

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

Appeal 1B/23
(Also referred as 1/23 and 6/22)

AND

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

Between

Mr A
CMEngNZ, CPEng

Appellant

And

Mr B
CMEngNZ, CPEng

Respondent

Decision of the Chartered Professional Engineers Council

20 December 2023

Introduction

1. Mr A appealed two separate decisions made by a Chair of Investigating Committees (CIC), appointed by the Registration Authority (RA) regarding:
 - (a) A complaint against Mr A by Mr B of Company C (Appeal 1A/23)
 - (b) A complaint against Mr B of Company C by Mr A (Appeal 1B/23).
2. Both appeals primarily relate to the seismic assessment work undertaken by both parties separately for Address D, Wellington.
3. Mr A, a structural engineer, raised the appeals in his personal capacity. At the time the seismic assessment work was undertaken, he was a structural engineer and director of Company E Limited.
4. Mr B is a structural engineer and director of Company C Limited.
5. The appeal panel (“The Panel”) of the Chartered Professional Engineers Council (“The Council”) has assessed and heard both appeals separately based on their individual merits.
6. The Panel has been provided with two paginated Bundles of Documents held by the RA in relation to each appeal. References to specific documents within these files are annotated as “[BOD1 *page numbers*]” and “[BOD2 *page numbers*]” relating to the appeals 1A/23 and 1B/23 respectively.
7. This decision of the Council relates to the Appeal 1B/23 i.e., Mr A’s appeal against the CIC decision to dismiss his complaint against Mr B of Company C.

The Legislation

8. Extracts from the relevant legislation considered by the Panel are presented in Schedule 1.
9. 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.
10. 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.
11. 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.
12. Appeals to the Council 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.

Background and Context

13. A timeline of key events is provided in Schedule 3.

Company C Engagement

14. Company C was engaged by Body Corporate F and Body Corporate G ("the Body Corporate") to carry out seismic assessment of existing buildings at Addresses D, Wellington and to develop a seismic strengthening scheme which achieves at least 67% NBS for all three buildings [BOD2 pg 39].

15. All three buildings Addresses D re unreinforced masonry (URM) buildings that are interconnected and share common walls. For simplicity, Company C analysed them as separate structures [BOD2 pg 39].
16. In May 2019, Company C issued its report titled *“DSA and Seismic Strengthening Design of the Existing Buildings at Addresses D”*. [BOD2 pg 37-237]
17. A *“Producer Statement – PS1 – Design”* was issued by Mr B, on behalf of Company C on 24 May 2019 [BOD2 pg 8-9].
18. City Council issued a building consent for Address D on 16 October 2019 [BOD2 pg 11-23].

Company E Engagement

19. On 7 May 2019, Company E was approached by members of the Body Corporate at Address D to provide an alternative approach, as apparently not all building owners were unanimously satisfied with the seismic strengthening scheme provided by Company C considering the total cost of strengthening exceeded the commercial value of building for some of the building owners. [BOD1 pg 20 and 26]
20. Company E issued a letter report titled *“High Level Seismic Assessment on the building located at Address D”* on 14 June 2019 to Company H. [BOD1 pg 4-10].
21. As per their report, Company E were requested to *“... carry out a very high level assessment of the building to determine the level of confidence whether the “as-repaired” building can achieve a %NBS higher than 34%NBS before the client makes any further investment”*. [BOD1 pg 4].
22. Company E based their High Level Assessment (HLA) on the assumption that the building at Address D experienced shaking from the Kaikoura earthquake of 14 November 2016.

23. Company E obtained publicly available records from a nearby seismographic station (less than 500m away) with similar subsoil conditions [BOD1 pg 6] and interpreted the information that the building at Address D was *“potentially subjected to shaking in the order of 25% NBS to 33%NBS earthquake intensities”* [BOD pg 8].
24. Company E concluded in their report *“... In the absence of any significant earthquake damage to the building in the recent Kaikoura earthquake, it is our conclusion that the existing building has a demonstrated seismic capacity which at this stage can be estimated at greater the 33% NBS. This is an outcome that Company E Engineers need to verify during the next phase of their involvement with the project with the completion of their advanced structural engineering model to enable a more accurate seismic rating on the building”* [BOD1 pg 8-9].
25. For their subsequent stages of assessment, Company E proposed a Non-Linear Time History Analysis (NLTHA) method and provided examples of buildings where they applied this method previously.

