Board was investigating multiple allegations but accepted that his work was limited to aspects of the build that were not under investigation as regards sections 317(1)(b) or (d) of the Act. As such, the only finding the board made was that the respondent had failed to provide a record of work on completion of restricted building work in accordance with the requirements of section 88(1) of the Act. The Respondent is fined \$1,000 and ordered to pay costs of \$700 in relation to the record of work finding. The fine was reduced on the basis that a record of work was eventually provided. A copy of the disciplinary finding will be recorded on the Public Register for a period of three years.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the **allegations**. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at, [OMITTED], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 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 or supervise, or has carried out 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) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, it would be inquiring into the issues noted in a Thames Coromandel District Council inspection report dated 13 May 2024, starting on page 63 of the Board's file, including whether correct building consent change processes were used for changes to the consent.
- [5] The Board also gave notice that, as part of its investigations, it would be inquiring into who the responsible Licensed Building Practitioner(s) were for the building work under investigation, noting that two other Licensed Building Practitioners were involved and are being investigated in relation to the same allegations (matters [OMITTED] and [OMITTED]).

Consolidation

- [6] The Board may, under Regulation 13, consolidate two or more complaints into one hearing, but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation. The matter proceeded as a consolidated hearing with matters [OMITTED] and [OMITTED].
- [7] The Respondent did not remain for the whole of the proceedings.

¹ 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

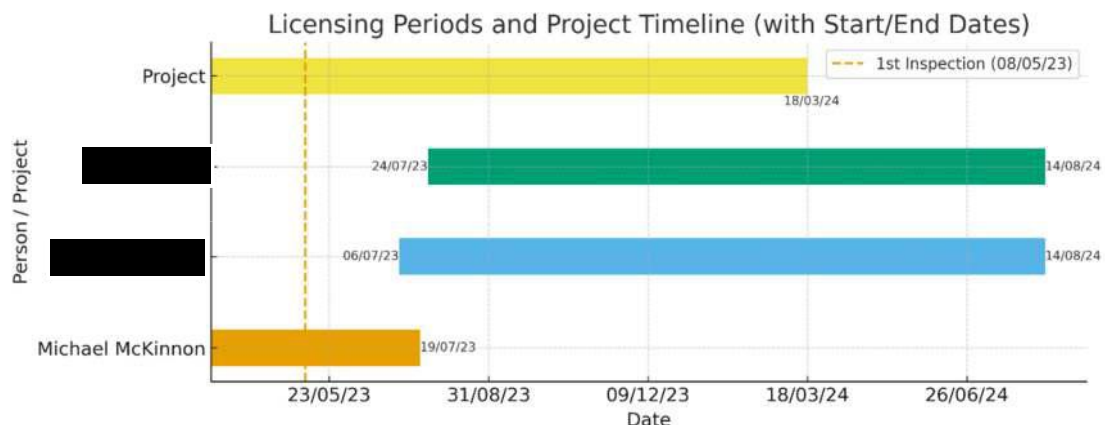
² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

Evidence

- [8] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed³. 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.

Licensing

- [9] The build started on or about 10 March 2023. Multiple Licensed Building Practitioners (LBPs) were involved in the build, which included restricted building work that, under Section 84 of the Act, must be carried out or supervised by an LBP. Each of the LBPs involved, [OMITTED], [OMITTED], and the Respondent (a subcontractor), were licensed for stages of the build. The following table shows their licensing status at the early stages of the build.



- [10] On the basis of the above, after the house foundations were completed by a separate foundation LBP sub-contractor, the Respondent was the only LBP up until 6 July 2023, when [OMITTED] became licensed. From 24 July 2023, when [OMITTED] obtained his licence, both [OMITTED] and [OMITTED] were carrying out and supervising restricted building work and were individually responsible and accountable for the building work they each undertook and supervised. The Respondent's LBP licence was suspended from 19 July 2023, due to relicensing, therefor could not carry out and/or supervise Restricted Building Work from that date.
- [11] According to the Building Consent Authority (BCA) records, the first framing inspection was on 23 June 2023, when the Respondent was the only licensed person. A framing and pre-wrap inspection then took place on 10 August 2023, when both [OMITTED] and [OMITTED] were licensed, and Mr Michael Mckinnon was no longer licensed.
- [12] In terms of who did what, the Board received evidence that the Respondent's involvement was limited to wall and truss framing. He stated he was not involved in any foundation work, and [OMITTED] stated that the foundations had been

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

subcontracted to [OMITTED], which had its own LBP. The Board's file included a record of work from an LBP who had carried out the foundations. That record of work excluded portal pads that were under investigation.

