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

Appeal 10/21

AND

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

Between

Mr A
Appellant

And

Mr and Mrs B
Complainants

Decision of the Chartered Professional Engineers Council
Dated 5 November 2021

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1. Mr A has appealed a decision made by an investigating committee ("the Investigating Committee") of the Registration Authority ("the RA"), to refer a complaint about Mr A, by Mr and Mrs B, to a disciplinary committee [BOD 953-977]

2. The appeal panel of the Chartered Professional Engineers Council ("the Council") has been provided with a paginated Bundle of Documents file 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. Legislation considered by the appeal panel is presented in Schedules 1 and 2.

4. Appeals to the Council are by way of rehearing s37(2) of the Chartered Professional Engineers of New Zealand Act 2002 (the Act).

5. The appeal panel is entitled to confirm, vary or reverse a decision 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. Section 21 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."

7. The facts and evidence 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 A:

(a) has breached an aspect of the code of ethical conduct as set out in the rules 42(A)-42(I); and/or

(b) has performed engineering services in a negligent or incompetent manner.

8. Rule 60 of the Rules states:

"60 Investigating committee must determine whether or not to refer complaint or inquiry to disciplinary committee

An investigating committee must, as soon as practicable after receiving a complaint or inquiry, investigate the matter and—

(a) refer the matter to a disciplinary committee; or

(b) dismiss the matter on a ground in paragraphs (a) to (f) of rule 57."

9. In hearing this appeal the panel must act as if it were the Investigating Committee under Rule 60.

10. In para 3.15 of its submission the RA notes *"..CPEC like an investigating committee, is not empowered by the statutory framework to determine the question of whether there are grounds to discipline Mr A under the CPEng Act….As a result, if CPEC determined this question of whether there are grounds to discipline Mr A under the CPEng Act, it would be ultra vires."*

11. The question to be answered by the panel is not whether there are grounds to discipline Mr A but whether there is a ground for not referring the complaint to a disciplinary committee.

12. The appellant has submitted (para 113, Synopsis of Submissions, dated 30 July 2021) that *"the alleged misconduct is insufficiently grave to warrant further investigation"*, a determination that was available to the Investigating Committee and that is also available to the panel.

13. In referring the complaint for investigation by a disciplinary committee the Investigating Committee had determined that the ground under rule 57(ba) was not applicable. The panel must make its own decision, as to the applicability of that ground, based on its assessment of the evidence regarding the alleged misconduct.

Purpose of professional disciplinary processes

14. As noted in para 6.1 of the RA's submission, the professional disciplinary process does not exist to punish individuals for their conduct or to appease persons dissatisfied with professional services they have received. The purpose is to ensure professional standards are maintained so that clients, the profession and the broader community are protected.

15. This is addressed in *Z v Dental Complaints Assessment Committee (Z)* [1] where the Supreme Court stated:

> *"The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus."*

[1] [2008] NZSC 55

Correspondence and submissions

16. Key correspondence and submissions in this appeal are listed in Schedule 3.

17. The panel acknowledges the constructive detail presented by the parties in their respective submissions and witness statements.

18. At the time the Notice of Appeal was filed, another engineer, who was named in the original complaint ("Engineer AA") filed notice (through counsel) of intention to be heard on appeal of Mr A. No submissions were received in relation to Engineer AA's notice.

Grounds of appeal and outcome sought

19. In Mr A's Notice of Appeal dated 5 May 2021, he submitted, as grounds that:

"the Investigating Committee erred in the following respects:

1 in refusing to request from the complainants that all reports they have obtained in respect of the condition of their property be disclosed to the Investigating Committee and the appellant.

2 In finding there was probative evidence upon which a Disciplinary Committee could make an adverse finding against the appellant as:

2.1 There is no evidence before the Investigating Committee that the conduct of the appellant failed to meet the standard of care expected of a chartered professional engineer.

2.2 The reports relied on by the Investigating Committee have no probative value or any evidential value at all as the Investigating Committee did not investigate the basis for the different conclusions reached in those reports

2.3 There was no evidence before the Investigating Committee as to "the degree of longer-term residual risk" in respect of the appellant's proposed repair methodology.

3 In failing to observe the rules of natural justice:

3.1 When relying on hearsay and privileged evidence.

3.2 By applying irrelevant considerations to its determination of the standard of care expected of a chartered professional engineer.

4 In failing to properly consider the scope of the appellant's engagement by the Earthquake Commission.

5 In failing to consider the relevant technical guidance publications and documentation and/or apply it correctly.

6 In considering and making findings on matters that are not subject to the complainants' complaint.

7 In finding there were no grounds to dismiss the complainants' complaint under Rule 57 of the Chartered Professional Engineers Rules 2002.

8 The decision of the Investigating Committee is wrong in fact and in law."

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

1 An order allowing the appeal and dismissing the complainants' complaint.

2 Costs."

21. The panel notes that the outcomes which it can determine under the appeal are referred to in 5 above.

Jurisdictional Issues

22. Under the statutory framework in which the Council may hear an appeal it cannot hear matters that relate to the actions or processes of the RA. It must address the actual decision that the RA has issued. In this regard issues relating to the processes or procedures of the RA are not relevant and they are cured by the rehearing.

23. The panel agrees with the RA (submission para 8.18) that a failure to observe the rules of natural justice is appropriately addressed by way of judicial review.

24. The panel notes similarities between this appeal and the decision of appeal 01/19[2], in which the Council determined that it does not have jurisdiction to consider procedural issues.

25. Where the grounds of appeal include matters of process or procedure, the panel acknowledges that while they provide some context for the appeal, they do not contribute to the substantive determinations.

The original complaint

26. On 20 November 2019 Mr and Mrs B filed a complaint with Engineering New Zealand. [BOD 4-13].

27. The complaint related to engineering services provided by Mr A and Engineer AA in respect of a residential property at Address E (the Property).

28. The Property which is owned by Mr and Mrs B had previously been damaged in the Canterbury Earthquake sequence and had been repaired by EQC when it was owned by others.

29. The complaint cited concerns on the part of Mr and Mrs B that Mr A and Engineer AA had not:

- undertaken their engineering activities in a careful and competent manner,
- taken reasonable steps to safeguard the health and safety of people, or
- acted with honesty, objectivity and integrity.

Decision being appealed and evidence considered

30. The decision under appeal is the 30 March 2021 decision of the Investigating Committee, to refer the complaint of Mr and Mrs B about Mr A and Engineer AA to a disciplinary committee. [BOD 953-977]

31. That decision noted in its final paragraph [BOD 977] – *"We consider the complaint warrants referral to a disciplinary committee on the basis it raises concerns as to*

[2] CPEC Appeal 01/19

whether [Engineer AA] and Mr A have met the standards expected of a reasonable Member of Engineering New Zealand and a Chartered Professional Engineer."