Concerns Raised

26. Mr B of Company C raised concerns regarding contents of the Company E’s HLA report to Engineering New Zealand (ENZ). The raised concerns were forwarded to Mr A by ENZ, that is a subject of separate appeal.
27. Within his response to ENZ on the concerns raised against him, Mr A raised some concerns of his own on the methodology adopted by Company C in their DSA, in his letter dated 1 October 2020 to ENZ [BOD1 pg 20-40].
28. After receiving advice from ENZ, that he should raise any concerns against Company C separately, Mr A lodged a complaint to ENZ on 18 February 2021 outlining a series of matters relative to the methodology adopted by Company C in their DSA, as presented in the “Discussion and Findings” section.

Adjudicator appointment and decision

29. ENZ appointed a Chairman of Investigating Committees (CIC) as adjudicator on 29 October 2021 to investigate both complaints [BOD1 pg 41].
30. In his decision of 19 December 2022, the CIC decided *“to dismiss the complaint under rule 57(a) of the CPEng Rules and clause 28.1 of the Disciplinary Regulations, on the ground that no applicable ground of discipline applies”*.
31. Mr A lodged an appeal against the CIC decision on 24 February 2023, with a detailed description of the grounds of appeal [BOD2 pg 248-251].

Grounds of Appeal

32. **Ground 1:** *“The Adjudicator determined that the complaint against Mr B should be dismissed under rule 57(a) of the CPEng Rules and clause 28.1 of the Disciplinary Regulations on the ground that no applicable ground of discipline applies. (The reference to clause 28.1 may be in error as it is clause 8 of the Regulations which are applicable).”*
33. **Ground 2:** *The basis of the decision is that Company C’s Detailed Seismic Assessment (DSA) and Strengthening Design (the SC Report) “appears to be a reasonable report, as it follows a clear, logical structure and provides reasons for its findings.”*
34. **Ground 3:** *“There is no assessment of the substance of the grounds of complaint. Instead the Adjudicator rubber-stamps the process Mr B followed when preparing the report and then relying on that to issue a PS1.”*
35. **Ground 4:** *“It is inadequate and superficial to find that on this basis alone the SC Report was not deficient, nor Mr B’s work negligent or irresponsible, without further investigation.”*

36. **Ground 5:** *“Having accepted that the subject matter of the complaint was not trivial as seismic strengthening is a significant matter, the conclusion that the structure of a report, and the subsequent issue of a building consent, justifies its contents is an inadequate reason to dismiss the complaint. There is little, if any, consideration of the concerns which Company E raised as to issues with the SC Report.”*
37. **Ground 6:** *“The fact that a City Council issues a building consent is not a guarantee that the work intended to be done will meet the Building Code or other regulatory requirements. The Courts are replete with claims against regulatory authorities for negligently issuing building consents.”*
38. **Ground 7:** *“The outcome of the complaint against Mr B is entirely inconsistent with the related complaint by Mr B against Mr A concerning the same property where the Adjudicator held that that complaint should be referred to an Investigating Committee.”*

Outcome Sought

39. The outcome sought by Mr A is *“to reverse the Adjudicator’s decision and ask the CPEC to find that the complaint should be referred to an Investigating Committee as none of the grounds for dismissing the complaint as set out in r 57(a) of the CPEng Rules and clause 8 of the Disciplinary Regulations apply.”*

Evidence Considered

40. 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.
41. The evidence considered by the Panel includes:
 - a) The Bundles of Documents, [BOD1 pg 1-64] and [BOD2 pg 1-251].
 - b) Submission received on behalf of Mr A on 28 Apr 2023.
 - c) Email received from Mr B on 16 May 2023 stating, *"I have nothing further I wish to submit"*.
 - d) Submission received from the Registration Authority on 19 May 2023.
 - e) Submission received on behalf of Mr A on 16 Jun 2023, in response to the RA submission.

