

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

Appeal 14/21

AND

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

Between

Mr A

Appellant

And

Ms B

CMEngNZ CPEng IntPE(NZ)

Respondent

Decision of the Chartered Professional Engineers Council

Dated 21 December 2022

Introduction

1. Mr A has appealed a decision, made by a Chair of Investigating Committees acting as Adjudicator, to dismiss his complaint about Ms B.
2. The Appeal Panel (“panel”) of Chartered Professional Engineers Council (“CPEC”) has been provided with a paginated Bundle of Documents file (“BOD”) held by the Registration Authority (“RA”) in relation to the case. References to pages in specific documents within this file are annotated “[BOD, nn]”.

The Legislation

3. Extracts from the relevant legislation considered by the Appeal Panel are presented in Schedule 1.
4. The right of appeal is contained in s35 of the Chartered Professional Engineers of New Zealand 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.
5. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (“the Rules”) that were enacted pursuant to s40 of the Act.
6. The Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“the Regulations”) sets out the requirements pertaining, amongst other matters, to the hearing and deciding of appeals.
7. Appeals to CPEC are by way of rehearing (s37(2) of the Act). The 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.

8. 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.”*

9. 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 Ms B:

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

Grounds of appeal and outcome sought

10. The grounds for appeal as cited by Mr A in his notice of appeal dated 20 December 2021 are:

Ground of Appeal 1: *“The Engineer has been dishonest and deceptive right through and deceived our community organisation with 12000\$ money and provided absolutely no service”.*

Ground of Appeal 2: *“Completely misled us with facts and her capability to handle the task”.*

Ground of Appeal 3 *“Submitted documents out of context and made up stories.”*

11. The outcome sought by Mr A from the Appeal was *“Disciplinary actin [sic] to be taken”.*
12. The panel notes that the outcomes which it can determine under the appeal are as set down in 7 above.

Decision appealed

13. The decision under appeal is the decision of a Chair of Investigating Committees acting as Adjudicator, to dismiss Mr A’s complaint about Ms B, under s57(a) of the Rules and clause 8(a) of the Engineering New Zealand Disciplinary Regulations, on the grounds that there is no applicable ground of discipline [BOD, 701-710].
14. CPEC 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.
15. Under s15 of the Regulations, CPEC may receive any evidence that the RA would have been entitled to receive on the decision being appealed.

Evidence considered

16. The evidence considered by the panel in arriving at this decision included:
 - a) The Bundle of Documents [BOD, 1-710].
 - b) Key correspondence, communications and submissions relating to this appeal as outlined in Schedule 2.
 - c) Oral submissions from Mr A, Ms B and the RA at the hearing on 9 September 2022.

Hearing

17. A hearing was held in Wellington on 9 September 2022.
18. The hearing was attended by Mr A and Ms B via “Zoom” audio-visual link, whereas the RA and the panel attended in-person.

Background and Context

19. On 23 September 2019, Mr A, on behalf of Company C (C), signed a contract with Ms B for her to assist in obtaining a building consent and provide associated services for the proposed extension to Centre D [BOD, 677-679] and [BOD, 29-31].
20. There appears to be a 4th page to the contract agreement as included at [BOD, 32] and [BOD, 680], however the versions of the 4th page are different and have not been initialled or signed by anyone. During the hearing, Mr A confirmed the agreement was a 3-page document. The panel has not considered these different versions of the 4th page [BOD, 32 and 680], as part of the contract.
21. Key extracts from the contract, signed on 23 September 2019, are:
 - (a) *“The timeline to complete the project is around four weeks from approval and supply all the required documents”* [BOD, 31 and 679].

