

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

Appeal 03/20

AND

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

Between

**Ms A
Appellant**

And

**Mr B, CPEng CMEngNZ IntPE(NZ)
Respondent**

Decision of the Chartered Professional Engineers Council
Dated 31 March 2021

1. Ms A has appealed a decision, made by the Chair of Investigating Committees acting in a role of Adjudicator ('the Adjudicator') to dismiss Ms A complaint about Mr B (BOD, pp 141-150).
2. The panel has been provided with a paginated Bundle of Documents file (BOD) held by the Registration Authority (RA) in relation to the case. References to specific documents within this file are annotated "[BOD pp n]".

The Legislation

3. The right of appeal is contained in S35 of the Chartered Professional Engineers Act 2002 ("the Act"). S37 of the Act sets out the scope of the Chartered Professional Engineers Council's (the Council) jurisdiction which is to deal with the matter by way of rehearing.
4. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules") and were enacted pursuant to S40 of the Act.
5. Appeals to the Council are by way of rehearing (S37(2) of the Act). The appeal panel is entitled to confirm, vary or reverse a decision (S37(5) (a)) and may make any decision that could have been made by the decision authority (S37(5) (c)). Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the panel is entitled to take a different view from the RA but the appellant carries the burden of satisfying the panel that it should do so.
6. s21 of the Act states:

"21 Grounds for discipline of chartered professional engineers

1. *The Registration Authority may (in relation to a matter raised by a complaint or by its own inquiries) make an order referred to in s22 if it is satisfied that a chartered professional engineer*
 - (a) *Has been convicted, whether before or after he or she became registered, by any Court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more if, in the Authority's' opinion the commission of the offence reflects adversely on the person's fitness to practice engineering; or*
 - (b) *Has breached the code of ethics contained in the rules; or*

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

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

- (i) *Has breached an aspect of the code of ethical conduct set out in the rules 42(A)-42(I) as amended in 2016; and/or*
- (ii) *Has performed engineering services in a negligent or incompetent manner.*

Chronology, submissions, communications and correspondence

8. Key interactions, correspondence, communications and submissions in this appeal are listed Schedule 1.

9. A timeline of events is in Schedule 2.

Grounds of appeal and outcome sought

10. The grounds of appeal are detailed in Ms A's Notice of Appeal to CPEC dated 23 October 2020 and noted that with respect to a complaint made about Mr B, she felt the Registration Authority's response (i.e. the Adjudicator's decision to dismiss the complaint) did not address her concerns. Ms A referred to her complaint as follows:

“I have concerns about whether the Company C engineer acted with honesty, objectivity and integrity in his review of the Company F report and fulfilment of his client’s brief. In particular:

Ground of appeal 1 – *He made an assessment on whether work by the builder had caused “further damage” to the house, despite having never visited or assessed the house prior to underpinning works being undertaken.*

Ground of appeal 2 - *He implied that building work did not have to meet the Building Code or Council requirements to consent it, including having Producer Statements for materials, construction and design.*

Ground of appeal 3 - *He undertook a geotechnical assessment using borehole data from an engineer external to his company that had clearly not been issued.*

Ground of appeal 4 - *He concluded works were fit for purpose despite having failed to obtain all available information. In particular, he opted to conduct his own geotechnical assessment based on non-issued soil borehole data, and failed to obtain, assess and explicitly comment on why his geotechnical assessment differed materially from the geotechnical report issued by Company G that he clearly knew:*

- a) existed*
- b) the Company F report he was reviewing (and contradicted) was based on*
- c) contradicted his assessment of what was an appropriate depth of foundation.*

Ground of appeal 5 - *In conducting a geotechnical assessment, I suspect Mr B worked outside his area of expertise.*

Ground of appeal 6 - *Overall, I believe that his comments were subjective and deliberately attempted to sway the judgement of the Disputes Tribunal in favour of his client. This is the basis of my formal*

complaint against him. Please see further details and appendices [sic] attached.”