The Hearing

42. An "in-person" hearing was arranged at Wellington on 12 September 2023, following consideration of the evidence by the Panel.
43. The hearing was attended by Mr B, Mr A, Ms L (Mr A's counsel), the RA and the Panel.

Discussion and Findings

44. The Panel has addressed the grounds of appeal in the following order:
 - Ground 1 is procedural, outlining the criteria for the decision.
 - Grounds 2, 3, 4, 5 and 6 together address the substance of Mr A's complaint.
 - Ground 7 addresses an issue which may not have direct bearing on this decision.

Assessment criteria for grounds of appeal (Ground 1)

Ground 1: *“The Adjudicator determined that the complaint against Mr B should be dismissed under rule 57(a) of the CPEng Rules and clause 28.1 of the Disciplinary Regulations on the ground that no applicable ground of discipline applies. (The reference to clause 28.1 may be in error as it is clause 8 of the Regulations which are applicable).”*

45. The Council has no jurisdiction to consider the matter with respect to the ENZ’s Disciplinary Regulations. The Panel’s focus is therefore on:
- (a) whether as decided by the CIC, Mr A’s complaint against Mr B should be dismissed on the grounds that no applicable grounds of discipline apply under rule 57(a) of the Rules, or
 - (b) whether as submitted by Mr A, Mr B’s actions require further investigation, and they are referred to an Investigating Committee.
46. Rule 57 (see attached Schedule 1), is summarised as below:
- (a) there is no applicable ground of discipline under section 21(1) 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.
47. Rule 57(a) refers to Section s21 of the Act, as included in the attached Schedule 1 of this decision. The facts and evidence clearly demonstrate that the criteria established under sections 21(1)(a), (b) 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 performed engineering services in a negligent or incompetent manner (s21(1)(c) of the Act).

48. The Panel has assessed all relevant specific issues raised in the complaint and under the grounds of appeal, against the criteria set out for rule 57(a) outlined in paras 46 and 47 above, as follows.

Assessment of the substance of the grounds of complaint (Grounds 2, 3, 4, 5 and 6)

49. Mr A has appealed that the substance of his grounds of complaint were not adequately addressed and commented on the aspects of the Adjudicator/CIC decision under his grounds of appeal 2, 3, 4, 5 and 6 respectively, summarized as below.

Ground 2: raises concern about the basis for CIC's decision,

Ground 3: highlights that the substance of the grounds of complaint was not assessed,

Ground 4: highlights the findings to be inadequate and superficial without assessment,

Ground 5: highlights inadequate justification to dismiss the complaint,

Ground 6: highlights that issuing building consent is not a guarantee that the work intended to be done will meet the Building Code or other regulatory requirements.

50. The grounds of complaint were outlined in Mr A's letter to ENZ dated 18 February 2021 [BOD2 pg 4-7], supported by extracts from the New Zealand Society for Earthquake Engineers (NZSEE) guidelines and a published paper from Holmes Consulting (2004) [BOD2 pg 5].

51. In his letter of 18 February 2021, Mr A summarized his concerns as below:

- *"The equivalent static method used by SC is not considered appropriate for the assessment and strengthening of Addresses D buildings, due to the above-mentioned basic limitations.*
- *There are several serious concerns on the processes and methods that SC have used to analyse and retrofit the existing structure with some of them require basic Earthquake Engineering knowledge.*
- *There appears to have been no consideration of the strength of the existing structural system (URM walls) as part of the global strengthening scheme and this imposes in our opinion a significant cost to the property owners.*
- *In our view, Mr B in preparing and certifying a structural design to comply with B1, did not act competently, and did not undertake (or oversee) the design work with the required level of skill and care".*

