

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

Appeal 02/21

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
Respondent**

**Decision of the Chartered Professional Engineers Council
Dated 2 August 2021**

1. Ms A has appealed a decision, made by a Chair of Investigating Committees acting as Adjudicator ('the Adjudicator'), to dismiss Ms A's complaint about Mr B [BOD 325-333].
2. The appeal panel of the Chartered Professional Engineers Council 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 nn]".

The Legislation

3. The right of appeal is contained in s35 of the Chartered Professional Engineers of New Zealand Act 2002 ("the Act") and s37 of the Act sets out the how the hearing is to be conducted, including the scope of determinations that the Council is entitled to make.
4. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules") that were enacted pursuant to s40 of the Act.
5. The Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 ("the Regulations") set out the requirements pertaining, amongst other matters, to the hearing and deciding of appeals.
6. 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.
7. 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 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 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 subparagraph (i); or*
 - (iii) produced to the authority or made use of any document knowing that it was not genuine."*

8. 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:

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

Correspondence and submissions

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

Grounds of appeal and outcome sought

10. In Ms A's Notice of Appeal dated 8 March 2021, she referred to *"the competence and ethical conduct of Mr Bs. [sic] illustrated by a representative instance of Mr Bs work which has been reviewed by his peers"*

11. She further submitted, as grounds:

"..the review points to significant competence deficiencies and breaches of the Engineering New Zealand and Chartered Professional Engineers of New Zealand code of ethical conduct, particularly his obligations to:

- a. take reasonable steps to safeguard health and safety,*
- b. have regards to effects on the environment,*
- c. act competently.*
- d. Act with honesty, objectivity, and integrity.*
- e. Acted out of his area of expertise when recommended No Survey was required"*

12. The remedy sought by the appellant as set out in the notice of appeal was:

"Assessment and judgement of

- a. Did Mr. B apply sound judgement when he accepted the Short Order Agreement prepared by Insurer F which he then applied strict adherence to.*
- b. A report that just outlines 'random' repair strategies that no-one knows whether the engineer considers they meet the required standard.*
- c. By applying this overall approach and exclusion of additional expert analysis and documentation provided to Mr. B has he produced an insufficient site investigation and analysis.*

d. Has this action created significant gaps and errors in his work as a result, does this action impact on Mr. B's credibility, and qualification to apply lawful repairs.

e. Has Mr. B met requirements or purpose of an engineering report and put forward an experts opinion of what is required to meet the required standard.”

13. The panel notes that the outcomes which it can determine under the appeal are as set down in 6 above.

The original complaint

14. On 5 February 2020 Ms A filed a Concerns Submission Form, with attachments, relating to services provided by Mr B [BOD 5-18].

15. Ms A's concerns related to a residential property at Location C.

16. Elements of Ms A's complaint [BOD 279-281] included:

- Her concern that in Mr B's first three reports, he failed to acknowledge the full extent of the damage, in particular a major crack that runs through the central slab including the hall and bedroom 2,
- Alleged failure [by Mr B] to acknowledge additional damage in the initial report, that resulted in an inappropriate repair strategy being recommended,
- Her belief that Mr B's first three reports conflict with statements of agreement in the Report to the Court by Experts – 30 November 2018 (“Joint Experts Report”). [Refer to appendices to Ms A's submission of 31 March 2021], and
- Alleged failure by Mr B to adequately assess the damage, incorporate all relevant information and provide a repair strategy that complies with the relevant standards, raises concerns about Mr B's competence and professionalism.

Decision being appealed and evidence considered

17. The decision under appeal is the 27 January 2021 decision of a Chair of Investigating Committees acting as Adjudicator, to dismiss Ms A's complaint about Mr B. [BOD 325-333]
18. The Chartered Professional Engineers Council has no jurisdiction to consider the matter with respect to the Engineering New Zealand Disciplinary Regulations (referred to in Ms A's notice of appeal) and the panel's focus is therefore on grounds under the Chartered Professional Engineers of New Zealand Rules.
19. Under s15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.
20. The evidence considered by the panel in arriving at its decision included:
 - (a) Notice of Appeal dated 8 March 2021,
 - (b) The paginated Bundle of Documents [BOD 1-333],
 - (c) Submission from Ms A received 31 March 2021,
 - (d) Submission from the RA received 22 April 2021,
 - (e) Submission from Mr B received 23 April 2021,
 - (f) Submission in response from Ms A received 29 April 2021, and
 - (g) Oral submissions at the hearing on 14 July 2021.

