

**Chirs Under the Chartered Professional
Engineers of New Zealand Act 2002**

Appeal 08/24

AND

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

Between

**Mr A
Appellant**

And

**Mr B
Respondent**

Decision of the Chartered Professional Engineers Council

Dated 19 December 2025

Introduction

1. The Appellant Mr A, has appealed to the Chartered Professional Engineers Council (the **Council**) a decision made by the Chair of Investigating Committees of the Registration Authority (the Institution of Professional Engineers New Zealand trading as Engineering New Zealand (the **RA**)), that dismissed his complaint about the conduct of Mr B, a Chartered Professional Engineer (the **Respondent**).
2. The Chair of Investigating Committees is also referred to by the RA in its processes as an 'Adjudicator'. For the purposes of this decision, the term from the relevant CPEng legislation, Chair of Investigating Committees or '**CIC**', will be used.
3. The panel of the Council which was convened to hear this appeal (the **Panel**) has been provided with a Bundle of Documents held by the RA in relation to the case. References to specific pages within this bundle are annotated "**BOD, p xx**".
4. The RA was granted leave by the Panel to be heard and provide submissions in this matter. An online hearing was conducted with appearances and submissions made by the Appellant, Respondent, and the RA.
5. Submissions and evidence received relating to this appeal are listed in Schedule 1 to this decision.

The Legislation

6. This appeal is brought under the Chartered Professional Engineers of New Zealand Act 2002 (the **Act**), which empowers the Council to hear and determine appeals of decisions of the RA. The right of appeal in respect of decisions of the RA is established by s 35 of the Act and appeals to the Council are by way of rehearing (s 37(2) of the Act).
7. The Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the **Regulations**) set out the requirements pertaining, amongst other matters, to the hearing and the deciding of appeals made to the Council.
8. The rules under which the appealed decision were made are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (the **Rules**).¹ The CIC is appointed by the RA under rule 83 of the Rules and, following the process in rule 58, has delegated authority to decide (per rule 56), whether to dismiss a complaint on a ground in rule 57 or refer it to an investigating committee.

¹ While new rules are now in force, those in force at the time of the concern and the CIC's decision are the 2002 Rules.

9. For clarity, the Panel notes that any reference made to Engineering New Zealand’s complaints resolution and disciplinary regulations in the RA’s process or decision relates to the Respondent’s membership of Engineering New Zealand, not his status as a CPEng, and is not relevant to this Appeal.
10. The Panel is entitled to confirm, vary, or reverse a decision (or part of a 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 has the responsibility of arriving at its own assessment of the merits of the case² and 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. It is only if the Panel considers that the appealed decision is wrong that it is justified in interfering with it – the onus is on the Appellant to demonstrate why the decision of the CIC is wrong.³

New allegations

12. The Panel’s jurisdiction is limited to the decision (or part of the decision) under appeal. It does not have the ability to hear or determine new allegations that were not part of the original complaint and decision.

Information able to be considered

13. Under clause 15 of the Regulations, the Council may receive any evidence that the decision-maker of the RA (here, the CIC) would have been entitled to receive on the decision being appealed. Therefore, while the Panel is entitled to receive additional, relevant information, this is limited to information that the CIC could have received when making the decision under appeal.

Background

14. The Appellant is the owner of a property at Property 1 (the **Property**) which suffered damage in the Canterbury Earthquake Sequence in 2010-2011.
15. The Respondent is a Chartered Professional Engineer (**CPEng**), practising largely as a structural engineer and employed as a Senior Principal Engineer with Company 1.
16. Initial repairs to the Property were undertaken under the Earthquake Resilience (**EQR**) programme, which included relevening the house. However, in 2018, during subsequent house alterations and renovations, the Appellant discovered that liquefaction ejecta (**liquefaction**) remained under the house, raising

² *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141 at [5]

³ *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141 at [4]

concerns that the original repair work had been inadequate. This prompted further investigation and engagement with the Earthquake Commission (EQC).

17. Over the next several years, multiple engineering firms were commissioned to assess the property and provide technical reports:
 - a. In 2019, New Zealand Civil Structural Engineers (NZCSE) issued a report to EQC, concluding that the differential levels observed at the property were historic and not attributable to earthquake damage, and therefore did not recommend remedial foundation work. The NZCSE report included the results of a Cavity Critter subfloor inspection, also undertaken in 2019.⁴
 - b. In 2020, the Appellant engaged Company 2 and Company 3 to undertake additional assessments.⁵ Company 2 conducted a geotechnical review focusing on soil stability and foundation adequacy. Their findings suggested that while the property was generally stable, certain areas required more substantial intervention than 'jack-and-pack' alone. Company 3 performed a floor-level survey and subfloor inspection, confirming significant differential settlement and uneven floor levels. Their measurements supported claims of foundation displacement and informed debate over whether jack-and-pack would sufficiently restore compliance and habitability.
 - c. In February 2021, the Appellant commissioned Company 4 to complete a structural assessment. The Appellant says that Company 4 issued a report that contradicted the earlier NZCSE findings, determining that earthquake damage was present and recommending a complete replacement of the foundation system.⁶
 - d. In May 2021 NZCSE undertook a review of the Company 4 and Company 3 report recommendations.⁷
18. Subsequent to that, on 9 September 2021 the Appellant's insurer, AA Insurance Limited,⁸ engaged Company 5 through a Short Form Agreement (SFA).⁹

⁴ BOD, p60.

⁵ BOD, p88.

⁶ BOD, p193. Note, the Panel was not provided with a copy of this report.

⁷ BOD, p100. Note, the Panel was not provided with a copy of this review.

⁸ Noting that records within the Bundle indicate the Appellant's claim has also been handled by Vero and SunCorp. The Panel was not provided background detail to this so we do not comment further as it has no bearing on the matter before the Panel.

⁹ BOD, p180.