- [13] Once the Respondent left the site, [OMITTED] and [OMITTED] continued with the build, with [OMITTED] being the person who had the most involvement in the build. He estimated he was on-site 95% of the time, whereas [OMITTED] stated he spent 2 to 3 days a week on-site for 3 to 4 months. [OMITTED] stated his involvement was limited to framing, including steel portal frames, trusses, cladding, and internal doors.
- [14] [OMITTED] considered that he was the person who was supervising unlicensed persons, in terms of which there were two qualified builders, an apprentice and a labourer.

Building Issues

- [15] The issues investigated by the Board were outlined in a Building Final Inspection Report dated 13 May 2024, prepared by Dennis McLeod, a Senior Building Control Officer of the Thames Coromandel District Council. It noted 11 failed items, as follows:

Inspection Summary: Final Building inspection for a single level 3-bedroom dwelling with attached double garage.

ITEMS TO ADDRESS

1/ All exterior cladding is to be removed in areas to enable the Engineer to carry out onsite investigation / monitoring for all SEO Steel Beam Post installation and connections, Portal Frame and connections.

2/ Cladding is to be removed above the main entry door, D02, D04, W0061, and refitted with a 5mm gap from the head flashings to the bottom of Linea Weather boards.

3/ Molding's are to be removed from the top of all other items of aluminum joinery, and head flashings installed and cladding fitted to comply with NZBC-E2.

4/ Cladding above D03 is to be removed, head flashing installed and reclad. 5/ Sill support WONZ bar to be installed to D03.

6/ Facings are to be removed around the garage door, and head flashing installed, with new facings compliant with NZBC-E2.

7/ Box corner facings to all exterior corners are to be removed and replaced with detail in accordance with the Linea weather board detail for box corners.

8/ Exterior cladding is to be fixed on the gable end of South elevation.

9/ H3.2 Packers to be installed to the bottoms of aluminum joinery where there are 15mm gaps between aluminum and cladding.

10/ H3.2 Packers are to be installed between all bottom weather boards and the cavity closer where there are 15mm gaps.

11/ Four roof support Portals have completely missed the Engineers foundation design (S1-Drawing number S3.1) and have metal support brackets fitting the sides of the concrete foundations, this is to be rectified under the Engineer's recommendation and monitoring.

- [16] The Board accepted that the Respondent had neither carried out nor supervised any of the building work under investigation. As such, its investigations at the hearing about him were limited to whether or not a record of work had been provided by the Respondent on the completion of his restricted building work.
- [17] The Respondent stated that he had provided his record of work to [OMITTED], who, after the hearing had concluded, confirmed that the Respondent had provided him with a record of work. [OMITTED] provided a copy of the record, dated 24 June 2024. It noted that he had carried out and supervised:

Walls – erected building frames supervised other builders on-site

Other – started to wrap areas for protection against weather conditions

- [18] Prior to the hearing, the Board obtained a copy of the building consent file from the Territorial Authority. It did not contain a copy of the Respondent's record of work.

Failure to Provide a Record of Work

- [19] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.⁴
- [20] 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 work⁵ unless there is a good reason for it not to be provided.⁶

Did the Respondent carry out or supervise restricted building work

- [21] The Respondent carried out and supervised building work on a new residential dwelling under a building consent. His work included building work on the structural framing and trusses, and the exterior moisture management systems (building wrap), both of which are forms of restricted building work.⁷ It follows that a record of work was required from him.

