

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

Appeal 11/24

AND

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

Mr A

Appellant

And

Mr A

CMEngNZ, CPEng

Respondent

Decision of the Chartered Professional Engineers Council

1 September 2025

Introduction

1. Mr A (the Appellant) has appealed a decision made by a Chair of Investigating Committees (CIC), appointed by the Registration Authority (RA) regarding the Appellant's complaint against Mr B (the Respondent), a Chartered Professional Engineer.
2. The Appellant's complaint primarily originated from the requirement to build a retaining wall (Wall A) for his consented construction project in order to obtain a Code Compliance Certificate (CCC), that he had not expected and budgeted for.
3. The panel of the Chartered Professional Engineers Council convened to hear this appeal (the Panel) has assessed the submissions received from both parties and the RA, in relation to this appeal.
4. The Panel has been provided a paginated bundle of documents (BOD) held by the RA in relation to the appeal. References to specific documents within these files are annotated as "[BOD page numbers]" relating to the appeal.

The Legislation

5. Extracts from the relevant legislation considered by the Panel are presented in Schedule 1.
6. The right of appeal is contained in s 35 of the Chartered Professional Engineers Act 2002 (the Act), and s 37 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.
7. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (the Rules) and were enacted pursuant to s 40 of the Act.
8. 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.
9. Appeals to the Chartered Professional Engineers Council (the Council) are by way of rehearing (s 37(2) of the Act).

10. After hearing the appeal, the Panel may confirm, vary, or reverse a decision (or part of decision) under appeal (s 37(5)(a)), refer the matter back to the RA for it to reconsider, either generally or in relation to specific matters, the whole or any part of the decision (s 37(5)(b)), and may make any decision that could have been made by the decision authority (s 37(5)(c)).
11. 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.
12. The grounds for disciplining a chartered professional engineer are set out within s 21 of the Act and are themselves a matter the CIC must assess under Rules 57 and 58.
13. 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.
14. The panel notes the relevance of s 21(1)(b) since matters of competence are also addressed within the code of ethical conduct set out within Part 3 of the Rules. Rule 42E(a)(iii) of the Rules requires a chartered professional engineer to “*undertake engineering activities in a careful and competent manner*”.
15. The Panel is therefore tasked with considering whether there is a prima facie case that the Respondent “*has breached the code of ethics contained in the rules*” or “*has performed engineering services in a negligent or incompetent manner*” (s 21(1) (b) and (c) of the Act respectively).

Background and Context

16. Around July 2018, Company C was engaged by the Appellant to carry out a geotechnical investigation of a site located at Property, that was being considered for the construction of a 9-lot residential subdivision.¹

¹ Company C Report (April 2019), p1.

17. On 25 February 2019, Company C prepared a Geotechnical Investigation Report (GIR), to support a Subdivision Resource Consent application for the 9-lot subdivision for the Appellant.²
18. Subsequently, on 12 April 2019, Company C prepared a Geotechnical Design Report (Report) for the Appellant. The stated purpose of the report was “to provide retaining wall design and construction recommendations to support a Building Consent application to Council”.³
19. The Report provided a plan of the proposed 9-lot subdivision site, showing locations of the four proposed retaining walls (Figure 1 withheld).⁴
20. The four walls are as follows:
 - (a) **Wall A:** Along and above the northern edge of a proposed accessway to the development, below Lots 2 and 3 (one of two walls shown in blue on Figure 1).
 - (b) **Wall B:** Along and below the southern edge of the same accessway, above Lots 1 and 4 (one of two walls shown in blue on Figure 1).
 - (c) **Wall C:** Located south of Wall B at the base of the large slope, northwest of Lot 4 and through Lot 5 (one of two walls shown in green on Figure 1).
 - (d) **Wall D:** Extends from the eastern end of Wall A towards northeast through Lots 9 and 6 (one of two walls shown in green on Figure 1).
21. Company D prepared several reports for the Appellant over the period commencing from 27 August 2020.⁵ Listed below is a summary of key reports relevant to this appeal, that were “peer reviewed”⁶ by the Respondent in his capacity as a chartered professional engineer.