Hearing

21. The appeal hearing was conducted in Wellington on 14 July 2021.
22. Present at the hearing were Ms A, Mr B, and Ms Issy Serci and Ms Christine Anderson, both representing the RA.

Discussion and Findings

23. Ms A is trustee of the estate which owns the residential property at Location C.
24. The property, which was insured by Insurer F for “Full replacement as when new” cover, was damaged in the Canterbury Earthquake Sequence.
25. Company D an engineering consultancy firm, was engaged by Company E, on behalf of Insurer F to provide a “Structural Site Summary” of earthquake damage related issues. (Refer to page 1 of Mr B’s submission received 23 April 2021)
26. Mr B is an employee of Company D and in that capacity provided the engineering services which are the subject of Ms A’s appeal.
27. No contractual agreement exists between Ms A and either Company D or Mr B.
28. Limitations were stated in Company D reports [BOD 32 and 102] applying to the services for which Insurer F (through Company E) had engaged Company D as follows:

“10. Limitations

- 10.1. The purpose of this report is to confirm/identify:
 - 10.1.1. Whether the building has suffered structural (as opposed to cosmetic) damage as a result of the Canterbury earthquake event(s) of 2010 and 2011;*
 - 10.1.2. The nature of any future repairs that may be required.
All within the scope of a limited time of involvement on site.**
 - 10.2. It is the responsibility of the client to request a more detailed investigation on particular aspects if that is indicated as being required.*
 - 10.3. All repair work should be completed in accordance with current building code requirements.*
 - 10.4. All information contained in this report is preliminary and is for clarifying the structural repair strategy and may change following detailed structural design.”*
29. No evidence has been presented which would indicate any concerns by Insurer F regarding Mr B or his work.

30. While, in her written and oral submissions Ms A has made statements and allegations about acts and omissions of other parties beyond the Council's jurisdiction, the panel is confining its consideration of the appeal to matters relating to Mr B.
31. The stated grounds of appeal in Ms A's notice of appeal have been used as the framework against which to assess if the evidence presented is sufficient to satisfy the panel that it should overturn the Adjudicator's decision and uphold this appeal.
32. An important consideration for the panel in addressing the five grounds of Ms A's appeal is the nature and purpose of Mr B's engagement by Insurer F through Company E, in particular the limitations of Company D's reports as addressed in 28 above.

Ground of appeal 1:

“Obligation to take reasonable steps to safeguard health and safety”

33. In addressing this ground, the panel has considered the relevant provisions of clause 42A and 42B of the Rules.
34. With regard to health and safety, Clause 42A states that *“adverse consequences means (a) significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people”*.
35. Clause 42A further states *“engineering activities means activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills”*
36. Clause 42B states *“A chartered professional engineer must, in the course of the engineer's engineering activities, take reasonable steps to safeguard the health and safety of people.”*
37. In response to a question from the panel during the hearing Ms A indicated that her health and safety concerns largely involved water or moisture, with reference

to both the risk of water penetration through cracks in the concrete floor and water problems related to the relativity of current floor levels, making reference specifically to the predicted 50-year flood levels.

38. Ms A also asserted on page 4 of her 31 March 2021 submission, a need to raise the foundation *“to the 1 in 50-year flood level to comply with Building Code E2”*.

39. A floor level assessment table was provided as an appendix to Ms A’s 31 March 2021 submission in a file named *“CCC Table on ffl”* and which, amongst other details for Ms A’s property, included the following levels relative to Christchurch Drainage Datum:

Building code floor level	12.13 m
District Plan floor level	12.3 m
Recommended floor level	12.49 m
Predicted 1 in 50 year flood level	11.73 m
Predicted 1 in 200 year flood level	12 m

40. The above table noted that the *“Recommended floor level”* was not mandatory.

41. Ms A also alluded to risks associated with poorly closing windows and doors, either preventing safe passage in an emergency, or causing poor environmental conditions such as could impact adversely on anyone living in the house.