19. The SFA required Company 5 to:¹⁰
 - a. identify the parts of the home affected by material earthquake damage and the nature of that damage;
 - b. prepare a scope of works to remediate the damage to the home, with the general objective of the remediation strategy being to *“repair the earthquake damaged parts of the home in the same or similar construction or style as new.”*
20. Company 5 confirmed it would provide the information requested, *“in terms of our Structural Engineering expertise and Company 6 expertise. As discussed we would expect an architect or building surveyor to deal with items outside of Engineering.”*¹¹
21. On 10 September 2021 Company 6 was commissioned by Company 5 to undertake a geotechnical investigation of the property.¹² On 8 December 2021 Company 6 issued their report analysing the Property’s soil conditions and foundation stability.¹³ It confirmed differential settlement and localised cracking, noting residual vulnerabilities under load-bearing walls. Company 6 recommended targeted foundation remediation before structural reinstatement, cautioning that minimal intervention might not fully address long-term resilience.
22. The Respondent, then a director at Company 5 , conducted an assessment of the property on the basis of a *“non-invasive interior and exterior inspection”*, a review of the recorded levels and observed settlement patterns from that visit, and a review of the above-mentioned Company 6 report and Christchurch City Council property files.¹⁴ The site visit was undertaken concurrently with Company 6 on 29 September 2021.¹⁵
23. The Company 5 report records that the Respondent referred to the *“appendices of the NZCSE report to obtain the EQC, EQR and Cavity Critter information essential to us in forming our opinion on what was or was not earthquake damage”*.¹⁶
24. The draft report was provided by Company 5 to Suncorp on 3 December 2021.¹⁷ Suncorp advised the Appellant of this and that it firstly needed to review the report and confirm it met their *“expectations*

10 BOD, p184.

11 BOD, p183.

12 BOD, p18.

13 BOD, p17.

14 BOD, p59.

15 Ibid.

16 Ibid.

17 BOD, p153.

around Company 5's engagement terms" before Company 5 finalised and released the report the following week.¹⁸

25. After some pressure from the Appellant, Suncorp instead released a draft version Company 5 report to the Appellant on 7 December 2021, albeit one which had been updated following Suncorp comments.¹⁹ Suncorp also provided the Appellant with the notes on the report it had sent back to Company 5 by email on 6 December 2021 and noted in the covering email to the Appellant that:

... [Company 5] have [sic] not followed [Suncorp's] instructions regarding *not* looking at any other reporting before producing their report. However, they have not referenced the NZCSE or Company 4's Engineering report in forming their views and have referred to the appendices of the NZCSE report to obtain the EQC, EQR and Cavity Critter information to help form their own opinion.

...

However, in terms of the report itself, we hope you can see that Company 5 have [sic] presented their own views based on the evidence and the other requirements we have set out.

As is usual with a draft report, we have requested several typos corrected and clarification of some areas. Attached is the email requesting these corrections and clarifications. The updated draft report is attached with those changes.

Company 5 have [sic] also requested that Company 6 update their draft report so that Company 5 can then finalise the Company 5 report.

Once the final report is available, the next step would usually be for you to provide that to your engineer to review and comment.

26. The Appellant has relied on the edits requested by Suncorp as support to his arguments around competence and integrity. These edits were:²⁰

1. Page 3 – 1.1 Scope of Work, paragraph 4, bullet point 5 “when new” s/be “as new”.
2. Page 4 – first paragraph, line 2-3, “as when they were new” s/be “as if they were new”.
3. Page 4 – 3.0 Documentation Received – can you please clarify why some documentation has been referred to, contrary to general instructions from MPS around their use/referencing?

¹⁸ BOD, p153.

¹⁹ BOD, p150.

²⁰ BOD, p239.

4. Page 26 – 7.7 Chimney – can you please clarify the extent of EQ damage to this structure and why you believe that such damage cannot be compliantly repaired, rather than taking a conservative approach towards deconstruction?
27. Company 5 issued their final report on 14 December 2021 and Vero issued this to the Appellant the same day (the **Company 5 Report**).²¹ The report recommended releveling the perimeter concrete foundation and partial replacement of the concrete foundation in the southeast corner, jacking and packing the interior, deconstructing and ‘making good’ the chimney, and making good the interior linings after releveling (to allow for consequential damage to linings from releveling process).
28. After receiving the Company 5 Report, the Appellant and Suncorp raised several questions and concerns, particularly regarding the future performance of the proposed foundation repair and the technical details of the recommended methodology.²² They requested clarification and additional information, including a crack map to identify which cracks would be repaired with epoxy and which would be addressed through foundation replacement.
29. In March 2022, Company 5 issued an 11-page addendum to the Company 5 Report, reaffirming its original assessment and responding to the queries raised by the homeowner and insurer.²³ Despite this, correspondence continued between the Appellant, insurance company representatives, and Company 5; with the Appellant expressing ongoing dissatisfaction with the clarity, adequacy, and transparency of Company 5's responses.²⁴
30. Company 5 provided a further response to Suncorp on 22 December 2022 to address queries by the Appellant. This stated that most structural cracks would be resolved by installing a new foundation, while a few specific cracks would be repaired with epoxy.²⁵ However, the Appellant found these responses vague and insufficient, and believed that Company 5's refusal to provide a detailed crack map hindered meaningful comparison and assessment of the repair strategy.²⁶
31. Correspondence between the Appellant and Company 5 continued until early June 2023, when the Chief Executive of Company 5, asked the Appellant to direct any further questions to their insurer and asked him to refer any concerns regarding their performance as professionals to the RA.²⁷

²¹ BOD, p149.

²² BOD, p149 and pp160-163.

²³ BOD, pp88-98.

²⁴ BOD, pp194-197.

²⁵ BOD, pp104-113.

²⁶ ‘Review Notes’ attached to Appellant’s submission email dated 10 November 2024.

²⁷ BOD, pp193-197

Concern raised with Engineering New Zealand and NZCRS process

32. The Appellant raised a concern with the RA in June 2023, alleging (in summary) that:
- a. Company 5's recommended repair methodology was unsuitable and did not meet the requirements of the SFA;
 - b. Company 5 had not responded adequately to queries; and
 - c. the Respondent may have breached the Code of Ethical Conduct.

The Appellant also raised concerns about impartiality, suggesting that Company 5's approach favoured the insurer's interests over those of the homeowner, as evidenced by differences in language and repair strategies for insured versus private clients.

33. As advised by the RA, in September 2023, the Appellant contacted the New Zealand Claims Resolution Service (**NZCRS**). The NZCRS is a service available to homeowners with an EQC or private insurance claims resulting from damage caused by a natural disaster such as an earthquake. In association with the NZCRS, the RA administers a Natural Disaster Recovery Panel, members of which can be asked to provide a peer review of engineering assessments of natural disaster damage and reinstatement recommendations.
34. Through this service a peer review of the Company 5 report was undertaken by Mr C (the **Peer Reviewer**). The matter was referred to the Peer Reviewer on 3 October 2023, who considered the Company 5 Report, the addendum to the Company 5 Report and additional reports and documentation.²⁸ We note that several of the reports provided to the Peer Reviewer were not included in the material provided to the CIC and/or to this Panel, including, but not limited to the:²⁹
- a. 2017 JART Structural Engineering file note;
 - b. 2019 Cavity Critter report and floor plan;
 - c. 2019 NZCSE Engineers Technical Report;
 - d. 2020 Company 3 foundation due diligence report;
 - e. 2020 Company 2 Geotechnical Investigation report; and

²⁸ BOD, p269.

²⁹ Ibid.