- (b) *“The price to undertake Architectural Design and Drawings”* and *“The price to undertake Structural Design and Drawings”* is shown as a total of \$23,000 [BOD, 30 and 678].
- (c) *“Payment terms - \$12,000.00 on completion of concept plan - Rest is before submitt [sic] the building consent application”* [BOD, 31 and 679]..
22. Ms B sent the draft concept plan on 23 October 2019, as is evident from her email message to Mr A stating *“please find attached is the draft concept design for your comments”* [BOD, 682].
23. On 25 October 2019, Ms B invoiced Company C for \$12,000 [BOD, 33 and 682]. This payment was made on 4 November 2019 [BOD, 34]. There is disagreement between the parties on whether this payment was a progress payment or an advance payment.
24. On 6 December 2019, Ms B advised Company C she was planning to lodge the building consent application on 20 December 2019 [BOD, 688] and requested a letter of authorisation to act as an agent on behalf of the owner, a copy of the resource consent along with several other items.
25. The contract was eventually terminated on 24 December 2019 [BOD, 693]. There was a disagreement between the parties as to whether the contract was terminated mutually or unilaterally by Ms B.
26. Company C brought a claim against Ms B to the Disputes Tribunal for amounts arising due to breach of contract. Ms B then filed a counter claim with the Disputes Tribunal for amounts owing under the contract. Both claims were dismissed by the Tribunal on 4 September 2020 [BOD, 663-666].
27. On 16 September 2020, Mr A raised concerns with Engineering New Zealand about Ms B. [BOD, 3-11 and 49-54]
28. Mr A’s concerns were that Ms B breached the Code of Ethical Conduct by:

- a) Acting outside her competence when she held herself out as a fire engineer and architect and misrepresented her competence to undertake architectural drawing work [BOD, 50-51 and 702], and
 - b) Behaving inappropriately by failing to act with honesty, objectivity, and integrity when she did not deliver the designs [BOD, 50-51 and 702].
29. The adjudicator issued his decision on 7 December 2021, dismissing the complaint by Mr A [BOD, 701-710].

Discussion and Findings

30. Three grounds of appeal were included in Mr A's notice of appeal dated 20 September 2021, as noted earlier in 10 above.
31. However, in his submissions, Mr A structured his response around the two original concerns raised in his complaint to the RA, as stated in 28 above, rather than substantiating each ground of appeal outlined in his notice of appeal.
32. With respect to 'misrepresentation of competence', as alleged in 28(a) above, Mr A submitted (on page 4 of his submission) to the panel that *"Item 1 is not our primary concern however she used it as a strong point to get the contract advising she understands fully of all fire requirements"*, in response to the Adjudicator's decision [BOD 702]. Further, on page 5 of his submission to the panel, Mr A submitted *"The facts are denied however it does not matter as Engineering NZ says they do not have jurisdiction to handle misrepresentation as Architect or Fire Engineer"*.

33. Following further confirmation by Mr A during the hearing that he is not concerned about the 'misrepresentation of competence' issue, the panel has not given further consideration to this concern, concluding that there is no basis for further investigation.
34. Mr A emphasised on page 4 of his submission to the panel and during the hearing that *"Item 2 is our main and primary concern. "failing to act with honesty, objectivity, and integrity because she did not deliver the designs, as she agreed to"*". He has sought to substantiate his concern by describing various issues in his written and oral submissions.
35. The panel has considered issues raised by Mr A, under the concern stated in 34 above, where they best fit under each ground of appeal.
36. The panel notes that most of the identified issues overlap all three grounds of appeal.

Ground of Appeal 1: *"The Engineer has been dishonest and deceptive right through and deceived our community organisation with 12000\$ money and provided absolutely no service".*

37. Key issues identified under the above ground of appeal are grouped under:
 - (a) Concept Plan – required information and time taken for preparation
 - (b) Payment of \$12,000 – whether advance or progress payment
 - (c) Resource Consent – status and availability
 - (d) Delays in programme and non-delivery of building consent documents
 - (e) Contract termination – mutual or unilateral
38. In addressing above issues under Ground 1, the panel has considered the relevant provisions of clause 42F(a)(i) which require that a chartered professional engineer, in performing, or in connection with, the engineer's engineering activities, must act with honesty, objectivity, and integrity.