52. Mr A believed¹ that the row of buildings at Addresses D cannot be assessed or strengthened without consideration of “row effect” and that the Company C report gave little consideration to the “pounding effect” within the strengthening scheme or the existing structural system (URM walls) as part of the global strengthening scheme.
53. Mr B responded to the concerns raised via email to ENZ dated 18 June 2021, as below:
- *“I consider that our design complies with B1 of the Building Act. I note that our design and documentation were Peer Reviewed by an independent consultant and were also reviewed by City Council (CC) who granted Building Consent for these seismic strengthening works.*
 - *I am not going to respond to the each of the points Mr A has raised that are specific to our strengthening design and analysis as I consider our design complies with B1 of the Building Act. I refer to my comments above.*
 - *I note some of the documents cited by Mr A are not Verification Methods under the New Zealand Building Code. Designing following recommendations from these documents would be considered Alternative Solutions under the New Zealand Building Code. This includes the MBIE Technical Guidelines (this document is intended for assessment and not for design) and also the Nonlinear Dynamic Analysis paper from the 13th World Conference on Earthquake Engineering*
 - *I consider that I have acted appropriately in overseeing the design and ensuring that appropriate independent checks were carried out”. [BOD2 pg 238]*
54. As noted in para 41(c), Mr B did not provide any further information via any submission as part of the submission process for this appeal.
55. However, at the hearing on 12 September 2023, Mr B provided a brief verbal submission, covering some of Mr A’s concerns generically. His verbal response is summarized as below:
- He did not consider it necessary to provide a point-by-point response to Mr A’s concerns, considering Mr A was not a peer reviewer for the Company C’s report.
 - Company C had engaged suitably qualified staff to carry out the DSA and seismic strengthening design for the buildings at Addresses D.
 - Company C had engaged a peer reviewer to review the seismic strengthening scheme, and the consenting authority City Council had also engaged a consulting

¹ Submission on behalf of Mr A, dated 28 April 2023, pg 3.

firm to undertake an independent review of the strengthening scheme before issuing the building consent.

- Company C had covered off any concerns that were raised as part of the review, including some of the concerns raised in this appeal.
- Company C addressed any identified deficiencies including inadequate connection of the floor diaphragm with the masonry structure following the reviews.
- In terms of strengthening, Company C made the structure more regular.
- Company C's assessment showed they could not pick up huge amount of demand from the neighboring buildings, because the floor is a semi-rigid diaphragm, and the diaphragm is not such that it will break easily.

56. The Panel has not received or sighted copies of any peer reviews or any other relevant material in support of Mr B's statements in paras 53 and 55, other than the information included in the bundle of documents i.e. Company C's DSA and Strengthening Scheme, PS1 and a copy of the building consent issued by City Council as noted in paras 16, 17 and 18 above.
57. The Panel considers the linear or non-linear assessment methods used by either party are supported by the respective technical bodies MBIE and NZSEE respectively. The issue was with respect to the suitability and way of application of either methodology for the seismic assessment of Address D.
58. Based on the verbal submission by Mr B, the information provided in the bundle of documents, the Panel accepts an appropriate process has been followed, and concludes Mr B's actions in relation to the design were in accordance with accepted standards of engineering practice, and in accordance with what a reasonable body of his peers would have done in the same circumstances.

Relative outcome of the two separate complaints (Ground 7)

Ground 7: *"The outcome of the complaint against Mr B is entirely inconsistent with the related complaint by Mr B against Mr A concerning the same property where the Adjudicator held that that complaint should be referred to an Investigating Committee."*

59. The Panel has treated and assessed both appeals independent of each other on their own merits, based on the relevant information provided for either appeal. Therefore, the issue raised under Ground 7 has no bearing on the Panel’s decision for each appeal.

Outcome of Appeal

60. The Panel has considered the grounds of appeal with respect to rule 57(a) of the Chartered Professional Engineers of New Zealand Rules.

61. The Panel finds Mr B has not performed engineering services in a negligent or incompetent manner, section 21(1)(c) of the Act does not apply.

62. The Panel, therefore, dismisses Mr A’s appeal, under rule 57(a), there is no applicable ground of discipline under section 21(1) of the Act.

63. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Costs

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

Dated 20 December 2023

Signed by the Appeal Panel

	
Manjit Devgun (Principal)	Alan Winwood (Member)
	