11. The remedy sought by the appellant as set out in the final appeal notice:

“The outcome I seek is that my complaint goes to an investigating committee / is investigated.”

12. The original resolution sought in the complaint to Engineering NZ/RA, as set out in Ms A’s Notice of Appeal, was as stated below:

“The resolution I sought was that “I would like Engineering NZ to assess whether their member acted in accordance with the engineering Code of Ethics, particularly 4(a)(ii) and 5(a)(i).” (Section 4(a)(ii) requires engineers “only undertake engineering activities that are within your competence”. Section 5(a)(i) requires engineers “act with honesty, objectivity, and integrity”).

“I felt the ENZ decision to dismiss my complaint, as well as the Adjudicator’s report, ignored or mis-interpreted information I provided to ENZ and did not address my stated complaint / concerns.”

“It appears a breach of the ENZ Code of Ethical Conduct would also breach rules in the Chartered Professional Engineers of New Zealand Rules (No 2) 2002, including:

42E Act competently

A chartered professional engineer—

must—

(ii) only undertake engineering activities that are within the engineer’s

“42F Behave appropriately

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

must—

act with honesty, objectivity, and integrity.”

Decision being appealed and evidence considered

13. The decision under appeal is the decision made by the Chair of Investigating committees acting in a role of Adjudicator ('the Adjudicator') to dismiss Ms A's complaint about Mr B on 23 September, 2020 (BOD, pp 141-150)
14. Under S15 of the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the Regulations) the Council may receive any evidence that the Registration Authority would have been entitled to receive on the decision being appealed.
15. The evidence considered by the panel in arriving at this decision included:
 - i. Engineering NZ Bundle of Documents (BOD) pages 3 to 173.
 - ii. Submissions as noted in Schedule 2.

Hearing

16. It was agreed by the parties that the appeal would be held “on the papers.” The panel met by “Zoom” on 17 February 2021 and since this date have been interacting via email to prepare the appeal response and decision. Another zoom meeting was held on 29 March 2021 to finalise the response.

Discussion and Findings

17. The original complaint, and the basis of Ms A's Appeal to CPEC, concerns the actions of Mr B in several instances. The first was his site visit to Ms A's property with Company D's Mr E on 27 May 2019, and the subsequent report (BOD pp 79-87) he wrote on 17 June 2019 for Mr E relating to: the 2 underpinning piles

at the southern end of the building, and his comments on the Company F Report (BOD pp 52-78). The second instance was his response to Ms A after the complaint was laid (BOD pp 93-94 and BOD pp 99-102) and lastly his responses and statements during the Disputes Tribunal hearing (BOD P19 – 20).

18. The panel notes that at no stage did Mr B or Company C have any direct commercial engagement or contract with Ms A. The sole contract Company C had in respect of this case was with Company D, to prepare a report (BOD pp 79-87) after the underpins were installed. Thus, Mr B's primary duty of care was to his client Mr E, and more generally to the wider public which would include Ms A.
19. The brief given to Mr B / Company C (BOD pp79) was very specific and as presented by Mr B in his report included the following extracts: “....
 - a) *Has the foundation underpinning installed by Company D at the rear of the house caused any further damage to the house, over and above that which was existing prior to the underpinning being installed?*
 - b) *The property owner engaged Company F to provide an opinion regarding cracking and floor movement. You asked us to comment on the content of this Company F report (ref. 100-093-01, October 2018)."*
20. The Company C report was presented to the Disputes Tribunal by Company D's Mr E, in defence of the claim by Ms A. The only references to the Company C report, or Mr B, in the Dispute Tribunal's decision (BOD pp 89-91) was in reference to:

“ the view of Company C Consulting that it was a “grey area” whether (Building) consent was needed. “

and

“the parties produced conflicting reports regarding whether the underpin foundations were effective way to deal with problems in the areas they were installed and whether the depth was sufficient”.