32. As Engineer AA was not a Chartered Professional Engineer at the time of the alleged actions that were the subject of the complaint by Mr and Mrs B, the Council has no jurisdiction to consider Engineer AA's conduct.

33. Consistent with the appellant's notice of appeal the focus of the panel is on Mr A's conduct.

34. 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.

35. The evidence considered by the panel in arriving at its decision included:

(a) Notice of Appeal 5 May 2021,

(b) The paginated Bundle of Documents [BOD 1-977],

(c) Submission from counsel (Synopsis of submissions) for Mr A received 30 July 2021,

(d) Witness statement of Mr C, for the appellant dated 29 July 2021, received 30 July,

(e) Submission from the RA received 27 August 2021,

(f) Submission from Mr and Mrs B received 27 August 2021,

(g) Witness statement of Mr D for the complainants received 27 August 2021, and

(h) Submission in response from counsel for Mr A received 13 September 2021.

36. In considering the material presented in the two witness statements the panel was mindful of criticisms of Mr C's credentials by the complainants (Complainants' submission – para 88) and of greater concern, submission by the appellant of conflict of interest on the part of Mr D (Appellant's reply submissions - paras 54 to 60).

37. The panel has considered both witness statements but notes that neither have played a decisive role in the outcome of the appeal.

Hearing

38. With the agreement of the parties the panel conducted the hearing on the papers.

39. The panel met by video link on 8 October 2021, 27 October 2021 and 3 November 2021 to deliberate and consequently reach a consensus decision.

Discussion and Findings

Context

40. The residential property at Address E was damaged as a result of the Canterbury earthquake sequence.

41. Repairs to the Property were completed under the Canterbury Home Repair Program (CHRP), including replacement of a damaged unreinforced masonry firewall with a light-weight design.

42. Mr and Mrs B later purchased the property and subsequently indicated they had noticed defects including foundation cracks and other irregularities and disputed the matter with EQC.

43. In response three reports were commissioned.

    (a) Company F Structural Damage Assessment Report dated 23 May 2017, commissioned by Mr and Mrs B [BOD 690]

    (b) Company H Engineering Assessment dated 8 December 2017 [BOD 14] commissioned by EQC

    (c) Company G Structural Peer Review Report [BOD 60] dated 26 September 2019. Addressed to Mr and Mrs B, this was an update of a draft structural report dated 6 June 2019 which was prepared for EQC.

44. Differences in the findings of the three reports are illustrated in 45 to 47 below.

45. The Company F report recommended [BOD 82] a total foundation rebuild with a new TC3 compliant foundation, along with other measures including work relating to internal framing, bracing and damaged internal linings.

46. The Company H report disagreed with some of the observations of the Company F Report and recommended crack repairs to the foundations with these repairs to be carried out by a suitably qualified tradesperson.

47. The Company G report recommended reconstruction of the perimeter foundation; replacement of cracked tilted piles; jacking and packing of interior piles; refixing the subfloor with stainless steel fittings system; rebuilding the firewall and remediation of damaged linings and claddings.

48. Mr A, an employee of Company H signed off the Company H report.

49. The services provided by Company H comprised a desk-top technical review, structural inspection and shallow geotechnical investigations. [BoD 18]

50. There is no evidence to suggest that the scope of services included design of remedial works for construction.

51. Para 44 of the complainants' submission stated: *"Nov/Dec 2020: EQC and the homeowner agree the dwelling is 'uneconomic to repair'.*

52. In their initial complaint [BoD 5] Mr and Mrs B noted: *"..the property is well over cap and will require a full perimeter foundation replacement and relevelling. This will be achieved with a lift. EQC has agreed…"*

53. The panel has seen no evidence that EQC, who engaged Company H, has any concerns about the services provided by Mr A.

54. The panel's references to Mr A and to Company H are used interchangeably on the basis that as the Chartered Professional Engineer who signed the report, Mr A is ultimately the one who is accountable for its findings.

Company H's brief

55. An email from EQC to Company H on 27 July 2017 [BOD 324] sought a review of documentation provided and advice on alternative courses of action as follows:

"….

1. *EQC accepts the Company F report and provides a SOW to define costs for a replacement foundation system and associated works due to completed foundation repairs/further necessary foundation repairs not being feasible due to the state of the existing ring foundation and piles.*
2. *Define the extent of further necessary targeted foundation repairs with specific commentary on the ability of these repairs to be integrated into the existing foundation system.*
3. *Confirm/refute the appropriateness of the installation of 3-6.0 lm of new ring foundation… carried out during CHRP repairs.*
4. *Confirm/refute the extent of our previous foundation repair and whether it satisfies EQC's obligations under the EQC Act 1993."*

The email then added:

"…The homeowners also raised concerns they had around the final Christchurch City Council sign-off (Code Compliance Cert?) not having been done at the appropriate time and having to be completed retroactively"

56. Company H's brief, which presumably was based on the request from EQC, was set out in section 1 of their December 2017 report [BOD 18], key elements being:

- A structural assessment of the existing residential building,
- A report on findings outlining damage sustained as a result of the Canterbury Earthquake Sequence, including an appraisal of earthquake repair work previously performed,
- Work to include a visual inspection, desktop review of third-party information, desktop study of the site and surrounding area, suitable structural remediation strategies and commentary on likely consenting procedures,
- Shallow geotechnical investigations at the Property,

- A report on findings outlining sub-surface conditions, and
- Assessment to include a visual inspection, hand auger and Scala penetrometer tests and a desktop study of available geotechnical publications.

57. Section 7 of the Company H report noted limitations, key elements including that:

- No structural analysis had been carried out and no assessment made of structural stability or building safety in connection with future earthquake events,
- Report and documentation being limited by restricted ability to carry out inspections due to health and safety considerations,
- No comment is made on structural damage that is not reasonably noted through visual inspection,
- Documentation provided to Company H is assumed to be accurate and reliable, and
- Recommendations provided by Company H are limited to those that relate specifically to the New Zealand Build Code Clause 'B1 Structure".

58. A number of observations have been made about Company H's brief. The panel considers that detailed elements of the brief are matters between EQC and Company H and the panel have not seen any evidence to suggest that EQC have taken issue with the work produced by Company H in connection with the Property. However, this does not relieve Mr A of his obligations under rules 42A to 42I of the Rules.

The existence of additional reports

59. Para 53 of the synopsis of submissions for the appellant states *"The Investigating Committee declined Mr A's request for confirmation from the complainants that all reports obtained by them in respect of their property had been disclosed to the Committee"*.