² *Ibid.*, p1.

³ *Ibid.*, p1.

⁴ BOD 174.

⁵ The Respondent’s submissions dated 24 January 2025, under ‘Chronology’.

⁶ Whilst the Respondent does not explicitly state he was an employee of Company D, at para 8 of his submissions dated 24 January 2025, he states he worked for Core50 subsequent to Company D’s liquidation.

- (a) On 5 October 2020, Company D issued a report titled *“Soil Capacity Testing and Site Suitability – Property”* (Company D Soil Report).⁷ The purpose of the report was stated as *“this site investigation including slope assessment was carried out for the purpose of assessing site suitability for construction of a timber framed dwelling”*. The legal description of the site stated in this report is *“Lot 1 DP XXX”*. The Panel notes this location was earlier referred to as Lot 2 in the Company C Report, as shown in Figure 1 in para 19.

This report recommended a Building Setback Line (BSL) of 5.0m from the crest of the slope was required, because the proposed building footprint had not achieved an acceptable level of stability against slope failure.⁸

- (b) On 22 October 2020, a Producer Statement PS1 was issued by Company D titled *“Residential Construction (Timber Piled Foundation, Subfloor & Retaining Wall Design) Property.”*⁹ The PS1 was peer reviewed and signed by the Respondent. The Respondent stated in his submission that the PS1 was for the design of an underpinned waffle slab foundation.^{10 and 11}
- (c) On 24 March 2021, Company D prepared *“Site Inspection Report – Subgrade Surface Inspection”*, noting the inspection result as *“fail”*.¹²
- (d) On 13 April 2021, a revised PS1 was issued in respect of *“Residential Construction – (Timber Piled Foundation, Subfloor & Retaining Wall Design)”*, signed by the Respondent.¹³ As noted in the Respondent’s submission (under ‘Chronology’), the foundation design was changed to be concrete piles supporting a timber floor, following the agreement with the Appellant that a part of the structure would be built within the 5m BSL.

⁷ BOD p199.

⁸ BOD p204

⁹ BOD p118.

¹⁰ The Respondent’s submissions dated 24 January 2025, under ‘Chronology’.

¹¹ BOD p204.

¹² BOD p163.

¹³ BOD p122

22. Company D issued a PS4 for the Bored Concrete Pile Holes on 17 August 2021, signed off by the Respondent.¹⁴
23. From the Respondent's submissions, it appears the Appellant applied for a Code Compliance Certificate for the dwelling from District Council, sometime in June 2023.¹⁵
24. On 15 February 2024, Core50 (which as the RA notes¹⁶ and we also infer,⁶ appeared to have taken over Company D staff including the Respondent), issued a Slope Review for Property.¹⁷
25. On 20 June 2024, the Appellant lodged a complaint against the Respondent with the RA that the Respondent had not made it clear that Wall A would be required for code compliance, and that as a result the Appellant had had to build a \$60,000 wall that he had not budgeted for.¹⁸
26. On 25 June 2024, the Respondent provided the RA with a response addressing the Appellant's summary of concerns.¹⁹
27. On 13 September 2024, the CIC appointed by the RA determined there was no evidence that the Respondent performed engineering works in a negligent or incompetent manner. The complaint was dismissed under rule 57(a) of the CPEng Rules and clause 8.1 of the Disciplinary Regulations²⁰ that there was no applicable ground of discipline.²¹
28. On 10 October 2024, the Appellant lodged an appeal against the part of the CIC decision that there was no evidence that *"the engineer performed services in a negligent or incompetent manner"*.

¹⁴ BOD p48

¹⁵ The Respondent's submissions dated 24 January 2025, under 'Chronology'.

¹⁶ RA's submissions dated 24 January 2025, at para 6.23.

¹⁷ BOD p39.

¹⁸ BOD p4.

¹⁹ BOD pp110-113.

²⁰ Engineering NZ Complaints Resolution and Disciplinary Regulations 2020. The Panel notes that these Regulations are applicable to members of Engineering New Zealand and are not relevant to this appeal, which is limited in jurisdiction to the Respondent's status as a CPEng.