21. The panel has addressed the grounds of appeal in order as follows:

Ground of appeal 1:

“He (Mr B) made an assessment on whether work by the builder had caused “further damage” to the house, despite having never visited or assessed the house prior to underpinning works being undertaken.”

22. The panel notes that it is clear that Mr B had not visited the site before Company D installed the underpins and this is explained by the fact that he had no part in the project until he made his first visit with Company D and Company G’s site engineer on 27 May 2019. This did not need to be noted in his report.
23. Mr B was asked by Company D to comment on the contents of the Company F Report. This report (BOD pp 52-78) had one section (Section 4, Site Observations, 4.1 Initial site visit, (BOD pp 56 and 57) that provided a description of the property and the state of the house foundations and the existing damage. Included in the Company F report were 18 of the 67 photographs taken by the Company F site visit engineer (BOD pp 68 to 71) on his first visit. Mr B thus had a significant amount of “before” information at the time he wrote his report and is consistent with the actions of a reasonable professional engineer.
24. Mr B’s client (Company D) may also have provided information in the state of the property prior to the installation of the underpinning piles but the panel has not seen evidence of this.
25. The breakage of a sewer adjacent to one of the underpins as evidenced by the photograph (BOD pp 72) and the CTV before and after reports (BOD pp 26 and 27) is acknowledged in the Company F report (BOD pp 55) and by the adjudicator in his report (BOD pp 149). It is understood this damage resulted in an insurance claim and the outcome is not known.

26. The panel has considered what the actions of a reasonable professional engineer would be in these circumstances, and we believe that Mr B should have spelt out the sources of his information about the prior condition of the house foundations, given that he had not seen the property prior to the underpins being installed some 15 months earlier. This would have qualified his opinion on the effect, if any, on the house foundations due to the two rear-of-the-house underpins. This would also have allowed other parties to recognise the information used to form his opinion.
27. In summary, the panel considers that the balance of evidence detailed above shows that Mr B had sufficient information available for him on the condition of the house prior to the underpinning 15 months earlier, which, combined with his 30 years' experience, meant that his assessment of damage caused by the 2 rear underpins was an informed professional judgement. The panel considers, however, that while Mr B could have done more to clarify his sources of information, the information that he had accessed was adequate for the purposes of meeting his brief.

Ground of appeal 2:

“He (Mr B) implied that building work did not have to meet the Building Code or Council requirements to consent it, including having Producer Statements for materials, construction and design.”

28. There was no reference to these issues in the Company C Report which Ms A has acknowledged (BOD pp 98).
29. The Dispute Tribunal order included only one reference to the Company C report relating to the need for Building Consent (BOD pp 89-91) which was in reference to the statement *“Mr E and his witness Mr B of Company C Consulting both expressed the view that it was a “grey area” whether consent was needed.”*
30. It is not apparent that this comment by Mr B had any effect on the outcome of Ms A's claim to the Tribunal.

31. The panel has considered what the actions of a reasonable professional engineer would be in these circumstances, and we believe that Mr B should have, given his 30 years' experience as a consulting engineer in the Greater Auckland area, been more definitive in the need for building consents for underpinning work than to say it was a "grey area," both in his report and at the Disputes Tribunal hearing.
32. In summary, the panel considers that, while Mr B could have done more to cover off the issue of Building Consent requirements for the underpinning, we consider that this omission had no real impact on the outcome of the Dispute Tribunal's order.

Ground of appeal 3:

"He (Mr B) undertook a geotechnical assessment using borehole data from an engineer external to his company that had clearly not been issued."

33. There is no evidence presented to the panel that specifically precludes or prohibits Mr B's use of the borehole data and the aerial and other photographs, provided to Company C by Company G (BOD pp 101 and 102) used to inform his professional opinion.
34. There is evidence that the person who performed the Hand Augering for Company G and produced both the bore logs for Company D, as well as the 5 original Company G bore logs, was Mr H, a Geotechnical Engineer. This factor indicates that appropriate geotechnical skills were being employed on the problem.
35. The fact that the two bore logs were not formally issued or branded with Company G's logo and were not accompanied by a full Geotechnical Assessment like the original Company G report, is not an issue in the panel's view. There are emails between a member of Company G's staff and Mr B, that confirm the provision of the borehole data (BOD pp 86 and 87) and the aerial picture of the borehole locations included in Appendix J of the Company C Report. (BOD pp 101 102).

