

Before the Building Practitioners Board

	BPB Complaint No. 26721
Licensed Building Practitioner:	Samuel Edward McCullum (the Respondent)
Licence Number:	BP 140421
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:	Complaint
Hearing Location:	by audiovisual conference
Hearing Type:	In Person
Hearing Date:	6 August 2025
Decision Date:	19 August 2025
Board Members Present:	
	Mr M Orange, Chair, Barrister (Presiding)
	Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
	Mr G Anderson, LBP, Carpentry and Site AoP 2

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 disciplinary offences under sections 317(1)(b) and (h) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(g) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$2,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary	2
The Charges	2
Evidence	3
Negligence or Incompetence	4
Has the Respondent departed from an acceptable standard of conduct	5
Was the conduct serious enough	7
Has the Respondent been negligent or incompetent.....	7
Outside of Competence	7
Has the Respondent breached section 314B(b) of the Act.....	8
Code of Ethics	8
The conduct being investigated.....	9
Was the conduct serious enough	10
Has the conduct breached the Code of Ethics.....	10
Board Decisions	10
Penalty, Costs and Publication	10
Penalty	11
Costs.....	12
Publication	12
Section 318 Order	13
Submissions on Penalty, Costs and Publication	13
Right of Appeal	13

Summary

- [1] The Respondent carried out building work in a negligent manner and carried out building work (design work) that was outside of his competence. The Respondent was fined \$2,500 and ordered to pay costs of \$2,150. A record of the disciplinary offending 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

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.

- [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) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act; and
 - (c) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act.
- [4] The Board gave notice that in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into the quality and compliance of the building work on a carport.
- [5] The Board also noted that in further investigating the Respondent's conduct under section 317(1)(h) of the Act, it would be inquiring into whether the Respondent carried out design work on the basis that what was built may not have complied with an Acceptable Solution, such as NZS 3604.
- [6] Finally, in relation to the alleged conduct under section 317(1)(g) of the Act, the Board notified the Respondent that it would be inquiring into whether the Respondent may have breached clause 10 of the Code (you must comply with the law), in relation to:
- (a) a possible failure to obtain a building consent for a carport that may have been larger than 40m²; and
 - (b) possible health and safety issues regarding the structural stability of the carport and the use of temporary structural supports.

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.³ 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.
- [8] The Respondent was contracted to build a carport. It replaced an existing carport that had been demolished. After it had been partially built, a dispute arose. The newly constructed carport was then demolished because of alleged issues with its construction. Those issues form part of the matters under consideration by the Board. The following photographs show the building work before it was demolished.

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.

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



[9] The Board's discussion in relation to each of the issues under investigation follows.

Negligence or Incompetence

[10] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 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.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

[11] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code. The test is an objective one.⁹ In terms of the Building Code, section 17 of the Act states:

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

[12] The Building Code sets out minimum performance requirements that all building work must meet. Clause B1 of the Building Code deals with structural requirements. It requires that building elements withstand the combination of loads and physical conditions they are likely to experience throughout their lives, including self-weight, earthquakes, and wind.

[13] There are various ways in which compliance with the Building Code can be achieved. The most common method for the type of structure that was built is NZS 3604, an Acceptable Solution for Timber Framed Buildings. Other options include the use of an Alternative Solution or a Verification Method.

[14] The evidence in the photographs provided, in [OMITTED] testimony and in answer to the Board's questions established that structural elements of the carport were not constructed in accordance with NZS 3604. In particular:

- (a) purlins were over spanned;
- (b) edge beams were over spanned, and were LVL's (laminated veneer lumber), which were outside of the scope of NZS 3604 and required specific engineer design (SED);
- (c) there was inadequate lateral bracing;

⁷ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as "a demonstrated lack of the reasonably expected ability or skill level". In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as "an inability to do the job"

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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".