42. Ms A indicated during the hearing that certain doors and windows currently either do not function or function intermittently.

43. With regard to the matter of ill-fitting doors and windows, Mr B confirmed at the hearing that a part of the repair process would involve checking and adjustment of doors and windows for correct operation following completion of relevening works and this is also stated in item 4.7 of Company D’s 4 April 2017 report [BOD 179].

44. Having established that Mr B's role was preliminary, it is clear from the evidence discussed above in 43 that Mr B cannot be held responsible for problems of ill-fitting joinery that Ms A asserts are currently being experienced and it can be seen that he has taken reasonable steps to ensure that the matter has been reported on for action by those tasked with detailed design and implementation of remedial works.
45. As addressed in 28 above the scope of Mr B's services was preliminary in nature and addressed structural damage and the nature of future repairs that may be required, and the panel takes such repairs to mean repairs limited to those of a structural nature.
46. Further, in response to a question from the panel, Mr B stated that his outputs did not include recommendations of any specific solution but with reference to the Joint Experts Report noted that a range of alternative options was presented, that could be considered by others, taking into account factors beyond the scope of Mr B's engagement or expertise.
47. One alternative referred to in 46 above, (Option 3) involved raising the floor level to 12.3m, requiring the house to be lifted approximately 270mm and Mr B's recommendation in the event that this option were to be adopted was for full demolition of the house and foundations.
48. It is noted that the floor level assumed in the option described in 47 above (12.3m) is lower than the non-mandatory level of 12.49m referred to in 38 and 40, but above the level referred to by Ms A during the hearing (see 37 above). However, any decision regarding the finished floor level in the event of demolition and replacement would be a matter for others and not Mr B or his employer to determine.
49. The panel is clear that Mr B's outputs, including the three Company D reports [BOD 29-37, 99-116 and 176-180] and his contribution to the Joint Experts Report are not presented as final designs.

50. Further to 49 the panel refers to item 4.10 in Company D's 4 April 2017 report [BOD 179] which states "*All repair work should be completed in accordance with current building code requirements.*", a provision which, in the view of the panel, indicates an expectation on the part of Mr B that any remedial work that might flow from his preliminary reporting would be code compliant and accordingly to a standard that could be regarded as reasonable.
51. The view of the panel having considered the evidence presented is that Mr B should not be held accountable for the current status of the property at Location C nor for the performance of any implemented remedial work because his work excluded detailed design and excluded consideration of non-structural matters, all such matters being the responsibility of others.
52. The panel is satisfied that no evidence has been presented which demonstrates any failure by Mr B to take reasonable steps to safeguard health and safety and considers that the ground has not been proven.

Ground of appeal 2:

"Obligation to have regards to effects on the environment"

53. In addressing this ground, the panel has considered the relevant provisions of clause 42A and 42C of the Rules.
54. With regard to the environment, clause 42A states that "*adverse consequences means (b) significant damage, or an unacceptable likelihood of significant damage, to the environment*" and further states the following:

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

environment means—

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

55. Clause 42C(1) of the Rules requires that:

“A chartered professional engineer must, in the course of the engineer’s engineering activities,—

(a) have regard to reasonably foreseeable effects on the environment from those activities; and

(b) have regard to the need for sustainable management of the environment.”

56. In Ms A’s written submissions and during the hearing, no evidence has been presented that Mr B has breached his obligations as to effects on the environment.

57. The view of the panel is that actions to remedy earthquake damage to an existing residential property, such as the structural engineering related activities of Mr B in this case, tend to involve reaction to impacts of natural processes as opposed to causing impacts or effects on the environment and it is difficult to see any aspect of Mr B’s activities or outputs that would represent a breach of clause 42C of the Rules.