36. The Company C report was informed by two hand-augered bore logs performed by an engineer from Company G, commissioned and positioned by Company D. The panel is satisfied that these two bore logs are a legitimate source of information to Mr B who states that: (BOD p100)

“I have interpreted the information referred to in 1 above to the extent it identifies the presence and depth of fill”

37. The panel considered what the actions of a reasonable professional engineer would have been in these circumstances and we find that the action to use two more bore logs in the locations selected would be appropriate and reasonable to confirm the information provided by the original 5 Company G bore logs i.e. the depth and extent of the non-engineered fill overlying the East Coast Bays Formation, which, along with poor drainage, is acknowledged by all parties to be the root cause of the settlement/movement of the south eastern corner of the house (BOD pp 41).
38. In summary, the Panel considers that Mr B was entitled to use more geotechnical information (two additional bore logs) to inform the Company C report.

Ground of Appeal 4:

“He (Mr B) concluded works were fit for purpose despite having failed to obtain all available information. In particular, he opted to conduct his own geotechnical assessment based on non-issued soil borehole data, and failed to obtain, assess and explicitly comment on why his geotechnical assessment differed materially from the geotechnical report issued by Company G that he clearly knew: a) existed, b) the Company F report he was reviewing (and contradicted) was based on and c) contradicted his assessment of what was an appropriate depth of foundation.”

39. The panel cannot find any statement in the Company C report that states the Company D underpins are “fit for purpose”. The Company C Report states that “the plain concrete piles installed by Company D are installed to a depth that is

at least 1m into stiff original soil. As such, they are more than capable of carrying applied vertical loads from the dwelling.” (BOD pp 81)

40. The Company C report notes, in the section headed Foundation Underpinning, that Company C concurs with the statement in the Company F report that (BOD p 81) “the (Company G) report concluded that the non-engineered fill combined with poor drainage was causing the settlement and associated cracking.” This is the Company G “Geotechnical Assessment” and there is no disagreement with it by Mr B.
41. The “Geotechnical Assessment” made by Mr B was based on the two bore logs done by Company G for Company D. This “Geotechnical Assessment” by Mr B (BOD pp100) read:

“I have interpreted the information referred to in 1 above to the extent that it identifies the presence and depth of the fill.”

42. Mr B clearly had access to the original 5 bore logs, and their locations in the original Company G report as they are referenced in the Company C Report “Appendix J, Summary of works and all soil core data (BOD pp 88).”
43. The panel also considered what the actions of a reasonable professional engineer would have been in the circumstances where there was, in existence, a full Geotechnical assessment and report (BOD pp 36 – 51) which was incorporated into the Company F report (BOD pp 52 – 78) as part of the appendix Section 9 (BOD pp 78). We consider that Mr B should have actively sought a copy of the full report in case there was more information in it than was summarised within the Company F report to inform him of the overall geotechnical aspects of the property and dwelling. This information may or may not have had any influence on his professional opinions.
44. The apparent discrepancy between Mr B and Company G in relation to pile depth was addressed by Mr B in his response to the Company F report item 2 in the Company C report (BOD pp 82). Here he agrees that a pile depth of 2500mm is needed to penetrate 1400mm of fill but he notes that the depth of fill decreases

in both directions and that 1200mm deep piles at locations where the fill is only 200mm thick (1000mm into original ground) is entirely appropriate.