Concept plan

39. The concept plan was delivered on 23 October 2019 [BOD, 682], four weeks after signing of the contract on 23 September 2019.
40. The panel has not sighted any correspondence or evidence specifically stating the one-week delivery timeframe for the concept plan, except the description provided by Mr A to the RA, “*..our mutual understanding was that concept would be agreed within a week..*” [BOD, 50, second bullet point].
41. Ms B stated the concept was submitted “*...in about two weeks’ time since the adequate information received..*”, in her submission to the Disputes Tribunal [BOD, 674, fourth bullet point].
42. With respect to the contractual timeline agreed in the contract, Ms B argues that the delivery timelines were from the supply of all required documents, not from the date of signing of the contract. In her submission to the panel (page 9 of submission), she states “*..Please refer my contract on page 679 of bundle of document, I clearly stated that after issuing all document required only four weeks not from the date of signing [sic] contract. I explained this before accepting the concept design and payment and Company C agreed*”.
43. On the other hand, Mr A submitted that “*she had all required documents during her very first site visit to start the work and she did start the work during the same week*” (page 3 of Mr A’s submission to the panel).
44. Before signing the contract, an email message sent by Mr A on 22 September 2019, stated “*Further to discussion we had please find attached the drawings and sketches for the extension. FR also attached.*” [BOD, 681].

45. In response to the email message from Mr A (as in 44 above), on 23 September 2019, Ms B sent the following message before signing the contract [BOD, 681]:
- “..I have priced the job and see proposal attached. I didn’t have the following, but I believe that you should be able to supply these before we commence the work*
1. *a Geotech Report*
 2. *existing building property file from the council*
 3. *If you have submitted a set of a plan to resource consent – the full set submitted – this means – existing and proposed of the following Site plans, floor plans, four elevations and at least two sections.”*
46. Ms B stated in her submission at the hearing that the Geotech report provided was from 2014, was outdated and another updated report was required. The final Geotech report was provided on 7 October 2019 [BOD, 683].
47. Mr A submitted in his summary of concerns to the RA that *“the draft concept plan was delivered on a housing design template (with numerous outdated notes of residential house which she said to ignore since it was just a concept)”* [BOD, 50]. From the evidence presented to the panel, this is a trivial issue that doesn’t warrant further investigation.
48. Having considered all information available, the Appeal Panel considers Ms B could have exercised better professionalism and communication in confirming timeframes and providing information of appropriate quality. However, there is no strong basis to conclude that elements of Rule 42F(a)(i) were breached.

Payment of \$12,000

49. As stated in 21(c), the contract signed on 23 September 2019 included a handwritten and initialled statement *“... Payment terms \$12,000 on completion of concept plan ...”*.
50. There was no mention of “advance payment”, “progress payment” or “Stage 1 payment” in the contract, although these descriptions have been used by both parties when referring to the payment of \$12,000 made to Ms B on 4 November 2019 after the submission of draft concept plan.

51. Mr A submitted *"She wanted advance \$12000 once the concept is agreed , every piece of document such as e mail, invoice etc says in writing that's an advance , she manipulates and claims with disputes tribunal that its progressive payment for the time spent. The time she spent has absolutely no value to us"* (page 7 of Mr A's submission to the panel).
52. In her response to Mr A's statement in 51 above, Ms B submitted *"Regardless of payment was considered as advance or progress payment dispute as per tribunal decision to be respected. I spent lot more time and revised several times in order to accommodate the changes and lodged the claim to dispute tribunal and voluntarily withdrawn all my fees for stage2 work as an offer to mutually terminate"* (page 10 of Ms B's submission to the panel).
53. Ms B refers to the payment made as "stage 1" payment in her submission to the Disputes Tribunal *"... as per my agreement payment was made for stage 1 completed – not paid in advance before commencing any work"* [BOD, 674]
54. CPEC does not have jurisdiction to resolve contractual issues, and the payments issue was considered by the Disputes Tribunal for both parties.
55. The panel has considered the matter of payments in the context of Rule 42F(a)(i) only and has seen no clear evidence that the provisions of the rule were breached.

Resource Consent

56. Regarding the status of the Resource Consent around the time that Ms B's services were engaged, Mr A submitted to the RA that *"An appointed consultant was handling the resource consent, council has [sic] started processing, had sent RFI requesting some info about traffic matters, council was about to finalise the Resource consent"* [BOD, 52].
57. Ms B submitted to the RA that *"the project was undertaken by me assuming that – a resource consent was well underway - which I was not aware of the stage of the project and I believed that the resource consent will be obtained before applying a building*

consent – But unfortunately – when I was ready to apply the building consent, the resource consent was not approved by the council” [BOD, 55].