58. The panel finds that this ground has no merit.

Ground of appeal 3:

“Obligation to act competently”

59. This ground has been addressed in the context of clause 42E of the Rules.

60. Clause 42E of the Rules states:

“A chartered professional engineer—

(a) must—

(i) ensure that the engineer’s relevant knowledge and skills are kept up to date; and

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

(iii) undertake engineering activities in a careful and competent manner; and

(b) must not–

(i) misrepresent, or permit others to misrepresent, the engineer's competence; or

(ii) knowingly permit other engineers for whose engineering activities the engineer is responsible to breach paragraph (a)(i) or (iii) or subparagraph (i)”

61. No allegation has been made against Mr B, by Ms A, which could represent a breach under clauses 42E(a)(i) or 42E(b) (i) or (ii) of the Rules.
62. In light of 61 above, in addressing this ground the panel must decide if Mr B has undertaken engineering activities that are beyond his competence (42E(a)(ii)), or if he has undertaken engineering activities in a manner which is not careful and competent (42E(a)(iii)).
63. Key reports which have been reviewed by the panel were completed by Company D (Mr B) on 17 July 2014 [BOD 29-37], 4 April 2016 (Rev A) [BOD 99-111] and a letter dated 4 April 2017 [BOD 176 to 180].
64. In addition, Mr B was one of three authors of the Joint Experts Report dated 30 November 2018.
65. The increasing detail produced in the reports referred to in 63 and 64 above reflects what the panel considers to be consistent with the normal evolution of detail as design processes advance and the panel does not see that this provides any reasonable basis for criticism of the earlier reports.
66. Furthermore, the panel understands that the four reports referred to above represent source documents which would be used for reference in the detailed design of remedial works but are not intended by the authors to substitute for detailed design, and this was confirmed by Mr B during the hearing.

Lack of clarity of reporting on central crack

67. On page 2 of her 31 March 2021 submission Ms A stated that on receipt of Mr B's report, which the panel assumes to be the Company D report dated 17 July 2014 [BOD 29-37], she found that "*this central crack had not been included in either written form or positioned on his floor plan*".
68. Ms A asserted that Mr B had lied about the existence of the crack and had only admitted its existence at the time of the Joint Experts Report, provided as an attachment to Ms A's 31 March 2021 submission.
69. Mr B explained that he was always aware of the crack, which coincides with a saw-cut contraction joint that runs from north to south and while it was not specifically marked on the plan, his reports [BOD 30 and 100] referred to saw cuts plural and there were only two such cuts, which ran at right angles to one another.
70. Mr B accepted, in hindsight, the Adjudicator's finding that there was some lack of clarity in his reporting [BOD 332 para 2] but did not accept Ms A's allegation that he had lied.
71. The panel agrees with the Adjudicator, that Mr B's reporting on this aspect could have been clearer but sees no evidence to support Ms A's allegation that he had lied and in any event is reminded that the report was prepared for Insurer F.

Description of damage / repair brief and baseless

72. On page 2 of her submission Ms A referred to Mr B's description of damage and repair as "*brief and baseless*" and providing "*no reasoning only opinions*" and a number of specific details are addressed below.
73. While some detail of Ms A's concerns relating to 72 above is discussed below, the panel notes that Company D and Mr B were engaged by Insurer F and not Ms A and furthermore the basis of the engagement was for preliminary reporting not detailed design, indicating no clear obligation for Mr B to have provided the reasoning referred to by Ms A.
74. With regard to Ms A's note that Mr B had "*noted NO lateral spread*" the panel confirms that in the Company D reports of 17 July 2014 [BOD 31] and 4 April 2016 [BOD 101] the report notes that no lateral spread has been observed, which

the panel takes to be a statement of fact by the author as to what he had or had not observed at the time and this is consistent with the reporting of Coffey in March 2016 [BOD 239] that assessed lateral stretch is in the minor category.

75. On page 3 of his submission, dated 23 April 2021, Mr B noted *“There was no physical evidence of ground cracks across the property and no [sic] Coffey reported no evidence of ground cracks within 200m radius of the house. In addition, there has been no rupture of the perimeter foundation beam adjacent to the ends of the saw cut joints. The only crack through the perimeter foundation was observed in the garage where there was a 2.5mm crack”*.
76. The panel considers Mr B’s statement (75 above) to be credible, consistent with paragraph 3.3 of Company D’s 4 April 2017 report [BOD 48] and indicative of lateral spread being insignificant and minimal at worst.
77. On Page 2 of her submission Ms A stated *“Brick veneer NO damage observed.”*
78. With regard to the brick veneer, the panel notes that the statement above was included in Table 4 of Company D’s first report, (17 July 2014) [BOD 29-37] but was updated in the 4 April 2016 revision [BOD 99-110] to read *“Minor damage observed, loose bricks to the top course under the eaves at the south east corner of the dining room”*, with commentary also added regarding reinstatement.

