

APPEAL NUMBER 10/15

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

AND

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

By

Mr T CPEng, MIPENZ,
Appellant

And

Mr H FIPENZ, CPEng
Respondent

Decision of the Chartered Professional Engineers Council dated 22 December 2015

Background

1. Mr H's company K Ltd issued a soil investigation report relating to a property in Woolston Christchurch on 4 July 2014 (pages 32 -121/411 of the Registration Authority bundle). Mr H is noted as authorising the report for issue.
2. The report was prepared for C Ltd and provided a site- specific geotechnical investigation in order to facilitate decisions on suitable foundation re-level options for 4, two storey unit blocks with a total of 16 units.
3. C Ltd later provided the report to U Ltd.
4. Following the issue of the 4 July 2014 report, U Ltd. were commissioned to undertake re-leveling of the floors of the units. (U Ltd has subsequently been rebranded as M Ltd).
5. K Ltd prepared a subsequent report for U Ltd to demonstrate that the proposed re-level works were suitable for the site and that they would comply with the requirements of the Building Code. The report and accompanying Producer Statement (PS1) was issued on 8 September 2014 (pages 122- 134/411). Mr H is noted as authorising the report for issue.
6. In October 2014 M Ltd noted to K Ltd that the report and Producer Statement had stated that the property was a residential dwelling rather than a two storey commercial building (page 310/411). This information is provided in Mr H's statement but is not disputed by Mr T.
7. Mr H revised the report and Producer Statement and re-issued it dated 16 October 2014 (pages 135 -144/411). The only changes between the two reports are:
 - i. Deletion of second paragraph of the introduction (page 125) that stated "It is intended to restore floor levels to within the tolerance of 1:200 as per the MBIE requirement".
 - ii. 4th bullet point in Section 5 changed from "Carefully monitor the extend of the lift; no differential displacement is to be created that exceeds the 1:200 MBIE requirement;" (page 128) to ""Carefully monitor the extent of the lift; no differential displacement is to be created that exceeds the natural stresses of the building;" (page 140)
 - iii. The "In Respect of:" line of the Producer Statement is changed from "Re-levelling of Existing House" (page 130) to "Re-levelling of existing commercial structure" (page 143).

8. On 14 June 2105 Mr T contacted IPENZ (page 12/411). He stated that he was an employee of M Ltd and that during the previous week he had found some “strange documents” on his company’s server. He raised the issues of:
 - i. Two different producer statements being issued for the same property
 - ii. The changes noted in paragraph 7 above
 - iii. That Mr H had both prepared the soil investigation report for C Ltd and the reports/Producer Statements for M Ltd.
 - iv. That he considered that Mr H had revised his PS1 at someone else’s request and that this was misconduct as a CPEng.
 - v. That he had informed his employer that of the above.
9. In an email to IPENZ dated 21 June 2015 (page 11/411) Mr T informed IPENZ that he had been terminated by his employer on 18 June 2015.
10. Mr H was informed of the complaint. In his 22 July 2015 letter (pages 309 - 312/411) he:
 - i. Acknowledges the course of events outlined in paragraphs 1 – 7 above.
 - ii. States his embarrassment at having used the wrong template Report/Producer Statements.
 - iii. States that the specific changes that were made to Report/Producer Statement were not at anyone’s request but due to the change in the report template from residential to commercial.
 - iv. Provides some context to the MBIE guidelines (issued principally for one and two storey timber dwellings).
 - v. Confirms that commercial buildings must be considered on a case by case basis.
 - vi. Outlines the processes put in place by K Ltd to reduce the chance of similar template errors being made again.
11. The complaint was considered by a Complaints Research Officer (CRO) who issued their report on 23 July 2015 (pages 4 – 9/411). The CRO recommended that the complaint be dismissed on the grounds contained in Rule 57 (ba) that the alleged misconduct is insufficiently grave to warrant further investigation.
12. The CRO’s report was issued to the Chair of an Investigating Committee (CIC) who was acting as the Adjudicator. The CIC issued their report on 7 August 2015 (pages 1 – 3/411). The CIC concurred with the CRO and dismissed the complaint on the grounds contained in Rule 57 (ba) the alleged misconduct is insufficiently grave to warrant further investigation.

The Appeal

13. Mr T contacted the Council on 25 August 2015 indicating his intention to appeal. He issued a Notice of Appeal on 7 September 2015 (pages 379 – 380/411).
14. The Council appointed a panel comprising:
 - i. Ms Jane Nees – principal
 - ii. Mr Roly Frost – member
 - iii. Mr Ross Tanner – member
15. Ms Nees' term on the Council concluded during the appeal process. At the Council's meeting on 11 December 2015 her role on the panel was replaced by Mr Jon Williams.
16. In his appeal, Mr T contended that:
 - i. The issuing of an incorrect Producer Statement could not be considered as a "simple mistake" without checking further producer statements.
 - ii. That a further possible example of this error was the Report/PS1 issued for 251 Travis Rd issued on 13 February 2015 (pages 396 – 409/411).
17. Submissions from both parties were sought. Mr T provided further examples of reports by other consultants (A Ltd, dated 19 December 2014). This report is not relevant to this complaint/appeal and is not strictly admissible. The report does note "Although the MBIE guidance was primarily intended for residential buildings we consider it appropriate for commercial buildings too."

Hearing

18. The Appeal was heard on the papers via telephone conference on 15 December 2015.
19. The Appeal panel noted the following:
 - i. When the error in the report/Producer Statement was highlighted to Mr H he acknowledged it and made changes to his company's procedures to reduce the risk of similar errors reoccurring.
 - ii. The second example of a potentially incorrect report/Producer Statement signed by Mr H (~~Y address 251 Travis Rd~~) was prepared prior to him being made aware of the ~~Woolston property at Terman Place~~ issue and new checking procedures being put in place.
 - iii. The MBIE guidelines were specifically developed for residential properties. As noted in the A Ltd report they may be used for commercial projects. However each commercial building can be considered on a case by case basis.
 - iv. K Ltd's initial engagement with C Ltd and then with M Ltd did not form a conflict of interest.

Findings

20. The Panel considers that the nature of Mr H's error is relatively minor.
21. His acknowledgment of his mistake and the putting in place of changed procedures to prevent reoccurrence align with the expectations of a Chartered Professional Engineer.
22. The Panel agrees with the findings on the CIC and dismisses the appeal on the grounds contained in Rule 57 (ba) the alleged misconduct is insufficiently grave to warrant further investigation.

Dated this 22 December 2015

Mr Jon Williams
Principal



Mr Roly Frost



Mr Ross Tanner

