DISCIPLINARY COMMITTEE DECISION

COMPLAINT BY TAURANGA CITY COUNCIL ABOUT BRUCE CAMERON

Confidential to the parties

In accordance with:
Chartered Professional Engineers of New Zealand Act 2002
Chartered Professional Engineers of New Zealand Rules (No 2) 2002

Prepared by:
Peter McCombs DistFEngNZ CPEng IntPE(NZ)
Chair of Disciplinary Committee

Anita Killeen, Barrister
Hamish Wilson, nominated by Consumer New Zealand
Garry Macdonald FEngNZ
Stewart Hobbs FEngNZ CPEng IntPE(NZ)
Members of the Disciplinary Committee

25 June 2019

engineering new zealand
Institute of Engineering Professionals

CONTENTS

EXECUTIVE SUMMARY

1. Bruce Cameron CPEng IntPE(NZ) is a sole practitioner operating out of Tauranga. Between 2015 and 2016 Mr Cameron provided engineering services to a range of clients, with most of the service he provided being to do with residential retaining walls, foundation designs and construction monitoring.

2. Tauranga City Council (TCC) became concerned about Mr Cameron's designs, construction monitoring, and his behaviour and professionalism towards TCC staff. TCC attempted to help Mr Cameron understand its concerns.

3. TCC considered that Mr Cameron had not engaged with it meaningfully and became more concerned about his behaviour towards staff and his professionalism. TCC complained to Engineering New Zealand, and the complaint was investigated.

4. Having considered the matter, following a hearing held in November 2018, the Disciplinary Committee found that the engineering services provided by Mr Cameron between 2015 and 2016 in the examples provided below did not meet the standard to be reasonably expected of a Chartered Professional Engineer. The complaint is upheld.

5. We order that:

    a. Mr Cameron's registration as a Chartered Professional Engineer is removed, and he may not apply for re-registration before the expiry of a two-year period; and

    b. Mr Cameron is to pay $19,000 towards the costs incurred by the Registration Authority in inquiring into Mr Cameron's conduct (approximately 50% of Engineering New Zealand's total costs).

6. In addition to notifying these orders in the register, the Registration Authority will:

    a. notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it; and

    b. publish the Disciplinary Committee's final decision on this complaint on its website, in a public press release and in any other communication it considers appropriate.

7. Mr Cameron's interim name suppression is lifted.

BACKGROUND

COMPLAINT

8. On 2 December 2016, TCC complained to Engineering New Zealand[1] about Bruce Cameron CPEng IntPE(NZ).[2] Mr Cameron is a sole practitioner in Tauranga who was previously the Director of a company called Civil Limited and is currently the Director of a company called The Engineer Limited.

9. TCC's complaint relates to several property developments encompassing many individual houses, all in Tauranga. The concerns relate to work carried out by Mr Cameron in 2015 and 2016.

10. TCC complained that, in Mr Cameron's capacity as a Chartered Professional Engineer, he:

    a. signed and submitted Producer Statements — Design (PS1) without supplying sufficient supporting information;

    b. signed and submitted Producer Statements — Construction (PS4) for building work that did not comply with the relevant requirements of the issued building consent and/or without supplying sufficient information;

    c. provided engineering services that did not meet a reasonable standard, including applying incorrect design assumptions, failing to apply relevant standards, and submitting standard drawings that were inappropriate for the specific site;

    d. misrepresented work as being his own when it had been carried out by another party;

    e. did not act with honesty, objectivity and integrity

    f. behaved unprofessionally, including criticising TCC staff.

11. TCC complained to Engineering New Zealand after multiple attempts to help Mr Cameron better understand its compliance requirements under the Building Act 2004. TCC provided extensive information to support its complaint, including examples covering 33 different properties and statements from TCC staff members and contractors. TCC submitted that the information it provided demonstrates a pattern of professional practice and behaviour by Mr Cameron that must not be permitted to continue.

Jurisdiction

12. TCC also complained that, pursuant to the Institution of Professional Engineers New Zealand Code of Ethical Conduct that applied at the time the engineering activities were carried out, Mr Cameron did not give engineering decisions, recommendations or opinions that were honest, objective and factual. Mr Cameron resigned his membership from Engineering New Zealand on 13 March 2018.

13. TCC submitted that its complaint should also be considered under the Building Act 2004. However, Engineering New Zealand as the Registration Authority does not have jurisdiction to hear complaints under the Building Act 2004.

14. The Disciplinary Committee has therefore considered the complaint under the Chartered Professional Engineers of New Zealand Act 2002 (the Act).

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[1] Then the Institution of Professional Engineers New Zealand Incorporated (IPENZ).

[2] At the time the engineering activities complained about were carried out, Mr Cameron was also a member of IPENZ (MIPENZ).

INVESTIGATING COMMITTEE

15. From its initial investigation, the Investigating Committee decided the information provided did not support the complaint that Mr Cameron intended to represent others' work as his own. However, this aspect of the complaint was not dismissed by the Investigating Committee; instead, it was confirmed by TCC at the hearing that TCC would withdraw this aspect of the complaint.

16. On 14 August 2018, the Investigating Committee referred the matter to a Disciplinary Committee for consideration.

DISCIPLINARY COMMITTEE

17. The Disciplinary Committee heard the matter on 12 and 13 November 2018.

18. The members of the Disciplinary Committee are:

    - Peter McCombs DistFEngNZ CPEng IntPE(NZ) (Chair)
    - Anita Killeen, Barrister
    - Hamish Wilson, nominated by Consumer New Zealand
    - Garry Macdonald FEngNZ
    - Stewart Hobbs FEngNZ CPEng IntPE(NZ)

19. The following parties attended the hearing:

    Complainant

David Fraundorfer	Partner, Holland Beckett Law
Pip Allan	Senior Solicitor, Holland Beckett Law

    TCC staff members and engineers as witnesses

    Respondent

Bruce Cameron CPEng IntPE(NZ)	Director, The Engineer Limited

    Engineering New Zealand

    Engineering New Zealand staff
    Investigating Committee representative
    Expert advisor to the Investigating and Disciplinary Committees: Trevor Robertson CPEng FEngNZ IntPE(NZ)

20. TCC's original complaint included statements from five engineers employed by, or contracted to, TCC, and another staff member. Mr Cameron was provided with a copy of the complaint in February 2017, and on 26 March 2017 he provided a written response.

21. In December 2017, the Investigating Committee conducted interviews with Mr Cameron and staff at TCC.

22. The Investigating Committee engaged Trevor Robertson FEngNZ CPEng IntPE(NZ) to provide Engineering New Zealand with a high-level expert review regarding TCC's complaint. Mr Robertson was not asked to comment on whether Mr Cameron had behaved professionally.

23. Mr Cameron provided the Investigating Committee with comments on Mr Robertson's report on 28 June 2018.

24. Prior to the hearing, all parties were invited to make submissions, and the Disciplinary Committee received submissions from Mr Cameron and the TCC witnesses who appeared at the hearing.

25. All the information gathered has been incorporated into our report below, if relevant.

INFORMATION GATHERED

INTRODUCTION

26. The TCC complaint relates to engineering services performed by Mr Cameron during 2015 and 2016 at 33 properties in Tauranga. TCC's concerns about the properties fall into several main categories, which are set out in paragraph 7 above. The 33 examples were provided in support of those main concerns.

27. The examples TCC provided were not all fully canvassed at the hearing, but they have all been considered and are all set out in this decision report, along with Mr Cameron's responses and comments from the expert advisor, Mr Robertson, where provided.

28. The reason we set out all examples in this report is to make evident the pattern and scale of poor practice identified by the Disciplinary Committee through its hearing of this matter. Some examples highlight more significant shortcomings than others. Some examples, on their own, may seem relatively minor or not at the level requiring a disciplinary response. However, it is the Disciplinary Committee's considered view that, taken together, the examples demonstrate a serious and worrying pattern of poor professional practice, rigour, and attention to quality practice that, cumulatively, are of significant concern to us.

29. We believe that Mr Cameron has not met the standard reasonably to be expected of a professional engineer – in the eyes of the public or the profession.

30. What follows below is a discussion of the 33 individual examples provided by TCC to support its complaint and then a discussion of the main issues and themes. Our discussion and decision are set out in paragraphs 253 to 314.

EXAMPLES

Subdivision A

Address one – timber pole and masonry foundation retaining wall design

31. On 1 March 2016, Mr Cameron submitted a Producer Statement – Design (PS1), [3] handwritten calculations and drawings for concrete masonry retaining wall foundations for address one.[4]

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[3] Producer statements have no statutory status under the Building Act 2004. However, they remain in widespread use and are used for design (PS1) and construction (PS4) purposes to assist Building Consent Authority's (BCAs) to establish compliance with the Building Code and the Building Act. As they have no statutory or formal status, accepting producer statements is discretionary for the BCA. For building consent to be granted, a BCA must be "*satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompany the application*" (section 49(1) of the Building Act 2004. This same test applies when a BCA decides whether to issue a Code Compliance Certificate or Certificate of Acceptance. See further: Engineering New Zealand, Practice Note 1: Guidelines on Producers Statements. **https://www.engineeringnz.org/documents/93/Practice_Note_1_Guidelines_on_Producer_Statements.pdf**

[4] When signing a PS1, the author, usually a Chartered Professional Engineer, is giving their professional opinion, specifically that: "*I believe on reasonable grounds that a) the building, if constructed in accordance with the drawings, specifications and other documents provided or listed in the attached schedule, will comply with the relevant provisions of the Building Code and that b), the persons who have undertaken the design have the necessary competency to do so.*"

32. A TCC engineer reviewed the building consent application. They considered that the design for the retaining wall was too short, in that it came up to the underside of the rib raft foundation not the top of the finished floor level. The TCC engineer was also concerned that Mr Cameron had not considered the downslope in his design, and further, that active soil pressure was taken to the top of the footing, which was incorrect for determining horizontal forces acting on the footing. The TCC engineer stated that the wall had not been checked for the appropriate seismic case and the foundation design and sliding resistance was not consistent with the Ministry of Business, Innovation and Employment (MBIE) Verification Method B1/VM4[5] or limit state design of foundations.[6]

33. A new engineer was engaged by Mr Cameron's client. The new engineer provided new designs that received consent. According to TCC, the new designs demonstrated that the original designs by Mr Cameron significantly underestimated the bearing capacity and footing size.

Address two — retaining wall design

34. On 13 September 2016, Mr Cameron submitted a PS1, along with spreadsheet calculations, for the design of a timber pole retaining wall at address two. A TCC engineer reviewed these documents as part of the building consent process. The TCC engineer considered that Mr Cameron's design did not allow for surcharges from access ways and right of ways.

35. A new engineer was engaged by Mr Cameron's client, and new designs were later supplied, which received consent.

36. Once construction had started, Mr Cameron lodged an amendment (to the consented designs) as the walls built were higher than in the new engineers' design. The TCC engineer stated that the amendment showed the walls were within an easement and they did not allow for surcharge from sloping ground or neighbouring properties.

37. The TCC engineer said that they issued requests for information (RFIs) in respect of Mr Cameron's amendment; however, no further information was supplied and the retaining walls had been constructed without resolution of the RFIs.

Address three — retaining wall design and floor piles

38. Building consent for dwelling and site works was granted for address three based on designs provided by another engineering firm. The plans showed minor fill less than 0.3m thick below one part of the dwelling, that the piles for the dwelling would be in close proximity to TCC services, and that the building line was effectively on the building restriction line.

39. A TCC engineer stated that during construction, building inspectors became concerned that there was approximately 2.5m of fill with steep batters above an existing slope. TCC advised the developer that due to the issues around fill and the building line, an amendment would need to be lodged. The

[5] Ministry of Business, Innovation and Employment (MBIE) Acceptable Solutions and Verifications Methods of New Zealand Building Code Clause B1 Structure. B1/VM4 sets out the verification method for foundations. **https://www.building.govt.nz/assets/Uploads/building-code-compliance/b-stability/b1-structure/asvm/b1-structure-amendment-12.pdf**

[6] A limit state is a condition of a building beyond which it no longer meets defined design criteria. The condition may refer to a degree of loading or other actions on the structure. The criteria refer to provisions that deal with structural integrity, fitness for use, durability, serviceability or other design requirements. Two basic limit states are defined by AS/NZS 1170 Structural design actions – the serviceability limit state (SLS) and the ultimate limit state (ULS). **http://www.seismicresilience.org.nz/topics/resilient-design/earthquake-engineering/limit-state-design/**

developer agreed to have Mr Cameron design a solution that would be peer reviewed by another engineering firm.