60. The complainants note in para 154 of their submission dated 27 August 2021 - *"Mr and Mrs B have no knowledge of any other reports as to the condition of their property, other than those referred to in the RA Bundle"*.

61. The panel is satisfied that there were no known relevant reports that had not been made available to the Investigating Committee and hence to all parties and concludes that in rehearing the complaint all known reports have been available for consideration by the parties and the panel.

Basis of differing conclusions

62. It is not uncommon for appeals to involve differences of technical opinion between engineers. Such differences do not automatically mean that one engineer is correct, and the other is incorrect and therefore also incompetent or negligent.

63. Specific areas where professionals have expressed differing views on matters associated with the structural condition of the Property are addressed under the relevant headings below.

Hearsay and privileged evidence

64. The panel notes the concerns about hearsay evidence raised by Mr A (Synopsis of submissions para 63) in relation to evidence obtained by Mrs B from family members of the now deceased previous owner of the Property. [BOD 7 and 309] This referred to the timing of cracking to the foundations and was also reported in para 58 of the Investigating Committee's decision [BOD 963].

65. The panel does not regard the third-party opinion given to and relayed by Mrs B as reliable and has not relied on it.

Irrelevant considerations

66. Para 77 of the appellant's synopsis of submissions notes *"As far as Mr A is aware, no evidence was put before the Investigating Committee regarding the costs of their recommended repair and so there is no evidential basis for the Investigating Committee's decision on this point."*

67. The panel considers that any reasonable engineer, exercising experience-based judgement would consider the Investigating Committee's reference to *"significantly cheaper repair solutions than those proposed by Company F and Company G"* to be

self-evident and a perfectly reasonable statement to have made. It is not disputed, nor is it relevant, that Company H's scope of services did not extend to costing.

68. The matters advanced by Mr A as irrelevant considerations do not materially affect the panel's decision.

Relevant technical guidance publications and documentation

69. In their complaint [BOD 6], Mr and Mrs B noted with reference to the Company H report, "*They also do not make any mention of key information in their Reference section, relating to unreinforced rubble foundations - referencing instead the MBIE guidelines which have been problematic in Canterbury without reference to insurance response and the EQC Act"*.

70. The statement at 69 above appears to establish that the primary concern with regard to application of the MBIE Guidelines is in relation to unreinforced rubble foundations.

71. The Investigating Committee commented on the use of MBIE guidance in paragraphs 147 and 148 of their decision [BOD 975] as follows:

> *"147 The MBIE Guidance provides crack repair as a repair option; but engineers must use their own knowledge and expertise to decide when such repairs meet the overriding criterion of compliance with the Building Act and Code.*
>
> *148 There are a number of tools engineers can use to help assess an insurance response. The MBIE Guidance is one. The MBIE Guidance contains criteria and information which can help engineers to work through earthquake damage and repairs. We consider a reasonable member of Engineering New Zealand or Chartered Professional Engineer using the MBIE Guidance documents would still need to explain their stance in relying on them. In the case of the Company H report, it was written some six years after the CES, following claims of non-compliance with Building Act brought by the complainants through their lawyers and Company F and we would expect solutions proposed to be robust and to carry a high level of certainty in long term performance."*

72. In para 139 [BOD 973] of its decision the Investigating Committee had also mentioned in respect of proposed epoxy repairs *"..the Investigating Committee consider the Company H proposal, if implemented, would have carried a degree of longer term*

residual risk" and then in its conclusions in para 163 [BOD 976] noted as one of five concerns *"the use of the MBIE Guidance"*.

73. Having referred (Synopsis of submissions - para 103) to the Investigating Committee's statements, Mr A notes as follows:

> *"104. It is submitted that the Investigating Committee's perception relating to 'rubble foundations' is contrary to the guidance documentation published by MBIE, other ENZ Technical Panel members, and open forum discussions."*

74. On 24 August 2020, Company H's response to the complaint accompanied a letter from Counsel I and included at Appendix D [BOD 385] copies of two High Court Rulings, MBIE Technical Forum slides and notes, MBIE updates and clarification to guidance, and a BMC epoxy report.

75. In para 40.3 of Counsel I's 9 February 2021 letter to Engineering New Zealand in response to the Provisional Decision [BOD 949] it is stated that the High Court's findings in *Fitzgerald & Ors v IAG New Zealand Limited (NZHC 3447)* and the epoxy report by BMC (submitted to the Committee with Engineer AA's and Mr A's earlier submissions) illustrate that epoxy repair was an appropriate repair method for consideration at the complainant's home, subject to the involvement of a concrete repair specialist with relevant experience.

76. The panel notes that the High Court's ruling, in favour of proposed epoxy repairs was subject to building consents or appropriate exemptions being issued for IAG's proposed repair works and ultimately the provision of any necessary code of compliance [sic] certificates.

77. Notwithstanding issues around credibility of expert witnesses, addressed in para 36 and 37 above, the panel observes that the expert witnesses for the appellant and complainants have submitted opposing views on the matter of the use of MBIE Guidelines and consequently do not assist in providing a compelling view.

78. The solution proposed at the time by Company H has not been implemented so there is no means of establishing whether or not it would have proven satisfactory in service.

79. With reference to the complainants' comments 69 above, the panel considers that the absence of key information regarding rubble foundations does not rule out their consideration as a potential solution.

80. Without making its own call as to the appropriateness of the recommended foundation repair solution, the panel has seen no evidence that Mr A, in applying the provisions of MBIE guidance had not used his own knowledge and expertise as might be implied by para 147 of the decision (71 above).

81. The statement in 80 above does not necessarily mean that reporting by Company H provided adequate detail on the rationale behind their recommendations. However, it needs to be remembered that their report was prepared in the first instance for their client, EQC.

Findings on matters not subject to complaint

82. Mr A implies that the Investigating Committee has not properly addressed his involvement in shallow geotechnical investigations, instead focussing on whether his reliance on shallow geotech investigations to inform foundation repair was reasonable. (Synopsis of submissions, para 50-51)

83. The panel addresses the elements of the complaint regarding shallow geotechnical investigations in paragraphs 90 to 99 below.

Standard of care expected of a chartered professional engineer

84. In considering if there are any grounds to dismiss the complaint the panel must determine if prima facie evidence exists as a basis for a disciplinary committee to investigate and make a finding that the appellant's misconduct, if proven, was such that it would tend to affect the good reputation and standing of Chartered Professional Engineers generally in the eyes of reasonable and responsible members of the public. Viewed another way, as a question - would the conduct complained of, if acceptable, tend to lower the standing and reputation of Chartered Professional Engineers in the eyes of reasonable and responsible members of the general public?