²¹ BOD pp251-255.

Grounds of Appeal

29. The Appellant has stated the following grounds of appeal:²²

“The pages I submitted showing the design detail dated 13.04.2021 show the slope at 20 degrees and pile A in ground of 2500m [sic] is completely [sic] different to the as built plan dated Nov 2023 that shows slope angle of 50 degrees with pile A inground of only 1135mm.

I don't think this has been considered in the complaint, and this design error has contributed to the bank not being stable. Also Wall A is on the neighbours [sic] land. Which cant [sic] be right.

In the Chairs notes,

There [are] comments about wall A being referred to in the engineering documents. There is also reference to walls B, C and D. All of these walls including wall A were designed for a future subdivision on the neighbouring land. If I had to build wall A because it was 'referred' [sic] to then why did I not have to build walls B, C and D.

The statement that 'Wall A will not be in place immediately post the construction of the foundation slab hence a 5.0m BSL and underpinning design to resist lateral ground creep has been adopted' tells me and everyone I show the document to, that the building has been designed to not need any other support i.e Wall A.

So I do believe the design has been done in a [sic] incompetent manner.”

Outcome Sought

30. The outcome sought by the Appellant is *“the decision to dismiss the complaint to be reversed, and the complainant to be referred to an investigating or Disciplinary Committee as applicable.”*

²² CPEC – Notice of Appeal, p5, dated 10 October 2024.

Evidence Considered

31. Under regulation 15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.
32. The evidence considered by the Panel includes:
 - a) The Bundle of Documents (255 pages),
 - b) Submissions received from the Appellant on 9 January 2025,
 - c) Submissions received from the Respondent on 23 January 2025,
 - d) Submissions received from the RA on 23 January 2025,
 - e) Reply submissions received from the Appellant on 30 January 2025, in response to the Respondent's and the RA's submissions,
 - f) A full copy of the Company C Report was provided by the Appellant as part of his submissions on 9 January 2025. With respect to that report, the RA has noted in their submissions that a full version of the Company C Report was not provided to the Registration Authority or the CIC when the complaint was being made and that the CIC did not have the advantage of having that document before them when making the decision.²³
33. The previously noted GIR report was not provided and has not been sighted by the panel.²⁴

Discussion and Findings

34. The Appellant has listed several discreet points in his grounds of appeal to support his key concern, summarised in his principal submissions as below:²⁵

"My general frustration is that I have unexpectedly and reluctantly had to build Wall A after construction of the building in order to be granted CCC for the building and I still

²³ RA submissions dated 24 January 2025, p8.

²⁴ Refer to paragraph 17, above.

²⁵ Appellant submissions dated 9 January 2025.

believe that poor communication, wording and detailing within Company D's information has led to this."

35. A similar statement was included in his reply submissions:²⁶

"In summary, I believe that Company D's poor documentation has led to me having to build Wall A, and I consider this to be negligent and incompetent. I believe this reason gives me grounds for my Appeal."

36. The evidence received has been assessed to establish whether there is a prima facie case that the Respondent has or has not:

- a) Undertaken engineering activities *"in a careful and competent manner"* (rule 42E(a)(iii) of the Rules pursuant to s 21(1)(b) of the Act);
- b) *"performed engineering services in a negligent or incompetent manner"* (s 21(1)(c) of the Act).

37. The Act does not provide a definition of 'engineering services', however, 'engineering activities' are defined in rule 42A of the Rules as *"activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills"*.

38. It is not the role of the CIC (and therefore also not the Panel) to determine whether the Respondent has in fact performed engineering services or activities in a negligent or incompetent manner. However, it is useful to note what 'negligence' and 'incompetence' would amount to in this context. As set out in CPEC decision of *Robinson v IPENZ* (Appeal Ruling #29, 10 July 2015):

"Whether engineering services have been performed in a negligent manner is a question of whether there has been a serious lack of care judged by the standards reasonably expected of a Chartered Professional Engineer. That standard may be informed by whether reasonable members of the public would consider such act or omission, if acceptable to the profession, were to lower the standards of that profession in the eyes of the public."