40. Mr Cameron submitted an amended foundation pile design on 1 September 2016 including hand-drawn designs along with spreadsheet calculations. The TCC engineer noted that the spreadsheet Mr Cameron was using contained formula errors, including in relation to the passive earth coefficient.

41. On 8 September 2016, TCC issued an RFI that requested Mr Cameron's work be peer reviewed by a Category 1 Geotechnical Engineer[7], including Mr Cameron's inspection and testing records. The RFI noted the following concerns with Mr Cameron's amended design:

    a. timber poles were to be installed where there were existing concrete piles;
    b. the retaining wall design had not accounted for the 1-in-4 toe slope;
    c. concerns about the bearers and joists and the seismic case in combination with earth pressure;
    d. concerns about the location of council services in respect of the piles;
    e. concerns about ground clearance and how level ground would be achieved without placing fill beyond a building restriction line and within an easement;
    f. concerns about the timber floor section covering a limited proportion of the western side of the building; and
    g. concern about how fill would be managed on the boundary with a neighbouring property.

42. The TCC engineer stated that Mr Cameron "failed to appreciate that the site had several issues that made it complex to deal with as each needed to be addressed singularly and holistically. He did not make any attempt to seek clarification from TCC as to what the issues were and if his ideas would be feasible in resolving those issues."

Address four – retaining wall design

43. A Geotechnical Completion Report[8] was carried out for Subdivision A in 2014 and 2015. Three types of geotechnical testing were carried out, including hand auger, drill hole boring and a cone penetration test. These tests indicated there were sandy soils on the property.

44. On 11 December 2015, Mr Cameron signed a PS1 for a retaining wall at address four and also supplied handwritten calculations and supporting information.

45. A TCC engineer reviewed Mr Cameron's design and found that it assumed cohesive soils were present on the property. The TCC engineer did not believe Mr Cameron had reviewed the available

[7] To ensure the risks associated with complex geotechnical hazards are appropriately managed, TCC maintains a register of Accredited Geo-Professionals. A Category 1 Geotechnical Engineer is a "Chartered Professional Engineer or Professional Engineering Geologist who is acknowledged by the Accreditation Panel as possessing the appropriate qualifications, skills, and relevant experience in Tauranga City to provide advice on all geotechnical issues found within Council's area. This category may also include professionals of high national or international standing who, despite not having extensive local experience or having been interviewed by the Accreditation Panel, Council considers to have sufficient technical ability to provide advice on specific ground conditions." (see: **http://idc.tauranga.govt.nz/design-standards/ds-10-natural-hazards-earthworks-/ds-10_7-geo-professional-accreditation-system.aspx**). Mr Cameron is not a Category 1 Geotechnical Engineer.

[8] This is a report that addresses geotechnical engineering aspects of a subdivision development, and that identifies and discusses geotechnical engineering limitations that must be taken into consideration during individual lot development. A Statement of Professional Opinion as to the Suitability of Land for Building Development is usually attached.

geotechnical information nor undertaken his own investigations to support his design. TCC issued an RFI, which was not resolved, and a new design was subsequently supplied by a different engineer.

46. During the interview conducted by the Investigating Committee Mr Cameron said that, in relation to TCC's view that site-specific designs were required, this TCC engineer only did things one way, which required unnecessary investigations. Mr Cameron said he believed his own designs were adequate and appropriate.

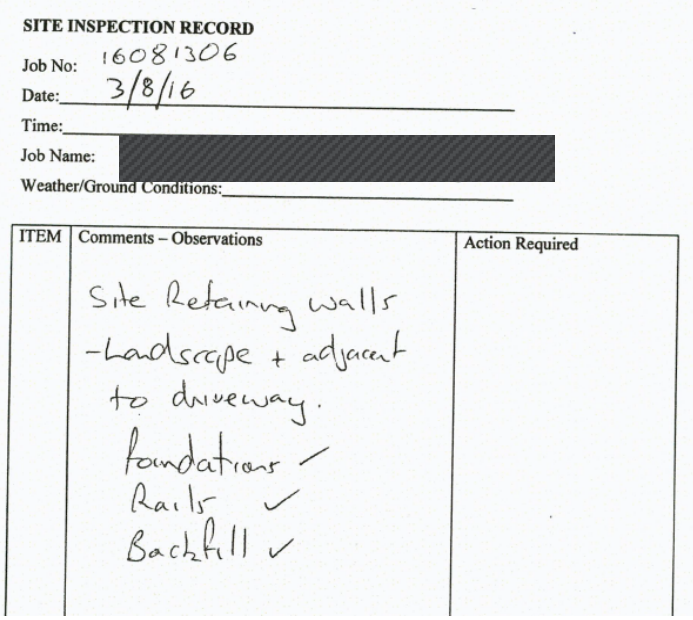
Address five – retaining wall design and construction

47. TCC complained that Mr Cameron allowed building work to be constructed without consent and provided producer statements with no supporting information and no site inspection records. At the hearing, one of the TCC engineers referred to address five as an example of this.

48. On 2 August 2016, a TCC building inspector failed the final inspection at this property because the retaining wall backfill was clay and said it "must be removed or engineer certified".

49. Mr Cameron provided a PS1 and spreadsheet calculations dated 1 August 2016, a site inspection record dated 3 August 2016 and a letter and PS4[9] dated 4 August 2016.

50. The site inspection record contained very little information:



SITE INSPECTION RECORD

Job No: 16081306

Date: 3/8/16

Time:

Job Name: [redacted]

Weather/Ground Conditions:

ITEM	Comments – Observations	Action Required
	Site Retaining walls -Landscape + adjacent to driveway. foundations ✓ Rails ✓ Backfill ✓	

51. The TCC engineer noted that the documents provided by Mr Cameron were dated 3 and 4 August 2016, which was after the building inspector's inspection of 2 August 2016. Because of this discrepancy, the TCC engineer was concerned that Mr Cameron had either inspected the wall after the building inspector had seen it built, or it was not the same wall.

[9] When signing a PS4, the author, usually a Chartered Professional Engineer, is giving their professional opinion, specifically that: "*on the basis of this/these review(s) and information supplied by the contractor during the course of the works and on behalf of the firm undertaking this Construction Review, I believe on reasonable grounds that all/part only of the building works have been completed in accordance with the relevant requirements of the Building Consent and Building Consent Amendments identified above, with respect to Clause(s) [insert] of the Building Code. I also believe on reasonable grounds that the persons who have undertaken this construction review have the necessary competency to do so.*"

52. In response to the failed building inspection, Mr Cameron emailed TCC on 4 August 2016 stating that:

> *Good engineering practice is to cap the surface fill behind a retaining wall with a clay type nature soil to seal off the ingress of surface water from entering the retaining wall backfill* [sic].
>
> *I am happy with the retaining wall backfill to remain.*

53. In response to this, the TCC engineer said, "I agree in part with the clay back fill. It is normal to have a clay cap. It is not normal for the wall to be backfilled entirely with clay or silt."

54. The TCC engineer advised that the information provided by Mr Cameron was not sufficient. He also advised that, because the walls were not on the original building consent for this property, a Certificate of Acceptance (COA)[10] should be applied for. This information was emailed to the property developer. The developer's response (cc'ing in Mr Cameron) began: "…after talking to Bruce Cameron and finding out that [the TCC engineer] isn't even qualified to make these comments".

55. This matter was resolved by another engineer.

Address six – retaining wall design

56. On 4 September 2015, Mr Cameron submitted a building consent application to TCC for this address. On 4 November 2015, a TCC staff member emailed Mr Cameron asking for his calculations as they considered that the proposed retaining wall would be taking a surcharge – because there was a TCC reserve at the rear of the property that sloped down to the retaining wall, imposing a load.[11] Mr Cameron replied the same day, stating that:

> *…the wall does not support ground greater than 1.5m in height and there is no surcharge. I didn't need calculations or even my glasses to see that! The Geotech report actually states that such a batter should be retained because the exposed soils (that **may be** variable ???), **may be** subject to future erosion! As such what is proposed is landscaping in accordance with the Building Act 2004 Schedule 1 and so not subject to this building consent application.* [Emphasis in original].

57. The matter was referred to an engineer contracted by TCC for peer review. On 4 November 2015, Mr Cameron wrote to the engineer:

> *I see* [another TCC employee] *has referred this issue to you, and note that you believe the proposed landscaping wall would be taking a surcharge? Which is contrary to my assessment? While* [another TCC employee] *asked for my evidence to prove a negative statement, such is impossible as it would be like proving I don't have weapons of mass destruction!! (Which by the way it turns out also never existed).*

58. On 11 November 2015, Mr Cameron submitted a PS1 to TCC for the retaining wall and on 17 November 2015 he also provided a design for the retaining wall to TCC. Mr Cameron explained his interpretation of Schedule 1 of the Building Act 2004 as follows:

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[10] An owner cannot apply for building consent if the relevant building work has already been completed but instead must apply to the BCA for a Certificate of Acceptance (COA) (section 17 of the Building Act 2004).

[11] The Building Act 2004 states that building work must have a building consent, except for the list of exemptions in Schedule 1. These exceptions include retaining walls that do not retain more than 1.5m of ground, and do not support any surcharge or any load additional to the load of that ground (for example, the load of vehicles). The exemption does not include sloping ground above the top of the retaining wall. https://www.building.govt.nz/assets/Uploads/projects-and-consents/building-work-consent-not-required-guidance.pdf

The depth of the ground to be supported here, even taking into account the sloping backfill which we all agree exists, is still less than 1.5m. As there is no additional surcharge load, and the retained (even sloping) ground is less than 1.5m depth, then what is proposed meets the Building Act Schedule 1 s 20 requirements, and so is considered exempt works from the Building Act.

59. On 19 November 2015, the TCC consulting engineer replied to Mr Cameron, referring him to the MBIE guidance (Building work that does not require a building consent),[12] which sets out the surcharge angles for different types of soil. He advised that as the bank was sand, it would be subject to a surcharge. The TCC engineer went on to say that he did not agree with Mr Cameron's interpretation of the exemption contained in the Building Act 2004, as set out in Mr Cameron's email of 17 November 2015.

60. Mr Cameron remained of the view that the TCC's assessment that the retaining wall would be supporting a surcharge was incorrect; and on 8 January 2016 he applied to MBIE for a determination on as to whether a building consent would be required. MBIE advised the parties that based on the information received, the wall would be considered to have a surcharge. MBIE requested further information as to the basis on which Mr Cameron believed that the retaining wall did not have a surcharge. Mr Cameron did not provide this information and on 9 May 2016 he withdrew his application for a determination.

61. Mr Robertson commented in his report that "Mr Cameron has argued there is no wall ground slope whereas the photo clearly shows a steep slope".

Address seven – foundation and retaining wall design

62. On 14 June 2016, TCC's building inspector visited address seven. The following day, the building inspector issued a site notice stating that "a copy of the geotechnical investigation [carried out by Mr Cameron] to determine the allowable bearing capacity of the underlying soils was not on site. Confirm suitability prior to pouring concrete". The inspector also failed the site due to the impact of the site works on buildings/neighbours, specifically:

Missing retaining walls – Left and Rear Elevations. At left boundary, the fence and earth is collapsing & eroding creating a unsafe site & your construction activities have damaged & are making the adjacent property unsafe. Install measures effective immediately or further actions may be taken.

63. TCC provided pictures that the building inspector had taken of the impact of the site works on the adjacent property.

64. TCC's building inspector wrote a memo to TCC's Manager (Building Consents), regarding the site inspection, reiterating that Mr Cameron's soils report and PS4 were not on site. The inspector said that during the inspection he had seen Mr Cameron on site carrying a cut-in-half prodding bar that he "witnessed to quickly jab the prod in two separate areas, and once he realized whom I was, Mr Cameron quickly left the site. He did not leave a carbon copy of his findings".