Insurer F / Company E Short order agreement

79. On page one of her submission Ms A implied a number of criticisms of Mr B with regard to applying the terms of his (Company D’s) engagement by Insurer F, commenting *“Mr B did not question this and conducted his inspection: walkaround the outside and [through] the building to assess the extent of damage to the interior and exterior of the house, as directed by Company E.”*
80. The panel believes that it was entirely in order for Mr B to follow the terms of his engagement and, in fact, to have not done so could have represented a breach of his obligations to his client, Insurer F.
81. With regard to Ms A’s reference to the Policy Standard in paragraph 1, page 3 of her submission, the panel considers that any issues of compliance with that standard are ultimately a matter to be resolved between Ms A and Insurer F and

the panel has seen no evidence that would support an allegation or implication that Mr B has in any way hindered such compliance.

Did not support his findings with applicable standards

82. On page 2 of her submission Ms A stated: “*Mr B did not support his findings with the applicable standards*”, citing “*10.3 All repair work should be completed in accordance with current building code requirement*” included in Company D’s reports [BOD 29 and 102].
83. The inclusion of clause 10.3 (82 above) in Company D reports [BOD 32, 49 and 102] not only represents a limitation but in the view of the panel is also evidence of the assumption and intention of Company D and Mr B that any options presented would be developed in a manner which complies with the building code.
84. In addition to the matter of compliance with the building code, the panel notes references in Company D’s reports to other relevant standards such as Table 2.3 and Part 7 of the MBIE Guidelines [BOD 30, 49, 100] and can see no evidence of any intention by Mr B not to comply with applicable standards, remembering also that Company D’s outputs in this case are not detailed designs and are not themselves subject to building consents or producer statements.

Did not update his report

85. On page 5 of her submission Ms A stated: “*At no time over the four years of his involvement with the claim did he update his report to include information from Council land information, geotechnical / survey assessments*”.
86. The panel has considered two aspects to this claim (85 above) by Ms A, namely whether or not he updated his reports and the extent to which his reports needed to incorporate the work of other disciplines.
87. Key reports of Company D that have been reviewed by the Panel include:

Company E Structural Site Summary - 17 July 2014 [BOD 29-37]

Company E - Structural Site - 4 April 2016 [BOD 99-116]

Letter to Company G – 4 April 2017

[BOD 176-180]

Report to the Court by Experts 30 November 2018

[Ms A's submission]

88. It is clear to the panel through simple comparison of these documents that information has been updated as the task evolved, examples including significant additions to Table 4 in the 4 April 2016 report, inclusion of GPR report as an appendix to that report and reference in Table 8 to verticality survey having been completed by Company D.
89. On the matter of consideration of reports by others, the 17 July 2014 report indicated the floor level survey having been completed by Company E, and the 14 April 2016 report indicated the inclusion of GPR data, with reference in Table 8 [BOD 101] to Geotechnical testing having been completed by Coffey.
90. The evidence does not support Ms A's claim that Mr B did not update his reports.
91. It is clear to the panel that Company D's focus was intended to be on structural aspects and that other disciplines were reporting in parallel for the various outputs to be considered by Insurer F or their project managers.
92. No evidence has been presented that Company D or Mr B was engaged to coordinate the inputs of various other disciplines, but the panel is satisfied that Mr B has taken a reasonable approach to incorporating the findings of others in completing his task.
93. While Mr B could have better communicated the full extent of cracking, the panel has considered the other matters raised by Ms A and does not consider that any ground has been established for referral for further investigation or disciplinary action.
94. The panel concludes that there is no evidence to suggest either that Mr B has undertaken engineering activities that are beyond his competence, or that he has undertaken engineering activities in a manner which is not careful and competent.

Ground of appeal 4:

“Obligation to act with honesty, objectivity, and integrity”

95. Clause 42F of the Rules states:

“A chartered professional engineer, in performing, or in connection with, the engineer’s engineering activities –

(a) must–

(i) act with honesty, objectivity, and integrity; and...”