²⁶ Appellant reply submissions dated 30 January 2025, p2.

Whether engineering services have been performed in an incompetent manner is a question of whether there has been a serious lack of competence (or deficit in the required skills) judged by the areas of competence which in this case are encapsulated in Rule 6 [of the Rules].”

39. Noting the above, the Panel has addressed the issues raised by the Appellant, generally in the same order as they appear in his grounds of appeal.

Slope behind Wall A

40. The Appellant has alleged that the inconsistency in detailing the slope behind Wall A would have contributed to the ‘design error’, as stated in his grounds of appeal:²⁷

“The pages I submitted showing the design detail dated 13.04.2021 show the slope at 20 degrees and pile A in ground of 2500m [sic] is completely [sic] different to the as built plan dated Nov 2023 that shows slope angle of 50 degrees with pile A inground of only 1135mm. I don’t think this has been considered in the complaint, and this design error has contributed to the bank not being stable.”

41. The Appellant expanded on this ground of appeal by providing further information under item 4 of his principal submissions:²⁸

“I believe Company D’s detailing of the slope and Wall A within their consented drawings (Page 3) is incorrect and confusing, and that this is meaning that either the built foundations may be incorrect or insufficient, or that there was incorrect and negligent work done in the consented design.

My concern is that the as-built drawing (dated Nov 23) is potentially not as stable as the consented structural design because the slope of the bank was incorrectly detailed at the beginning and on the consented design.”

42. The RA submitted that these arguments were never substantively made out in the original complaint and not presented in the summary of complaint approved by the Appellant and were therefore not addressed by the CIC. The RA further noted that:²⁹

²⁷ CPEC – Notice of Appeal, dated 10 October 2024, p5.

²⁸ The appellant’s submissions dated 9 January 2025, p6.

²⁹ RA submissions dated 24 January 2025, p20.

“...its [sic] unclear how any alleged deficiencies in the design could have impacted the slope such that Wall A was needed, as the need for Wall A was identified by Company C [sic], before Company D’s designs were drafted, and all reports note the preexisting slope stability issues with the site. Additionally, it is unclear how this inconsistency could have contributed the confusion of the necessity of Wall A, as Wall A is present on both designs.”

43. The Respondent also submitted the alleged inaccurately detailing of the slope was a “new allegation” and provided the following response in his submissions:³⁰

“Company D’s original design used a lower slope angle as that was the information provided by Mr A. Our onsite measurements indicated a steeper slope. It is not uncommon for there to be a difference between the designed and the as-built, and there is no issue with the adequacy of the foundation. The foundation received a Code of Compliance Certificate.

Regardless of the slope angle, we based the design assumption on the premise that the lower half of the bank would be supported by an engineered retaining wall. That was the key aspect that we have held at every step of the way.”

44. In his reply submission the Appellant noted:³¹

“... no soil was removed to form the right of way, as the right of way was already existing. The bank was only required to be cut during the later stage of having to construct Wall A.”

45. The Panel noted the slope above the right of way, as mentioned in the Company D Report (5 October 2020) was 33 degrees³² and 30-35 degrees³³ in Company D drawing (13 April 2021) whereas the Core 50 Slope Review (15 February 2024) described the slope as 49-50 degrees.³⁴ Further photographs contained within the April 2021 Company D report accompanying the PS1 included photographs of the subject

³⁰ Respondent submissions dated 24 January 2025, p4.

³¹ Appellant submissions dated 30 January 2025, pp1-2.

³² BOD p202

³³ BOD p135

³⁴ BOD p41

accessway, and the slope associated with Wall A.³⁵ At face value, these engage with the point made by the Appellant.