45. The panel considers that Mr B has been remiss in the following areas :

- Failing to explain to his client, and other readers of the Company C report, how the information contained in the original 5 bore logs had impacted his conclusions, and that he had not ignored them.
- Failing to mention in his report the calculation of the depth of fill at the pile installed inside the house foundation and close to the original HA 5 bore log which showed 900mm to fill. The Adjudicator assessed this fill depth as 300mm, meaning the 1200 pile installed by Company D was only 900mm into the base material. The basis of Mr B's calculation should have been mentioned in the original Company C Report as it would have qualified the statement that "the three piles have been installed in locations that are generally outside the wedge of uncontrolled fill beneath the SE corner of the dwelling. Hence the lower 1 m of pile is poured within natural soils ..." (BOD pp 80 and 81). This statement apparently ignores the fourth pile.

In summary, this ground of appeal does have some merit, but the magnitude of the transgressions and the apparent absence of serious consequences are not considered sufficiently grave to refer for further investigation.

Ground of Appeal 5:

"In conducting a geotechnical assessment, I suspect Mr B worked outside his area of expertise."

46. This ground for appeal rests on the definition of a Geotechnical Assessment. If it is defined as a site investigation and a report on the findings with recommendations, such as the Company G report to Ms A dated 26 June 2018 (BOD pp 36-51), then the "Geotechnical assessment" Ms A claims Mr B made in his report is not comparable.

47. Mr B's 'Geotechnical Assessment', alluded to in the Company C report, is simply a confirmation of the depth down to the East Coast Bays formation adjacent to one of the rear concrete piles installed by Company D, and, by extrapolation (refer to the adjudicator's decision (BOD pp 148)), the estimated depth to this material adjacent to the other company D pile near the South East corner.
48. In the register of Chartered Professional Engineers, Mr B's primary areas of engineering work are listed as Civil Engineering and Structural Engineering. This shows he has been through the CPEng registration process and has nominated these practice fields. CPEng Engineers are allowed to practice in other fields (e.g. Geotechnical) as long as they can complete the work successfully within their competence. This is governed by self-regulation and an annual commitment to the Code of Ethical Conduct.
49. Mr B is a senior director of Company C Consulting Ltd and is listed as their leading retaining expert under their work heading "Retaining (permanent and temporary retaining structures)." There is a significant geotechnical element in the design and construction of these structures.
50. Mr B has over 30 years' experience in civil and structural consulting, working with Company C, or its' predecessor, since 1987, in the Auckland market. His own evidence states *"I have had over 30 years' experience practising as a consulting engineer in the Greater Auckland area. I have seen many cases of foundation settlement in residential dwellings, and I am familiar with the various causes"* (BOD pp 94).
51. The panel has not been provided with any clear evidence that Mr B was practising outside his area of expertise as suspected by Ms A in this ground of appeal.
52. The final statement that Mr B makes is in full agreement with the Company F report (BOD pp 82 - 83).

"We agree that additional underpinning will be required to stabilise the dwelling and that this may require deeper piles in some areas. Further, we

agree that the locations and construction details for further underpinning should be specified by suitably qualified geotechnical and structural engineers”.

This statement is one that suggests Mr B was taking steps to ensure that appropriate specialist skills were applied in further work and this is consistent with what would be expected of a reasonable professional engineer who is not working outside their area of expertise.

53. In summary, the panel considers that no evidence has been provided that Mr B’s work on the Company C report or at the Disputes Tribunal, was beyond his area of expertise.

Ground of appeal 6:

“Overall, I believe that his comments were subjective and deliberately attempted to sway the judgement of the Disputes Tribunal in favour of his client.”

54. The Company C report was presented to the Disputes Tribunal by Company D’s Mr E, in defence of the claim by Ms A. The only references to the Company C report, or Mr B, in the Dispute Tribunal’s order (BOD pp 89-91) was in reference to

“the view of Company C that it was a “grey area” whether (Building) consent was needed.”

and

“the parties produced conflicting reports regarding whether the underpin foundations were an effective way to deal with problems in the areas they were installed and whether the depth was sufficient”.

