

**In the matter of the Chartered Professional
Engineers of New Zealand Act 2002**

Appeal 08/21

AND

**In the matter of an appeal to the Chartered
Professional Engineers Council pursuant to
Section 35**

Between

Mr A
Appellant

And

Mr B, CPEng MIPENZ (now CMEngNZ)
Respondent

Decision of the Chartered Professional Engineers Council
Dated 28 June 2022

1. Mr A has appealed a decision, made by a Chair of Investigating Committees acting as Adjudicator, to dismiss his complaint about Mr B, CPEng MIPENZ (now CMEngNZ), a structural engineer of Company C [BOD 206-212].
2. The panel has been provided with a paginated Bundle of Documents file (BOD) held by the Registration Authority (RA) in relation to the case. References to specific documents within this file are annotated “[BOD nn]”.

The Legislation

3. The right of appeal is contained in s35 of the Chartered Professional Engineers Act 2002 ("the Act") and s37 of the Act sets out the how the hearing is to be conducted, including the scope of determinations that the Council is entitled to make.
4. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules") and were enacted pursuant to s40 of the Act.
5. The Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 ("the Regulations") set out the requirements pertaining, amongst other matters, to the hearing and deciding of appeals.
6. Appeals to the Council are by way of rehearing (s37(2) of the Act). The appeal panel is entitled to confirm, vary or reverse a decision (s37(5)(a)) and may make any decision that could have been made by the decision authority (s37(5)(c)). Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the panel is entitled to take a different view from the RA, but the appellant carries the burden of satisfying the panel that it should do so.
7. s21 of the Act states:

“21 Grounds for discipline of chartered professional engineers

1. *The Registration Authority may (in relation to a matter raised by a complaint or by its own inquiries) make an order referred to in s22 if it is satisfied that a chartered professional engineer*
 - (a) *Has been convicted, whether before or after he or she became registered, by any Court in New Zealand or elsewhere of any offence punishable by*

imprisonment for a term of 6 months or more if, in the Authority's opinion the commission of the offence reflects adversely on the person's fitness to practice engineering; or

- (b) Has breached the code of ethics contained in the rules; or*
- (c) Has performed engineering services in a negligent or incompetent manner; or*
- (d) Has, for the purpose of obtaining registration or a registration certificate (either for himself or herself or for any other person), -*
 - (i) Either orally or in writing, made any declaration or representation knowing it to be false and misleading in a material particular; or*
 - (ii) Produced to the authority or made use of any document knowing it to contain a declaration or representation referred to in sub paragraph (i); or*
 - (iii) Produced to the Authority or made use of any document knowing that it was not genuine."*

8. The facts and evidence clearly demonstrate that the criteria established under sections 21(1)(a) and (d) of the Act do not apply in this case. The panel is therefore tasked with considering whether there is a prima facie case that Mr B:

- has breached an aspect of the code of ethical conduct set out in the rules 42(A)-42(I) as amended in 2016 (s21(1)(b) of the Act); and/or
- has performed engineering services in a negligent or incompetent manner (s21(1)(c) of the Act).

Correspondence and submissions

9. Key correspondence, communications and submissions relating to this appeal are listed in Schedule 1.

Grounds of appeal and outcome sought

10. The grounds for appeal as cited by Mr A in his notice of appeal dated 29 March 2021 are as follows. The appellant notes: *"I am appealing the decision made due to the information provided to the adjudicator was incorrect, misleading, irrelevant, too much and in a not easy to understand format. The adjudicator decided nothing wrong was done but there was lots done wrong and breached the engineering NZ rules."*

11. The grounds provided by the appellant are

Ground 1: *“the material provided to adjudicator was presented in disordered manner that was hard to understand.”*

Ground 2: *“Some of the information given was false and misleading.”*

Ground 3: *“I was not shown the information that was given to adjudicator before it was presented and once, I received a copy he was not allowed to amend or correct it. I was told by Engineering NZ I could not submit any more information but the engineer I was complaining about was allowed to and I was not allowed to comment on his new submissions.”*

Ground 4: *“Some of the information given by other parties is not true and I have tried to get this amended I am currently getting the ombudsman to investigate this.”*

Ground 5: *“I believe that engineer broke many rules including giving a misleading ps4 stating work had been done to a design when it was not and also stating the work done was code compliant when it was not.”*

12. The appellant is seeking, as relief, *“for the information to be looked at in honest and fair manner and for a correct decision to be made”*.
13. The panel notes that the outcomes which it can determine under the appeal are as set down in paragraph 7 above.