46. The angle of the right of way depicted in the photograph on BOD p183 suggests the photograph was taken on an angle when compared with the photograph on the preceding page of the report (BOD, p182). Had the photo at BOD p183 (or similar) been used to determine the slope of the embankment, this might have accounted for a measurable difference in the angle of the slope. If measured as photographed, the embankment slope approximates the 33 degrees originally used in the design. When the photograph is rotated so there is more consistency between the images, the embankment slope is closer to the final as built slope of 55 degrees.³⁶ Whilst the Respondent opines that *“it is not uncommon for there to be a difference between the designed and the as-built”*,³⁷ the difference between 33 degrees and 50 degrees seems more than a trivial divergence. However, the PS1 report is subsequent to the design, and there is no evidence to suggest that a ‘misaligned photograph’ was the basis for determining the embankment slope. Instead, the Respondent notes the slope measurements were *“from information provided by Mr A”* and the Appellant did not dispute this.
47. Irrespective, the Respondent notes the design was based *“on the premise that the lower half of the bank would be supported by an engineered retaining wall”*³⁸ and that wall (Wall A) is present in the designs presented by both Company C and Company D. Moreover, there is no evidence to suggest the design of the wall is deficient; quite the contrary as it has been issued a Code of Compliance Certificate.³⁹

Location of Wall A

48. The next statement the appellant has included in his grounds of appeal is that *“...Wall A is on the neighbours [sic] land...”*.

³⁵ BOD pp182-183.

³⁶ CPEC – Notice of Appeal, dated 10 October 2024, p5.

³⁷ Respondent submissions dated 24 January 2025, p4.

³⁸ Ibid.

³⁹ BOD, p4.

49. He further elaborated on this statement by providing several scenarios of the subdivision options in his principal submissions that he was considering, including selling or not developing some lots, that may have resulted in Wall A being on adjacent property or neighbouring land. ⁴⁰ The Appellant therefore considers it to have been incompetent or negligent for the Respondent to have advanced a design that assumed without clarification that Wall A would be built.

50. The Appellant noted in his principal submissions that: ⁴¹

“There has been no guarantee given by myself to Company D that the development was 100% going ahead at any time and it seems as if an assumption has been made by those at Company D in this regards.”

51. The Respondent submitted that:⁴²

“Mr A has raised several questions and made several comments about his plans for the subdivision, including future possibilities of selling off neighbouring land and what would legally happen to the retaining wall then. These are all issues for Mr A to consider as the developer. It was Mr A's responsibility to plan and understand the subdivision he was undertaking. At the time we designed the foundations, Mr A said he would be building the walls. It was only later that he said otherwise.”

52. The Respondent further submitted that:⁴³

Mr A has also referred to the retaining walls being on separate titles. As far as the design is concerned, the presence of boundaries is inconsequential. Both lots of were adjacent on land owned by Mr A at the time and part of the same larger subdivision area. We consider the Wall A was required for the upper building as designed. We did not see any barriers to Mr A accessing the land or gaining permission to build the wall. This has been confirmed by Mr A being able to build Wall A with no impediment.

⁴⁰ Appellant submissions dated 9 January 2025, under item 2 on p4.

⁴¹ Appellant submissions dated 9 January 2025, under item 2 on p5.

⁴² Respondent submissions dated 24 January 2025, p3.

⁴³ *Ibid.*, p3.

53. From the evidence provided, the Panel notes that Company D's engagements were focused on the site inspections and foundation design for the dwelling on Lot 2, relying on the slope stability solutions provided by Company C including the need for Wall A, irrespective of its location.
54. The Panel has not come across any instructions from the Appellant indicating the whole subdivision development may not go ahead or seeking any alternate or partial development scenarios, development of lots in isolation, or a non-retaining wall solution for Lot 2 (Figure 1).
55. In the circumstances, the Panel believes the non-consideration of alternate potential development scenarios or requiring any non-retaining wall solutions for Lot 2, which were not specifically requested, was not negligence or incompetence on the part of the Respondent.

Reference to Wall A versus Walls B, C and D

56. The next issue stated in the grounds of appeal is:

"In the Chairs notes,

There is [sic] comments about wall A being referred to in the engineering documents. There is also reference to walls B, C and D. All of these walls including wall A were designed for a future subdivision on the neighbouring land. If I had to build wall A because it was 'referred' [sic] to then why did I not have to build walls B, C and D."