55. The issue of building consent is discussed in Ground of appeal 2 above.
56. The issue of conflicting reports is a matter of differing professional opinions, a situation that is not uncommon as design situations are assessed and solutions developed and resolved. Mr B’s professional opinion on pile depth and location

was informed by the limited, yet reasonable, mapping of the non-engineered fill overlying the firmer East Coast Bays formation. He considered the 2 piles installed by Company D in the South East corner of the dwelling (the subject of the Company C report) were in areas where the fill was only 200mm deep and thus a 1200 deep pile would be at least 1000 mm into the firmer soil, and would carry any vertical loads imposed by the dwelling. It does appear that, by extrapolation of depths of fill mapped from the 2 boreholes, the pile closest to the S-E corner of the house was in fill approximately 300mm deep (refer BOD p 148) which, in the opinion of the Adjudicator “would be adequate but would provide a reduced factor of safety”. As mentioned in Ground of appeal 4, paragraph 12 above, the panel considers that Mr B has been remiss in not outlining the basis for the calculation of the depth of fill at the pile installed inside the house foundation and close to the original HA 5 bore log which showed 900mm to fill.

57. As discussed in 43 above, the panel considered that a reasonable professional engineer should have fully referenced the information provided in the full Company G report and confirmed the source of that information and how it was used to inform his professional opinion.
58. The professional opinion expressed in the Company F report relating to pile type was that underpinning piles should be designed to support both vertical loadings and transverse loadings that may result from a seismic event or very strong winds (BOD p59). Mr B’s opinion was that the piles only needed to carry vertical loading as any transverse loading would be taken care of (BOD pp 82)

“by the existing sub-floor bracing system together with friction and passive soil resistance from the existing foundation system. In this situation underpinning piles are required to resist vertical loads only “

59. The panel agrees with the Adjudicator’s finding that read (BOD pp 149):

“I consider that there can be justification for both approaches (By Company F and Company C), depending on the circumstances of the building and the underlying foundation soils”.

60. Differences of professional opinion are usually resolved by discussion and mutual agreement in the process of arriving at an agreed solution. To the panel’s knowledge, interaction between Mr B and the author of the Company F report did not take place, either informally or formally, as no evidence to this effect has been presented to the panel.
61. The panel concurs with the Adjudicators opinion (BOD pp 149-150) in the section of his report headed “*Objectivity*” which read:

“ ... I note that Mr B’s report generally supports the Company F report’s key finding. The Company F report concludes that the underpinnings installed by Company D were too few and in the wrong locations to be of any positive effect in relation to the settlement in the south-east corner of the dwelling, Mr B acknowledges this point in his report:

“We agree that additional underpinning will be required to stabilise the dwelling and that this may require deeper piles in some areas. Further, we agree that the localities and construction details for the further underpinning should be specified by suitably qualified geotechnical and structural engineers”.

62. In summary, the panel considered the evidence detailed above and finds that, while Mr B should have been more explicit in how he used the full information from the 7 boreholes, all other available information does not conclusively support Ms A’s assertion that Mr B attempted to sway the judgement of Disputes Tribunal.

Outcome of Appeal

63. The panel have reviewed all 6 grounds of appeal and have found Grounds 1,2 3, 5 and 6 are not proven. The panel finds that Ground 4 has some merit but that

any alleged misconduct or omissions are insufficiently grave to warrant the passage of this appeal to an Investigation committee.

64. Thus, the panel has not found a prima facie case that Mr B :

(i) *Has breached an aspect of the code of ethical conduct set out in the rules 42(A)-42(I) as amended in 2016; and/or*

(ii) *Has performed engineering services in a negligent or incompetent manner.*

65. The panel's decision is to dismiss the appeal under rule 57(ba) of the Chartered Professional Engineers Rules (No 2) 2002, on the grounds that any alleged misconduct is insufficiently grave to warrant further investigation. In accordance with S35 of the Act either party may appeal this decision to the District Court within 28 days.