The original complaint

14. On 22 February 2017, Mr A contacted IPENZ (as Engineering New Zealand was then) to lodge a complaint about Mr B’s structural design work. Mr A’s concerns related to renovations which had been undertaken on his house at Address D. The renovations had been undertaken in 2015 by the previous owner of the house [BOD 4-17].
15. That previous owner engaged Mr B, a structural engineer of Company C, to provide engineering services at the property. Specifically, Mr B designed two roof support beams to span the gaps left by the proposed removal of two sections of wall between

two rooms of the home. This design was approved and building consent issued by the City Council (Council) on 24 January 2014. However, during the renovation works it became apparent there was insufficient roof space to accommodate the beams called for by the original design. Due to the issue, Mr B undertook a redesign which replaced the two beams with a single cantilevered beam but issued a PS4 based on his original consented design with a reference to “authorised instructions” issued during the course of the works.

16. The Council issued a Code of Compliance Certificate on this basis, sometime after the work had been completed, on 4 December 2015 [BOD 156]

17. Mr A’s concerns at the time of contacting IPENZ were captured by IPENZ on 9 March 2017 [BOD 11] as:

- *“You purchased a property at the end of 2015. Upon settlement you received documentation relating to that property.*
- *“Among the documentation you received, there was a Producer Statement issued by Mr B stating that building work on the property had been done to drawing and specifications approved by Council.*
- *“Subsequently you discovered that a beam which was meant to be installed after removing a load bearing wall was not there.*
- *“You sought an explanation from Mr B. Mr B was aggressive, and you asked him to leave your property. Mr B’s explanation of the missing beam was that the building was executed to a different design, one which had not got the approval of Council.*
- *“The result of all this was that the Code Certificate of Compliance was issued for the building consent but the work had not been done according to the consent.*
- *“The builder involved is now being investigated by MBIE for his work on the project.*
- *“Due to the removal of the load bearing wall and the missing beam, the roof is slumping which has pushed the external wall out of plumb.”*

18. Mr A's complaint was initially referred to an Adjudicator in April 2017 who summarized Mr B's concerns as related to the variation as follows [BOD 381]:
 1. *"Mr B varied his design without notifying the Council of the variation or getting the requisite approval.*
 2. *Mr B should have recorded the variation in his Producer Statement — PS4 — Construction Review (PS4).*
 3. *The variation made by Mr B meant the work was not code compliant and resulted in damage to the house. Specifically, Mr A claimed, because of the variation, the roof of his house is slumping and pushing the external wall out of plumb."*
19. The Adjudicator dismissed the complaint in May 2017, on the basis that there was no applicable ground of discipline.

Reopened complaint and further information

20. After some communications with Mr A, the City Council requested the Ministry of Business, Innovation and Employment (MBIE) make a determination on whether the work complied with the Building Code. As part of their determination, MBIE engaged Company E to assist them.
21. MBIE issued their determination on 17 March 2020, after an amount of correspondence between the Council, Mr B and his employer Company C, and their lawyers, and Mr A. Two earlier drafts were issued for commentary.
22. Engineering New Zealand was provided with a copy of the MBIE determination and background technical reports [BOD 171-216.] Based on this new information (the MBIE determination and the Company E report) Engineering New Zealand reopened Mr A's complaint, on the basis that the documents introduced new information which suggested there was cause for further investigation.
23. The final MBIE determination found the variation Mr B made to the design was not minor and so the Council should have been notified and the building consent varied. It also found the Council should not have issued the Code Compliance Certificate.

24. However, the re-opened complaint against Mr B by Mr A was not upheld by the second Adjudicator, on the basis that there was no applicable ground of discipline. The Grounds for the Registration Authority not to refer a complaint to an investigating committee are detailed in s57 of the Rules.

Decision being appealed and evidence considered

25. The decision under appeal is the decision issued on 14 April 2021 of a Chair of Investigating Committees acting as Adjudicator, to dismiss Mr A's second complaint about Mr B, under s57(a) of the Rules and clause 8(a) of the Engineering New Zealand Disciplinary Regulations, on the grounds that "*there are no applicable ground of discipline.*" [BOD 380-390]
26. The Chartered Professional Engineers Council has no jurisdiction to consider the matter with respect to the Engineering New Zealand Disciplinary Regulations and the panel's focus is therefore on grounds under the Chartered Professional Engineers of New Zealand Rules.
27. Under s15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.
28. The evidence considered by the panel in arriving at this decision included:
- i. The Bundle of Documents [BOD 1--392]
 - ii. Submission from Mr A received 9 August 2021.
 - iii. Further submission from Mr A including consent documentation and correspondence file received 10 August 2021.
 - iv. Submission from Lawyer F on behalf of Mr B received 23 August 2021, including *IPENZ's decision in respect of the First Complaint dated 11 May 2017; A v B (03/20, CPEC Appeal Ruling 56, 31 March 2021); A v B & C (04/18, CPEC Appeal Ruling 51, 26 February 2019); and Koyama v New Zealand Law Society [2015] 3 NZLR 29 (HC).*
 - v. Submission from the RA received 23 August 2021