- f. 2021 Project Structure Structural Earthquake assessment and reinstatement report and its 2022 addendum.
35. The Appellant submits that, as part of the NZCRS process, they requested input into the NZCRS letter of engagement and the ability to discuss their concerns. The Appellant did not have the opportunity to have input into the engagement letter; however, they did provide the Peer Reviewer with a document detailing their concerns³⁰ and had an in-person meeting with the Peer Reviewer. At that meeting they say they spent 45 minutes “going over ... concerns and showing [the Peer Reviewer] evidence to support these”.³¹
36. The peer review resulted in a report, produced on an Engineering New Zealand templated form, dated 14 November 2023 (**NZCRS PR Report**). The form which the NZCRS PR Report used includes two places for additional questions from the homeowner:³²
- a. Section 8 (‘Engagement’), the explanation of which is to “Please provide the details of your engagement with Engineering New Zealand”. This section includes a subheading which asks the peer reviewer to “Please add any further questions the homeowner would like addressed:”. Nothing was listed in the NZCRS PR Report under this subheading.
 - b. Section 15 (‘Homeowner Questions’). The explanation of this section asks the peer reviewer to “Please answer the questions provided to you by Engineering New Zealand from the homeowner regarding the Report.” In this section the Peer Reviewer has stated “No questions from the homeowner have been provided by Engineering NZ.”
37. The Appellant believes the above means that their questions and concerns have gone unacknowledged or dealt with in the NZCRS PR Report.
38. The NZCRS PR Report generally supported Company 5’s methodology but noted areas requiring clarification, such as distinguishing earthquake damage from pre-existing conditions and reviewing the extent of releveling work. In particular, the NZCRS PR Report noted that:
- a. The instruction from AA Insurance was comprehensive and provided a clear reference point and the scope of work section in the Company 5 report indicated that their assessment and repair recommendations were “based on the insurer’s descriptions relating to as new”.³³
 - b. The investigations undertaken by Company 5 (obtaining and reviewing relevant documentation including council property files, previous assessments and reports; carrying out non-invasive

³⁰ Appellant document, ‘Notes for Engineer’, attached to the Appellant’s submission.

³¹ BOD, p252.

³² BOD, p270.

³³ BOD, p272.

inspections; taking floor level measurements) were sufficient to determine the damage. Determining damage attributable to the 2010/2011 earthquake events in inspections was made more challenging by the house alternations and repair work that had both occurred and was ongoing.³⁴

- c. Company 5's report did not clearly identify what was and was not damage from the Canterbury Earthquake Sequence so the Peer Reviewer could not determine if Company 5's suggestion to relevel the floor was a reasonable response in relation to that damage.³⁵ Company 5's conclusion that releveling or foundation repair was required as part of 'earthquake repairs' was at odds with the information and reasons given. Rather, the information presented did not indicate significant earthquake damage to the concrete foundations.³⁶
 - d. Several statements in Company 5's report would benefit from clarification. Particularly with respect to releveling, Company 5 should clarify if the 'imperative to relevel' is to address earthquake damage or general dislevelment due to other causes.
 - e. Once Company 5 provided clarification regarding the earthquake damage and recommended reinstatement methodology i.e. why replacement of some of the perimeter was required as Company 5 asserts, the extent of jacking pads, and whether remedial works are to include repairing foundation perimeter cracks, Company 5's recommended reinstatement methodology would meet the required standard of the policy.³⁷
 - f. The Peer Reviewer considered the scope of repair work may be excessive to address earthquake damage.³⁸
39. At the RA's request, the NZCRS PR Report was forwarded by the Appellant for inclusion within the material to be considered by the CIC.
40. Both the Appellant and Respondent were provided with further opportunities to provide material and comment on the complaint before the matter was referred to the CIC for a decision.

³⁴ BOD, p272.

³⁵ BOD, p273.

³⁶ BOD, p273-274.

³⁷ BOD, p274.

³⁸ BOD, p275.

CIC's Decision

41. The relevant decision of the RA is the 13 June 2024 decision of the CIC to dismiss the Appellant's complaint.³⁹
42. The process, and way in which that decision is to be made, are set out in rules 56, 57, and 58 of the Rules.
43. Under rule 56 of the Rules, the RA must refer the complaint to an investigating committee unless there are grounds for not doing so. The applicable grounds for a dismissal of the complaint are limited to those in rule 57. Under rule 58, the CIC makes this decision following an initial investigation process by the RA.
44. Rule 57 provides the following grounds of dismissal:

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.*
45. Section 21(1) of the Act, which sets out the applicable grounds of discipline referred to in rule 57(a), provides:

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.*

³⁹ BOD, pp283 – 289.

46. For completeness, the Panel notes that 'code of ethics contained in the rules' under s 21(1)(b) is the 'Code of Ethical Conduct' contained in part 3 of the Rules.
47. The CIC framed the issues/allegations raised in the Appellant's complaint as follows:
- **Issue 1:** A contractual dispute regarding interpretation of a short form agreement by an engineering firm (Company 5).
 - **Issue 2:** Concerns held by the homeowner that an engineering firm (Company 5) did not act impartially in the relevant work, but in support of the homeowner's insurer.
 - **Issue 3:** Concerns held by the homeowner regarding a repair solution by an engineering firm (Company 5) relating to earthquake damage to a house, that the solution is not to the appropriate standard and queries raised were not addressed by the engineer.
 - The report prepared by the Respondent set out an unsuitable repair solution, in that it was not to an appropriate standard (competence);
 1. Company 5 did not follow the SFA under which they were engaged
 2. Company 5's repair strategy
 3. Company 5 changing their repair strategy
 4. Identifying foundation cracks and the use of epoxy for repairs
 5. Ongoing foundation movement
 6. Have Company 5 applied the MBIE guidelines?
 7. Company 5's approach
 - The Respondent did not act with honesty, integrity, and respect when the Appellant asked him to address questions relating to inconsistencies in the above report but these were not addressed appropriately (conduct).
 - **Issue 4:** Differences of engineering opinion.

48. With respect to those issues, the CIC found:⁴⁰

- a. Issues 1 and 4 were outside of the jurisdiction of the Registration Authority and Engineering New Zealand. *“Issue 1 relates to contractual matters that must be pursued in other forums. Issue 4 in essence relates to differences in engineering opinion, which are not, of themselves, disciplinary matters.”*
- b. Issue 2 was dismissed under rule 57(a) of the Rules. That is, that there is no applicable ground of discipline under s 21(1)(a) to (d) of the Act.
- c. Issue 3 was dismissed under rule 57(ba) of the Rules – that the alleged misconduct is insufficiently grave to warrant further investigation.
 - o The CIC considered there were shortcomings in the Company 5 report, in particular:
 - failure to adequately clarify which damage was attributable to the Christchurch earthquake sequence, and consequently whether the proposed releveling addressed earthquake damage only;
 - omission of the requirements for repairs to cracks in the perimeter concrete foundation from the schedule of remedial works; and
 - failure to review some aspects of the jacking pad installation plan.