57. The Respondent agrees with the Appellant that the retaining walls were designed to "support the right-of-way and subdivision **below** the site".⁴⁴ However, the Respondent goes on to explain that the walls:⁴⁵

"... also serve the purpose of supporting the and excavated to form the right-of-way. Therefore, they provide the long-term support to the bank that was removed when forming the right-of-way below the building in question. Wall A was a requirement of the building works to guard against long term erosion and deformation of the bank cut

⁴⁴ Respondent submissions dated 24 January 2025, p1.

⁴⁵ *Ibid.*, pp1-2.

to form the right-of-way. It does not directly support the underpinned building, but it does affect the long-term stability of the shallow soils.”

58. The RA has pointed out that because Wall A is directly adjacent to Lot 2 and *“retains the soil that forms the steep, unstable slope several feet from building footprint ... it is clear why Wall A would be required for code compliance certification for that specific building in Lot 2, while the other walls were not.”*
59. The Panel accepts the response from the Respondent and the RA and considers that the above issue is not evidence of any negligence or incompetence on part of the Respondent.

Foundation Design for Dwelling on Lot 2 versus Need for Retaining Wall A

60. The last issue stated in the grounds of appeal is:
- “The statement that ‘Wall A will not be in place immediately post the construction of the foundation slab hence a 5.0m BSL and underpinning design to resist lateral ground creep has been adopted’ tells me and everyone I show the document to, that the building has been designed to not need any other support i.e Wall A. ... So I do believe the design has been done in a [sic] incompetent manner.”*
61. The statement quoted by the Appellant (within the quote in paragraph 59 above) appears in the Company D’s *“Design Features Report – Engineered Timber Pile Foundation, Subfloor & Retaining Wall Design”* dated 13 April 2021.⁴⁶ That report itself refers to an earlier pre-existing Company D report *“Soil Capacity Testing and Suitability”* report.⁴⁷ The Panel notes the scope of these reports was the site suitability and design of foundation for the dwelling on Lot 2 (as shown in Figure 1). These reports did not revisit the **need** for Wall A, instead the comment relates only to the **timing** of when Wall A would be in place.

⁴⁶ BOD p120.

⁴⁷ BOD p199.

62. Further in his submission the Appellant stated:⁴⁸

“As per Company C’s report, which Company D refer to, the retaining walls were not designed for the support of structures above them – they were designed to form an accessway and to “provide suitably stable slope conditions for the lots below it”. It also mentions that the walls have been designed to incorporate catch zones to contain and mitigate the effects of any slips that come about due to the steepness of the slopes. No mention of structures above. Hence why I feel it is natural for me to presume that construction was not required to support the building above.”

63. The Panel notes the Respondent’s view that:⁴⁹

“Wall A was a requirement of the building works to guard against long term erosion and deformation of the bank cut to form the right of way. It does not directly support the underpinned building, but it does affect the long-term stability of the shallow soils.”

64. Section 5.2.3.1 of the Company C Report, which addresses Pre-development slopes, also states that:

“As established in the Company C GIR, the existing slope profiles on all cross sections analysed were found to have factors of safety less than target values in all cases and the existing slopes are considered to be marginally stable under prevailing (long-term) groundwater conditions.

Under short-term (transient) elevated groundwater conditions the steeper natural slopes are shown to have factors of safety of less than 1 indicating potential for slope instability. This is supported by the presence of an existing relic slip feature with steep head scarp that is interpreted to have failed due to the ingress of surface water from the terrace above the site”.

65. The Company C Report continues at section 5.2.3.2 Proposed Works to advise:

“To achieve the required factor of safety under the conditions presented in Table 2, ground stabilisation measures are needed in the form of retaining walls...”

⁴⁸ Appellant submissions dated 9 January 2025, p1.

⁴⁹ Respondent submissions, dated 24 January 2025, p1.