vi. Submission in response from Mr A received 30 August 2021

vii. Submission from Mr A of property file data received 1 September 2021

Hearing

29. Submissions were initially delayed until 10 August 2021 with consent of all parties.

30. The parties agreed that the appeal would be heard “on the papers”.

31. The panel met by “Zoom” on 20th September 2021 and 13 January 2022 to consider the evidence and formulate this decision.

Discussion and Findings

32. Mr A bought a house at auction at the end of 2015 [BOD 4]. Soon after taking possession of the house, he noticed that the ceiling was deflecting, and went into the roof space to find that the work done didn’t match the drawings on the PS4 that was used in the house marketing materials. The drawings were based on a structural change to the house, when a wall was taken out between the kitchen and lounge.

33. The previous owner had work done to remove this inner wall in 2014. In 2013, the builder recommended Mr B as engineer [BOD 15-17], and Mr B, the builder and an architect worked on design, consenting and construction of the work. Work was completed in June 2014. The Code Compliance Certificate was sought in September 2015 and passed after an initial failure due to lack of consent paperwork.

34. In January 2016, Mr A made enquiries with the builder and engineer, who attended the property separately on 27 January 2016. Whilst visiting, the builder noted a missing fixing on a pile footing and corrected it. The panel acknowledges this incident may have elevated concerns of the homeowner about build quality.

35. Mr B visited the site after the builder in January 2016 and brought a paper copy of the design variation with him. Mr B advised Mr A that he does not use a digital data storage system and relies on paper files.

36. The property was also subsequently attended by the Council when contacted by Mr A, which mobilised a number of experts to inspect the property.

Design variation and authorisation

37. Consent was granted in 24 January 2014, based on design calculations and sketches from August and September 2013.
38. The PS1 submitted on 31 October 2013 for “structural alterations including roof support beams and lateral wall bracing for the removed wall section” covered verification of foundation bearing pressure, and two planned inspections – lining removal and opening up (prior to demolition) and support beams and preliminary.
39. There was only 1 site visit undertaken, on 23 March 2014 – this combined the opening up with the support beams and preliminary inspection. On inspection of the roof space, Mr B changed the design from 2 simply supported beams to 1 cantilevered beam, and Mr B added a pile and footing to support the edge of the cantilever between the kitchen and lounge. Fixing and hold down straps were included to ensure stability.
40. A design check was done so the bearing of the pile was not greater than assumed soil capacity, as it was only carrying the load from the revised beam.
41. Mr B issued a site report dated 26 March 2014 to the builder describing the changes. The site report noted a further site inspection would be undertaken so as to issue the PS4. [BOD 74].
42. There is some confusion about whether or not the Council was aware of the variation at the time of construction. This has led to a disparity of views between Mr A and Mr B about whether the changes to the design were ‘authorised’, or whether they should have been treated as a Variation to the design.
43. Mr B put forward the case, accepted by the Council, that the variation was minor, and as such did not need a design amendment notified to Council [BOD 89-93, 142 and 192]. This proposition has subsequently been overturned by the MBIE determination in 2020.

However, the panel acknowledges that at the time, Mr B and the Council both believed that the approach taken was reasonable.