[12] Ministry of Business Innovation and Employment, "Building work that does not require a building consent". https://www.building.govt.nz/assets/Uploads/projects-and-consents/building-work-consent-not-required-guidance.pdf

65. On 15 June 2016, the inspector emailed a copy of his field review report and Site Notice to the property developer. The following day, 16 June 2016, the property developer provided the inspector with documents from Mr Cameron, including a PS4 in respect of foundation ground preparation and construction investigation and certification, along with a site inspection record. These documents were all dated 15 June 2016.

66. On 16 June 2016 Mr Cameron signed a PS1 in respect of an amendment to the timber pole retaining wall and submitted this to TCC with supporting information, including a spreadsheet and drawings.

67. A TCC engineer reviewed the amendment to the building consent. He stated that on the drawings, the retaining wall was shown as cut into a storm water bund. However, when he reviewed the Geotechnical Completion Report for Subdivision A, he found that the bund was described as "a debris protection structure to protect future dwellings downslope of a large steep escarpment". He said that the original consent application "did not include any information that would have suggested a retaining wall was necessary or would be constructed".

68. On 6 July 2016, TCC issued an RFI asking for a Category 1 Geotechnical Engineer to confirm that the retaining wall design did not compromise the protection of the property required from the bund, as the TCC engineer stated he could not see evidence in Mr Cameron's calculations that he had considered the volume of unstable soil and the impact load that the bund/wall would need to absorb. TCC did not receive a response to their RFI, and the wall was built without consent.[13] The TCC engineer advised that a Code of Compliance Certificate (CCC)[14] was being withheld until TCC was satisfied that the dwelling is not at risk of a natural hazard.

69. On 9 November 2016, TCC queried the numbers Mr Cameron had written in the ground report (submitted with the PS4) under the Specific Engineering Design as they were not clear to the TCC engineer reviewing the work and two other engineers. Mr Cameron responded: "Yes, such is a problem when the unnecessary requirement demanded by [a TCC engineer] is not prescribed in any legislation." Mr Cameron then clarified that the numbers related to Scala penetrometer testing results.

70. The TCC engineer stated that the information provided by Mr Cameron was not in line with the requirements of section 3.3 of NZS3604.[15] For example: Mr Cameron's testing was approximately one metre deep (the standard requires two metres); a hand auger was not used (a requirement of NSZ3604); only two locations were tested (the minimum is four); and he did not identify the building foundation types nor levels.

Address eight – Retaining wall design and construction review

71. While a TCC engineer engaged with the property developer for the previous address (address seven), the property developer provided TCC with a PS1, PS4, and handwritten site inspection record all dated 25 July 2016 and signed by Mr Cameron in respect of address eight.

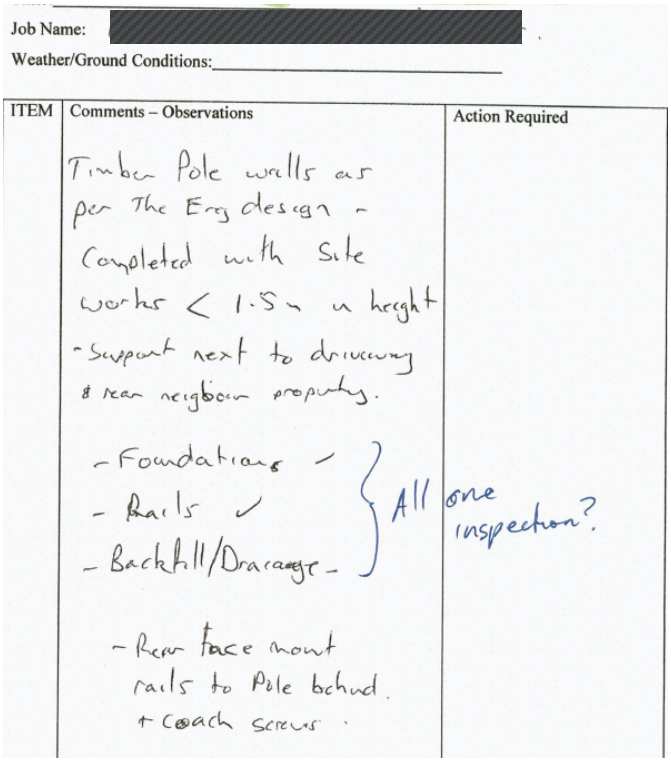
[13] If a building consent has been issued and building work has not been completed in accordance with the consent, a Licensed Building Practitioner (Chartered Professional Engineers are Licensed Building Practitioners (section 291 of the Building Act 2004)) must notify the territorial authority and the owner (section 89 of the Building Act 2004).

[14] Subpart 5, Building Act 2004.

[15] NZS 3604 shows how to construct timber-framed buildings up to a maximum of three storeys where there is "good ground".

72. The TCC engineer said it was unusual for a PS1, PS4 and site inspection record all to have the same date because there would normally be a requirement to order the materials upon receipt of the design.

73. The site inspection record contained very little information:



Job Name: [redacted]

Weather/Ground Conditions:_____

ITEM	Comments – Observations	Action Required
	Timber Pole walls as per The Eng design - Completed with Site works < 1.5m in height - Support next to driveway & rear neighbour property. - Foundations ✓ - Rails ✓ - Backfill/Drainage - } All one inspection? - Rear face mount rails to Pole behind + Coach screws	

74. The TCC engineer stated that it was unusual for foundations, rails and backfill/drainage to be observed in one site inspection as "there is normally an allowance for the concrete to cure before nailing the rails to the posts and backfilling the wall".

75. The TCC engineer stated that the walls were designed with surcharges that were not shown on the approved consent and should also require a COA. Additionally, the walls were adjacent to TCC infrastructure; and no supporting information had been provided to confirm the walls complied with TCC's "Close Proximity: Retaining Wall Restrictions".[16]

Address nine – retaining wall design

76. Mr Cameron submitted a building consent application that was reviewed by another Building Consent Authority (BCA) contracted to TCC.[17] On 26 August 2015, the contracted BCA issued an RFI as the wall was subject to an additional surcharge that was not accounted for in Mr Cameron's original design.

77. On 29 October 2015, Mr Cameron responded to the RFI, stating "I can't see any surcharge" and that the retaining wall did not require a building consent as it was exempt under Schedule 1 of the Building

[16] Tauranga City Council, Infrastructure Development Code, T554, Close Proximity, Retaining Wall Restrictions. https://www.tauranga.govt.nz/Portals/0/data/future/strategic_planning/idc/files/standard_drawings/t500/T554.pdf

[17] TCC outsources some of its consent processing services to other Councils including Porirua City Council.

Act 2004. TCC disagreed with this on the basis that, per the MBIE guidance (Building work that does not require a building consent),[18] the wall was supporting a surcharge.

78. On 4 November 2015, Mr Cameron wrote to TCC:

> *… you obviously have no idea what you are talking about as the concentrated actions of 31kN in AS/NZS1170.1[19] is not applicable to such a design load case for a continuous retaining wall design! Even for such a load case as the 5kPa being medium vehicle traffic areas, this is only applicable for driveways, ramps, vehicle access and car parking, which a berm inside of the footpath can hardly be comparable to !! Even inside your warped imagination!! The only most extreme load case scenario that can be asked under the Building Code is 5kPa, which the design has already been undertaken to. … you really are showing that you have no technical competence and refusal to issue the building consent on this basis goes to the negligence of Council. Either issue the building consent or advise where in the legislation you can require the design with a 10kPA live load. … over a week ago I asked you for the Council complaints procedure as a BCA. When can I expect a response as the list of incompetent actions by this group of Council is growing on a daily basis?*

79. On 10 November 2015, a TCC Building Consents Manager visited the site to discuss the retaining wall as Mr Cameron and the TCC contractor could not agree on the surcharge issue. The TCC Manager stated that Mr Cameron made unhelpful comments, such as "should I design the house for a spaceship to land on the roof?". The disagreement could not be resolved, and the TCC Manager engaged an independent engineer to review the design. TCC advised that the RFI was then closed.

80. On 8 January 2016, Mr Cameron applied to MBIE for a determination as to whether building consent was required for the wall. MBIE wrote to Mr Cameron requesting further information and stated, "on the basis of the information received, the wall would be considered to have a surcharge." Mr Cameron did not respond to the request for information from MBIE and on 19 May 2016 withdrew his application for a determination.

Address 10 – retaining wall design

81. Mr Cameron designed a retaining wall for this address. In respect of this design, a TCC engineer said that:

> *a surcharge from the dwelling on the retaining wall was not calculated by Bruce Cameron, and when the issue was raised by TCC's building inspector, Bruce Cameron stated there was no surcharge on the retaining wall and the wall was exempt under Schedule One of the Building Act 2004, which TCC deemed it was not. TCC asked Bruce Cameron to provide calculations and supporting evidence to prove it wasn't taking a surcharge.*

82. On 26 August 2015, TCC issued an RFI in relation to the building consent documentation for this property as it considered that the retaining wall was subject to a surcharge and required Specific Engineering Design. TCC also required safety barrier details for the retaining wall.

[18] Ministry of Business Innovation and Employment, "Building Work that does not require a building consent". https://www.building.govt.nz/assets/Uploads/projects-and-consents/building-work-consent-not-required-guidance.pdf

[19] AS/NZS1170.1 is a publication by Standards New Zealand, regarding Structural design actions.

83. On 29 October 2015, Mr Cameron emailed TCC and said, "I can't see any surcharge, just the retained ground which is less than 1.5m supported by the landscaping retaining wall in accordance with schedule 1 of the Building Act!"

84. On 14 December 2015, the TCC engineer wrote to Mr Cameron asking for him to, in future, provide supporting information for PS1s and PS4s in a timely manner. The TCC engineer also directed Mr Cameron to IPENZ guidance on Producer Statements.

85. On 8 January 2016, Mr Cameron applied to MBIE for a determination as to whether building consent was required for the wall. MBIE wrote to Mr Cameron and asked him on what basis he believed that the retaining wall did not have a surcharge. Mr Cameron did not respond to the request for information from MBIE and on 19 May 2016 withdrew his application for a determination.

Address 11 – foundation design

86. On 27 October 2015, TCC carried out a site inspection at this address. TCC failed the inspection due to soft ground being found on site. TCC wrote to Mr Cameron on 29 October 2015 and said that the site was firm except for an area that it deemed required further investigation. It asked Mr Cameron to provide his findings and professional opinion. Mr Cameron provided a site inspection record on the same day, and a PS4. The site inspection record (dated 27 October 2015) stated: "good ground check…no one can figure out why [TCC's inspector] could not determine this for himself! & required an engineering inspection."

87. On 30 October 2015 Mr Cameron wrote to TCC to advise that he could not find any soft ground. TCC responded the same day asking for a PS1 with supporting information and stated that it reserved the right to peer review his work. Mr Cameron responded, "are you threatening me?"

88. On 2 November 2015, Mr Cameron provided foundation certification for the proposed building site to TCC and further stated: "Please advise if you intend to follow through with your threat to cause further unnecessary delay and cost by requiring a peer review?"

89. On 10 November 2015, Mr Cameron supplied the ground shear strength test and information to support the PS4 he had previously issued, and TCC issued a Code Compliance Certificate (CCC).[20] TCC states that this matter took a lot of time and unnecessary argument with Mr Cameron to resolve.

90. On 8 January 2016, Mr Cameron applied to MBIE to have this matter determined on the basis that "Council required specific engineer testing of the formed foundation platform is more restrictive than the requirements of the Building Code and references New Zealand Standards".

91. On 18 January 2016, MBIE asked for further information from Mr Cameron, including plans for the consented work, the geotechnical report, details of the site work for, and design of, the foundations. Mr Cameron did not provide this information and on 9 May 2016 withdrew his application for a determination.

[20] A code compliance certificate is a formal statement issued under section 95 of the Building Act 2004, that building work carried out under a building consent complies with that building consent. https://www.building.govt.nz/building-officials/guides-for-building-officials/code-compliance-certificates-cccs/downloadpdf#:~:text=A%20code%20compliance%20certificate%20is,complies%20with%20that%20building%20consent.&text=Building%20consent%20authorities%20need%20to,manage%20issuing%20code%20compliance%20certificates.

Subdivision B

Addresses 12 and 13 — foundation and retaining wall design

92. At the hearing, a TCC engineer gave evidence that on several occasions Mr Cameron's designs have not fitted with the existing and final landform without significant modification of these during the building work. The TCC engineer considered address 12 to be an example of this.