58. Ms B requested approved resource consent documents from Mr A on several occasions - 6 December 2019 [BOD, 688], 19 December 2019 [BOD, 690] and 23 December 2019 [BOD, 689].
59. On 23 December 2019, Ms B sent an email message to Mr A “...*Did you have a resource consent approved document to include the details like the height to boundary requirements – Engineering plans approval and conditions of resource consent ...*” [BOD, 690]
60. In his reply to Ms B’s message of 23 December 2019, as stated in 59 above, Mr A stated “*Its not available at this stage. Please provide the completed plans for review*” [BOD, 689].
61. In his submission to the panel, Mr A stated “*She claims that she needed resource consent approval letter to ensure that building can be on the boundary. She herself advised us that business building can be on boundary, she advised us about the fire rating etc and numerous discussions. She now advises disputes tribunal and Eng NZ that she doesnot know if the building can be on boundary etc she needs final Resource consent letter to verify . What an absolute lie*” (page 8 of Mr A’s submission to the panel).
62. In response to Mr A’s allegation at 61 above, Ms B submitted “...*I did not provide any advice on the planning as well as fire rating. The project had a planner and a fire engineer engaged separately. There is no need for my advice on these*” (page 13 of Ms B’s submission to the panel).
63. The panel has not seen evidence of any correspondence with City Council (“CC”) regarding what was lodged as part of the resource consent application, any gaps identified by CC in the resource consent application and what was requested as part of the RFI before a resource consent could be issued.

64. The panel has not found any convincing argument or evidence that Ms B's conduct breached any provisions of Rule 42F(a)(i).

Delays and non-delivery of building consent documents

65. With regard to urgency required for the lodgement of building consent, relevant information extracted from Company C's submission to the Disputes Tribunal [BOD, 15], is as follows.
- (a) Before Ms B was engaged by Company C, another engineer was appointed to complete the building consent work in 4 weeks' time but failed to produce anything at the end of 4 weeks, and his contract was terminated.
 - (b) The Company C management was exploring ways to continue the building consent process so the building work could be completed in mid-2020.
 - (c) They received several quotations from various consultants with prices in the range of 18-25k and timelines between 8-12 weeks.
66. In the hearing, Mr A stated that Ms B was engaged because she had confirmed her availability to complete the job in 4 weeks' time. This point is also stated in Company C's submission to Disputes Tribunal [BOD, 16].
67. Mr A submitted *"She promises that she can/will deliver in 4 weeks. Takes 5 weeks to do a concept plan, In another 7 weeks not able to provide at least 1 deliverable document. Is this dishonesty or incompetent?"* (page 7 of Mr A's submission to the panel).
68. In the hearing, Ms B claimed she could have finished the work in 4 weeks' time if all required information was available to her, and she stressed that the 4 weeks period applied from the time all information was provided to her.
69. In her submission to the panel, Ms B submitted *"Please refer my contract on page 679 of bundle of document, I clearly stated that after issuing all document required only four weeks not from the date of signing contract. I explained this before accepting the concept design and payment and Company C agreed"* (page 9 of Ms B's submission to the panel).