44. The producer statement PS4, signed by Mr B, to say that the work had been done to his design and was code compliant was not based on a second site visit. Instead, Mr B relied on phone calls and conversations with the builder to assess that the work had been done to his design and was code compliant. No evidence has been provided in the documents of any file notes or other documentation kept by Mr B as the basis of his decision-making.
45. The panel acknowledges the quantum of work undertaken in the MBIE investigation, and the number of experts who were involved in advising MBIE and the other parties to the investigation. This has provided the panel with a significant amount of data regarding the concerns raised by Mr A, and the technical considerations undertaken by Mr B.
46. The MBIE investigation found a number of elements of concern with relation to workmanship of the building work, including poorly driven nails, split timbers, missing fixings and a missing structural element (the under-purlin strut). Mr B provided design assumptions of actual loads vs 'design' loads to MBIE, which showed that most elements still achieved design compliance under the building code.
47. The original design and the variation placed different loads on the pile footings, on the pile which the builder placed the fixing on during his site visit on 27 January 2016.
48. In the MBIE investigation, there were concerns raised about the quality of concrete in the pile footing. Mr B and MBIE's advisors made different assumptions about how much of the concrete was poor quality, neither of which was followed up with physical testing. Mr B noted soil investigations were not done, and not deemed necessary. Based on Mr B's assumptions, there were no design concerns relating to the pile performance, and this appears to have been accepted by MBIE during the deliberations process [BOD 184, 187, 190, 198, 199]. In addition, Mr B provided calculations showing that the ceiling deflection of up to 8mm would have been acceptable within design

parameters in the Code. However, MBIE did not accept that the life of the pile met Clause B1 because it was not supervised by a qualified builder, and therefore could not find the work code compliant.

49. Mr A employed Company G to provide him with engineering advice, at the time of the MBIE investigation (BOD 340-348). The report findings were also provided to Mr B whose response was summarized by the second Adjudicator as *“Mr B disputes the report’s findings. He states the MBIE determination found the pile footing likely had achieved the required design strength. In the ordinary course of construction observations Company C would not have been required to inspect or test the pile (and would instead have relied on the builder’s advice the required strength was achieved). In addition, Mr B rejects the report’s criticism that there was “no consideration of torsional/eccentric loads on the main cantilever beam” and the report’s suggestion that there may have been pile settlement of approximately 7-8mm.”* [BOD 386]
50. The panel notes that workmanship issues with the builder are not part of the deliberations of the panel, and notes that Mr A has been advised by the second Engineering NZ Adjudicator [BOD 382] to follow workmanship issues up with the builder directly.
51. On 14 December 2016, the builder sent documents to MBIE which have been included in the BOD as ‘Respondent’s Documents’. [BOD 13- 79]. This bundle included a letter Mr B sent to the builder also dated 14 December 2016 detailing the extent of correspondence, including phone calls, with Mr A. [BOD 63-79]: This includes mention of Mr A’s *“aggressive”* calls and emails [BOD 64]. Mr A made a complaint to Engineering NZ on 22 February 2017 regarding Mr B including Mr B’s aggressive behaviour [BOD 4]. Mr A then complained again to Engineering NZ on 23 November 2019, having read Mr B’s submissions about him in the MBIE documentation [BOD 259]. This email complained about Mr B making *“a false and misleading statement”*.
52. The stated grounds of appeal, in Mr A’s notice of appeal, have been used as the framework against which to assess if the evidence presented is sufficient to satisfy the panel that it should overturn the Adjudicator’s decision and uphold his appeal.

53. The panel has addressed the grounds of appeal as follows:

Ground 1: *“the material provided to adjudicator was presented in disordered manner that was hard to understand.”*

and

Ground 3: *“I was not shown the information that was given to adjudicator before it was presented and once I received a copy he was not allowed to amend or correct it. I was told by Engineering NZ I could not submit any more information but the engineer he was complaining about was allowed to and I was not allowed to comment on his new submissions.”*

54. The Panel does not have the jurisdiction to address any appeals on the process followed by Engineering NZ.

55. The panel acknowledges that the BOD is large. It acknowledges that the formal presentation of documentation for appeals is chains of related correspondence rather than a timeline of events, which over a period of several years of correspondence, can be difficult to follow.

56. An important factor is that the appeal is heard by way of a rehearing (s37(2) of the Act refers) (see 6 above), to which the appellant has been able to make a submission and comment on the submissions of Mr B and the RA.

57. The stated grounds are procedural in nature and beyond the jurisdiction of the Council. Therefore, they cannot be used as a basis to overturn the Adjudicator’s decision.

Ground 2: *“Some of the information given was false and misleading.”*

and

Ground 4: *“Some of the information given by other parties is not true and I have tried to get this amended I am currently getting the Ombudsman to investigate this.”*

58. In his submission, Mr A notes that he is basing his complaint on the following items:

- 1) Mr B submitting a design that was incorrect, not informing the BCA about his design error and not getting an amendment made to the design he submitted.
- 2) Mr B not inspecting the work before issuing a PS4 and saying it had been done to his design and code compliant. Mr A believes it would have been obvious the work was 'not done to a proper standard'
- 3) The PS4 stating that authorised instructions had been given, when he didn't get any changes authorised

Therefore, Mr A believes that Mr B made false or misleading statements that were an offence under the Building Act. The panel have therefore included the following grounds in this discussion.