Take reasonable steps to safeguard health and safety

85. Rule 42B of the Rules requires that 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."*

Act Competently

86. Rule 42E of the Rules is presented in Schedule 2 and of particular relevance to the matter being appealed are requirements contained in that rule that "*a chartered professional engineer must … (ii) only undertake engineering activities that are within the engineer's competence; and (iii) undertake engineering activities in a careful and competent manner…"*

87. The technical elements of the matter being appealed are addressed below in the context of the requirements of the Rule 42E (a), (ii) and (iii).

Behave appropriately

88. Rule 42F of the Rules is presented in Schedule 2 and of particular relevance to the matter being appealed is the requirement of clause (a) that "*a chartered professional engineer, in performing or in connection with the engineer's engineering activities, - (a) must (i) act with honesty, objectivity and integrity..."*

Specific elements of the appeal

89. The various elements of the matter being appealed are addressed below in the context of the requirements of the above-mentioned rules.

Shallow geotechnical Investigations

90. In their complaint [BOD 8], Mr and Mrs B raised as an issue - *"Mr A Acting outside his areas of expertise / scope of practice"* going on to insert a quote from para 6.4 of the *"Company G report"*.

91. The version of the Company G report included in the bundle of documents is noted as an update of a draft structural report dated 6 June 2019 and the reference made by Mr and Mrs B appears at para 7.4. [BOD 100]

92. The essence of the complaint as taken from the above-referenced report [BOD 24] is the opinion expressed by Company G that the type of geotechnical testing, number of tests and locations should be undertaken and overseen by a "Chartered Professional Geotechnical Engineer".

93. Mr A refers (Synopsis of submissions para 47) to submissions he made to the Investigating Committee, citing MBIE's "*Updates and Clarifications to the Residential Guidance, Issue 6 – July 2014*", including an extract which read:

> *" It is preferable to have a specialist geotechnical professional involved in foundation work on TC3 sites. However, where remediation only involves simple repairs or relevelling, for which the MBIE guidelines do not require a deep investigation or liquefaction assessment, a shallow investigation can be carried out under the oversight of a CPEng engineer. The CPEng engineer must have relevant experience in ground investigation and the interpretation of the results of such investigations, and also enough relevant experience to be able to recognise on a site if further investigation, or a different approach is warranted. The CPEng engineer must be familiar with the requirements of section 3.4.1 of the guidelines (which covers shallow investigations), and in particular the need to take investigations as deep as is practicable."*

94. Mr A further asserted (Synopsis of submissions para 48) that he had the necessary experience in regard to the MBIE guidance and that his experience in this regard has not been challenged.

95. The solution that was being pursued by Mr A, rightly or wrongly, was one that involved no foundation relevelling. In regard to geotechnical investigation for such a solution, on balance, the panel favoured the evidence that Mr A acted in a manner that complies with the above-quoted MBIE guidelines.

96. Company G's commentary referred to at 92 above does not address the situation regarding Mr A's particular solution and the varying requirements of the MBIE Guidance. Similarly, Mr D's Witness Statement did not address the appropriateness of

the geotechnical investigations in the specific context of the solution being considered by Company H.

97. Mr and Mrs B in their submission (para 89) considered Mr C's evidence on geotechnical matters as relevant.

98. Company H's engagement by EQC was not a detailed design exercise and it is not unreasonable for Company H to have undertaken shallow geotechnical investigations in addressing a solution that involved simple foundation repairs. If they were engaged to carry out detailed design for say a foundation replacement then the panel would take a different view and the involvement of an appropriately qualified geotechnical engineer would be expected.

99. The panel's conclusions on this aspect are consistent with the para 84-88 in the Witness Statement of Mr C, which was considered relevant and not challenged at para 89 of the Complainants' submission.

<u>Damage observations and recommended repair methodology</u>

100. With regard to damage observation by Company H, the primary concerns of the complainants [BOD 5 to 8] are taken to focus mainly on Company H's findings on the history of cracking and repairs to the perimeter foundation beam, the extent of dislevelment and also damage to internal walls which may or may not relate to the performance of the firewall. The issues regarding the firewall are addressed separately at para 129 to 141 below)

101. In reporting on the dwelling foundations, Company H addressed the perimeter foundation and subfloor area. Their coverage of the dwelling superstructure included external cladding, the roof, floor levels and wall verticality followed by general observations. [BOD 28 to 34]

102. In relation to the foundation damage Company H's summary [BOD 17] noted:

- Previous earthquake repairs including a new section of perimeter foundation, installation of subfloor framing, installation of 14 new timber piles and crack repairs to the perimeter foundation,
- Floor height variation reportedly less than 50mm and measured to be approximately 44mm during their inspection,
- Foundations evidenced to have settled differentially over time, referencing review of third-party documentation and a forensic engineering inspection,
- Age, construction type and geotechnical conditions considered to have reached equilibrium following static settlement, further noting *"The effects of recent earthquakes on floor levels are evidenced to have been limited",* and
- Recently performed crack repairs to the perimeter foundation observed to be *"insufficient and requiring remediation"*.

103. Company H's summary regarding the superstructure noted:

- *"Following the completion of consented repair works to the boundary firewall and issuance of a code compliance certificate by the local building consent authority, structural repairs to the superstructure are considered to have been successfully concluded"*
- No damage observed to the external brick veneer, with timber weatherboard being in fair general condition with some minor potential earthquake repairs,
- Recent cosmetic damage observed within the dwelling, noting *"this damage is non-structural and in some instances may be related to issues with previous repairs and/or recent renovations"*
- Misalignment of fixtures, noting *"However, much of this is attributable to differential settlement over the life time of the structure. Only the main entrance door of the property required adjustment during the scope of earthquake repair work, and joinery was observed to be functional."*

104. Company H's report noted the following conclusions and recommendations.

- Disagreement with the findings and recommendations of Company F,

- Belief that the scope of previous earthquake repair work at the property is broadly appropriate, and that minor remedial works are required to address outstanding natural disaster damage and a statement that no relevelling work is advocated,
- The occurrence of recent cosmetic damage, particularly in the living room is *"non-eq related"*,
- Works required included crack repairs in the perimeter beam and remediation of previous crack repairs, and
- A requirement for assessment of cosmetic repairs by qualified tradesperson.

105. Company H reported perimeter beam cracking up to 5mm in multiple locations [BOD 28] and total floor height variation within the dwelling of 44mm [BOD 32] which agrees with the Company F Report.