70. Ms B has provided several reasons for the delays, her inability to provide the final building consents documents and to complete the contract for which her services were engaged. The reasons provided include:
- (a) Request from the client on 6 November 2019 [BOD, 685] to change the cladding from lightweight-weight steel to heavy weight concrete, that required her to redesign and remodel the building [BOD, 674-675].
 - (b) Request by the client on 27 November 2019 to change the building design to accommodate the traffic engineer's report [BOD, 675]. The traffic report was received by Ms B on 4 December 2019 [BOD, 686]
 - (c) Unavailability of resource consent and related items as stated earlier in 57 to 62 above.
 - (d) Completing other work that she took on and health issues [BOD, 36-38]
71. With respect to taking on other work, Ms B submitted to the panel that *"When a project get delayed other project commitments needs to be looked after as well. If the project progressed as planned - yes, I didn't have other projects at that period of time"* (page 7 of Ms B's submission to the panel).
72. On 5 December 2019, Ms B told Mr A she would lodge the building consent on 20 December 2019 [BOD, 36]
73. On 6 December 2019, Ms B requested further documents from Mr A including the resource consent and confirmation of several matters [BOD, 688]
74. On 13 December 2019, Ms B mentioned in an email to Mr A that *"drawings are almost done but no [sic] quite ready"*, and on 19 December 2019 *"Drawings are nearly complete, but I still need a few things to complete..."* [BOD, 36-37]
75. On 23 December 2019, several email messages were exchanged, which are presented below, as these are relevant to the issues raised.

- (a) 05:20am: Message from Ms B *"Did you have resource consent document to include the details like the height to boundary requirements – Engineering plans approval and conditions of resource consent"* [BOD, 689-690].
- (b) 06:59am: Reply from Mr A *"Its not available at this stage. Please provide the completed plans for review"* [BOD, 689]
- (c) 11:48am: Message from Ms B *"this means - we cannot lodge building consent – I am not sure whether building on the boundary is acceptable – part of the building consent – I need to provide a planning plan showing height to boundary conditions"* [BOD, 689].
- (d) 07:55pm: Reply from Mr A *"Building on the boundary is acceptable and height to boundary has been taken care of. Please provide final completed drawings for review urgently..."* [BOD, 689].
- (e) 08:13pm: Message from Ms B *"Tomorrow is the last day I can work on it. Then will have to done in the new year. As resource consent approval is required to building consent application as per lodgement check list. We will not lodge this side of Christmas. So I need to wait until next year to do the rest of the work"*. [BOD, 689].
- (f) 08:26pm: Reply from Mr A *"We are seriously suspecting that you have not been able to complete the drawing but trying to find excuses to delay further..."*[BOD 38]
- (g) 09:50pm: Message from Ms B *"I tried my best to finalize to sent - the set of drawings, I have been working - but due to changes like concrete panel walls - changes in car parking layout the original design of steel members are all failing - I checked before sending the work and therefore needed to be reanalyzed - So I need more time to do these tasks. My personnel - situation has been changed and I am seriously sick as you know I was working full time and unexpectedly there was lots of pressure from work before closing for Christmas. I am now seriously sick and unable to continue work for some time. Because this is*

delaying your work, I am much regret to say that - It cannot be done in a hurry as you want. So I think it is better to mutually terminate my contract - as I am unable to proceed to work due to my mental stress level is very high and unable to concentrate.” [BOD, 37-38].

76. The panel has considered all arguments and counterarguments presented with respect to the provisions of Rule 42F(a)(i) and has concluded that communications both ways have not been clear. It also appears that Ms B may have been over-optimistic in her assessment of what needed to be done and how much time would be required to complete it. However, panel does not consider this to be at a scale that warrants further investigation.

Contract Termination

77. There is clear disagreement between the parties as to whether or not the contract termination was by mutual agreement.
78. The panel considers that responsibility for initiation of termination of the contract agreement has no bearing on any possible breach of the Rules and in any event this aspect of the complaint is a commercial matter which is beyond the jurisdiction of CPEC.

Overview

79. Having considered all elements listed under Ground 1, the panel concludes that the ground is not supported by compelling evidence.
80. No clear breach of Rule 42F(a)(i) has been established, and any shortcomings on the part of Ms B are considered by the panel to be insufficiently grave to warrant further investigation. The ground is not proven.

Ground of Appeal 2: *“Completely misled us with facts and her capability to handle the task”.*

81. The general substance of this ground has been addressed under Ground 1 in paragraphs 37 to 80.

82. While the panel has seen statements alleging that Ms B has misled the appellant on facts and on her capability to handle the task, there is an absence of clear evidence in support of the allegations in respect of any breach of Rule 42E (Act competently).