Ground 5: *"I believe that engineer broke many rules including giving a misleading PS4 stating work had been done to a design when it was not and also stating the work done was code compliant when it was not."*

Incorrect design, not notified to BCA as an amendment – basis of complaint item 1 of Mr A's submission

59. On 17 March 2020, MBIE released a determination [BOD 171-216] on code compliance regarding the consented alterations to the walls and roof of the house. This states that the reason for the change of design was insufficient clearance in the roof space for the original design. The panel confirms that there is no evidence that the original design was in error, rather that it proved to be unsuitable for the site once the roof inspection was undertaken. Therefore, there is no applicable ground for discipline (Rule 57(a)).
60. The MBIE determination considered whether the alterations complied with the Building Code, and the authority's (the Council) exercise of its power of decision in issuing the Certificate of Code Compliance. A specific element of the decision was "whether the departures from the approved design are a minor variation from the building consent." [BOD 172].
61. The MBIE determination found that "the change in design from two simply-supported beams to a cantilevered beam is not a minor variation" based on changes to the loads,

layouts, beams and supports. [BOD 202]. However, the panel notes that both Mr B and the Council, as the consenting authority, had thought at the time that it was a minor variation.

62. The panel has considered whether Mr B's decision making and actions in relation to considering the change to be minor comprise a breach of either of the rules defined under Clause 8.
63. For the test of whether there is evidence that Mr B has breached an aspect of the code of ethical conduct set out in the Rules 42(A)-42(I) as amended in 2016 (s21(1)(b) of the Act); the Rules comprise:

42B Take reasonable steps to safeguard health and safety

42C Have regard to effect on environment

42D Report adverse consequences

42E Act competently

42F Behave appropriately

42G Inform others of consequences of not following advice

42H Maintain confidentiality

42I Report breach of code

64. Rule 42E 'Act competently' is further defined to include the obligations to (i) ensure that the engineer's relevant knowledge and skills are kept up to date, (ii) only undertake engineering activities that are within the engineer's competence and (iii) Undertake engineering activities in a careful and competent manner.
65. In terms of the test of whether there is evidence that Mr B has performed engineering services in a negligent or incompetent manner (s21(1)(c) of the Act), and the test of whether Mr B has acted competently (Rule 42E (iii)), the panel accepts the MBIE determination and its basis. However, the panel finds no evidence that Mr B has been negligent or incompetent in determining the change to be minor, based on what

appears to be common working practice with the Council at the time the change was made.

66. The panel also notes the second Engineering NZ Adjudicator's advice to Mr B regarding any future design changes, as a learning outcome. That is, to keep MBIE's comments in mind when making any future changes, and to review the Building Act and Building Regulations for further guidance on how to approach variations to design. [BOD p 388].
67. Therefore, in Mr B's analysis of the variation of the change as 'minor; under Mr A's basis of complaint relating to Grounds 2, 4 and 5, the panel considers that the alleged misconduct is insufficiently grave to warrant further investigation (Rule 57(ba)).

Not assessing the work before issuing the PS4 – basis of complaint item 2 in Mr A's submission

68. The producer statement PS4 signed by Mr B to say that the work had been done to his design and was code compliant was not based on a second site visit. Instead, Mr B relied on phone calls and conversations with the builder to assess that the work had been done to his design and was code compliant. No evidence has been provided in the documents of any file notes or other documentation kept by Mr B as the basis of his decision-making. The panel notes that Mr B's Site Report comprising the change of design [BOD 64 and 69] said that a further site visit would be needed.
69. The MBIE determination has since found that the work was not code compliant, and that the consenting authority "*relied on the PS4 in error*", noting that "*the consenting authority did not appear to question the lack of observation of the building work by the engineer after the cantilevered beam was installed*" [BOD 203]. The MBIE report states that "*there were non-compliant aspects of the alterations when the code compliance certificate was issued ... that should have been obvious to the authority and the engineer*". [BOD 203]. These were listed in the MBIE report as:
 - The pile fixing did not comply with Clause B1 (but was rectified by the builder on his site visit in January 2016).

- The connection of the roof strut (and splitting timber which was not evidenced in earlier photographs of the strut).
- The removal and failure to reinstate an under-purlin strut.

MBIE also could not conclude that the concrete footing for the new pile was compliant, due to lack of data on its strength, and the fact that its construction was not supervised by the qualified builder.