93. A Statement of Professional Opinion as to the Geotechnical Suitability of Land for Subdivision had been completed in respect of Subdivision B (by a different engineering firm). This showed there was possible local soft zone within ash soil.

94. Building consents were issued for addresses 12 and 13. These properties are next to each other on a steep hill. The consents included foundations and timber pole retaining walls designed by Mr Cameron. The proposal was for a new retaining wall to be built above an existing retaining subdivision wall (Mr Cameron designed the new retaining wall only).

95. On 21 October 2015, Mr Cameron completed a PS4 for building foundation ground preparation, construction investigation and certification for address 13. On 25 January 2016, Mr Cameron provided a PS4 for site retaining walls, foundation, drainage and backfill construction inspection and certification for address 12. On 22 February 2016 he issued a PS4 for site timber pole retaining walls also for address 13.

96. On 24 February 2016, while inspecting a neighbouring property, a TCC engineer noticed issues with the retaining walls at addresses 12 and 13. The TCC engineer raised his concerns with TCC, reviewed the consents and undertook a site visit. It appeared to the TCC engineer that the walls were not built in accordance with the approved plans regarding location or design. The TCC engineer said the design appeared to be for a flat site, yet there was a 20-degree slope between the upper and lower retaining walls. The slope was not accounted for in Mr Cameron's design and his calculations did not allow for a surcharge between the upper and the lower walls. The TCC engineer also raised concerns about the construction of some of the retaining walls on site.

97. Another TCC engineer stated that Mr Cameron had an obligation under section 89 of the Building Act 2004 to inform TCC and the owner that the work carried out at address 12 was not in accordance with the building consent, and that signing a PS4 was not honest, objective nor factual.

98. TCC raised questions with Mr Cameron in relation to both consents about the as-built wall details and calculations, as well as for confirmation of ground conditions and inspection records. According to TCC, Mr Cameron continually resubmitted the same designs in response to the RFIs. TCC also said that unsuccessful attempts were made to get Mr Cameron to meet with them to address outstanding issues.

99. The property developer engaged another engineering company to resolve TCC's queries and requested a meeting with TCC. This new engineering consultancy carried out physical investigations of the wall construction, ground conditions, and undertook their own calculations. Several issues were identified, including that extensive fill had been placed between the two sites and that there was no record of the site preparation. Remedial work was recommended, and this was overseen by the new engineering company.

100. TCC said that prior to issuing CCC, they had requested Mr Cameron's records for the site works. A TCC engineer said: "very basic records were furnished that did not address the suitability of the subgrade for large fills, or test compaction for the fill thickness of the fill." The same TCC engineer stated that while TCC was awaiting the information for address 12, a section of the upper retaining wall collapsed. They said:

> *the backfill behind the wall was poor quality fill, primarily silty. Some bricks were present however it was not known if they were on the surface at the time of collapse. There was no free-draining aggregate and the rails did not span multiple poles as specified on Mr Cameron's design.*

101. TCC provided photographs of these retaining walls, including a collapsed portion of wall below address 12:

102. In response, Mr Cameron said the collapse was due to excavations in front of the wall, not due to his design or sign-off. In his submissions to the Disciplinary Committee, he said a drainlayer excavated the backfill behind the retaining wall and backfilled it with poor quality backfill after he had inspected and certified the wall.

Suburb I

Address 14 – retaining wall design

103. On 15 December 2015, Mr Cameron signed a PS1 for a surcharged timber pole retaining wall for address 14. TCC issued an RFI requesting that a Category 1 Geotechnical Engineer review the designs.

104. The review was carried out and recommended larger diameter poles and deeper embedment for the wall in the cut than Mr Cameron's design. The reviewer also recommended that additional poles be installed to strengthen the walls.

Address 15 – building platform

105. Address 15 relates to Mr Cameron certifying a building platform constructed at the property. TCC issued an RFI to request a Category 1 Geotechnical Engineer review the work as the property had been tagged as having peat deposits.

106. A TCC engineer was asked to review Mr Cameron's response to the RFI. Mr Cameron had provided a Statement of Professional Opinion as to the Geotechnical Suitability of Land for Building to his client. This document stated an appropriate level of site investigation had been carried out, and that:

> *The filled ground was suitable for the erection of suitable buildings not requiring specific design in terms of NZS 3604: 2011*[21] *and related documents;* [and]
>
> *The original ground not affected by filling is suitable for the erection thereon of residential buildings not requiring specific design in terms of NZS 3604: 2011*[22] *and related documents.*

107. Mr Cameron also attached the results of Scala penetrometer testing he had carried out. The TCC engineer reviewing this work stated that Mr Cameron had not provided any information on the subgrade or records of site preparation and:

> *…it was not clear from the testing as to the depth of the fill or if* [Mr Cameron] *had tested the entire depth of the fill. He also struck out 'construction supervision' on his certification certificate and marked two items as not applicable without further explanation. He also certified the ground not affected by fill as suitable for foundations in accordance with NZS3604 without supporting documentation.*

108. The TCC engineer issued a further RFI requesting a Category 1 Geotechnical Engineer to approve the building platform. Mr Cameron engaged a Category 1 Geotechnical Engineer, whom the TCC engineer said provided reasonable grounds to accept that the fill compaction and site preparation was adequate. However, the engineer engaged by Mr Cameron was concerned about the gradient of the batters and proximity of the batters to the proposed foundations, issues that were not considered in Mr Cameron's original letter.

Subdivision C

Generic retaining wall design

109. A TCC engineer raised concerns in relation to the designs and calculations submitted by Mr Cameron as part of building consent applications for several sites within the Subdivision C property development, including that there was no design features report, and the design calculations were a generic photocopy ("the generic design") with no appreciation for the variability of on-site conditions.

110. The TCC engineer stated that the generic design used adopted an undrained shear strength of 75kPa, except for the highest wall (two metres), where Mr Cameron increased the undrained shear strength to 100kPa, which was not supported by any ground investigation or explanation.

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[21] NZS 3604 Timber-framed buildings is published by Standards New Zealand. It is referenced, with some modifications, as an Acceptable Solution for Building Code clause B1 Structure. On-site building consent requirements of the BCA take precedence over the guidance in NZS 3604 (standard 1).

[22] Standard 3.1.1 of NZS3604 states that: "If a site does not comply with the definition of good ground, the foundations shall be the subject to Specific Engineering Design (SED) and Investigation as appropriate."

111. The TCC engineer further stated that the generic design calculation to determine the pole diameter was correct, but the answer was incorrect. The TCC engineer stated that when he queried this, Mr Cameron's response to RFIs was that the answer was correct. The TCC engineer further stated that, after some time, Mr Cameron stated that the poles allowed for taper.

112. The TCC engineer also stated that there was no consideration for seismic actions in the generic design. The TCC engineer said that they considered that this was "less than the requirements of the Building Code based on clause B1.2[23] and B1.3.3[24] of the Building Code". They also considered the rail design did not comply with the Building Code and that deficiencies in the documentation provided by Mr Cameron included:

> *No requirement to end treat timber cuts, poorly defined drainage requirements, lack of drainage filter, not specifying that the design relied on the poles having a taper, not specifying the strength grades of timbers, not outlining the hold points for inspection.*

113. On this basis, the TCC engineer concluded that there were no reasonable grounds to conclude that the retaining wall, if built, would comply with the Building Code.

114. At the hearing, Mr Cameron stated that he created "cookie cutter designs" that once developed, could be rolled out time and time again so that he could get the designs out quickly and efficiently.

Address 16 – retaining wall design

115. Mr Cameron signed a PS1 for this address on 6 August 2015. TCC said the initial engineering drawings submitted as part of the building consent application for this property were the generic designs Mr Cameron used across the Subdivision C development. In addition, Mr Cameron's design failed to account for geotechnical report findings that had previously been issued for the development. TCC sent Mr Cameron's client an RFI requesting a site-specific design.

116. Mr Cameron provided reviewed designs and calculations, together with a new PS1 dated 27 November 2015. The retaining walls were then built prior to consent being issued.

117. On 23 December 2015, Mr Cameron submitted a PS4 for the retaining walls, without supporting information. TCC did not accept this due to the lack of supporting information.

118. A TCC engineer stated that by issuing the PS4 without building consent being granted, Mr Cameron was neither honest, objective, nor factual, because signing a PS4 requires a Chartered Professional Engineer to confirm that the work was built in accordance with the building consent. In this case, that was not possible as no building consent had been issued. TCC requested that a COA be applied for.

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[23] B1.3.1 of the Building Code states that "Buildings, building elements and sitework shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during construction or alteration and throughout their lives."

[24] Bi.3.3 of the Building Code states that: "Account shall be taken of all physical conditions likely to affect the stability of buildings, building elements and sitework, including: (a) self-weight, (b) imposed gravity loads arising from use, (c) temperature, (d) earth pressure, (e) water and other liquids, (f) earthquake, (g) snow, (h) wind, (i) fire, (j) impact, (l) reversing or fluctuating effects, (m) differential movement, (n) vegetation, (o) adverse effects due to insufficient separation from other buildings, (p) influence of equipment, services, non-structural elements and contents, (q) time dependent effects including creep and shrinkage, and (r) removal of support."

119. Mr Cameron's client made an application for a COA. However, a TCC engineer said that during a TCC site inspection in February 2016, it was noted that a cut had been made below the retaining wall, exposing the wall's concrete encasement. The TCC engineer advised that it was clear that the retaining walls had not been installed correctly. TCC did not issue a COA.

120. On 12 February 2016, TCC issued an RFI requesting calculations for the (as-built) retaining wall. TCC said Mr Cameron continued to resubmit the same information.

121. Another engineering company was eventually engaged by the developer to resolve the RFIs. In May 2016, the new engineer completed an as-built construction review. A TCC engineer stated that:

> *As part of the review* [the new engineering company's] *staff had measured retaining wall details and excavated adjacent to selected poles to verify the depth of embedment.*
>
> *A table was provided that compared Mr Cameron's design to their design and the as-built details. Not only was Mr Cameron's design less than that produced by* [the new engineer]*, the pole sizes and embedment measured by* [the new engineer] *were less than that specified in Mr Cameron's design. I consider that the information referred to in Mr Cameron's PS4 was not factually correct.*

122. The new engineer's review concluded that a new wall or strengthening was required, and this was subsequently undertaken.

123. Mr Robertson's view was that TCC was right to reject the PS1 and PS4 for this property because of miscalculations and a lack of supporting documentation. In his report, he stated:

> *It is quite common and appropriate in a retrospective situation such as this for a TA* [Territorial Authority] *to require substantial supporting information, as the TA has been denied the opportunity to carry out its own inspections, yet it is the body that ultimately must make the decision as to whether the construction is adequate and acceptable. Further, Council did visit the site to view the finished product and found that the wall elements it could see differed from the submitted design. Council therefore lacked confidence that the PS4 adequately represented the essential parts of the construction that could not be seen i.e. the foundations.*

Address 17 – retaining wall and foundation design

124. On 15 November 2015, Mr Cameron issued a PS1 for this address along with supporting evidence for a timber pole retaining wall design. TCC stated that this design was the generic design referred to above, and TCC issued an RFI seeking clarification.

125. Mr Cameron engaged a second engineer to peer review his retaining wall design and on 2 February 2016 they completed their report. The peer reviewer concluded that Mr Cameron's retaining wall "is considered to be appropriate for the proposed wall alignment".

126. A TCC engineer stated that they were not sure whether the second engineer was endorsing the design by Mr Cameron or not. The second engineer advised the TCC engineer that he had prepared a design and package to show Mr Cameron what he needed to do to resolve the RFI.

127. On 12 February 2016, Mr Cameron signed a PS1 for a foundation design. A TCC engineer said that they reviewed Mr Cameron's calculations and identified that Mr Cameron had not changed his calculations but had "simply changed the wall requirements to match the calculations by [the second engineer]".

128. The TCC engineer advised that Mr Cameron's PS1 could not be accepted as it was the second engineer's design. The second engineer issued a PS1 for the retaining wall design at the property and consent was issued by TCC.

129. In Mr Robertson's evaluation of this matter, he commented that Mr Cameron's calculations for this retaining wall were incorrect. He said that although the error was just a simple arithmetic error, "it is symptomatic of the standard of calculations presented".