However, they did not consider those shortcomings sufficiently grave to require further investigation.

- o The CIC also considered that, *“whilst Company 5 may have given more expansive responses to [the Appellant’s] queries, [they found] no evidence that [the Respondent] did not act with honesty, integrity and respect in his dealings with [the Appellant].”*⁴¹

Grounds of appeal and outcome sought

49. In lodging the Appeal, the Appellant set out the reasons for the Appeal in an email dated 8 July 2024 and attaching a document titled “Notes for Engineer” that had been provided to the NZCRS Peer Reviewer.

⁴⁰ BOD, pp286-288.

⁴¹ BOD, p289.

50. In summary, the Appellant has challenged the CIC's decision on the basis that:

General

- (1) The CIC relied too heavily on the NZCRS PR Report when the process by which that review was created was flawed because:
 - i. The Appellant's concerns were not properly considered by the Peer Reviewer, despite assurances from NZCRS that they would have input into the engagement.
 - ii. The Peer Reviewer ignored evidence and concerns presented by the Appellant and inaccurately reported that no questions were provided by the homeowner.
 - iii. This led to a biased and incomplete review, which then influenced the CIC's findings.
- (2) CIC did not seek any further material on a peer review by Appellant's insurer, which the Appellant says raised significant questions about the proposed repair strategy, including:
 - (i) The appropriateness of using epoxy as a repair strategy.
 - (ii) The need for further investigation of foundation damage.
 - (iii) The requirement for confirmation from another engineering firm (ENGEO) regarding future performance.

Issue 1 – SFA

- (3) The CIC was wrong to treat Issue 1 as a 'merely a contractual matter' as:
 - (i) It is a matter of competence whether an engineer has correctly carried out their engagement and the Respondent has failed to do that here because the proposed repair does not meet the brief in the SFA.
 - (ii) The Respondent does not appreciate that the Appellant, as "the insured" are also clients of Company 5.
- (4) Company 5's refusal to provide a crack map, which was requested by both the insurer and the Appellant, was a failure to meet professional standards.

Issue 2 - Impartiality

- (5) The CIC was wrong to accept certain statements of the Respondent regarding independence and impartiality when they have been different accounts given of what documents were reviewed for the report and change in between use of "when new" to "as new".

(6) The CIC was wrong to find that there was no perceived or actual bias in Company 5's report. The Appellant says this is evident from differences between the report prepared for the Appellant's insurer and a private client of Company 5's:

- (i) The different use of adjectives to describe the same event (between private client and insurer client);
- (ii) The difference in the proposed repair strategies and canvassing of options - Company 5 canvassed all the options proposed by the Geotech for the private client's property, discounting others and proposing a full foundation rebuild. However, with the Appellant's property the Respondent only investigated one of the two solutions proposed by the Geotech and did not comment on the other.

Issue 3 – Competence and ethical conduct

(7) The CIC's conclusion (on Issue 3) failed to address the core issue: Company 5 did not review the jacking pad installation plan, which is critical for ensuring the future performance of the repaired foundation.

(8) The CIC's summary understates the significant level of correspondence directed to Company 5 that did not elicit 'straight forward responses to straight-forward questions' such as the future performance of the proposed foundation repair.

51. The Appellant is not explicit as to the outcome sought from their Appeal. However, it can be assumed from the binary nature of the CIC's decision-making (the decision being to either refer to the Investigating Committee or dismiss) and the fact of the Appeal, that the Appellant is seeking either for the complaint to be referred to the Investigating Committee or for the Panel to ask the CIC to reconsider their decision.

Discussion and findings

52. The Panel has read and considered the CIC's decision, the bundle of documents, and all submissions and additional documents by the parties and the RA. The Panel was also assisted by the attendance of parties at an online hearing and presentation of oral submissions.

53. As noted above, in reaching its decision in this appeal the Panel should form an independent judgement, but it is for the Appellant to persuade the Panel that the original decision of the CIC was wrong based on the grounds of appeal raised.

54. The Panel notes that the CIC's decision is an early part of what can be a three-stage process, to ultimately investigate and determine whether a CPEng has engaged in conduct that ought to be the subject of discipline under s 21 of the Act. The CIC's function in this first stage is therefore akin to a screening role.

55. When considering rule 57(a), the basis on which Issue 2 (as framed by the CIC) was dismissed, the Panel notes that it is not the role of a CIC to make a finding that the Respondent did or did not in fact breach the Code of Ethical Conduct. Rather, as outlined in an earlier decision of the Council on an appeal from a decision of the CIC:⁴²

[66] At this early stage of the disciplinary process, there is no testing of the evidence to establish alleged facts. Rather, the ‘threshold’ applicable at this stage in relation to whether a complaint should be dismissed on ‘no applicable ground of discipline’ following an initial investigation is, “*confined to considering whether the circumstances which form the basis of a complaint would, if established, qualify as one of the grounds of discipline specified in [the Act]*”.²¹

[67] Therefore, the Panel considers the appropriate question in relation to rule 57(a) to be whether, if the factual circumstances of the allegation(s) were to be proven, those facts could give rise to an applicable ground of discipline.

[Footnote: *McLanahan & Anor v The New Zealand Registered Architects Board* [2017] NZCA 458, at [66]]

56. The Panel adopts this approach with respect to considering applicable grounds of discipline for the purposes of rule 57(a).

Reliance by CIC on NZCRS PR Report

57. The CIC acknowledges in their decision that, “*In considering issue 3, [they were] guided by the NZGCRS peer review dated 14 November 2023.*”

58. The Appellant says that the CIC relied heavily on the NZCRS PR Report and that this was inappropriate as that review was ‘the outcome of an abuse of process’. That abuse of process arising from:⁴³

a. The Peer Reviewer ignoring all the Appellant’s concerns that he had discussed with him – while the Appellant spent ‘at least 45 mins’ with the Peer Reviewer “*going over our concerns and showing him evidence to support these*”, the Peer Reviewer stated in the NZCRS PR Report that “*No questions from the homeowner have been provided by Engineering NZ*”.

b. Despite requesting it, the Appellant did not have the opportunity to input into the letter of engagement to the Peer Reviewer to ensure their concerns were covered.

59. It is clear that the Appellant did have the opportunity to provide input into the NZCRS process, both speaking directly to the Peer Reviewer and providing a document detailing their concerns. It is unfortunate that, despite this, the Appellant feels that their concerns have been ignored due to the Peer Reviewer’s approach to the templated peer review report form. The NZCRS PR Report records that “*No questions from the homeowner have been provided by Engineering NZ*”. This is technically accurate – the RA did not

⁴² CPEC Decision #72 (Appeal 02/22)

⁴³ Appellant’s submission, p 1

provide the Peer Reviewer with questions from the homeowner, these were posed by the Appellant themselves directly to the Peer Reviewer.