...a timber pole retaining wall (Wall A) is proposed along the upslope side of the new accessway to provide suitable factors of safety. This maximum 1.6m high timber pile retaining wall is required along the upper approx. 55m length extending from Property. To avoid the need for backfilling behind the wall the wall is to be extended an additional 1m above proposed bench level. This above ground portion will have hit-and-miss rails and will act to attenuate any slip debris originating from the existing slope above."

66. Based on the statements from the Company C Report and the Respondent's statements quoted in the preceding paragraphs (56 and 62), it is apparent that the Wall A was required not only for the lots below, but also to provide stability of the slope behind it as well. Therefore, requirement of Wall A appears to be in addition to the "underpinning design to resist lateral ground creep" adopted for the foundation, not as an alternative option.
67. The Panel finds the statement quoted by the Appellant in paragraph 59 may appear confusing (and we turn to this next). However, the Panel has not found any evidence that the design was undertaken in an incompetent manner.

Ambiguity

68. In his principal submissions (under item 2), the Appellant stated that Company D's reference to Wall A not needing to be constructed "immediately" and other terms like "proposed", "short-term", "medium term" and "long term" have resulted in considerable ambiguity in terms of if or when Wall A was required to be constructed.
69. The Panel accepts the terms used could have caused some ambiguity around the timing of when Wall A was required to be constructed. However, this in itself does not lead to say that the engineer performed engineering services in a negligent or incompetent manner, nor that it was careless.

Construction Sequence

70. In item 3 of his principal submissions, the Appellant cites the construction sequence in the Company C report required Walls C and B to be built before Wall A. He asks "If I

*had to build wall A because it was 'referred' [sic] to then why did I not have to build walls B, C and D."*⁵⁰

71. The Company C Report provided for a construction sequence as below:⁵¹

"To maintain overall slope stability conditions during construction it is necessary that earthworks are first undertaken to remove vegetation, topsoil and undercut loose near-surface soils. Following this Wall C is to be constructed first, followed by Wall B then Wall A."

72. The Panel notes the Company C Report was for the development of the whole 9-lot subdivision, without a known construction sequence of dwellings. The report did not provide for slope stability solutions for partial development or isolated development of the lots.
73. The Appellant has not provided any evidence or supporting arguments that would lead the Panel to conclude that there is a prima facie case of the Respondent having been careless, negligent, or incompetent with respect to the need to build Wall A, ahead of the construction sequence noted in the Company C report.

Outcome of Appeal

74. The Panel has considered grounds of appeal and issues raised in the Appellant's submissions, as to whether the complaint should be referred to for further investigation to an investigating committee.
75. The Panel has found that there is no applicable ground of discipline under s 21(1)(b) or (c) of the Act (rule 57(a)).

⁵⁰ CPEC – Notice of Appeal, p5, dated 10 October 2024

⁵¹ Company C Report, p6.

76. The Panel has, therefore, decided to dismiss the appeal under rule 57.
77. In accordance with s 35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated: 1 September 2025

Signed by the Panel



Manjit Devgun
Principal



Dr. Carron Blom



Megan Neill

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	10 Oct 2024
2	Email to the parties from CPEC confirming Notice of Appeal	18 Oct 2024
3	The Appellant forwarded a copy of the Notice of Appeal to the Respondent	21 Oct 2024
4	Email to the parties from CPEC confirming appointment of the Panel	11 Dec 2024
5	Email from the RA to the parties containing link to the paginated bundle of documents	
6	Letter from Panel principal to the parties confirming Panel members, outlining the appeal process, establishing the schedule for submissions and addressing communications	17 Dec 2024
7	Submissions received from the Appellant	10 Jan 2025
8	Submissions received from the Respondent	24 Jan 2025
9	Submissions received from the Registration Authority.	24 Jan 2025
10	Submissions in response received from the Appellant	31 Jan 2025
11	Letter from Panel principal acknowledging receipt of all submissions, proposing a hearing on the papers and checking if either party preferred a hearing in-person.	23 Feb 2025
12	Letter from Panel principal confirming acceptance of hearing on the papers from both parties and the RA.	6 Mar 2025