106. The Company F report identified *"several areas where the floor slopes are over the MBIE Guideline tolerance of 0.5%"* and based on floor slopes had indicated that *"foundation relevelling is required at a minimum"*. Company H made no mention of measured floor slopes or areas where slope exceeded the MBIE Guideline tolerance of 0.5%, but they did note - "*Floor height variation of this nature does not typically have any adverse effect on the structural integrity of a building but may affect the functionality/amenity."* [BOD 95].

107. Company H commented in their report [BOD 32] as follows - *"…….*

- *Having thoroughly inspected the property and reviewed third party documents relating to the scope of previous earthquake repair works, there is little evidence to suggest that the earthquake movement has resulted in any material change to floor levels or that this has affected the amenity of the dwelling….*
- *It is the inspecting Engineer's opinion that floor height adjustment within the dwelling is not required from a structural perspective. These works are not considered to be related to earthquake damage and it is anticipated that enactment of any relevelling works at the property would result in undue consequential damage. Particularly given the extent of recent renovations which has resulted in this pre-existing dislevelment being 'locked in'."*

108. It appears that central to Company H's assessment of damage is the extent to which it is attributable to earthquake action. This is supported under general observations in Company H's December 2017 report, which noted - *"Doorframes and in-built cupboards have been found to be out-of-square (i.e., tapered lintels, tilting differently to adjacent walls) indicating that at least part of the dislevelment recorded was present at the time of installation."* [BOD 34]

109. Citing previous experience with similar situations Company F considered there to be *"a high probability of considerable consequential damage to the perimeter beam if relevelling of this beam is attempted"* recommending that the perimeter beam be rebuilt. [BOD 79]

110. Further, making reference to both the new piles and completed sectional replacement of a length of perimeter beam and a number of piles that need replacement, Company F considered that "*a partial foundation replacement would have a major overall impact on foundation behaviour and differential settlement in future earthquake events."* Company F recommended a new TC3 compliant foundation be built adding *"this should be decided during the design stage with a chartered geotechnical engineer's input"*. [BOD 80]

111. The Company F report had identified that *"a number of walls are bowed and several are out of plumb in excess of 10mm per storey"* [BOD 80]. Company H noted limitations of the survey method they had used and stated it had been used as a basic assessment tool only. Company H noted: *"verticalities measured throughout the property do not indicate the occurrence of any structurally significant damage to bracing elements or any wider damage mechanisms such as global rotation or racking."* [BOD 32]

112. Company H's report discussed possible origins of vertical misalignment and after noting that its measurements varied notably from those in the Company F report in magnitude and slope direction, reported: *"..the information provided by Company F*

and its inference as a reliable indicator of structural damage is flawed." Company H did not provide any reasoning for that conclusion. [BOD 33]

113. Company H recommended crack repairs to the foundation wall, whereas Company F had recommended a full foundation replacement.

114. While the full foundation replacement would be expected to provide superior future foundation performance, that is not the key issue and the panel notes that Company H have made their own assessment and documented their reasoning, in the context of the extent of damage they consider attributable to the earthquake action.

115. While the extent to which the damage can reasonably be attributed to earthquake action has not been ascertained, the panel considers that Company H had documented their findings and their reasoning behind them.

116. It is widely acknowledged that engineering opinions of professional engineers may differ, and this has clearly been experienced in relation to responses to earthquake damage to residential properties in Christchurch. Issues arising from the process in earlier years led to the establishment of the Greater Christchurch Claims Resolution Service (GCCRS) and the Canterbury Earthquakes Insurance Tribunal (CEIT). GCCRS was launched in October 2018 and CEIT commenced in June 2019, both events post-dating the Company H report which is central to the complaint.

117. As generally happens when there are differing professional opinions on a matter, a final position is arrived at, in this case a decision by the EQC to agree to full foundation replacement as recommended by Company F.

118. The occurrence of differing professional opinions does not necessarily mean that one is correct and the other incorrect and therefore negligent or incompetent.

119. The question might be asked "as the EQC ultimately agreed to the full foundation replacement recommended by Company F rather than the lesser repairs recommended by Company *H, does this indicate Company H came to the wrong conclusion?"*

120. The panel does not attempt to answer the question in 119, nor does it have jurisdiction to make a ruling on the point. However, the panel considers that with regard to the foundation damage and repairs there does not appear to be compelling evidence that Company H fell short of what would be expected of a chartered professional engineer.

Residual risk of repair methodology

121. In para 139 of its decision [BOD 973], the Investigating Committee *wrote "The Company F report referred to rubble foundations, and recommended the foundations be replaced. Likewise, the Company G report. The Company H report considered repairs were feasible and in their most recent response consider the "rubble" foundation material to be reasonable overall, implying the foundation material would be suitable to allow sound bonding of epoxy filled cracks and drilled and epoxied starter bars. We have seen the various photos and the past attempted crack repairs (subsequently re-cracking) and these works do not seem to have worked. Company H claim that their proposed crack repair solution uses modern epoxies that would work. As the insurers have now agreed to demolition and replacement, actual performance will never be tested. However, the Investigating Committee consider the Company H proposal, if implemented, would have carried a degree of longer term residual risk."*

122. The panel accepts that full foundation replacement recommended in the Company F report, would be expected to perform better than the crack repairs recommended by Company H. Put differently, the crack repair alternative would have carried a degree of longer-term risk. However, the matter is not so simple.

123. With reference to 122 above it must be noted the future performance of crack repairs would be gauged against the performance of the existing perimeter foundation, before it was subjected to earthquake damage, and not to a newly designed and constructed foundation. On this basis the issue is whether or not the crack repaired sections of foundation would perform at least as well as the existing foundation before it experienced earthquake damage.

124. As quoted in 121 it is evident from photographs and reports that the previous crack repairs had not been successful. However, the panel notes that reports indicate that

the repairs were only applied to the outer surface and did not extend through the beam, suggesting they were not properly executed.

125. Furthermore, technical and case law material provided in Company H's August 2020 response [BOD 319 to 477] establish that epoxy repairs can be regarded as an alternative.

126. The panel notes Company H's recommendation [BOD 36] is that a concrete repair specialist be engaged and notes also that the recommendation does not represent detailed design or specification for implementation.

127. While the evidence provided does not guarantee that the recommended repair would work, the panel considers that no evidence has been presented to rule consideration of the recommended alternative out. In any event the actual performance will never be tested.

128. While there may be questions as to the choice of repair type by Company H, the panel has seen no compelling evidence of shortcomings regarding the specific matter of residual risk of the recommended repair methodology, which would warrant consideration by a disciplinary committee.