⁴ Section 88(1) of the Act.

⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁶ Section 317(1)(da)(ii) of the Act

⁷ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Was the restricted building work complete

- [22] The Respondent's restricted building work came to an end early in the project. He left the site and had no further involvement in the build. When he left was when completion occurred, and it was when a record of work was due. Whilst the Board did not have an exact date for when he left, he was unlicensed from 19 July 2023 and could no longer carry out restricted building work, it noted that the project as a whole came to an end in or about March 2024, so it would have been some time before then.

Has the Respondent provided a record of work

- [23] The Respondent did not provide a record of work on completion carrying out of his restricted building work to either the owner or the Territorial Authority. He did provide one to [OMITTED]. It was dated 24 June 2024, which was well after his restricted building work had come to an end due to his licence suspension, and it was not then provided to the owner or the Territorial Authority.
- [24] Based on the above, whilst the Respondent did eventually provide a record of work, its provision was not in accordance with section 88 of the Act, which requires that it be provided on completion. Nor was it provided to the stipulated persons, being the owner and the Territorial Authority.

Was there a good reason for the Respondent to withhold his records of work

- [25] There were no good reasons for the failure to provide a record of work on the completion of restricted building work, and the Respondent should note that provision to a main contractor does not constitute a good reason. In this respect, whilst it may be common practice in some quarters of the building industry for records of work to be provided to main contractors, it is a practice that carries with it the risk that the record of work will not be passed on to the required recipients, the owner and the territorial authority, as occurred in this matter. Also, even if it had been passed on, it would still have been outside of allowable timeframes, given that the Respondent's restricted building work came to an end when he became unlicensed 19 July 2023 and his recorded work was dated 24 June 2024.
- [26] Finally, for future reference, the Respondent should note that the requirement is on an LBP to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations.

Did the Respondent fail to provide a record of work

- [27] The Respondent has failed to provide a record of work on the completion of the restricted building work he carried out and or supervised.

Board Decisions

- [28] The Respondent **has not** breached sections 317(1)(b) or (d) of the Act.

[29] The Respondent **has** breached sections 317(1)(da)(ii) of the Act.

Penalty, Costs and Publication

[30] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[31] The Board heard and received evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[32] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.⁸ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:⁹

- (a) protection of the public and consideration of the purposes of the Act;¹⁰
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹¹
- (c) setting and enforcing a high standard of conduct for the industry;¹²
- (d) penalising wrongdoing;¹³ and
- (e) rehabilitation (where appropriate).¹⁴

[33] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases¹⁵ and applying the least restrictive penalty available for the particular offending.¹⁶ In all, the Board should be looking to impose a fair, reasonable, and

⁸ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

⁹ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁰ Section 3 Building Act

¹¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹² *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty¹⁷ that is consistent with other penalties imposed by the Board for comparable offending.¹⁸

- [34] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.¹⁹
- [35] 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.
- [36] After the hearing, the Board was provided with evidence that showed the Respondent had provided a late record of work. The Board has taken that into consideration as a mitigating factor. The penalty will be reduced by \$500 to a fine of \$1,000.

Costs

- [37] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁰
- [38] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²¹. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case²².
- [39] 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, as regards the Respondent, was simple.
- [40] Ordinarily, when a matter is heard at an in-person hearing, the costs are higher than those if the matter is dealt with on the papers. However, in this instance, because the only finding made regarding the respondent was a failure to provide a record of work, which accorded with the Respondent's earlier statements, the Board decided to impose the on the papers cost scale, which is less than the in-person hearing amounts. The amount to be paid is \$700.

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁹ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²¹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²² *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.

Publication

- [41] 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,²³ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [42] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁴ Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.²⁵
- [43] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [44] 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 \$1,000. |
| Costs: | Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (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, the Respondent will be named in this decision, which will be published on the Board's website. |
- [45] 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.

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

²⁵ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [46] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Friday, 23 January 2026**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. 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

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

Signed and dated this 11th day of December 2025.



Mr M Orange
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.*

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- (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 318 Disciplinary Penalties

- (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 1 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.*

iii 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.*