Address 18 – retaining wall design

130. On 28 April 2016, Mr Cameron submitted what TCC described as the same generic design for retaining walls and a PS1 at this address. A TCC engineer said they could not see any evidence that Mr Cameron had had his work independently checked, and there were errors in the spreadsheet. TCC stated that because of these errors the wall was under-designed, and they issued an RFI on 3 May 2016.

131. On 8 May 2016, Mr Cameron responded to the RFI and submitted another PS1 with supporting documentation to TCC. TCC reviewed the information and considered there were some outstanding issues. It sent Mr Cameron's client another RFI on 12 May 2016.

132. Mr Cameron wrote a letter to his client responding to the RFI on the same day. In respect of TCC's questions that related the pole design, he said: "To appease those ignorant of the real world, the pole design has been changed to accommodate." In respect of the TCC's queries regarding a barrier to protect from falling at the top of the wall, he stated: "What a joke! As someone with a little bit of authority and lots of stupidity thinks a barrier is required to meet F4, then install a barrier as a monument to such incompetence!" Mr Cameron's client sent Mr Cameron's response to TCC.

133. After receiving this letter from Mr Cameron, TCC stopped work on this matter as they considered it to be threatening and abusive. Mr Cameron emailed TCC the following day apologising and asking whether they would consider what triggered his frustration and look into breaches of the Building Act 2004. At the hearing, Mr Cameron agreed that his comments were unprofessional. He said that at the time he was frustrated. He went on to say that the letter and his comments were addressed to his client, and it was never his intention that they would be provided to TCC.

134. On 17 May 2016, TCC sent Mr Cameron's client another RFI. On 23 May 2016, Mr Cameron responded with another copy of the proposed wall design and a new set of calculations. TCC sent Mr Cameron's client another RFI regarding the rail design and he responded the same day.

135. TCC said that eventually a design was submitted with all calculations correct and details consistent with the design.

Address 19 – retaining wall design

136. TCC stated that this example relates to a proposal to construct a new timber pole retaining wall below an existing retaining wall, with the new wall being designed by Mr Cameron. A TCC engineer stated that Mr Cameron had "allowed a small amount of additional height in his design. However, it was not clear how he had evaluated the additional height and it seemed insufficient". The TCC engineer said that he was not aware of any design methodology that provided guidance in this situation. However, it was their opinion that Mr Cameron's approach was not clear and would result in a design with less stress than the other approaches they had seen. In this example, much of the correspondence was between TCC, the architect and developer of this property.

137. On 24 May 2016, TCC issued an RFI querying the elevations of the retaining wall, requesting a cross section of the retaining wall, geometric design case, further information relating to the existing retaining wall and how they relate to the geotechnical completion report requirements.

138. On 27 May 2016, Mr Cameron submitted a PS1 for the property, along with supporting information. On 1 June 2016, TCC issued a further RFI in respect of the elevations of the retaining walls, a cross section of the retaining walls and amended calculations.

139. On 15 June 2016, TCC issued a further RFI in respect of the cross section of the retaining walls and amended calculations. It also asked Mr Cameron not to resubmit information that was irrelevant, as the most recent set of documents submitted included calculations for walls that had been removed from the plans.

140. On 16 June 2016, Mr Cameron issued a further PS1, with supporting information. This PS1 was not signed by Mr Cameron. The TCC engineer said that they did not accept Mr Cameron's new calculations as there was insufficient room between the top of the batter and the dwelling. The TCC engineer also said that the documents included conflicting plans. TCC emailed the architect the same day advising that the calculations included details for a wall that had been removed from the plans, and the batter shown in the information from Mr Cameron was not suitable and a retaining wall was needed.

141. On 21 June 2016, Mr Cameron issued a further PS1, with supporting information. On 22 June 2016, TCC asked further questions and requested further information. On 30 June 2016, the architect provided further information and advised that Mr Cameron had confirmed his latest retaining wall design met MBIE guidelines.

142. On 1 July 2016 and 5 July 2016, TCC issued further RFIs as the matter had still not been resolved. It suggested a peer review be undertaken to resolve the matter.

143. On 9 July 2016, Mr Cameron issued a further PS1, with supporting information. On 13 July 2016, TCC advised the developer that it was still not able to issue a consent. It stated:

> *It is all minor detailing things, however Bruce needs to be looking at all the documentation properly before signing them. I shouldn't be picking up a lot of these errors.*

144. Building consent was eventually issued on 20 July 2016. However, a TCC engineer said that Mr Cameron signed several versions of the plans that either "did not comply with the Geotechnical completion Report, or undermined the foundations of an existing retaining wall, or contained incorrect information about the pre-existing site conditions".

Address 20 – retaining wall design

145. On 23 June 2016, Mr Cameron submitted a PS1 for a timber pole retaining wall, with supporting information. The retaining wall had been built without consent and required a COA.

146. A TCC engineer said that they reviewed the application and found that there was no summary outlining what had occurred at the site and what inspections had been undertaken. In addition, they considered that the set of calculations provided by Mr Cameron did not match the visible construction details of the wall. TCC's building inspector had measured the pole sizes (145mm), and these were found to be significantly smaller than what was shown on the design drawings (200mm), and no information regarding the verification of the non-visible parts of the wall had been provided.

147. On 29 July 2016, a TCC engineer sent an RFI to Mr Cameron, but the matter was not resolved while they were working at TCC.

Subdivision D

Address 21 – RibRaft foundation design

148. On 24 July 2006, a Category 1 Geotechnical Engineer prepared a statement of professional opinion as to the geotechnical suitability of the Subdivision D. It stated that an investigation was to be undertaken by a Category 2 Geotechnical Engineer by each lot owner when the intended building location on the lot is established. [25]

149. On 27 February 2016, Mr Cameron submitted a PS1 for the design of a RibRaft[26] foundation floor at this address. TCC said that they did not accept Mr Cameron's design as there had not been an additional site investigation by a Category 2 Geotechnical Engineer. There was also no specification for the site works required to form a building platform. TCC issued an RFI.

150. A Category 2 Geotechnical Engineer prepared and submitted a report to TCC. The report noted that variable ground conditions were encountered at the site, and these ground conditions do not constitute 'good ground' as defined in NZS3604. It recommended that soft to firm silt within the top one metre should be removed and replaced with hardfill, to be monitored by a geotechnical engineer. Further, that a Chartered Professional Engineer would need to specifically design a RibRaft type foundation beneath the southwest wing of the house, and that this would need to be designed to span over a 4m x 4m void internally and the edge to cantilever two metres at the corners.

151. Mr Cameron provided a new foundation design. A TCC engineer stated that although the new design allowed for a four-metre span and two metre cantilever, he identified that the gravity and live load factors were less than the required standard. In response to this, Mr Cameron provided TCC with correspondence with Firth stating his design was in accordance with how they design their TC2 floors for the purposes of the technical guidance for the Canterbury earthquake repair and rebuild.[27]

152. A TCC engineer advised Mr Cameron that this was not an earthquake situation, and he eventually changed his design.

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[25] To ensure the risks associated with complex geotechnical hazards are appropriately managed, TCC maintains a register of Accredited Geo-Professionals. A Category 2 Geotechnical Engineer is a "A Chartered Professional Engineer or Professional Engineering Geologist who is acknowledged by the Accreditation Panel as possessing the appropriate qualifications, skills and relevant experience in Tauranga City to provide advice on a limited number of less complex geotechnical issues found in the Council area. Mr Cameron is not a Category 2 Geotechnical Engineer (see: **http://idc.tauranga.govt.nz/design-standards/ds-10-natural-hazards-earthworks-/ds-10-appendix-c-geo-professional-accreditation-sy.aspx**)

[26] RibRaft foundations are a pod system foundation product sold by Firth. See further: **http://www.firth.co.nz/residential/foundations/ribraft/**

[27] TC2 is defined in the MBIE Technical Guidance TC2: Liquefaction damage is possible in future large earthquakes. Once the TC is confirmed, shallow geotechnical investigations may be required (depending on the degree of damage, and in particular for a rebuild) and, subject to establishing minimum bearing capacities, suspended timber floor or enhanced slab foundation options per section 5 can be used. (see: Ministry of Business, Innovation and Employment, Canterbury Guidance Part A **https://www.building.govt.nz/assets/Uploads/building-code-compliance/canterbury-rebuild/repairing-and-rebuilding-houses/canterbury-guidance-part-a.pdf**)

Suburb II

Address 22 — retaining wall and foundation design

153. On 14 November 2015, Mr Cameron produced a PS1 and calculations for a retaining wall and building foundations. A TCC engineer said in this case the retaining walls were proposed above and below existing retaining walls, and there were also TCC services running through the site. However, they said this information was not apparent from Mr Cameron's design documentation and in the TCC engineer's opinion Mr Cameron had not considered them.

154. The TCC engineer also stated that these designs were similar to the generic Subdivision C design and did not include a reasonable design features report. In addition, they were based on an assumed ground bearing capacity of 300kPa. On 17 December 2016, TCC queried the basis for the ground bearing capacity referred to, raised other queries about the design of the retaining walls and requested they be reviewed by a Category 1 Geotechnical Engineer.

155. On 24 January 2016, the plans were resubmitted by Mr Cameron, together with a PS1. TCC considered its questions had not been addressed. The architect later engaged another engineer, and revised plans and a geotechnical report were submitted, which resolved TCC's concerns.

Address 23 — deck balustrade

156. Mr Cameron produced a PS1 for a deck balustrade, dated 23 June 2015.

157. This design was referred by TCC to a consulting engineer for TCC, for design review. On 1 December 2015, the TCC consulting engineer advised that the design did not meet the Building Code due to calculations and assumptions that were incorrect. The TCC engineer believed that the design was a generic design and that other balustrades may have been constructed using the same design.

158. The TCC engineer said they were contacted by the project architect advising that Mr Cameron would not redesign the balustrade. The TCC engineer suggested that they redesign using a standard detail that did not require engineering input. This was done and accepted by TCC.

159. In his advice to the Investigating Committee, Mr Robertson considered the balustrade design contained errors, which he said were "so fundamental, going to the very core of structural analysis, that they raise significant concerns with me about the standard of Mr Cameron's competence". Mr Robertson identified four errors in the single page of calculations for the balustrade:

- incorrect code load selected
- no load factor applied to top-rail load
- incorrect lever-arm used to calculate the fixing bolt shear load, and
- permissible bolt edge-distance calculated incorrectly.

160. Mr Robertson said these errors, when combined, resulted in a bolt load only 25 percent of what it should have been, and then applied that bolt load at an unacceptable edge distance.

Suburb III

Address 24 – Retaining wall design

161. At the hearing, TCC stated that Mr Cameron appeared to have no desire to include surcharges or toe slopes in his retaining wall designs, they referred to address 24 as an example of this.

162. On 5 December 2015, Mr Cameron produced a PS1 for the design of a retaining wall. On 22 December 2015, TCC issued an RFI and asked that the plan be reviewed by a Category 1 Geotechnical Engineer. In response to this, Mr Cameron asked another engineer to complete a plan review of his design.

163. On 15 January 2016, another engineer provided a Statement of Professional Opinion that commented that the proposed development plans were "considered to be in accordance with existing geotechnical requirements". They further stated: "the proposed development would require additional geotechnical inputs prior to building construction, including observations of the foundations during construction to ensure the ground conditions and bearing capacities were to be expected."

164. TCC sent Mr Cameron an RFI requesting more information on the design, namely: whether the 1m berm was sufficient to encompass the passive earth pressure wedge; whether the poles were deep enough to satisfy global stability of the slope; and whether there had been allowance made for a surcharge and the compliance of the proposed barrier fence.

165. Mr Cameron engaged the same engineer to peer review his design.

166. The peer reviewer completed their peer review on 15 July 2016. The peer reviewer stated that the passive wedge below the down slope retaining wall was insufficient for full passive capacity to develop for the wall. They recommended that the wall be reduced in height. However, at the time the work was being peer reviewed, the wall had already been constructed without consent.

167. A TCC engineer contacted Mr Cameron advising him that as the wall had been built, a COA would now be required. TCC issued an RFI against the COA and requested: that the recommendations of the peer reviewer's report be implemented; and the inspecting engineer's PS4, site notes and summary for the foundations and retaining wall inspections.