96. In addressing this ground in page 9 of her submission Ms A simply stated: *“This is the report that was supplied to Company G for use in their Design repair plan”*.

97. Ms A’s claim that Mr B did not admit to full detail of the floor cracking (saw cut joints) has been addressed under Ground 3 above and is considered by the panel to be a matter of semantics or omission rather than dishonesty or lack of objectivity.

98. While Ms A has made a number of assertions or allegations concerning the honesty of Mr B and others, including an accusation during the hearing that Mr B had lied about a crack / saw-cut, the panel has seen no evidence that Mr B has breached his obligations under cl 42F(a)(i) of the Rules.

99. This ground is found to have no merit.

Ground of appeal 5

“Acting out of his area of expertise when recommended [sic] No Survey was required”

100. As noted in 60 above clause 42E(a)(ii) of the Rules requires that a chartered professional engineer must only undertake engineering activities that are within the engineer's competence.

101. The wider matter of Mr B’s competence has been addressed under Ground 3 above and in 102 to 105 below the specific matter relating to Ms A’s statement *“No survey was required”* is addressed.

102. In describing this ground Ms A appears to be referring to Table 8 (Further investigations recommended) of Company D's first report [BOD 31], where "NO" is recorded alongside "Floor level survey", with indication that it had been completed by Company E and "NO" recorded alongside "Verticality survey?", the same details appearing under a table titled "Further investigation" [BOD34].
103. The revised report issued on 4 April 2016 indicates for "Verticality survey?" in Table 8 [BOD 101] and the "Further investigation" table [BOD 104] "NO", with the additional comment added "Completed by Company D", indicating that no survey is required.
104. As far as the panel can determine there is no unresolved matter regarding survey and that appropriate survey documentation has been utilised by Mr B in undertaking the work he was engaged by Insurer F to perform.
105. No evidence has been presented under this ground to demonstrate that Mr B has acted outside of his area of expertise and the ground is found to have no merit.

Outcome of Appeal

106. The panel appreciates the unenviable situation that Ms A is in with regard to completion of satisfactory remedial works to the property at Location C, but in hearing the appeal must take full account of the evidence and this includes careful consideration of Mr B's role and responsibilities in the matter.
107. As observed by the RA during the hearing, the primary outcome sought by Ms A, and raised by her several times during the hearing, is to have remedial works to the property at Location C resolved and completed. Such an outcome is beyond the jurisdiction of the RA or the Council to rule on.
108. Potential rulings under the Act and the Rules are limited to determinations with regard to complaints about an engineer's conduct, in particular, breaches of the code of ethical conduct which are covered by Part 3 of the Rules.

109. Disciplinary penalties which are available through the complaints process are covered in s22 of the Act and are limited to restrictions on an engineer's registration, censure, a fine and publication of details of disciplinary rulings against the engineer.
110. It is clear to the panel that the engagement of Mr B and his employer was for preliminary engineering structural services, to identify repair options for more detailed design and implementation by others and his role involved working alongside other specialists such as surveyors, geotechnical engineers and the like, each of whom contributed findings and/or advice in their respective areas of expertise.
111. Ms A appears to be attributing the current unfortunate situation with her property to Mr B because of the reports that he produced, but the panel is clear that the reports of Mr B did not represent design detail and any final detail would be the responsibility of Insurer F and the engineers engaged for detailed design.
112. The panel have reviewed all five grounds of appeal and while noting a conclusion under Ground 3, that Mr B could have better communicated the full extent of cracking in his earlier reporting, no ground has been proven for the panel to overturn the Adjudicator's decision that has been appealed.
113. The decision of the panel is to uphold the decision of the Adjudicator and dismiss the appeal.
114. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Costs

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

Dated 2 August 2021

Signed by the Appeal Panel



Chris J Harrison (Principal)