⁹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

- (d) structural loads were not adequately transferred to the ground through the posts;
 - (e) posts were not buried to an adequate depth, and not adequately designed to perform as cantilevered posts for bracing; and
 - (f) posts did not have sufficient concrete volumes at their base to deal with uplift.
- [15] The Board also considers the fact that the carport had to be deconstructed because of compliance and safety issues is itself an indication that the building work did not meet Building Code requirements.
- [16] The Respondent gave evidence that the carport was not complete and that he would have resolved the structural issues if he had continued with the work. He outlined how he would have gone about that. The Board did not accept his explanations, which appeared to have been developed on the spot in response to the Board's questions. For example, he stated posts were adequately buried with sufficient concrete, but the Complainant's evidence was that when they were deconstructed, they were found to be noncompliant. The Board also noted that the materials ordered showed that there was insufficient concrete with which to secure the posts. The method the Respondent outlined to deal with bracing was impractical as it involved building the posts out to form approximately 600mm square columns, which would have exceeded the fascia line, downpipes that had been installed would have been compromised, along with the internal usable space of the carport. The solution was also generally unworkable for the posts that were beside the dwelling, given the proximity to the dwelling. Moreover, the Respondent referenced bracing methods that applied to internal plasterboard bracing (GS1), not external bracing, and there were no suitable foundations in place to which bracing could have been affixed. The Respondent also stated he was going to line the ceiling with plywood to create a diaphragm. That solution would not have provided the required bracing. Also, the roof had clear light sheets that would have been blocked by a diaphragm ceiling, which would have been counterproductive.
- [17] The Respondent also submitted that he was going to install central posts, which would have meant that edge beams were not over spanned. Again, the Board did not accept that explanation. First, had that been the intention, it would have been logical to install them at the same time as the other structural elements. Second, the evidence was that the temporary supports were installed because the edge beams were sagging. Lastly, the Respondent stated the intention was to install a concrete pad, which would have also assisted with structural strength. There was, however, no evidence other than the respondent's
- [18] Given the above factors, the Board finds that the Respondent has carried out building work in a negligent manner in that his conduct has fallen below acceptable standards. The Board did consider making a finding of incompetence, given the extent of his departure from an acceptable standard. However, by a narrow margin,

it decided that a finding of negligence was sufficient. In making that decision, it took into account that the construction methodology adopted may have been influenced by price (which is not an excuse or defence) and by the Respondent's prior working relationship with the Complainant.

Was the conduct serious enough

[19] The Respondent's building work was seriously deficient. As noted above, the conduct verged on incompetence. The Board's view was that the departures from the Building Code occurred without forethought as to the consequences. In those circumstances, the Board finds that the conduct meets the threshold for disciplinary action.

Has the Respondent been negligent or incompetent

[20] The has carried out and supervised building work in a negligent manner contrary to section 317(1)(b) of the Act.

Outside of Competence

[21] Another issue under investigation was whether the Respondent had carried out design work that was outside of his competence. The issue arose because the building work included structural elements that were outside of the scope of the applicable Acceptable Solution, NZS 3604. An Acceptable Solution is a deemed pathway to compliance with the Building Code in that if building work is carried out in accordance with an Acceptable Solution, further evidence of how compliance is or will be achieved is not required. If an Acceptable Solution is not used, those responsible for the building work have to establish how the building work meets or will meet the minimum requirements of the Building Code.

[22] Looking at the disciplinary charge, section 314B(b) of the Act provides:

A licensed building practitioner must—

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

[23] 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. The Respondent holds a Carpentry Licence. That deems him to be competent to carry out carpentry work.

[24] The evidence shows that the Respondent also carried out design work. He developed the design that was utilised and aspects of that design and the building work involved work that did not accord with an Acceptable Solution and did not meet the minimum requirements of the Building Code, as set out above in the Board's findings in relation to negligence.

[25] In essence, the Respondent developed an Alternative Solution. An Alternative Solution is a design-led Building Code compliance solution that differs partially or completely from those provided for in an Acceptable Solution. Alternative Solutions

are normally used where an Acceptable Solution cannot be used, or a non-generic approach to the building work is necessary.

- [26] Alternative Solutions are normally developed by a person with the necessary knowledge and skills to ensure that Building Code compliance will be achieved. Persons who are recognised as having those skills are Architects, Design LBPs and Engineers. The Respondent does not have those qualifications, and there is no evidence that he has acquired or retained any of the skills or knowledge that those persons hold.
- [27] Looking at the Alternative Solutions that he came up with and used, the Board has noted various aspects that did not meet Building Code compliance. It follows that he has carried out design work that he was not competent to carry out.

Has the Respondent breached section 314B(b) of the Act

- [28] The Respondent has committed a dictionary offence under section 317(1)(h) of the Act in that he has breached section 314B(b) of the Act by carrying out building work (design work) that was outside of his personal competence.

Code of Ethics

- [29] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.¹⁰ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes¹¹ for some time, and the Board has taken guidance from decisions made in other regimes.
- [30] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [31] The disciplinary provision in the Act simply states, “has breached the code of ethics”. Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,¹² Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling,

¹⁰ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

¹¹ Lawyers, Engineers, Architects and Accountants, for example

¹² [1992] 1 NZLR 720 at 724

as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

- [32] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,¹³ the test was stated as:

[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.

- [33] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

The conduct being investigated

- [34] The issues being investigated were possible breaches of clause 10 of the Code (you must comply with the law), in relation to a possible failure to obtain a building consent for a carport that may have been larger than 40m², and possible health and safety issues regarding the structural stability of the carport and the use of temporary structural supports.