Ground of Appeal 3 *“Submitted documents out of context and made up stories.”*

83. In his submission, Mr A has not provided specific details regarding this ground. However, when queried during the hearing, he outlined three related issues.
- (a) Ms B provided an out of context text message regarding the change in cladding material,
 - (b) she stated that the resource consent document was not supplied and
 - (c) she stated that the \$12,000 payment was ‘stage 1 payment’, not ‘advance payment’.

84. With respect to the cladding material, Mr A submitted that *“She claims that we changed cladding material to precast so she had to redesign and delay. Provided an out of context text as evidence. She had seen sample building, our requirement was precast cladding. When she sent some drawing she had it incorrectly marked as light cladding. We advised by text that she needed to correct the mistake”* (page 8 of Mr A’s submission to the panel).
85. In response, Ms B submitted that *“I completely deny this -during the concept Company C clearly stated he wanted to make it cheaper as possible and accepted to go for light weight cladding material. But later Company C decided to make it as concrete panel wall cladding evidence is in page 685 as the form of text message. That message did not say that as an error –simply said want to change it to concrete panel this is not and honest statement and misleading to accuse me”*, (page 13 of Ms B’s submission to the panel).

Overview

86. The panel has not been convinced that Ms B provided an out of context message regarding the change in cladding material having seen contradictory submissions with no compelling evidence to support the element at paragraph 83(a). Accordingly, no breach of Rule 42F(a)(i) has been established.
87. The issues relating to 83(b) and 83(c) have been addressed already under Ground of Appeal 1 above in paragraphs 49 to 64.
88. The panel concludes this ground has not been proven.

Outcome of Appeal

89. The panel finds that none of the grounds has been proven and in any event any shortcomings on the part of Ms B are insufficiently grave to warrant further investigation.

90. The appeal is declined and the decision of the Adjudicator to dismiss the complaint is upheld. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Costs

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

Dated 21 December 2022

Signed by the Appeal Panel

A handwritten signature in black ink that reads "Manjit Devgun". The signature is written in a cursive style with a horizontal line underneath the name.

Manjit Devgun (Principal)

A handwritten signature in blue ink that reads "Chris Harrison". The signature is written in a cursive style with a long horizontal line extending to the right.

Chris Harrison (Member)

A handwritten signature in blue ink that reads "Alan Winwood". The signature is written in a cursive style.

Alan Winwood (Member)

Schedule 1: Extracts from the relevant legislation

Chartered Professional Engineers of New Zealand Act 2002 (“the Act”)

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 [section 22](#) 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 practise 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 or 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 subparagraph (i); or
 - (iii) produced to the Authority or made use of any document knowing that it was not genuine.
- (2) The Registration Authority may make the order whether or not the person is still a chartered professional engineer.
- (3) The Registration Authority must comply with the applicable procedures under [section 25](#) before making an order.

35 Right of appeal

- (1) The person to whom the decision relates or, if it is a disciplinary matter, the complainant may appeal to the Council against a decision of the Registration Authority under this Part.
- (2) The Registration Authority, the person to whom the decision relates, or, if it is a disciplinary matter, the complainant may appeal to the District Court against a decision of the Council under this Part.
- (3) The appeal of a decision must be made by written notice to the Council or District Court (as the case may be) within—
 - (a) 28 days after the person receives notice of the decision from the decision authority; or
 - (b) any further time that the Council or District Court (as the case may be) allows on application made to it before the expiry of the 28-day period.

Section 35(2): amended, on 1 March 2017, by [section 261](#) of the District Court Act 2016 (2016 No 49).

36 Decisions to have effect until appeal

Subject to the order of the Council or District Court (as the case may be), every decision of the decision authority against which an appeal is lodged continues in effect according to its terms until the determination of the appeal.