<u>Findings on firewall</u>

129. In their complaint Mr and Mrs B alleged that *"a life safety concern - a non-compliant firewall"* was a key issue not identified in the Company H report. [BOD 5] This appears to follow the findings of para 12.5 of Company G's report. [BOD 127]

130. Company H's brief is outlined in 55 and 56 above and the panel notes that in an email to Company H dated 27 July 2017, [BOD 324] the EQC noted - *"….The home owners also raised concerns they had around the final Christchurch City Council sign-off (Code Compliance Cert?) not having been done at the appropriate time and having to be*

completed retroactively". The panel notes that the emphasis was on the time and retroactive nature of completion of the certification process.

131. The brief for Company G's September 2019 report to Mr and Mrs B, is presented in Section 2 of that report [BOD 61 and 62] and logically includes addressing the Company H and Company F reports and providing views as to whether they agree with the opinions expressed in the reports and whether or not further work is required *"to reach a concluded view"*.

132. Company G indicated they would produce a draft report and note that they were asked to provide a final report following their completion of a review of the Christchurch City Council file information obtained by EQC, review of site photographs taken during the previous repairs, issue of the Company G TC3 Geotechnical Investigation report and taking three cores from the perimeter foundation.

133. Neither the Company F report nor Company H identified potential shortcomings with the compliance of the existing fire wall, whereas Company G have investigated in some depth and reported on the matter comprehensively.

134. Presumably a key reason why Company H did not investigate the firewall to the depth that Company G had, was their reliance on the signed Consent and Certificate of Code Compliance as being indicative of compliance. The question for the disciplinary process to consider would be whether or not it was reasonable for Company H to take this approach.

135. The panel is unaware of any concerns on the part of Company F regarding the firewall or its foundation or potential bracing inadequacies raised by Company G.

136. In addition to the previous point, when considering the conduct of Company H it is important to note that design and supervision of the existing replacement as not the responsibility of Company H or Mr A. That lay with another CPEng engineer and a licenced building practitioner who are not party to the complaint.

137. In the absence of any known complaints by EQC, to whom Company H had the primary duty of care it could be argued that Company H has done what it was commissioned to do.

138. In their August 2020 response to the complaint [BOD 328] Company H concluded: "*We note that Company H are not the engineers responsible for the design, monitoring and sign off of the original works, nor were we the only engineers to have inspected the property following the completion of CHRP repairs. None of the preceding engineers who have provided input at the property have raised concerns relating to a potential life safety hazard as outlined by Company G in their recent report"*.

139. The statement in 138 above must be kept in mind as consideration is given to the complaint.

140. Faced with works which had been designed, constructed and signed off by others, and in the absence of any finding regarding the firewall in the Company F report that Company H had been engaged to review, the panel considers that insufficient evidence exists in support of any clear misconduct by Company H.

141. From the evidence viewed, questions could be raised as to whether the service provided by Company H was on the margin of being adequate and reasonable. While, in the panel's view, the evidence does not suggest that Company H "went the extra mile", that is not relevant. However, the panel does not consider that the evidence with regard to the firewall is sufficient to warrant further investigation.

<u>Mr A's reporting</u>

142. Mr and Mrs B addressed Mr A's reporting in para 56 to 63 of their submission.

143. The complainants also submit – "*It appears part of Mr A's defence is that he was instructed differently to how he disclosed in his reporting. The inference is, he was restricted by those further instructions, which impacted how far he went with his assessment and reporting. To us, if the CPEC finds he was restricted beyond what he disclosed in his reporting, then the fact that he didn't disclose that restriction in his*

reporting fails the basic test of 'honesty' and 'objectivity' required by the CPEng ethical standards." (Complainants' submission para 59)

144. Several aspects of Mr A's actions and conduct have been addressed elsewhere in this decision and the panel considers that any non-compliance with or divergence from the EQC terms of engagement would be primarily a matter between Company H and EQC, without relieving Mr A of his obligations under rule 42 of the Rules. No evidence has been seen by the panel that would suggest any concerns held by EQC about Company H or Mr A.

145. In para 161 of their decision the Investigating Committee note - "*It appears the opinions given by Company H were genuinely and honestly held"* [BOD 976] when addressing the honesty and integrity of Mr A.

146. Para 39 of the appellant's submission in response notes the contrast between the complainants' allegation that *"Mr A's reporting fails the basic test of 'honesty' and 'objectivity' required by CPEng ethical standards"* and the Investigating Committee's finding that the panel refers to in 145 above.

147. Further, para 40 of the appellant's submission in response submits - *"Mr A's instructions from EQC were to review the Company F Report and advise on certain matters referred to in those instructions, which he did. There is no evidence before CPEC that Mr A acted dishonestly, without integrity or without objectivity when reviewing that documentation."*

148. The complainants cite C*&S Kelly Properties v EQC and Southern Response [2015] NZHC 1690*, [Complainants' submission para 62] in referring to the High Court having observed *"that experts who have worked predominantly for an insurer, and/or sourced most of their income from them, cannot be considered impartial."*

149. Mr and Mrs B also submit – *"If Mr A's independence and objectivity is under examination here, we propose it is appropriate for the CPEC to enquire further into Mr A's work history for EQC to determine the extensiveness and reliance of the relationship*

which could indicate a partial response in favour of the EQC." [Complainants' submission para 63]

150. The appeal concerns Mr A's conduct regarding the work which EQC engaged Company H to undertake at the Property and the panel has not seen any evidence that Mr A's work history for EQC has any relevance. The panel is required to make its decision having reviewed the evidence presented. It is not the role of the panel to undertake a wider enquiry such as that urged by the complainants.

151. The panel concludes that Mr A's views were reasonably held and does not consider there to be evidence under Rule 42F to warrant referral to a disciplinary committee.

Conclusions

152. The RA has addressed grounds for not referring the complaint to a disciplinary committee in 8.14 to 8.17 of their submission:

> *"8.14 In determining whether the alleged misconduct is insufficiently grave under rule 57(ba), an investigating committee should consider whether the misconduct, if it was established by a disciplinary committee, would be insufficiently grave to warrant further time and resources being invested in the matter. As a result, this ground is an extension of rule 57(b), that the complaint subject matter is trivial."*
>
> *"8.15 However, Mr A's misconduct, if it was established, does not appear insufficiently grave and should warrant further investigation. The allegations raised are that Mr A performed engineering activities in a manner which was not careful or competent by issuing the Company H Report with an inappropriate repair methodology and inaccurate earthquake damage assessment, did not address an inadequate firewall which posed a health and safety risk, did not act objectively, and acted outside his competence. Regardless of Mr A's view on the veracity of the allegations, if the misconduct was established, it cannot be said that that misconduct is insufficiently grave.*

153. The panel is not convinced by the RA's argument (RA's submission para 8.14) that *"this ground [57(ba)] is an extension of rule 57(b)"*. Rules 57(b) and (ba) are two of a number of grounds for not referring a complaint to a disciplinary committee.