70. Mr F's submission, on behalf of Mr B, has indicated that the non-code-compliant elements are not design issues. This was also the finding of the second Engineering NZ Adjudicator [BOD 389], who indicated that *"the quality of workmanship and whether the variation as executed by the builder is code compliant is not within Engineering New Zealand's jurisdiction"*.
71. The panel notes that some of MBIE's advisor's queries relating to hold-down straps, whilst proven to be in compliance with Clause B1 of the Building Code, indicate that the work as constructed was not per the amended design [BOD 197]. This was not further pursued by MBIE, and the panel interpret the correspondence provided between MBIE advisors and Company C that this indicates the amended design was conservative.
72. The Engineering NZ Adjudicator indicated that Mr B had been entitled to rely on information given to him by the builder as 'reasonable grounds' for certifying the PS4. [BOD p388], and notes *"there was nothing abnormal in the procedures Mr B followed."*
73. The panel has considered whether Mr B's decision making and actions in relation to not assessing the work before certifying a PS4 comprise a breach of either of the rules defined under Clause 8.
74. In terms of the test of whether there is evidence that Mr B has performed engineering services in a negligent or incompetent manner (s21(1)(c) of the Act), and the test of whether Mr B has acted competently (Rule 42E (iii)), the panel finds there is no evidence that Mr B has been negligent or incompetent.

75. The panel notes that the Engineering NZ Adjudicator has recommended that Mr B review his understanding of the documentation requirements associated with certification and concurs with this recommendation. However, this documentation failure does not meet the test of incompetence or negligence, neither does it constitute a breach of the Rules relating to acting competently.
76. Under item 2 of Mr A's basis of complaint relating to Grounds 2, 4 and 5, the panel considers that the alleged misconduct is insufficiently grave to warrant further investigation (Rule 57(ba)).

Authorized changes – basis of complaint item 3 in Mr A's submission

77. The MBIE determination also considered whether or not there was evidence that Mr B or the builder had informed the consenting authority, the Council, about the changes to the design, at the time they occurred. The panel notes that there is anecdotal evidence both for and against this information having been provided, and no physical records. However, the MBIE determination [BOD 176] Section 2.12 notes that as the revised design was provided to the builder on 26 March 2014, it would have been available to the authority at time of inspection on 31 March 2014, when the construction scored a 'pass' against the "site report for engineering work" criteria.
78. The panel notes the comment from the Adjudicator in Paragraph 65 above relating to paperwork for a PS4 and acknowledges that Mr B did not provide comprehensive documentation of the variation with the PS4, which the Adjudicator acknowledged was common practice [BOD 388].
79. Under item 3 of Mr A's basis of complaint relating to Grounds 2, 4 and 5, the panel considers that the alleged misconduct is insufficiently grave to warrant further investigation (Rule 57(ba)).

Outcome of Appeal

80. The panel members have reviewed all five grounds of appeal.

81. While Mr B has received some advice from the Adjudicator regarding minor variations, and the paperwork around certification of producer statements, the panel considers that no ground has been established for referral of the matter to an Investigating Committee, because these matters are insufficiently grave.
82. The panel's decision is to uphold the Adjudicator's decision and dismiss the appeal under rule 57(ba) of the Chartered Professional Engineers Rules (No 2) 2002, that the alleged misconduct is insufficiently grave to warrant further investigation.
83. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days of receipt of the decision.

Costs

84. The panel rules that any costs incurred by the parties in relation to this appeal shall lie where they fall.

Dated 28 June 2022

Signed by the Appeal Panel



Sarah Sinclair (Principal)



Manjit Devgun (Member)



Alan A Winwood (Member)

Schedule 1 - Key correspondence, submissions and communications in this Appeal

1. The Bundle of Documents [BOD 1--392]
2. Submission from Mr A received 9 August 2021.
3. Further submission from Mr A including consent documentation and correspondence file received 10 August 2021.
4. Submission from Lawyer F on behalf of Mr B received 23 August 2021, including IPENZ's decision in respect of the First Complaint dated 11 May 2017; A v B (03/20, CPEC Appeal Ruling 56, 31 March 2021); A v B & C (04/18, CPEC Appeal Ruling 51, 26 February 2019); and Koyama v New Zealand Law Society [2015] 3 NZLR 29 (HC).
5. Submission from the RA received 23 August 2021
6. Submission in response from Mr A received 30 August 2021
7. Submission from Mr A of property file data received 1 September 2021