Mark Holland (Member)	Sandra Hardie (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	24 Feb 2023
2	Email to the parties from CPEC Chair confirming Notice of Appeal	24 Feb 2023
3	Email to the parties from CPEC Chair confirming appointment of the Panel	13 Mar 2023
4	Email from the RA to the parties containing link to the paginated bundle of documents	28 Mar 2023
5	Letter from the panel principal to the parties confirming the panel members, outlining the appeal process, establishing the schedule for submissions and addressing communications	2 Apr 2023
6	Letter from the panel principal regarding appointment of additional panel member	27 Apr 2023
7	Submission received on behalf of Mr A	28 Apr 2023
8	Email from Mr B stating, <i>"I have nothing further I wish to submit"</i> .	16 May 2023
9	Submission received from the Registration Authority.	19 May 2023
10	Submission in response on behalf of Mr A	16 Jun 2023
11	Letter from the panel principal acknowledging receipt of all submissions, proposing a hearing on the papers and checking if either party preferred a hearing in-person.	27 Jun 2023
12	Email received on behalf of Mr A stating, <i>"Mr A's preference is for the hearing to be in-person"</i>	30 Jun 2023
14	Letter from the panel principal confirming the hearing date of 12 Sep 2023, hearing agenda, venue and relevant instructions (after exchanging various email messages to arrange a mutually suitable date for the hearing)	16 Aug 2023

Schedule 3: Timeline of Key Events

Note: BOD1 refers to Bundle of Documents for Mr B 's complaint about Mr A , and BOD2 refers to Mr A's complaint about Mr B

Date	BOD Ref.	Item
Before May 2019	BOD2 [pg 39]	Body Corporate F and Body Corporate G Body Corporate engaged Company C (Mr B) to Assess 8, 10 and 20 Egmont St, Wellington and provide a seismic strengthening scheme.
7 May 2019	BOD1 [pg 20]	Company E approached by members of Body Corporate at Address D to provide an alternative approach.
May 2019	BOD2 [pg 37-237]	Company C produced DSA and Strengthening Design report for Addresses D .
24 May 2019	BOD2 [pg 8-9]	Mr B /Company C issued PS1 for the strengthening scheme for Addresses D
24 May 2019	BOD1 [pg 8]	Mr A visited the site on behalf of Company E Consulting and was escorted by Mr Roger Walker to certain public areas around the existing building.
31 May 2019	BOD1 [pg 10]	Company E proposal to undertake a staged assessment to 20 Egmont St
14 Jun 2019	BOD1 [pg 4-10]	Company E 's report issued to Walker Architecture and Design titled " <i>High Level Seismic Assessment on the building located at Address D</i> "
21 Jul 2019	BOD1 [pg 2-3]	Email from Mr B to Mr Pratchett of ENZ raising concerns about content of letter dated 14 June 2019 from Company E to Walker Architecture and Design, relating to 20 Egmont St report.
17 Sep 2020	BOD1 [pg 11-13]	ENZ forwarded summary of concerns raised by Mr B , to Mr A with a statement "at this stage we have not formally classified it as a complaint"
2 Oct 2020	BOD1 [pg 20-40]	Mr A responded Mr B 's concerns by sending a redacted and an unredacted letter dated 1 October 2020 to ENZ.
8 Oct 2020	BOD1 [pg 14]	Mr A's email to ENZ stating " <i>I would like to exclude from documents the WCC letter as I haven't received approval from my client to share this in public</i> "
16 Oct 2019	BOD2 [pg 11-23]	WCC granted Building Consent for 20 Egmont St.
4 Dec 2020	BOD1 [pg 45-48]	Mr B 's letter to ENZ, in response to Mr A's letter dated 1 October 2020.
18 Feb 2021	BOD2 [pg 4-7]	Mr A raised concerns to ENZ regarding Company C 's work on Addresses D buildings, with supporting documents.
27 May 2021	BOD2 [pg 2-3]	ENZ forwards summary of concerns raised by Mr A to Mr B
18 Jun 2021	BOD2 [pg 238]	Mr B responded to the RA summary of concerns from Mr A about himself/Company C .
19 Dec 2022	BOD2 [pg 239-247]	Adjudicator/CIC decision on Mr A's s complaint against Mr B
19 Dec 2022	BOD1 [49-59]	Adjudicator/CIC decision on Mr B 's complaint against Mr A .
24 Feb 2023	BOD1 [pg 60-64]	Adjudicator/CIC decision on Mr B 's complaint about Mr A appealed by Mr A .
24 Feb 2023	BOD2 [pg 248-251]	Adjudicator/CIC decision on Mr A's complaint against Mr B appealed by Mr A .