Costs

66. The panel rules that any costs generated by any parties to this appeal shall lie where they fall.

Dated this 31st day of March 2021

Signed by the Appeal Panel

Alan A Winwood – Principal

Rebecca Knott

Manjit Devgun

Schedule 1

Key interactions, correspondence, submissions and communications in this Appeal

- (a) Formal complaint submitted by Ms A to the RA (BOD 3-93)
- (b) Response from Mr B (BOD 93-94)
- (c) Correspondence from Ms A (BOD 95-98)
- (d) Second response from Mr B (BOD 99-102)
- (e) Further correspondence from Ms A (BOD 103-106)
- (f) Correspondence between the RA and Ms A (BOD 107 – 129)
- (g) Correspondence between Mr B and the RA (BOD 130- 140)
- (h) Decision of the Adjudicator (BOD 141 – 150)
- (i) Further correspondence from Ms A (Building Practitioners Board decision on Mr E)
- (j) Copies of letters to Ms A and Mr B covering the release of the Adjudicators report (Omitted from the BOD)
- (k) 18 November 2020. Initial notice of appeal to CPEC
- (l) 23 October 2020 Email from CPEC Chair to CPEC members with final notice of appeal attached, requesting panel members.
- (m) 2 November 2020 – email from CPEC Chair to both parties acknowledging the appeal, advising the panel members, requesting all correspondence is directed to the panel principal and members, and the other parties, and requesting the RA provide the paginated bundles of relevant documentation.

- (n) 3 November 2020 email from the panel principal (Alan Winwood - AAW) to the parties setting out the Basis of Appeal, the Appeal Grounds, the onus on the Appellant to provide in, her submission, the reasons why the decision of the Adjudicator should be overturned.
- (o) 10 November 2020 - email from the RA with link to the paginated bundle of documents.
- (p) 12 November 2020 – email from the Panel Principal (AAW) inviting Ms A to make a submission to the panel in support of her appeal by 23 November 2020.
- (q) 25 November 2020 – email from Ms A confirming that she will be relying on the BOD's provided by the RA for her appeal submission.
- (r) 25 November 2020 - email from AAW to the RA and Mr B inviting them to make submissions to the panel by December 11th 2020.
- (s) 16 December 2020 - submission from the RA.
- (t) 16 December 2020 – email from Mr B confirming that he will not be submitting to the Appeal Panel.
- (u) 27 January 2021 – email from AAW to the parties requesting agreement to holding the appeal “on the papers “
- (v) 27 January emails from the parties agreeing to the appeal being held “on the papers.”
- (w) 17 February 2021 - email from AAW to the parties regarding progress.

Schedule 2 Timeline of events in this case

- (a) 27 September 2017 - Initial CCTV taken in the drainage pipe
- (b) 20 December 2017 - Initial site visit by Company F

Early February 2018 - Company D underpin installation (4 piles of 11)
- (c) 12 February 2018 - Quote and invoice from Company D for 4 underpins
- (d) 22 March 2018 - follow up CCTV revealing broken drain adjacent to one of the installed underpins
- (e) 27 May 2018 – Company G report for Ms A
- (f) Undated? October 2018 - Company F Report for Ms A
- (g) Early 2019 - Disputes Tribunal claim lodged against Company D
- (h) 27 May 2019 – Company G site visit with Company D, taking two bore logs
- (i) 16 June 2019 - Company C Consulting Engineer's Report to Company D regarding underpins and commenting on the Company F Report
- (j) 12 August 2019 - Disputes Tribunal decision against Company D
- (k) 5 March 2020 - Building Practitioners Board (BPB) decision on Ms Gibb's complaint about Mr E of Company D
- (l) Mid-February - 2020 Ms A lodges the complaint with Engineering NZ
- (m) 24 September 2020 Ms A received the RA (Adjudicator's) decision
- (n) 18 October - Ms A lodges the initial appeal with CPEC
- (o) 23 October 2020 - Ms A lodges the final appeal with CPEC