60. Given the prompts in the form, it would have been prudent for the Peer Reviewer to acknowledge the concerns raised by the Appellant explicitly. It is not unreasonable for the Appellant, who was interacting with the RA as well as the NZCRS, to question whether their concerns had been heard and taken into consideration.
61. However, in the Panel's view, the Appellant not having input into the Peer Reviewer's initial engagement letter and the Peer Reviewer not explicitly acknowledging the Appellant's concerns in their peer review do not amount to an 'abuse of process'. Nor do they undermine the value of an independent, expert comment on the technical aspects of the Company 5 Report including matters that the Appellant held concerns about – as demonstrated by the overlap in the Peer Reviewer's 'Engagement' scope and areas of the Appellant's complaint.
62. While it is potentially unusual to have the technical aspects of a complaint considered at the 'adjudication' stage rather than at the Investigating Committee, it does not preclude the CIC from considering the NZCRS PR Report nor weighing it with other information in their decision. Given the Peer Reviewer had access to material not otherwise provided to the CIC by the Appellant, the CIC was able to draw upon the NZCRS PR Report as a more fulsome assessment of the technical aspects of the complaint.
63. Therefore, the Panel considers that the Appellant has not demonstrated that the CIC should not have considered the NZCRS as part of its decision based on it arising from 'an abuse of process', nor why consideration of the NZCRS PR Report was inappropriate.
64. The Appellant has also raised that the CIC did not seek additional information on the insurer's peer review, and that the review was important because:⁴⁴

EFI Global questioned the use of epoxy as a repair strategy in a dis-levelled foundation, agreed future performance is a critical factor in any repair strategy ..., stated that further investigation of the foundation damage was warranted and stated further confirmation from Company 6 be sought regarding future performance requirements.

65. The RA requested a copy of the insurer's peer review from the Appellant⁴⁵ but this was not provided. The Appellant has not convinced the Panel that, given the information that was before the CIC at the time of making its decision, the CIC was under an obligation to seek this peer review, or to make a decision to refer the matter to the Investigating Committee based on its potential content.

⁴⁴ Appellant submission attachment, 'Review Notes' p1.

⁴⁵ BOD, p265.

66. As noted above and at paragraph 13, the Panel is able to receive any evidence that the CIC would have been entitled to receive; however, the Appellant has not put this review before us to consider either.
67. Therefore, the Panel's view is that the matters raised by the Appellant in relation to this general ground do not warrant overturning the CIC's decision.

Issue 1 - SFA

68. While the Panel agrees that contractual matters are typically outside of the RA's jurisdiction, it does not follow that every dispute involving a contract should be treated as such. For example, the Panel accepts that whether or not the SFA should be interpreted as the Appellant being a 'client' of Company 5, is a matter of contract interpretation which is not for determination by the CIC.
69. However, where it is alleged that a CPEng's treatment of a homeowner or engineering work they have undertaken was poor, it should be considered against the potentially applicable grounds of discipline including the code of ethical conduct contained in part 3 of the Rules. Therefore, regardless of whether or not the Appellant was a 'client' under the SFA, as a CPEng carrying out engineering services or activities the Respondent was obligated to act competently and behave appropriately.
70. Having said that, it is not entirely clear what issues fell within 'Issue 1' that were dismissed as being allegations of a contractual nature only. It appears that matters of competence and appropriate behaviour, including whether the Respondent fulfilled the brief of the SFA and the Appellant's treatment by the Respondent, were considered by the CIC under Issue 3.
71. Therefore, the Panel has considered the matters raised on appeal by the Appellant in relation to this as follows:
 - a. Ground (3)(i). Whether the Respondent fulfilled the engagement is a matter relevant to competence and conduct: It is the Panel's opinion that the CIC did consider whether Company 5 had 'followed the SFA under which they were engaged' in relation to Issue 3. Therefore, this was not an issue that was dismissed by the CIC as a contractual matter outside of the RA's jurisdiction.⁴⁶
 - b. Ground (3)(ii). Whether the Appellant was also the 'client': The Panel considers that the interpretation of the term 'client' under the SFA, specifically whether or not the Appellant was the 'client' under the SFA, is a matter of contractual interpretation and outside the scope of the RA's jurisdiction.
 - c. Ground (4). The alleged refusal to provide a crack map is a matter of competence and conduct: While not specifically referring to the provision (or not) of a 'crack map', the CIC did consider an allegation

⁴⁶ BOD, pp287-288.

from the Appellant in relation to identifying foundation cracks.⁴⁷ Therefore, the Panel is not persuaded that this was a matter that the CIC dismissed as ‘contractual’ under Issue 1.

72. Therefore, in the Panel’s view, the Appellant has not demonstrated that the CIC’s decision was ‘wrong’ with respect to this issue.

Issue 2 - Impartiality

Ground (5)

73. The Appellant takes issue with two statements made by the CIC under Issue 2.

74. The first relates to what documents the Respondent had access to and relied on when preparing the report:⁴⁸

[The Appellant] questioned whether Company 5 viewed previous engineering reports they were asked not to view in order to maintain independence, when assessing damage to his home. Section 3 of Company 5’s report which was written by [the Respondent] states: *“Note that Company 5 have not referenced the NZSCSE or Company 4 reports in forming our views or writing our report. We have however referred to the appendices of the NZSCSE report to obtain the EQC, EQR and Cavity Critter information essential to us in forming our opinion on what was or was not earthquake damage.”* This statement appears reasonable, as the house had already undergone some repairs and renovations.

75. The Appellant has pointed to the following to demonstrate that Company 5 did have reference to some of the earlier reports when preparing the Company 5 Report but has not been forthcoming about it:⁴⁹

- a. Vero’s email to the Appellant of 7 December 2021, where they state, *“Unfortunately, [Company 5] have [sic] not followed our instructions regarding not looking at any other reporting before producing their report.”*⁵⁰
- b. Email from the Respondent to SunCorp states *“Company 5 have [sic] honoured the request, via a special instruction, to undertake an independent report as per [withheld] email of 11.08.21. Our final report was issued on 14 December 2021. It was only after we were issued a variation by the insurer in February 2022 that we reviewed the other Engineering reports on the property.”*⁵¹

⁴⁷ BOD, pp287-288.

⁴⁸ BOD, pp286-287.

⁴⁹ Appellant’s submission, p2.

⁵⁰ See BOD, p150.

⁵¹ See BOD, pp 118 – 119.