37 Hearing and determination of appeal

- (1) Every appeal under [section 35](#) must be heard as soon as practicable after the appeal is lodged.
- (2) An appeal to the Council is a rehearing and must be conducted in accordance with any regulations made under [section 65](#).
- (3) Unless the Council otherwise directs, on the rehearing, the record of the evidence adduced at the hearing before the Registration Authority must be placed before the Council, and it is not permissible to recall witnesses who gave evidence before the Registration Authority or to call other witnesses.
- (4) An appeal to the District Court is a rehearing and must be conducted in accordance with the District Court Rules made under [section 228](#) of the District Court Act 2016.
- (5) The Council or District Court, as the case may be, may—
 - (a) confirm, vary, or reverse the decision, or part of decision, to which the appeal relates;
 - (b) refer the matter back to the decision authority for it to reconsider, either generally or in relation to specific matters, the whole or any part of the decision (together with any direction on that whole or part that the Council or District Court, as the case may be, thinks fit);
 - (c) make any decision that could have been made by the decision authority;
 - (d) make any order as to the payment of the costs of the appeal that it thinks fit.
- (6) Nothing in this Part gives the Council or District Court the power to review any part of the decision other than the part to which the appeal relates.
- (7) In reconsidering a decision referred back to it with a direction under this section, the decision authority must take account of the reasons for the direction and give effect to the direction.

Section 37(4): replaced, on 1 March 2017, by [section 261](#) of the District Court Act 2016 (2016 No 49).

Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules")

Part 3 **Code of ethical conduct**

Part 3: replaced, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42A Interpretation

In this Part,—

adverse consequences means—

- (a) significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people; or
- (b) significant damage, or an unacceptable likelihood of significant damage, to the environment

engineering activities means activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills

environment means—

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural resources and physical (man-made) resources.

Rule 42A: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

Obligations in public interest

Heading: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42B Take reasonable steps to safeguard health and safety

A chartered professional engineer must, in the course of the engineer's engineering activities, take reasonable steps to safeguard the health and safety of people.

Rule 42B: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42C Have regard to effects on environment

- (1) A chartered professional engineer must, in the course of the engineer's engineering activities,—
 - (a) have regard to reasonably foreseeable effects on the environment from those activities; and
 - (b) have regard to the need for sustainable management of the environment.
- (2) In this rule, **sustainable management** means management that meets the needs of the present without compromising the ability of future generations (including at least the future generations within the anticipated lifetime of the end products and by-products of activities) to meet their own reasonably foreseeable needs.

Rule 42C: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42D Report adverse consequences

A chartered professional engineer who has reasonable grounds to believe that an engineering matter has, or could have, adverse consequences must bring the matter to the notice of the relevant regulatory body unless the engineer, having made inquiries, is satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or in an appropriate manner.

Rule 42D: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

Obligations relating to personal conduct

Heading: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42E Act competently

A chartered professional engineer—

- (a) must—
 - (i) ensure that the engineer's relevant knowledge and skills are kept up to date; and
 - (ii) only undertake engineering activities that are within the engineer's competence; and
 - (iii) undertake engineering activities in a careful and competent manner; and
- (b) must not—
 - (i) misrepresent, or permit others to misrepresent, the engineer's competence; or
 - (ii) knowingly permit other engineers for whose engineering activities the engineer is responsible to breach paragraph (a)(ii) or (iii) or subparagraph (i).

Rule 42E: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42F Behave appropriately

A chartered professional engineer, in performing, or in connection with, the engineer's engineering activities,—

- (a) must—
 - (i) act with honesty, objectivity, and integrity; and
 - (ii) treat people with respect and courtesy; and
 - (iii) disclose and appropriately manage conflicts of interest; and
- (b) must not—
 - (i) offer or promise to give to any person anything intended to improperly influence a decision relating to the engineer's engineering activities; or
 - (ii) accept from any person anything intended to improperly influence the engineer's engineering activities; or
 - (iii) otherwise engage in, or support, corrupt practices.

Rule 42F: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42G Inform others of consequences of not following advice

A chartered professional engineer who becomes aware that the engineer's professional advice may not be followed, and who considers that a failure to observe that advice may have adverse consequences, must inform the recipient of the advice of those adverse consequences.