154. The panel considers that the circumstances need to be taken into consideration in assessing whether or not the matter is sufficiently grave to warrant further time and resources involved in an investigation by a disciplinary committee.

155. In considering its decision the panel must weigh the factors which help define the gravity of the alleged misconduct.

156. Firstly, the panel assesses that potentially attributable consequences are limited to the effect of prolonging the process for agreement to be reached by the EQC and the homeowners.

157. The recommendation signed off by Mr A was not built and as well as a number of contentious points not being able to be tested, no failures, damage or personal harm are able to be attributed to the alleged misconduct.

158. Furthermore, the assessment for which Company H were engaged by EQC is not a detailed design assignment and as a consequence neither Mr A nor Company H would have responsibility for any consenting, or sign-off of ensuing producer statements.

159. Much has been observed about Company H's compliance with the Building Act and the Building Code but ultimately no solution recommended by Company H has been implemented for that to be checked and importantly no evidence has been presented that recommended work would actually be non-compliant or that Company H had that intent. In any event that responsibility would lie with the Licenced Building Practitioners / Chartered Professional Engineers engaged for design, implementation and supervision of the recommended works.

160. On the matter of the firewall and its foundations the panel is of the view that regardless of whether or not Company H should have identified shortcomings in the design, stability and compliance of the replaced firewall and its foundation the real

accountability should fairly lie with those responsible for its design, supervision and producer statements.

161. Based on consideration of the factors outlined the panel assesses that this matter is not at the serious end of the scale and the panel further considers that there is not compelling evidence to warrant further investigation by a disciplinary committee.

162. The complaint and the ensuing investigations took place against an historical backdrop of the many damage and repair issues that have arisen in Christchurch since the Canterbury earthquake sequence. The matters raised and the thresholds addressed further highlight the reliance that stakeholders place on the work of professional engineers and serve as a reminder for all engineers of their professional obligations.

163. On balance having considered all of the evidence the panel considers it fair to suggest that Mr A could have taken a different path in reporting by providing better reasoning for Company H's recommendation that differed from those in the Company F report, but the ultimate question faced by the panel is whether or not the complaint should be dismissed under rule 57(ba) on the grounds that it is insufficiently grave to warrant further investigation.

Outcome of Appeal

164. The decision of the panel is to uphold the appeal and dismiss the complaint against Mr A by Mr and Mrs B, on the grounds that the alleged misconduct is insufficiently grave to warrant further investigation (Rule 57(ba)).

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

Costs

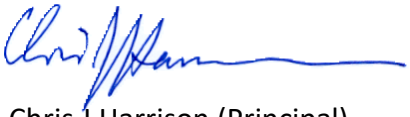
166. Both parties made reference to costs in their submissions and consequently the panel is open to receiving submissions on costs from the parties, within ten working days of this decision. Any such submission should be confined strictly to the matter of costs.

167. While the panel has found in favour of the appellant, it is of the view that it was not unreasonable for the complaint to have been laid in the first instance and the decision reflects a careful balancing of the evidence from both sides. Consequently, the panel's expectation is that a fair outcome would be for costs to lie where they fall. This should be kept in mind in any submission on costs.

Dated 5 November 2021

Signed by the Appeal Panel

Signed by



Chris J Harrison (Principal)

Sandra Hardie

Sue Simons

Schedule 1 - Legislation

1. 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.

2. 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.

3. 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.

4. Appeals to the Council are by way of rehearing (s37(2) of the Act).

Schedule 2 – Extracts of the Act and the Rules

s21 of the Act:

"21 Grounds for discipline of chartered professional engineers

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."

Rule 42B

"42B Take reasonable steps to safeguard health and safety

A chartered professional engineer must, in the course of the engineer's engineering activities, take reasonable steps to safeguard the health and safety of people."

Rule 42E

"42E Act competently

A chartered professional engineer—

(a) must—

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

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

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

(b) must not—

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

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

Rule 42F

"42F Behave appropriately

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

(a) *must—*

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

(ii) treat people with respect and courtesy; and

(iii) disclose and appropriately manage conflicts of interest; and

(b) *must not—*

(i) offer or promise to give to any person anything intended to improperly influence a decision relating to the engineer's engineering activities; or

(ii) accept from any person anything intended to improperly influence the engineer's engineering activities; or

(iii) otherwise engage in, or support, corrupt practices.

Rule 56

"*56 Registration Authority must refer complaint to investigating committee unless grounds for not doing so*

The Registration Authority must, as soon as practicable after receiving a complaint, carry out an initial investigation of the complaint in accordance with rule 58 and—

(a) refer the complaint to an investigating committee in accordance with rule 59(b); or

(b) dismiss the complaint on a ground in rule 57.

Rule 57

"57 Grounds for not referring complaint to investigating committee

The Registration Authority may dismiss a complaint without referring it to an investigating committee if the chairperson of investigating committees decides under rule 58 that—

(a) there is no applicable ground of discipline under section 21(1)(a) to (d) of the Act; or

(b) the subject matter of the complaint is trivial; or

(ba) the alleged misconduct is insufficiently grave to warrant further investigation; or

(c) the complaint is frivolous or vexatious or is not made in good faith; or

(d) the person alleged to be aggrieved does not wish action to be taken or continued; or

(e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(f) an investigation of the complaint is no longer practicable or desirable given the time elapsed since the matter giving rise to the complaint.

Rule 60:

"60 Investigating committee must determine whether or not to refer complaint or inquiry to disciplinary committee

An investigating committee must, as soon as practicable after receiving a complaint or inquiry, investigate the matter and—

(a) refer the matter to a disciplinary committee; or

(b) dismiss the matter on a ground in paragraphs (a) to (f) of rule 57."

Rule 61:

"61 Powers of investigating committee

An investigating committee may—

(a) make, or appoint a person to make, any preliminary inquiries it considers necessary:

(b) engage counsel, who may be present at a hearing of the committee, to advise the committee on matters of law, procedure, and evidence:

(c) request the person complained about or the complainant to provide to the committee, within a specified period of at least 14 days that the committee thinks fit, any documents, things, or information that are in

the possession or control of the person and that are relevant to the investigation:

(d) take copies of any documents provided to it:

(e) request the person complained about or the complainant to attend before the committee, at that person's own cost, on at least 14 days' notice:

(f) receive any evidence that it thinks fit:

(g) receive evidence on oath and otherwise in accordance with section 27 of the Act:

(h) require a person giving evidence to verify a statement by oath or statutory declaration:

(i) use the powers to summon witnesses under section 28 of the Act:

(j) provide information to assist the complainant and the person complained about in obtaining counsel or other advocacy assistance."