76. The Appellant has argued that, given this contradiction and the lack of ‘the element of truth’, the CIC was wrong to say that Company 5’s statement appeared reasonable.
77. The Respondent has stated that Company 5 required access to certain technical information to assist their assessment, and the Company 5 report lists the information it was provided with.⁵² The Respondent explained at the hearing that the insurer had provided the Company 2 and Company 4 reports, and in both cases provided the whole document to Company 5 with the advice that the Respondent was not to read the body of the report. The Respondent also relayed that another member of the Company 5 assessment team had looked at the report to find the material required, which included the EQC scopes of earthquake damage, but did not read the conclusions.
78. The Panel agrees with the CIC that it was reasonable for the Respondent to access the technical material it required. Given the Appellant was clearly concerned that the Company 5 assessment was independent, particular care was required by the insurer in the handling of the earlier reports so that the question of impartiality could never be called into question. Despite this, it would appear the insurer provided the entire reports to Company 5.
79. The Panel does not consider that either the accessing of the technical material, nor statements of the Respondent relating to that access, breach the Code of Ethical Conduct as:
- a. it was not an unreasonable approach to utilise the technical information from the earlier reports, particularly as that information was provided to Company 5 by the insurer;
 - b. the Respondent took steps to try and manage the assessment independence;
 - c. whilst the statement made in the Respondent’s email on 2 August 2022 was contradictory, it could have been made inadvertently rather than intentionally and is therefore not necessarily dishonest; and
 - d. ultimately, this is not a matter that would warrant further investigation.
80. The second statement by the CIC that the Appellant takes issue with is:⁵³

I also note that the NZGCRS peer reviewer considered the scope of the repair work recommended by Company 5 may have been excessive to address earthquake damage. This view does not support an allegation of bias favouring the insurer.

⁵² BOD, p60.

⁵³ BOD, p287.

81. The Appellant says that this statement ‘misses the point’ and that the ‘correct’ question to be answered was – “*was bias shown towards the Insurer by Company 5 not ensuring their repair strategy met the policy standard?*”⁵⁴
82. The Appellant argues that it is evident that the Respondent was using the wrong policy standard as SunCorp asked Company 5 to amend the wording in the draft Company 5 Report from “*when new*” to “*as new*” and this was done without any adjustment by the Respondent to the repair strategy.
83. The Appellant also suggests that this is evidence of collusion between the Respondent and SunCorp to reduce the insurer’s liability to the Appellant and a competent engineer should be well aware of the extensive legal case history regarding the difference between the phrases “*when new*” and “*as new*”.
84. The Respondent addressed the Panel on this point at the hearing and stated that the use of the phrase “*when new*” in the draft report was a typographical error that arose from the use of a template. It was not the ‘standard’ on which his investigation and report was focussed. Therefore, when SunCorp pointed out this error in the draft, all that was required to amend the report was to amend that wording.
85. The Panel accepts that this was a simple error and notes that:
- a. SunCorp accepted that these were ‘typos’ in the draft report.⁵⁵
 - b. The NZCRS PR Report found that the Company 5 had undertaken sufficient investigations to determine damage to the property,⁵⁶ and that notwithstanding certain clarifications, the proposed methodology “*will meet the required standard of the policy*”.⁵⁷
86. Therefore, regardless of how this is framed, this is not a matter that raises concerns about either competence or bias/impartiality. Accordingly, the Panel does not agree that the CIC’s decision was ‘wrong’ with respect to this issue.

Ground (6)

87. The Appellant submits that the CIC was wrong to find that there was no perceived or actual bias in Company 5’s report. The Appellant says this bias or lack of impartiality is evident from differences between the report prepared for the Appellant’s insurer and a private client of Company 5’s:
- a. The different use of adjectives to describe the same event (between private client and insurer client);

⁵⁴ Appellant’s submission, p2.

⁵⁵ BOD, p239.

⁵⁶ BOD, p272.

⁵⁷ BOD, p274.

- b. The difference in the proposed repair strategies and canvassing of options — Company 5 canvassed all the options proposed by the Geotech for the private client’s property, discounting others and proposing a full foundation rebuild. However, with the Appellant’s property the Respondent only investigated one of the two solutions proposed by the Geotech and did not comment on the other.

88. The Appellant has also alleged that Company . :⁵⁸

Stated for a private client *“The building has experienced seismic loadings as a result of the severe Christchurch Earthquake of 22nd February 2011. There were more-moderate earthquake events on 4th September 2010, 13th June 2011 and 23rd December 2011.”* Whereas for us an insured client Company 5 stated *“The building has experienced seismic loadings primarily as a result of the strong Christchurch Earthquake of 22nd February 2011. Other more-moderate earthquakes occurred on 4th September 2010 (Darfield Earthquake), 13th June 2011 (two events), 23rd December 2011 (two events), 14th February 2016, and 14th November 2016.”*

89. The Appellant further asserts that this bias is also highlighted through a comparison of the proposed repair strategies claiming that Company 5 recommended *“full foundation replacement including an innovative TC3 foundation system versus our jack and pack repair”*.⁵⁹

90. The Appellant continues that, unlike for him as an insured client, for a private client:⁶⁰

Company 5 canvased [sic] all the options proposed by the geotech for this property, discounting others and proposing a full foundation rebuild. However, with our property [the Respondent] only investigated one of the two solutions proposed by the Geotech (BOD page 30 point 7 b) – they never commented on the other.

91. It is the Appellant’s view that *“this adds further to the perception of bias shown by Company 5”*,⁶¹ and notes that when he questioned why this was the case the Respondent replied, *“We are unclear what alternative strategy is being referred to here.”*⁶² The Appellant considers this is *“an issue of competence and suggests a predetermined outcome.”*⁶³

92. At the hearing, the Respondent explained why the language used to describe the Christchurch earthquake sequence made no difference to their assessment or the outcomes for the Appellant. In a nutshell, this was because any solution was required to provide a compliant outcome against the Building Code and the standard of the policy. The Respondent also explained that the report written for the ‘private client’ as

⁵⁸ Appellant’s submission, p1.

⁵⁹ Ibid.

⁶⁰ Appellant’s submission, p1.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

cited by the Appellant was prepared before he joined Company 5 and was not authored by himself. He submitted that this accounted for differences in language, and — given it was for another client — differences in the terms of reference.