Rule 42G: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

42H Maintain confidentiality

- (1) A chartered professional engineer who obtains confidential information from clients or employers in the course of the engineer's engineering activities—
 - (a) must not use the information for any purpose other than the purpose for which the information was obtained; and
 - (b) must not disclose the information unless the disclosure is permitted by this rule.
- (2) A chartered professional engineer may disclose confidential information if, and to the extent that,—
 - (a) the engineer is required to disclose the information in order to comply with rule 42D or 42I and the engineer has first raised the matter with the person to whom confidentiality is owed; or
 - (b) the engineer is otherwise required by law to disclose the information; or
 - (c) the information is publicly available; or
 - (d) the disclosure is authorised by the person to whom confidentiality is owed.
- (3) Information disclosed under subclause (2)(a) or (b) may only be disclosed to the person or organisation to whom or to which the engineer is required to disclose it.

Rule 42H: inserted, on 1 July 2016, by rule 4 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 Amendment Rules 2016 (LI 2016/121).

Initial investigation of complaint

56 Registration Authority must refer complaint to investigating committee unless grounds for not doing so

The Registration Authority must, as soon as practicable after receiving a complaint, carry out an initial investigation of the complaint in accordance with [rule 58](#) and—

- (a) refer the complaint to an investigating committee in accordance with [rule 59\(b\)](#); or
- (b) dismiss the complaint on a ground in [rule 57](#).

Rule 56(a): amended, on 1 January 2012, by [rule 15](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

57 Grounds for not referring complaint to investigating committee

The Registration Authority may dismiss a complaint without referring it to an investigating committee if the chairperson of investigating committees decides under [rule 58](#) that—

- (a) there is no applicable ground of discipline under [section 21\(1\)\(a\) to \(d\)](#) of the Act; or
- (b) the subject matter of the complaint is trivial; or
- (ba) the alleged misconduct is insufficiently grave to warrant further investigation; or
- (c) the complaint is frivolous or vexatious or is not made in good faith; or
- (d) the person alleged to be aggrieved does not wish action to be taken or continued; or
- (e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or
- (f) an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint.

Rule 57(ba): inserted, on 1 January 2005, by [rule 13](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2004 (SR 2004/413).

58 Way in which decision on whether or not to refer complaint to investigating committee must be made

The Registration Authority must carry out an initial investigation of a complaint against the grounds in [rule 57](#) in the following way:

- (a) the Registration Authority must notify the person complained about of the general nature of the complaint before commencing the investigation; and
- (b) a complaints research officer must carry out the initial investigation of the complaint and recommend to the chairperson of investigating committees that the complaint proceed or be dismissed on a ground in [rule 57](#); and
- (c) the complaints research officer, or chairperson of investigating committees, may seek to verify the information provided in the complaint by a statutory declaration from the complainant; and
- (d) after considering the complaints research officer's recommendation, the chairperson may explore (with the complainant and the person complained about) the possibility of the complaint being referred to conciliation, mediation, or another dispute resolution process for 60 days or any other time period that the chairperson thinks fit; and
- (e) if alternative dispute resolution is not used or if it fails to resolve the dispute within the requisite time period, the chairperson must decide whether the complaint should be—
 - (i) referred to an investigating committee in accordance with [rule 59\(b\)](#); or
 - (ii) dismissed on a ground in [rule 57](#).

Rule 58(d): replaced, on 1 January 2012, by [rule 16](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 58(e): inserted, on 1 January 2012, by [rule 16](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Schedule 2: Key correspondence, submissions and communications in this Appeal

1	Notice of Appeal received	20 Dec 2021
2	Email to the parties from CPEC Chair confirming Notice of Appeal	20 Dec 2021
3	Email to the parties from CPEC Chair confirming appointment of the Panel	14 Feb 2022
4	Email from the RA to the parties containing link to the paginated bundle of documents	16 Feb 2022
5	Letter from panel principal to the parties confirming appeal panel membership, outlining the appeal process, establishing the schedule for submissions and addressing communications	9 Mar 2022
6	Submission from Mr A	20 Mar 2022
7	Submission from Ms B	6 Apr 2022
8	Submission from the RA	6 Apr 2022
9	Submission in response from Mr A	13 Apr 2022
10	Letter from panel principal acknowledging receipt of all submissions and confirming that an in-person hearing would be required	29 Jun 2022
11	Letter from panel principal confirming the hearing date of 9 September 2022, hearing agenda and relevant instructions	16 Aug 2022