Address 25 – soakage system

168. A TCC engineer reviewed the soakage system proposed by Mr Cameron at this property, including Mr Cameron's soakage test. Mr Cameron said that the testing was done in accordance with E1/VM1.[28]

169. Field testing in accordance with E1/VM1[29] requires the tester to:

    a. Bore test holds of 100mm to 150mm diameter to the depth of the proposed soak pit. If ground water is encountered in the bore test hole.

[28] E1/VM1 is set out in the MBIE Acceptable Solutions and Verification Methods for New Zealand Building Code Clause E1 Surface Water. Paragraph 9.0.1 of E1/VM1 states that: *Where the collected surface water is to be discharged to a soak pit, the suitability of the natural ground to receive and dispose of the water without causing damage or nuisance to neighbouring property, shall be demonstrated to the satisfaction of the* territorial authority. (Emphasis in original). (see: **https://www.building.govt.nz/assets/Uploads/building-code-compliance/e-moisture/e1-surface-water/asvm/e1-surface-water-1st-edition-amendment10.pdf**)

[29] Paragraph 9.0.2 of E1/VM1.

b. Fill the hole with water and maintain for at least four hours, (unless the soakage is so great that the hole completely drains in a short time).

c. Fill the hole with water to within 750 mm of ground level, and record the drop in water level against time, at intervals of no greater than 30 minutes, until the hole is almost empty, or over four hours, whichever is the shortest.

d. Plot the drop in water level against time on a graph, and the soakage rate in mm/hr is determined from the minimum slope of the curve. If there is a marked decrease in soakage rate as the hole becomes nearly empty, the lower rates may be discarded and the value closer to the average can be adopted.

170. TCC said that Mr Cameron cited compliance with E1/VM1 in his documents and producer statements but departed from them significantly. For example, he stated that E1/VM1 requires the test hole to drain completely, or to be draining for at least four hours, and for the minimum slope on the graph to be used to determine the soakage rate. Mr Cameron had terminated the testing while the hole was one third full and an average was used. Not draining the hole completely and obtaining the lowest rates resulted in Mr Cameron using a high rate, resulting in unconservative design.

171. Another TCC engineer reviewed Mr Cameron's design and concluded that it was inadequate. The TCC engineer redesigned the system.

Suburb IV

Address 26 – retaining wall and reinforced concrete floor slab design

172. At the hearing, TCC gave evidence that Mr Cameron has undertaken the design of retaining walls without site investigation or review of geotechnical reports. TCC referred to this address as an example.

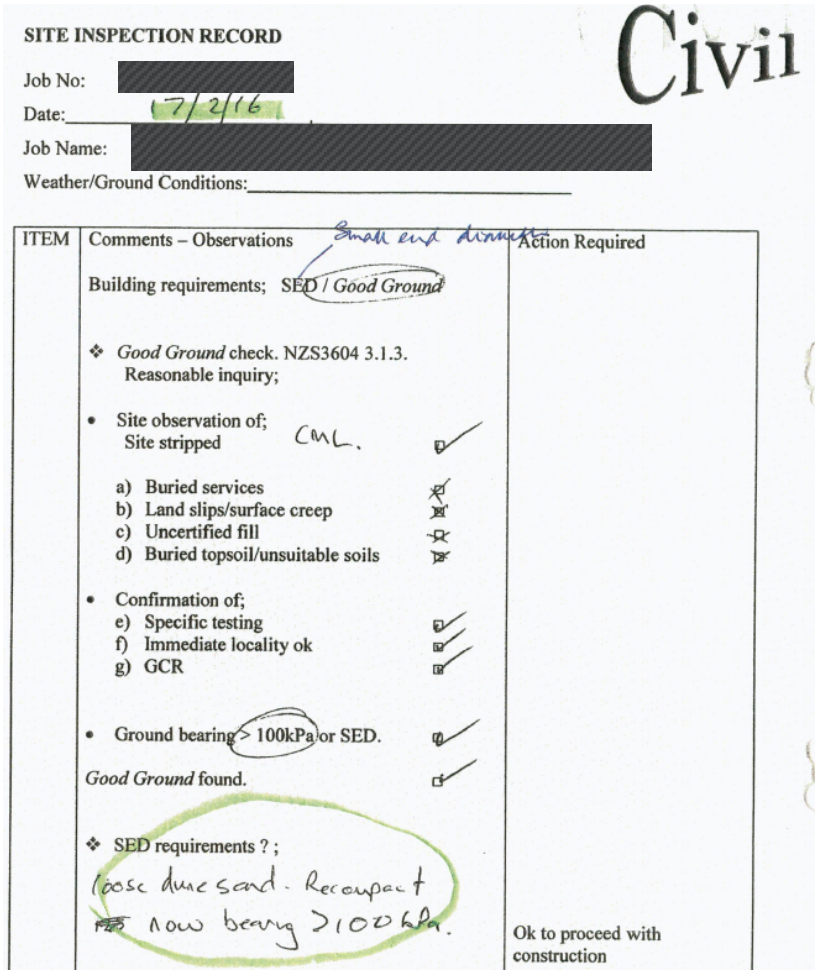
173. On 16 June 2015, Mr Cameron submitted a PS1 and supporting information for a retaining wall design at this property. A TCC engineer reviewed this work and found that the inspection record Mr Cameron had sent through said the wall was founded on dune sands. However, the PS1 design had adopted parameters that are associated with stiff clay (undrained shear strength of 85kPa).

174. On 17 February 2016, Mr Cameron submitted a PS4 for the retaining wall with one site inspection record of the same date, which also contained minimal information. It stated the ground bearing was 100kPa.

175. TCC requested further information in respect of the retaining wall, including a summary of the inspections undertaken, what was inspected, a plan showing the wall locations and that the maximum as-built heights are in accordance with the heights on the approved consent plans.

176. In respect of the ground check, TCC requested inspection records and a site plan showing where the testing took place.

177. Mr Cameron resubmitted the PS4 for the foundation ground preparation with some changes, and the same site inspection record:



SITE INSPECTION RECORD

Civil

Job No: [redacted]

Date: 17/2/16

Job Name: [redacted]

Weather/Ground Conditions:

ITEM	Comments – Observations	Action Required
	Small end diameter Building requirements; SED / *Good Ground*	
	❖ *Good Ground* check. NZS3604 3.1.3. Reasonable inquiry;	
	• Site observation of; Site stripped CML. ✓	
	a) Buried services ✗ b) Land slips/surface creep ✗ c) Uncertified fill ✗ d) Buried topsoil/unsuitable soils ✗	
	• Confirmation of; e) Specific testing ✓ f) Immediate locality ok ✓ g) GCR ✓	
	• Ground bearing > 100kPa or SED. ✓	
	Good Ground found. ✓	
	❖ SED requirements ? ; Loose dune sand - Recompact Now bearing >100kPa.	Ok to proceed with construction

178. TCC noted that Mr Cameron had stated in the PS4 that the holes for the foundation were oversized but did not say if this was in parameter or depth. Mr Cameron's design also assumed that a footpath would provide restraint to the rotation of a retaining wall; however, the footpath was yet to be constructed. A TCC engineer said that this was an incorrect design assumption based on the MBIE guidance. The TCC engineer said that Mr Cameron had not provided information to demonstrate a realistic load path. The TCC engineer also noted errors in Mr Cameron's spreadsheet relating to earth pressure.

179. Mr Cameron was asked to submit a new calculation for the as-built wall condition that adopted parameters suitable for the soil on site.

180. On 21 July 2016, a meeting was held, and it was decided that Mr Cameron's design would be reviewed by a consulting engineer for TCC. The consulting TCC engineer said they felt that the wall would meet the Building Code. TCC said that the questions asked by TCC were valid as "it is not the role of the BCA to undertake design or verify the validity of an as-built structure".

Suburb V

Address 27 – retaining wall design

181. In this example, a two-tiered retaining wall had been constructed without a building consent. On 3 November 2015, TCC sent Mr Cameron an RFI advising that the geotechnical assessment on file recommended that cut faces higher than 1.5m are retained with a structure designed by a registered engineer, and "the design should take into account the control of surface water runoff from above the cut faces and adequate rear wall drainage. The wall designer shall consider the effect of the stability of the slopes surrounding the filling and the walls." Further, they advised that as no building consent had been issued, a COA would need to be issued.

182. On 8 November 2015, Mr Cameron responded to the RFI stating that as the walls complied with the geotechnical assessment, and as they were exempted under Schedule 1 of the Building Act 2004, they did not require a building consent. TCC responded on 17 November 2015 asking Mr Cameron to provide evidence to show how the retaining walls complied with Schedule 1 of the Building Act 2004. An engineer for TCC said that this "is another example of Bruce pushing back at Council's reasonable requests and Bruce not understanding the requirements of the Building Act and Building Code".

183. The Disciplinary Committee was not supplied with information setting out if this matter was resolved.

Suburb VI

Address 28 – retaining wall design

184. In this case, a retaining wall was constructed by the owner to the northern and western boundary of the address. On 2 April 2015, a TCC Building Inspector issued a Site Notice requesting a PS4 from Mr Cameron, noting the retaining wall appeared to be over the boundary. On 16 October 2015, the inspector followed up this Site Notice asking for a PS1 and PS4 with calculations for the construction surcharge of the walls.

185. On 3 November 2015, Mr Cameron responded by saying: "In order to resolve this outstanding issue that you seem to have so that TCC can issue the CCC, the ability to park the vehicle adjacent to the north western wall will be removed by the installation of a low timber rail… thus removing the surcharge load upon the low timber retaining wall making it exempt." On 23 November 2015, Mr Cameron wrote to TCC again and stated that the retaining walls carry no surcharge and therefore are not subject to the building consent.

186. On 5 February 2016, Mr Cameron wrote to TCC asking why the CCC had not been issued. On 8 March 2016, TCC responded to Mr Cameron and advised that the retaining wall to the western boundary was adding a surcharge load to the lower retaining wall. It advised that the installation of a timber barrier was not a professional nor long-term solution to the surcharge problem and this would not help the applicant (for the building consent) nor the long-term owner of the address.

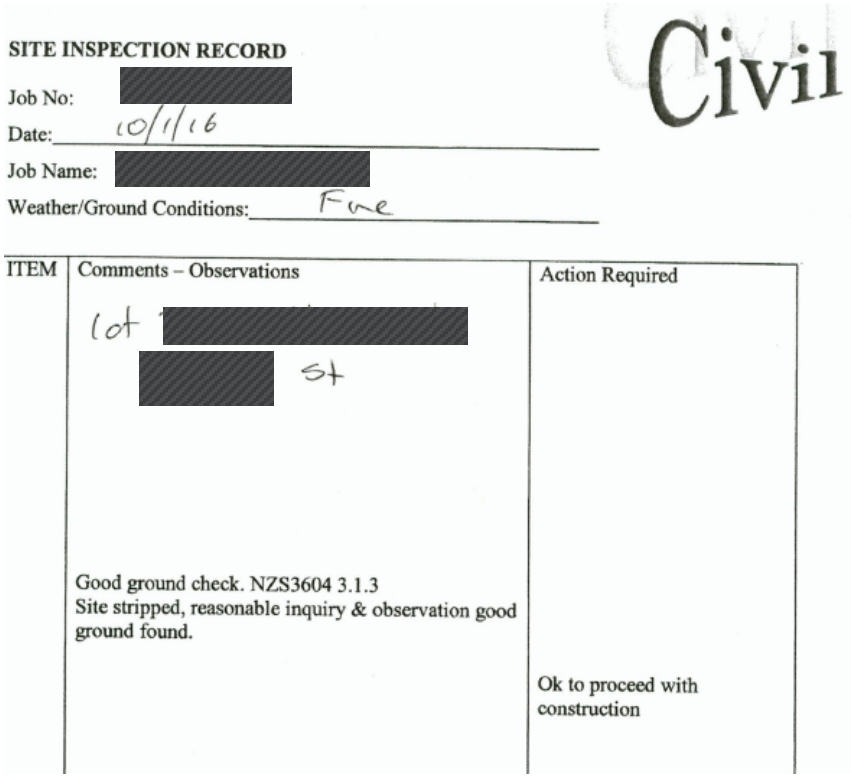
Suburb VII

Addresses 29 – 32 – foundation ground preparation, construction investigation and certification

187. On 2 November 2015, Mr Cameron signed a PS1 for the design of a TC2 RibRaft foundation that related to address 32. The PS1 itself did not state the house number to which it related.