93. On the matter of the consideration of options, which the Appellant claimed was less comprehensive in the Company 5 report than for another property, and that the Respondent did not consider identified alternative options identified by Company 6, the Panel notes:
94. From a geotechnical perspective, the Company 6 report recommends three repair strategies to address different types of damage: mechanical jacking, pile replacement, and replacement of the perimeter footing.⁶⁴
95. To address floor releveling Company 6 note there are “*other suitable alternatives*” set out within MBIE Guidelines but ultimately recommend, “*the use of the [defined] shallow releveling strategy*” that utilises a jacking pad.⁶⁵
96. Whilst the Appellant claims that Company 5 only investigated one of two solutions proposed by Company 6:
 - a. The Company 5 report states, “*Company 5 are not specialist geotechnical engineers. We have received Company 6’s geotechnical report and **considered their advice regarding** liquefaction and **appropriate repair methods.**” (emphasis added).⁶⁶ Subsequently, the Company 5 report advises readers to, “*refer to the [Company 6] report in full as our comments are only intended as a summary for the purpose of identifying an appropriate structural repair strategy*”.⁶⁷*
 - b. The Company 5 report addresses the practicality of releveling the dwelling, and clearly ‘tested’ but accepted the Company 6 recommended repair strategy as they concluded that the dwelling could be relevelled by jacking but with certain precautions taken in some areas “*including a sectional rebuild around the east corner*”.⁶⁸
 - c. The Company 5 “*Schedule of Remedial Works*” then includes releveling through jacking, pile replacement, replacement of the strip (perimeter) foundation, and auxiliary works such as grouting, and consequential reconstruction.⁶⁹ The CIC noted that the repair of cracks to the perimeter concrete

⁶⁴ BOD, p30.

⁶⁵ Ibid.

⁶⁶ BOD, p59.

⁶⁷ BOD, p76.

⁶⁸ BOD, p79.

⁶⁹ BOD, pp82-83.

foundation had been omitted from this schedule,⁷⁰ which the Respondent acknowledged in the hearing.

- d. The Respondent's above-mentioned statement that he was not the author of the report for the 'private client', which was undertaken for another client and likely with different terms of reference.
97. Whilst noting the cause of the observed damage needed further differentiation and some aspects of the repair needed further clarification, the NZCRS Peer Reviewer was nonetheless of the opinion that *"the proposed reinstatement methodology will meet the required standard of the policy"*⁷¹ and in fact considered that *"the scope of repair work may be excessive to address earthquake damage"*.⁷²
98. The Panel considers that the matters identified by the Appellant are not demonstrative of bias, and draw the Appellant's attention to the Peer Reviewer's conclusion that the repair strategy may be generous relative to the damage sustained to the dwelling.
99. In their submissions in this appeal⁷³ the Appellant has also pointed to a statement by the Respondent in an email on 16 January 2024 to the RA, that, *"You will note that I have left Company 5 partly due to the stress of dealing with the few homeowners still trying to resolve their EQ claims almost 13 years on from the Christchurch EQ sequence. Mr A is one example of owners using a disciplinary process when he does not agree with the CPEng engineers recommendation for EQ damage repairs. I trust you will already be well aware of this."*⁷⁴
100. The Appellant suggests this statement is evidence that the Respondent *"has a tainted view when dealing with EQ clients who seek answers relating to his work."* The Appellant also noted he finds, *"the insinuation in [the Respondent's] comment offensive."*
101. The Panel does not consider that the comments in this email, made some time after the Company 5 report and a number of exchanges in relation to that report, to be indicative that the Respondent approached the report with a particular bias or view. In context, which the Respondent says was a request by the RA to make a seventh response to the Appellant, and a belief that the RA would first indicate if there was a 'case to answer', it is understandable, if somewhat unwise, for the Respondent to be expressing a level of frustration at the situation. While it may be unfair of the Respondent to ascribe that motive to the

⁷⁰ BOD, p288.

⁷¹ BOD 274.

⁷² BOD, p275.

⁷³ At p4.

⁷⁴ See BOD, p250.

Appellant, in the circumstances the Panel does not consider that this rises to the level of a breach of ethical conduct.

102. Therefore, in the Panel's view, the Appellant has not demonstrated that the CIC's decision was wrong in relation to its findings on Issue 2 and there is insufficient basis to overturn it.

Issue 3 – Competence and ethical conduct

103. As indicated at paragraph 71, two of the matters raised by the Appellant in relation to Issue 1 are matters that were considered by the CIC within Issue 3 (competence and ethical conduct):

- a. Whether the Respondent met the brief of the SFA, and
- b. The absence of a map showing the location of foundation cracking (referred to by the Appellant as a 'crack map').

104. The Appellant has also raised a further ground (Ground 7) that the CIC's conclusion did not address their point that Company 5 did not review the jacking pad installation plan.

Ground (3)(i) – SFA

The Appellant has not raised any additional reasons as to why the Respondent is alleged to have failed to fulfil the brief of the SFA that persuaded the Panel that the CIC's decision was 'wrong' with respect to this issue.

Ground (4) – Crack map

105. On this matter, the Appellant says:⁷⁵

[The Respondent] goes onto say "At no point has Company 5 refused to do work that it should reasonably be expected to do". This later statement is at odds with [the Respondent's] refusal to provide a crack map, which was requested by both AA Insurance and ourselves. This is something other engineers have provided, which is therefore something that a competent engineer would normally be expected to do. When AA Insurance requested "Can Company 5 complete a beam crack map showing the cracks that are being epoxied and the cracks that are being fixed via the partial new foundation?" (BOD page 105 point 5) Company 5 responded on 22 December 2022 "... Most of the structural cracks are being broken out and a new foundation installed, refer to our concept plan. There are two cracks on the west side and one on the southwest corner that are of a structural nature and require epoxy repairs." The description of these cracks is so vague as to be meaningless yet the Adjudicator accepted Mr B's response without consideration of what that actually meant. We believe Mr B's refusal to supply a crack map was because it would allow

⁷⁵ Appellant's submission, p2.

points of comparison between those structural cracks in the section of the foundation being replaced and those being epoxy repaired. Many of the other foundation cracks fell outside MBIE guidelines for epoxy repair. This information was provided to Mr C, who chose to ignore it, in his peer review. There was also evidence of lateral stretch, outside MBIE's guidelines, in the foundation which Company 5 failed to identify and which Mr C also chose to ignore.

106. The Appellant has provided photographs of the perimeter foundation,⁷⁶ and points to varied responses from the Respondent on this matter and in particular the variable reporting of crack numbers which “has gone from stating there are 2 structural cracks, to 3 structural cracks to no structural cracks”.⁷⁷

107. In an email to the RA, the Respondent has said:

The second concern [of the Appellant] was over providing a plan showing the extent of structural cracks to the perimeter which were caused by the earthquake sequence. We described this damage and it is our practice not to show this on a plan but describe the extent in a scoping table at the end of our report. Most of the cracks will be remedied by the 10m of perimeter foundation replacement.

108. The NZCRS Peer Reviewer notes that previous “crack repairs to the concrete foundations” had been undertaken as part of earlier earthquake repair work.⁷⁸ The Peer Reviewer concludes (emphasis added):⁷⁹

Company 5 identify some cracks in the perimeter concrete foundation and don't specifically state they are earthquake damage. Irrespective of the cause of the cracks I consider they are minor.