Schedule 3

Key correspondence and submissions

(a) Paginated documentation pack provided (977 pages) provided by RA, containing:

1. Letter from Mr and Mrs B to Engineering New Zealand dated 20 November 2019 [BOD 4-13] including supporting information

    - Company H Engineering Assessment dated 8 December 2017 [BOD 14-59]

    - Peer review (Company G) dated 26 September 2019 [BOD 60-270]

2. Email from counsel for Company H (Counsel I) to Engineering New Zealand dated 22 November 2019 and attachments:

    - Screenshots [BOD 272-274]

    - Letter from Counsel I to Ms J dated 21 November 2019 [BOD 275, 276]

    - Email from Ms J to Counsel I dated 22 November 2019 [BOD 277]

3. Email from Engineering New Zealand to Counsel I dated 2 December 2019 [BOD 278-279]

4. Email from Engineering New Zealand to Engineer AA and Mr A dated 2 December 2019 notifying them of concerns raised [BOD 280-283]

5. Email from Ms J to Engineering New Zealand dated 17 December 2019 attaching photographs [BOD 284-289]

6. Email from Engineering New Zealand to Engineer AA and Mr A dated 17 December 2019 enclosing Ms J's email (item 5) [BOD 290]

7. Email from Engineer AA and Mr A dated 19 December 2019 responding to concerns [BOD 291-293]

8. Email from Engineering New Zealand to Ms J dated 20 December 2019 attaching Mr A and Engineer AA's response (item 7) [BOD 294]

9. Email from Engineering New Zealand to Ms J dated 23 January 2020 discussing next steps [BOD 295-296]

10. Email from Engineering New Zealand to Mr A and Engineer AA dated 24 January 2020 discussing next steps [BOD 297-298]

11. Email from Ms J to Engineering New Zealand dated 24 January 2020 attaching a further response [BOD 299-304]

12. Email from Engineering New Zealand to Engineer AA and Mr A dated 28 January 2020 attaching Ms J's further response (item 11) [BOD 305]

13. Email from Engineer AA and Mr A to Engineering New Zealand dated 28 January 2020 [BOD 306]

14. Adjudicator's decision [BOD 307-315]

15. Further information received by the Investigating Committee from the respondents:

    - Letter from Counsel I to the Investigating Committee dated 24 August 2020 [BOD 316-318]

    - Covering letter from Company H [BOD 319-322]

    - Outline of Company H's scope of engagement with EQC [BOD 323-328]

    - Company H's desktop review of Company G report [BOD 329-459]

    - Company H's itemised response to the complaint [BOD 460-472]

- Company H's itemised response to email from complainant [BOD 473-477]
- Appendix D to the Company H report which sets out relevant third-party documents [BOD 478-940]

16. Mrs B's submissions on the provisional decision (by the Investigating Committee) dated 7 January 2021 [BOD 941]

17. Letter from Counsel I to Engineering New Zealand dated 9 February 2021 [BOD 942-952]

18. Investigating Committee's decision [BOD 953-977]

(b) Notice of Appeal dated 5 May 2021

(c) Notice by Engineer AA of intention to be heard on appeal of Mr A (5 May 2021)

(d) Email to the parties from CPEC Chair confirming Notice of Appeal (12 May 2021)

(e) Email to the parties from CPEC chair forwarding link to the paginated bundle of documents (9 June 2021)

(f) Letter to parties from CPEC chair/panel principal (11 June 2021) addressing appeal panel composition, the appeal process, grounds of appeal and relief sought, submission schedule, hearing arrangements and communications.

(g) Memorandum of counsel for appellant seeking leave to amend timetable and call expert witness dated 22 June 2021

(h) Letter from panel principal to the parties granting leave for Mr A to call an independent expert witness and providing an amended timetable for submissions (23 June 2021)

(i) Memorandum of counsel for appellant regarding breach of confidentiality (28 June 2021)

(j) Letter from the RA (29 June 2021) objecting to the panel's decision to allow Mr A to call an expert witness and acknowledging receipt of memorandum of counsel for the appellant dated 28 June 2021

(k) Letter from panel principal (1 July 2021) seeking submissions from the complainants and counsel for the appellant, in response to the Registration Authority's 29 June 2021 letter

(l) Letter from panel principal in response to memorandum of counsel for appellant regarding confidentiality (1 July 2021)

(m) Memorandum of counsel for appellant regarding expert evidence (8 July 2021)

(n) Letter from Mr and Mrs B in response to the RA's 29 June 2021 letter (8 July 2021)

(o) Decision of the Chartered Professional Engineer's Council concerning the calling of an independent witness (16 July 2021) and seeking submissions from the RA and Mr and Mrs B regarding additional evidence and deadline for submissions

(p) Synopsis of submissions for appellant (30 July 2021)

(q) Witness statement of Mr C dated 29 July 2021 (received 30 July 2021)

(r) Email from RA (6 August 2021) confirming intention not to submit additional evidence and committing to 20 August deadline for submissions

(s) Email from Mr and Mrs B (6 August 2021) noting intention to submit expert evidence and seeking a one-week extension of the submission deadline

(t) Letter from panel principal (9 August 2021) extending deadlines for submissions (complainant and RA) and submission in response (appellant) by one week to 27 August 2021 and 3 September 2021 respectively

(u) Submission from RA dated 27 August 2021

(v) Submission from the complainants (27 August 2021)

(w) Witness statement of Mr D on behalf of the complainants (27 August 2021)

(x) Memorandum from counsel for the appellant seeking further directions (3 September 2021)

(y) Memorandum from panel principal addressing extension of time for reply submissions and nature of hearing (3 September 2021)

(z) Email (1 of 2) from complainants – disagreeing with opinion of counsel for the appellant that an in-person hearing is necessary, stating need for the reply submission and advising no objection to the extension of time to next week (3 September 2021)

(aa) Email (2 of 2) from complainants restating that their disagreement with the appellants opinion that an in-person hearing is necessary, and advising their full support of a hearing on the papers (3 September 2021)

(bb) Email from RA advising no objection to hearing being held on the papers (6 September 2021)

(cc) Appellant's reply submissions (dated 10 September 2021, received 13 September 2021)

(dd) Witness statement of Mr C in reply (13 September 2021)

(ee) Memorandum from counsel for the appellant agreeing to the appeal being heard on the papers (17 September 2021)