188. On 10 January 2016, Mr Cameron signed PS4s for foundation ground preparation, construction investigation and certification at address 30 and address 31. Neither PS4 stated the house number to which it related.

189. Attached to the PS4s was a site inspection record, also dated 10 January 2016, which contained minimal information.



SITE INSPECTION RECORD

Civil

Job No: [redacted]

Date: 10/1/16

Job Name: [redacted]

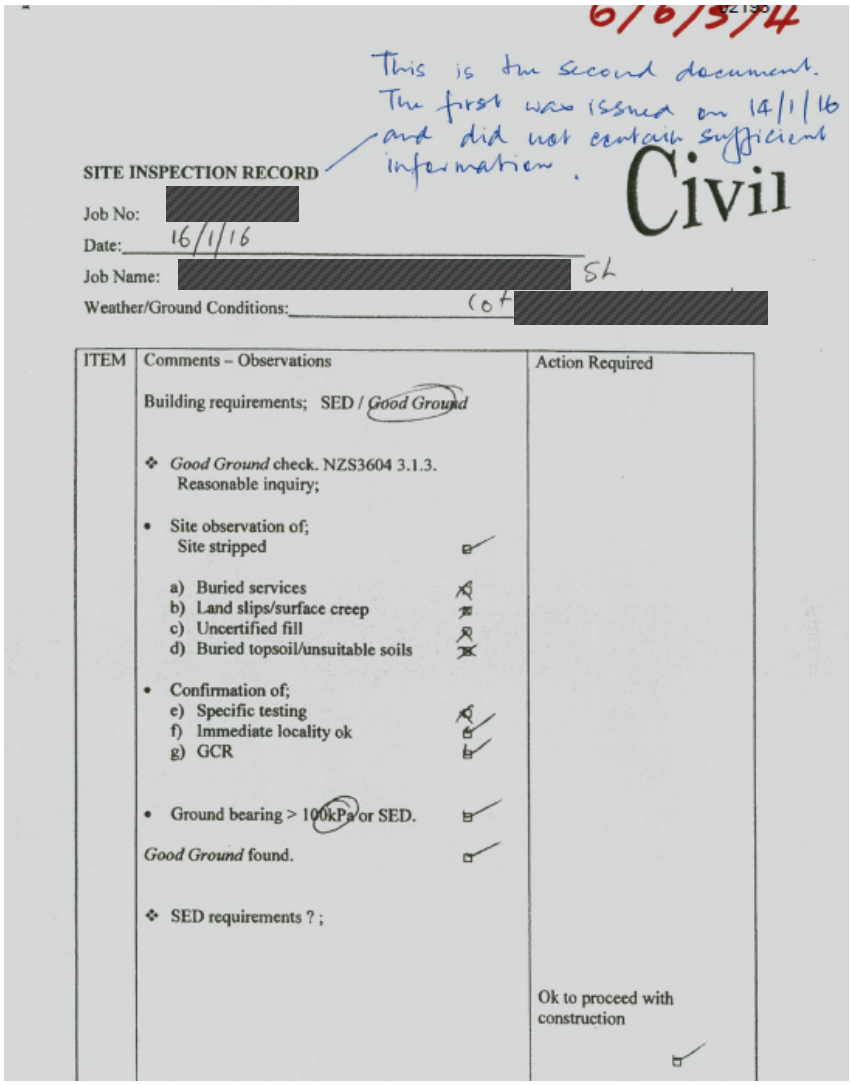
Weather/Ground Conditions: Fine

ITEM	Comments – Observations	Action Required
	lot [redacted] [redacted] St	
	Good ground check. NZS3604 3.1.3 Site stripped, reasonable inquiry & observation good ground found.	Ok to proceed with construction

190. On 12 January 2016, Mr Cameron submitted a PS4 for address 29.

191. On 16 January 2016, Mr Cameron submitted a PS4 for foundation ground preparation, construction investigation and certification at address 50, along with two site inspection records. The PS4 did not state the house number to which it related. One site inspection record, dated 14 January 2016, containing narration identical to the address 30 and address 31 inspection record (pictured above) was provided. It did not state the house number to which it related.

192. The second site inspection record for address 30 was dated 16 January 2016. It contained a checklist that had been completed by Mr Cameron; the checklist contained slightly more information than the first site inspection report:



6/6/3/14

This is the second document. The first was issued on 14/1/16 and did not contain sufficient information.

SITE INSPECTION RECORD

Civil

Job No: [redacted]

Date: 16/1/16

Job Name: [redacted] SL

Weather/Ground Conditions: Cof [redacted]

ITEM	Comments – Observations	Action Required
	Building requirements; SED / *Good Ground*	
	❖ *Good Ground* check. NZS3604 3.1.3. Reasonable inquiry;	
	• Site observation of; Site stripped ✓	
	a) Buried services ✗ b) Land slips/surface creep ✗ c) Uncertified fill ✗ d) Buried topsoil/unsuitable soils ✗	
	• Confirmation of; e) Specific testing ✗ ✓ f) Immediate locality ok ✓ g) GCR ✓	
	• Ground bearing > 100kPa or SED. ✓	
	Good Ground found. ✓	
	❖ SED requirements ? ;	
		Ok to proceed with construction ✓

193. The PS4s for addresses 29 – 32 did not state the house number that the PS4 related to, and TCC considered that there were insufficient inspection records to comply with NZS 3604 clause 3.1.3, which sets out the steps required to determine good ground.

194. On 26 January 2016, a TCC engineer wrote to Mr Cameron regarding addresses 29 – 32. In this letter, the TCC engineer further stated that PS4s should include inspection records, including instructions given during the construction phase and any drawings amended during construction. They went on to say:

> *… all we are asking you to do is to please provide supporting documentation… the comments below that you seem to have put on all the site inspection records for your PS4's* [sic] *e.g. "Good ground check. NZS3604 3.1.3 Site stripped, reasonable inquiry & observation good ground found". Is not sufficient…. I have attached an example of a suitable PS4 ground bearing conditions report from a CPEng.*

195. In his submissions to the Disciplinary Committee, Mr Cameron stated that the standard inspection record he uses has been developed based on the code requirements for identified features:

> *For example, NZS3604:2011 s 3.1.1 for the determination of Good Ground. While other features may require specific consideration based on site specific issues, covering them on a general prompt report has not in the past be* [sic] *my practice. The standard inspection record that I use evolves as required, based on requirements as they unfold and are discovered.*

Address 33 – stormwater design

196. On 9 February 2016, Mr Cameron submitted a stormwater disposal and retaining wall design for this address. A TCC engineer reviewed the file and issued an RFI on 1 April 2016 in relation to Mr Cameron's drainage designs. The RFI said Mr Cameron's design did not meet Building Code requirements, and requested site-specific soakage investigation and testing, along with calculations to derive the soakage rate. In respect of the retaining wall design, the RFI said that the design used incorrect parameters (clay instead of sand), the surcharge was not sufficient, and a revised design was required. A second RFI was issued on 18 April 2016 advising that the soakage design did not comply with the verification method.

197. Mr Cameron responded to the RFI on 25 April 2016 stating:

> *To demand site specific testing as the only means of determination of the soakage rate for the building consent, on the basis that* it's *what other engineers do, or as could be described as* dumbing down to lowest common denominator*, is ignorant of the body of knowledge that I have from over 10 years of doing such testing*. [Emphasis in original].

198. TCC issued a further RFI on 28 April 2016 advising that the soakage test provided did not comply with the Building Code as the test had not been run for four hours or until the hole had completely drained and therefore the result was "very non-conservative".

199. Mr Cameron responded to this RFI on 28 April 2016 that the testing and information requested was unnecessary and that the information he had provided was adequate. He said it "should be understood by anyone with any common sense and I would certainly expect sufficient for someone with any engineering schooling!". Further, he said: "I'm unsure why council is so confused."

200. On 8 May 2016, Mr Cameron provided a new design based on the relevant test, which TCC advised was still insufficient and did not comply with the Building Code. TCC set out what it required for consent to be issued. A TCC engineer offered to meet with Mr Cameron to go through the TCC requirements.

201. TCC arranged for a peer review of Mr Cameron's stormwater disposal calculation by a consulting engineer. The TCC consulting engineer said:

> *[Mr Cameron's] report dated 25 April tabulates the soakage test results and determines an "average" rate of 6738 mm/hr. Firstly, the lowest rate is required to be used, not the average and secondly, the test needs to be run until the hole is almost empty (E1/VM1, 9.0.2c). The results supplied indicate that there was approx. 600mm of water still in the bottom of the hole. However, an email from Bruce Cameron suggests that the bottom of the hole collapsed, and we have not been supplied with the depth of this sand in the bottom of the hole….*

202. The TCC consulting engineer further commented that "the design method given in E1/VM1 can be unconservative if the rate of percolation is determined when the soakhole is not nearly empty. It is important that the method is adhered to."

203. In addition to these comments on the testing, the peer review stated:

> *Bruce Cameron has issues with the requirement to supply information to the council. In the past, an engineers* [sic] *statement may have been accepted without qualification, but times have changed and the council are requiring evidence and justification for designs submitted. Councils are now rigorously audited, to a far higher standard than ever before, and they must have the evidence as to why a design was accepted – it is not acceptable to just say they relied on the engineers* [sic] *statement without any supporting documentation. … As a related example, the council have for many years required engineers to submit full, job specific, structural engineering calculations with consents - they don't just accept the engineers* [sic] *Producer Statement.*

MAIN ISSUES IN THE COMPLAINT AND EXPERT ADVICE

204. Each of the examples above provided by TCC were provided to support the main issues in its complaint, as set out in paragraph 10, noting that the complaint that Mr Cameron misrepresented work as being his own when it was carried out by another party has now been withdrawn.

205. Set out below is further information from Mr Cameron and TCC in relation to these main issues, along with Mr Robertson's expert advice.

Insufficient supporting information for PS1s

Mr Cameron's response

206. When asked about TCC's claims that his designs were often inadequate, Mr Cameron said many of his designs were for routine work, and standard designs were sufficient unless there was geotechnical input required. His view was that TCC was requiring more information than was justified in many cases. Mr Cameron said he now provided a higher level of documentation to satisfy compliance requirements. He still considered some of TCC's requirements were unnecessary but that he was trying to avoid further conflict.

207. In respect of RFIs, Mr Cameron said that, at the start of 2015, he agreed with his clients to have another engineer respond to resolve the RFIs to keep his jobs on track. He said he suspects that he received further RFIs from TCC because he was working for property development company Bella Vista Homes.

TCC's response

208. TCC stated that by the date the issues with Mr Cameron arose, engineers in Tauranga were very aware of the approach that TCC was taking, and these requirements should have been known to him.

Mr Robertson's advice

209. Mr Robertson identified several instances in which Mr Cameron's calculations were obscure or poorly set out, making review difficult. These examples included addresses one to three, addresses in Subdivision B and address 22. Mr Robertson observed from the information provided that for most of these cases (where the calculations could not be reviewed) TCC had requested further information, which was not provided in a timely manner, if at all, which led to TCC (or the

owner/developer/architect) engaging another engineering consultant to either provide a peer review or an alternative design.

210. Mr Robertson's view was that Mr Cameron appeared to be accustomed in earlier years to providing information to TCC in a certain format and having his producer statements accepted as sufficient evidence of compliance – that is, he expected TCC to take him at his word, based on his professional experience. However, Mr Robertson noted, times have changed. He stated:

> *[Territorial Authorities] have frequently been the 'last man standing' when building matters have ended up in court and also been subject to frequent audits of their systems. Consequently, they have become significantly more risk averse … [Territorial Authorities] now require substantially greater documentation and verification than in previous times."*

211. Mr Robertson considered Mr Cameron could be forgiven for initially not realising this change was occurring in the overall building consents landscape. However, it appeared that he had subsequently been resistant to the change and unwilling to modify his practices. Mr Robertson said the engineering profession had tightened up procedures in this area since well before 2015, and it was by that time usual for engineers to provide substantial information to Territorial Authorities in support of building consent applications and producer statements.