Building Consent Issues

- [35] Included in the issues under investigation was whether the carport required a building consent. [OMITTED], gave evidence that he had attended the site to review the building work and had measured the building as part of his investigations. He stated that he measured the carport from the outside of the structural elements, which was in accordance with what had been decided in an MBIE Determination. His view was that the building was more or less 40m² and that if it did not come within the Schedule 1 exemption, it was within a lunch box of doing so. Subsequent evidence provided in the form of plans with annotated measurements showed that the carport measured 42.264m² to the outside of the structural elements.
- [36] The Schedule 1 exemption for carports is contained in clauses 18 and 18A. Clause 18 relates to carports not exceeding 20 m² floor area. Clause 18A applies to carports exceeding 20 but not exceeding 40 m² in floor area. Building work under clause 18A must be designed or constructed by or supervised by a Licensed Building Practitioner.
- [37] Looking at the carport that was constructed, it is clear that it exceeded the limitations of clause 18A. A building consent was, therefore, required. Because the Respondent did not ensure that a building consent was in place prior to the building

¹³ [2001] NZAR 74

work being carried out, he has, in effect, breached section 40 of the Act, which states that it is an offence to carry out building work that requires a building consent without one. The question for the Board is whether the conduct reaches the threshold for it to take disciplinary action. That question is discussed below.

Health and Safety

- [38] The health and safety issues related to the use of temporary props. The structural members spanning from the dwelling to the outside posts were over spanned. They did not meet Building Code structural compliance standards. There was a risk that the structure could fail and, in doing so, harm persons or property. The Respondent gave evidence that there had been an intention to install intermediary posts to assist in carrying the structural load. The Board doubts that this was the case. Intermediary posts would have compromised the utility of the carport, making it difficult to park two vehicles. As an interim measure, timber-props were installed. Those props supported the structure, but there was a risk that they could be dislodged with the movement of vehicles in and out of the carport, thereby creating a health and safety risk. Again, the question is whether the conduct reached the threshold for disciplinary action.

Was the conduct serious enough

- [39] The Board considers that the contraventions, whilst disconcerting, were minor departures from acceptable standards of conduct. On that basis, whilst the Board does not condone the conduct, it is decided that the breaches of the Code of Ethics do not reach the threshold as outlined by the courts for the Board to take disciplinary action.
- [40] The Respondent is, however, cautioned that in future he should check with the Building Consent Authority (BCA) or design professionals to ascertain whether building work comes within Schedule 1 of the Act and should familiarise himself with the full scope and the limitations of Schedule 1.

Has the conduct breached the Code of Ethics

- [41] The Respondent has not breached section 317(1)(g) of the Act.

Board Decisions

- [42] The Respondent has breached sections 317(1)(b) and 317(1)(h) of the Act, but has not breached section 317(1)(g) of the Act.

Penalty, Costs and Publication

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

[44] The Board heard 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

[45] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ 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.¹⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁵

- (a) protection of the public and consideration of the purposes of the Act;¹⁶
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹⁷
- (c) setting and enforcing a high standard of conduct for the industry;¹⁸
- (d) penalising wrongdoing;¹⁹ and
- (e) rehabilitation (where appropriate).²⁰

[46] 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 cases²¹ and applying the least restrictive penalty available for the particular offending.²² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²³ that is consistent with other penalties imposed by the Board for comparable offending.²⁴

[47] 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.²⁵

[48] In this matter, the Board adopted a starting point of a fine of \$2,500. The proposed fine reflects the level of offending found, including that two of the charges have

¹⁴ *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]

¹⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁶ Section 3 Building Act

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

¹⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ *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

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ 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.

been upheld, and is consistent with other penalties imposed by the Board. The Board does not consider that there are any mitigating or aggravating factors that should be taken into account.

Costs

- [49] 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.²⁶
- [50] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁷. The starting point can then be adjusted up or down with regard to the particular circumstances of each case²⁸.
- [51] 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 are then made.
- [52] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,150 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter heard using an audiovisual link. It is significantly less than 50% of actual costs.

Publication

- [53] 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,²⁹ 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.
- [54] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁰ 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.³¹
- [55] Based on the above, a summary of the decision will be published. The Respondent will be named in that publication. The publication is to be carried out by the

²⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁸ *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.

²⁹ Refer sections 298, 299 and 301 of the Act

³⁰ Section 14 of the Act

³¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Registrar, and it is to focus on the need to adhere to Acceptable Solutions where there is no consented design.

Section 318 Order

[56] 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 \$2,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,150 (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, and the Registrar is to publish an article summarising the Board's decision in the Wrap Up.

[57] 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 Penalty, Costs and Publication

[58] 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 **Tuesday 16 September 2025**. 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

[59] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 26th day of August 2025.



Mr M Orange
Presiding Member

ⁱ Section 3 of the Act

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.*

ⁱⁱ 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.”*

ⁱⁱⁱ 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.*

^{iv} **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.*