Anthony Fairclough



Alan A Winwood

Schedule 1

Key correspondence and submissions

- (a) Paginated documentation pack provided (333 pages) provided by RA, containing:
 - (i) Email from Ms A (11 February 2020) with concerns
[BOD 3 to 18]
 - (ii) Email correspondence (1-2 April 2020) between Engineering New Zealand (ENZ) and Ms A summarising concerns and seeking further info [BOD 19-21]
 - (iii) Email from Ms A to ENZ (3 April 2020) with floorplan + Company D report - Company E - Structural Site Summary dated 17 July 2014.
[BOD 22-37]
 - (iv) Email correspondence (21 April 2020) between ENZ and Ms A regarding concerns and further info [BOD 38-39]
 - (v) Email from Ms A to ENZ (23 April 2020) with further information [BOD 40-41]
 - (vi) Email from ENZ to Ms A (23 April 2020) requesting further info [BOD 42-43]
 - (vii) Email from Ms A to ENZ (28 April 2020) w further info [BOD 44-65]
 - (viii) Email from ENZ to Ms A (11 May 2020) requesting further info [BOD 66]
 - (ix) Email from Ms A to ENZ (15 May 2020) w further info [BOD 67-130]
 - (x) Email from ENZ to Ms A (3 June 2020) requesting further info [BOD 131]
 - (xi) Email from Ms A to ENZ (3 June 2020) with video of crack [BOD 132]

- (xii) Email from ENZ to Ms A requesting further information (3 June 2020) [BOD 133]
- (xiii) Email from Ms A to ENZ (4 June 2020) providing further information [BOD 134-164]
- (xiv) Email from Ms A to ENZ (5 June 2020) providing further information [BOD 165-201]
- (xv) Email from Ms A to ENZ (19 June 2020) [BOD 202]
- (xvi) File note of telephone conversation (22 June 2020) [BOD 203]
- (xvii) Email from Ms A to ENZ (14 July 2020) with further information [BOD 204-262]
- (xviii) Email from Ms A to ENZ (15 July 2020) [BOD 263]
- (xix) Email from ENZ to Ms A (21 July 2020) providing summary [BOD 264-267]
- (xx) Email from Ms A to ENZ (24 July 2020) with response to summary [BOD 268-278]
- (xxi) Email from ENZ to Ms A (28 July 2020) providing summary BOD [279-281]
- (xxii) Email from ENZ to Ms A (8 August 2020) providing summary [BOD 282]
- (xxiii) Email from ENZ to Mr B (22 August 2020) notifying him of the concerns [BOD 283-285]
- (xxiv) Email from Mr B to ENZ (9 September 2020) responding to concerns [BOD 286-288]
- (xxv) Email from ENZ to Ms A (10 September 2020) [BOD 289]

- (xxvi) Email from Ms A to ENZ (21 September 2020) with further information [BOD 290-324]
- (xxvii) Adjudicator's decision (27 January 2021) [BOD 325-333]
- (b) Notice of Appeal (final) dated 8 March 2021
- (c) Email to from CPEC Chair confirming Notice of Appeal (10 March 2021)
- (d) Letter from CPEC Chair to parties (12 March 2021) regarding panel, process, submissions and communications
- (e) Letter from panel principal (17 March 2021) regarding submission schedule.
- (f) Submission email from Ms A received 31 March 2021, including:
- (i) Report to the Court by Experts
 - (ii) Appendix A of 'Company H' survey - Brief of Evidence – Mr H
 - (iii) Floor level assessment CCC table
 - (iv) Main Submission by Ms A
 - (v) "Dad's photo"
 - (vi) Company L peer review dated 26 May 2017
 - (vii) Copy of email Mr I > Person J dated 27 June 2018 (Outlook)
 - (viii) Copy of email Mr I > Person J dated 27 June 2018 (pdf) same as above
 - (ix) Comments by Person K rev A draft dated 10 March 2020. ("Preliminary comments to Company G design package dated 26 March 2019")
- (g) Submission from the Registration Authority received 22 April 2021

- (h) Submission from Mr B received 23 April 2021
- (i) Submission in response from Ms A dated 29 April 2021 - Two volumes addressing the respective submissions of Mr B and the RA
- (j) Letter from panel principal (10 May 2021) proposing hearing process
- (k) Letter from panel principal (1 June 2021) outlining hearing venue, timing and format
- (l) Letter from panel principal (30 June 2021) addressing format and detailed agenda for hearing