109. Both the Peer Reviewer and the CIC note that the schedule of repairs in the Company 5 report does not include repairing any foundation cracks. The Peer Reviewer does not go so far as to provide a view on whether that minor cracking requires repair however, instead stating that Company 5 should confirm *if* repair work is required.⁸⁰

110. At the hearing the Respondent acknowledged his reporting of the number of perimeter cracks was variable and gave compelling personal reasons for his focus at that time. The Panel considers that, at most, any shortcoming relates to the omission of minor cracking to the perimeter foundation from a repair schedule. The particular scope relates to an item that has an unclear link to earthquake damage, and in any event is considered minor by both the assessing engineer (the Respondent) and the NZCRS Peer Reviewer.

⁷⁶ File labelled ‘Foundation Cracking’ attached to the Appellant’s evidence for hearing (14 March 2025) and provided to the Peer Reviewer.

⁷⁷ BOD, p199.

⁷⁸ BOD, p271.

⁷⁹ BOD, p273.

⁸⁰ BOD, p274-275.

111. The CIC considered that the Respondent's "omission of the requirements for repairs to cracks in the perimeter concrete foundation from the schedule of remedial works" in the report was a shortcoming of the Company 5 Report, but not one that was sufficiently grave to warrant further investigation.⁸¹ The Panel considers that the Appellant has not persuaded it that the CIC's decision was wrong. The Panel does not consider the Respondent not producing a crack map upon request makes this matter one that is sufficiently grave to warrant further investigation.
112. The Appellant has also questioned the suitability of the proposed epoxy repairs of the cracks proposed to be repaired. The Respondent acknowledged it was appropriate for the Appellant to ask questions, but noted epoxy is currently an available repair strategy in MBIE guidance. The Respondent told us that this is a technical issue for the industry and the question of whether or not the repair strategy will satisfy long term asset life requirements is yet to be resolved. Consequently, this is a matter for MBIE (perhaps in conjunction with Engineering New Zealand and the Building Research Association of New Zealand (BRANZ), rather than that an issue against which to hold an individual engineer.

Ground 7 – Review of jacking pad installation plan

113. The Appellant's Notice of Appeal states that the CIC's conclusion (on Issue 3) failed to address the core issue: Company 5 did not review the jacking pad installation plan, which is critical for ensuring the future performance of the repaired foundation.⁸²
114. The CIC identified the failure to, "review some aspects of the jacking pad installation plan" as one of the shortcomings of the Company 5 report,⁸³ but considered this was, amongst the other listed shortcomings, to be "insufficiently grave to require further investigation".
115. The NZCRS Peer Reviewer noted that, "the extent of installing jacking pads could be reviewed to target where the more significant dislevelment exists – i.e., in the toilet/laundry area on the south side of the house."⁸⁴ This indicates more specificity is required, not that the proposed methodology is inappropriate. This is underlined by the preceding recommendation which states that (emphasis added):⁸⁵

More justification should be provided for why the foundation needs to be replaced in the southeast corner (below and adjacent to where the bay window is located). For example, is the foundation in this area being replaced because of the quality of concrete or is to address earthquake damage. The dislevelment in this

⁸¹ BOD, p288.

⁸² Notice of Appeal, p3.

⁸³ BOD, p288.

⁸⁴ BOD, p274.

⁸⁵ Ibid.

*area is not considered significant and to address **any dislevelment in this room may be acceptably performed by jacking and packing**. Therefore, it is suggested that the repair methodology is reviewed in this location.*

116. The Panel notes that the Company 5 Report was caveated in relation to the detail of the remedial works:
- a. The Company 5 Report does note ahead of the Schedule of Remedial Works that the Schedule, “*is intended for pricing purposes and not as specifications for construction*”.⁸⁶
 - b. Whilst the drawings attached to the Company 5 Report indicate jacking locations, these are also annotated, advising that the “*number and location are indicative only, TBC by specialist contractor*”.⁸⁷ The notes on the same drawing include other qualifiers that note the “*location and size of jacking pads are indicative*”.
 - c. The Company 5 Report is a structural engineering assessment report, “*to identify structural earthquake damage and recommend an appropriate reinstatement strategy*”.⁸⁸
 - d. The Company 5 Report limitations also advise the report is “*a scoping document for feasibility/pricing purposes and recommendations are not ‘for construction’*”.⁸⁹
117. At the hearing, the Respondent noted that the extent of dislevelment was challenging to determine given the extent of historical works so made a judgement call. The Respondent also acknowledged that the Appellant may not have been clear that further steps were required to confirm the suitability of the repair strategy, but maintained at the hearing that as a scoping exercise, the work was appropriate. He also acknowledged his extenuating personal circumstances at the time meant that he missed the cues indicating further clarification was required.
118. The Panel acknowledges the Respondent’s personal circumstances, which would have made this challenging, and agrees it was unfortunate that communication with the Appellant was not more fulsome. That said, the Panel also considers the report was very clear on its scope and that further detail would be required before the repair strategy proceeded to construction. Consequently, we do not consider the lapse to be sufficiently grave and agree with the CIC that this does not warrant further investigation.

⁸⁶ BOD, p82.

⁸⁷ BOD, p87.

⁸⁸ BOD, p59.

⁸⁹ BOD, p60.

Outcome

119. Having found that none of the grounds of appeal are made out, the decision of the Panel is to exercise its power in s 37(5)(a) of the Act to confirm the parts of the decision of the CIC that have been appealed and dismiss the Appellant's appeal.
120. In accordance with s 35 of the Act, either party may appeal this decision to the District Court within 28 days of receiving notice of this decision.

Costs

121. Per s 37(5)(d) of the Act, the Council has the power to make any order as to the payment of costs of the appeal that it thinks fit. No parties have indicated that they would seek costs therefore the Panel determines that any costs incurred in relation to this appeal should lie where they fall.

Dated 19 December 2025

Signed by the Panel



Megan Neill (Principal)



Dr Carron Blom



Manjit Devgun

Schedule 1 - Key documents, evidence and submissions

122. Email serving as Notice of Appeal (8 July 2024), attaching 'Notes for Engineer' and CIC decision.
123. The paginated Bundle of Documents received from Registration Authority ("RA") via electronic link (3 September 2024)
124. Appellant's submissions (revised) (10 November 2024), attaching 'Notes for Engineer' and an email to the RA dated 10 September 2024
125. Submissions of the RA (29 November 2025) including Appendix A: email string between the Appellant and the RA 8-28 September 2023
126. Respondent's submissions (limited to CV) (20 December 2024)
127. Appellant's submissions in reply (email dated 5 January 2025)
128. Appellant 'evidence for hearing' (14 March 2025) including the Draft Company 5 Report and a file entitled 'Foundation Cracking' (*"that was shown to the Peer Reviewer"*).
129. Hearing via videoconference (20 March 2025)