212. In Mr Cameron's submissions to the Disciplinary Committee, he said that he agreed with Mr Robertson's finding that "times have changed in terms of local authorities having to protect themselves and that a straight certification from the professional is no longer acceptable without fully supportive documentation". He said he accepted he was tardy in acknowledging this change in practice and he now endorses and welcomes these changes.

213. Overall, Mr Roberson concluded that over the period that this complaint relates to, "Mr Cameron frequently (in almost all of TCC's examples) provided insufficient information in support of his PS1 certificates". We accept Mr Robertson's advice.

Insufficient supporting information for PS4s

Mr Cameron's response

214. When asked about the sufficiency of the documentation supporting his PS4s, Mr Cameron again referred to the shift in documentation requirements. He said historically it had been acceptable to just provide the PS4, and the engineer's sign-off was like that of a building inspector. He said he did not have a problem providing additional information if required, but TCC was asking for unnecessary information in many instances. He said it was a 'tick box' exercise and he considered TCC's RFIs were often over the top.

215. Mr Cameron also stated that the changes he had made in his practice are providing full working drawings and information and notes with all PS1 and PS4 certificates.

Mr Robertson's advice

216. Mr Robertson noted that Mr Cameron's PS4s were usually "accompanied with a single sheet 'Site Inspection Record' which ticked off the site checks made, but often simply noting that observations were made and 'good ground found'. TCC invariably requested better information including the outcomes for the specific features observed."

217. Further, Mr Robertson noted that when TCC has inspected work (retaining walls) it found that the work did not comply with the building consent. Mr Robertson commented that although "it is possible Mr Cameron used his judgment that non-compliance didn't affect the stability of the wall… this did not justify issuing an incorrect and misleading PS4".

218. Mr Robertson concluded that Mr Cameron "appeared to resist complying with TCC's current requirements and therefore did not conform to the norms of the profession". We agree with this advice.

Act competently

Mr Cameron's response

219. Mr Cameron stated at the hearing that he did not consider TCC's concerns to be as serious as they were holding them out to be.

220. In his submissions to the Disciplinary Committee, Mr Cameron said that different engineers create different designs "based on their education, experience, background and observation". In respect of his design programmes and spreadsheets, he said that:

> *I have cross referenced other engineers* [sic] *similar design tools for consistency of results, and I have also have had mine checked. These proofing checks do on occasion and particularly in the early stages of development reveal calculation errors or the use of incorrect input data and formula.*

221. In his July 2018 response to the complaint, Mr Cameron submitted that he has undertaken two courses on retaining wall design and that he "acknowledges the need to work, as far as is possible, in a collaborative relationship with another CPEng for the purpose of in-house reviews". At the hearing, Mr Cameron advised that he regularly attends Engineering New Zealand courses and seminars, as well as seminars through product suppliers.

222. Mr Cameron also said he had learned after the complaint had been made that he must comply with TCC's requests for information. He said that he had developed a professional working relationship with another engineer who is a Chartered Professional Engineer, and member of Engineering New Zealand. Mr Cameron stated that they review each other's designs and reports. Mr Cameron stated that this engineer undertakes all the construction inspections within the TCC area on his behalf.

223. When Mr Cameron was asked by the Disciplinary Committee about what the relationship between himself and this engineer looks like, i.e. how often he gets his work reviewed, Mr Cameron could not provide specific details. He stated that if he is using the same design over and over, he would get his designs peer reviewed; he said that this was perhaps every one design in 100. Mr Cameron did not provide any other information to support this and advised that he had no formal quality control processes.

TCC's response

224. At the interview in December 2017, in response to Mr Cameron's submission that he has changed his practice since September 2016, TCC advised that "Mr Cameron still appears to have not changed his practice and the issues that were originally raised continue". TCC reiterated this at the hearing.

Mr Robertson's advice

225. Regarding the various retaining wall design defects identified by TCC, Mr Robertson stated that there were some instances in which the same issue was repeated on multiple designs, despite TCC pointing out the mistake. Other errors occurred in some wall calculations but not in others in the same circumstances.

226. Mr Robertson identified the following themes in the examples of Mr Cameron's retaining wall design calculations:

- Disagreement between TCC and Mr Cameron as to the magnitude of surcharge above the wall (Mr Robertson generally supported TCC's approach, though not in every case).
- Disagreement as to the ground slope above the wall, including an example in which Mr Cameron argued there was no above wall ground slope whereas the relevant photos clearly showed a steep slope.

227. Another common theme identified by Mr Robertson was that there was lack of soil information supporting the soil property values used in the calculations, leading to inappropriate calculations.

228. In response to this, Mr Cameron submitted that the soil profile in Tauranga is well known and therefore the duplication and validation of the data assumed and used in foundation designs has not been required or necessary in routine residential designs.

229. TCC's response was they agreed the soil profile within various areas of Tauranga is generally well known; however, they were of the view that Mr Cameron's view was simplistic, and that it was common practice to complete exploratory investigations to confirm these assumptions. However, in their view "Mr Cameron's approach is that no validation of conditions is required".

230. Mr Robertson said some of the disagreement between TCC and Mr Cameron, in relation to retaining wall design, stemmed from a difference in approach to calculations:

> *TCC has maintained that Mr Cameron made an error in many retaining wall calculations, by taking the maximum pole bending moment at the top of the concrete encasement instead of at some calculated depth into the soil. Mr Cameron's approach relies on composite action between the timber and the concrete immediately the pole meets the concrete. The former (Council) approach will generally result in one pole size increase compared to Mr Cameron's approach.*

231. While Mr Robertson supported TCC's approach, he acknowledged this was a somewhat controversial point with two different approaches being taken within the profession. He said there was very little specific guidance on the matter, and what was available was contradictory. He did not consider Mr Cameron would be the only engineer to take the approach he did. While Mr Robertson said that Mr Cameron's initial approach may have been understandable, he would have expected most reasonable engineers to update their practice after the unreliability of this approach was brought to their attention, as had been done by TCC.

232. Mr Cameron stated that he normally used the simple embedment formulae (Batchelar) contained in the Timber Design Guide 2nd edition, which he has found to be comparable and acceptable when, over many years, reviews of his design have been undertaken by other engineers. In response to this, TCC stated that the current Timber Design Guide is the 3rd edition (not the 2nd edition), issued in

2007. They went on to say that the 3rd edition details the Broms equation for the design of pole embedment, and that this equation has been in the Verification Method of the Building Code since 2000, which had been widely publicised.

233. Mr Robertson commented that there seemed to be a willingness on Mr Cameron's part to sign off on construction that was inadequate. It was his opinion that "Mr Cameron's work has frequently fallen short of the standards expected of a reasonable engineer".

234. Mr Cameron said, while the built product may not be identical to his designs, this was acceptable when the design turned out to be inappropriate for the site and in that situation, he would document the changes and that any allegation of negligence "is simply denied".

Behave appropriately

235. Mr Cameron stated that if the complaint about behaving unprofessionally relates to adopting an advocacy role in supporting clients against what at the time seemed to be over-the-top requirements, then he accepted that he may have at times pushed his client's positions. He reconfirmed this is no longer part of his practice and he now understands that his role is to be objective and not act as an advocate.

236. In his submissions to the Disciplinary Committee, Mr Cameron stated that:

> *I think the complaint as to behaving unprofessionally if it purely relates to adopting an overly advocate role in supporting clients against what at the time seemed to be intransient and over the top requirements, then I accept that I may have at times pushed my clients' positions over much. …*
>
> *I have accepted in full* [my legal consultant's] *advice, that at least some of the difficulties that have been generated in regard to an ongoing professional relationship with TCC is because I had adopted an overly adversarial role for my clients. This advocacy obligation I saw as part of my professional role of supporting clients in the face of intransient decisions and requirements being made by TCC. …*
>
> *I accept now that it is not possible to be objective in an expert sense if one is adopting an advocacy role and as advised my practice does not now include any form of advocacy.*

237. Mr Cameron stated that he has never in his "professional life knowingly acted dishonestly and have never provided knowingly wrong facts and have at all times attempted to be objective".

238. In discussing his attitude towards TCC staff, Mr Cameron acknowledged he could be blunt when questioning TCC requirements but said this was sometimes necessary depending on the individual. He said he was always working for a client, and there were cost implications from the TCC's unnecessary requirements. He said he was changing the way he approached conversations with TCC.

239. Mr Cameron stated that if TCC were to file complaints against every professional who criticises their staff then practically every professional in the Tauranga area would be the subject of a complaint, and he feels it is unfair to single him out.

240. In response to this, TCC advised that other professionals do not act the same way that Mr Cameron has, and it has not complained about any other professionals. TCC advised that it had not had similar issues with any other professionals, and Mr Cameron stands alone.

241. In respect of the applications for the MBIE determinations that he had made, Mr Cameron said at the hearing that he put through the applications "when he had time on [his] hands". He said he withdrew his applications because he no longer had the support of his client as they had "given TCC what they wanted" and it was "no longer relevant to them".

OTHER MATTERS

Parties' comments on Mr Robertson's report

242. In a letter dated 28 June 2018, Mr Cameron's legal consultant advised that Mr Cameron accepted the findings in Mr Robertson's report "for the time period of March 2015 to September 2016". However, he stated that since that time Mr Cameron has changed his practice to ensure that all his certifications are now supported with "full information", and that he has not received any "adverse feedback from TCC" since that time.

243. At hearing, TCC also stated that it agreed with Mr Robertson's report. However, it was of the view that the report was somewhat narrow, in that many other examples of Mr Cameron's work exist, and if they had been explored many other issues in a consistent pattern would be found, not just five isolated incidents. The consistent pattern of Mr Cameron's approach, in TCC's mind, undermined any trust and confidence that can be placed in him.

Relationship breakdown

244. In Mr Cameron's response of March 2017, he said he had several ongoing disputes with TCC because of the management changing in the building department at the end of 2015. He considered TCC requirements in relation to building consents were both "technically and legally wrong" and that TCC's approach was to "make unilateral demands by fiat and impose the rule of the empowered over the powerless".

245. At the interview in December 2017 Mr Cameron said the change in TCC's approach to building consents occurred in August 2016 when a new Building Services Manager joined TCC. Since that time TCC had been requesting more information in support of consent applications.

246. Mr Cameron advised that the "dysfunction" he had experienced with TCC had been experienced throughout the building industry, and that a review has been commenced into the TCC consent process due to the number of complaints it had received. He submitted that TCC's complaint was an attempt to silence him and to intimidate him into not representing the building industry.
Mr Cameron's perspective was that TCC was linear in its approach and only willing to follow one process. He considered he has been singled out for TCC's complaint because he had been the most vocal in objecting to the new processes.

247. Mr Cameron requested that Engineering New Zealand obtain a copy of an audit report produced by BDO Spicers, which was commissioned by TCC to review the culture and leadership of TCC's building department, TCC's dealings with Bella Vista Homes, and the formulation, approval and application of TCC's geotechnical policy. Engineering New Zealand obtained a copy of this report dated June 2017. In summary, in relation to TCC's dealings with external stakeholders, the report noted that external stakeholders were seeking improvement in the timeliness of the consent assessment, clear and timely communication in relation to RFIs, and consistency in the application of the Building Act 2004 and Code. However, the report noted that many delays were the result of poor quality of consent applications. In relation to TCC's dealings with Bella Vista Homes, the report found "no evidence to

suggest deliberate obstruction on the part of TCC Building Services" but noted that there were learnings for TCC in relation to consistency in inspector and customer service.

248. In his submission to the Disciplinary Committee, Mr Cameron stated that the relationship breakdown was because of his involvement in Bella Vista Homes, and that this was the motivating factor behind TCC's complaint against him. Mr Cameron went on to state that the issues he had been having with TCC were a result of a breakdown of communication and respect over a relatively short period of time (March 2015 to September 2016). He stated that he attributed this breakdown in relationship with TCC to him being a consultant to Bella Vista Homes, where he designed and supervised foundations and retaining walls.

249. He went on to say that TCC had been having issues with Bella Vista Homes and had now instigated criminal prosecutions against him and his company for breaches of the Building Act 2004.

250. Mr Robertson commented in his report that "the strained relationship between Mr Cameron and TCC should not affect the standards of competence expected of a reasonable engineer… [he] has resisted TCC requests for additional and better information, which TCC is entitled, as a TA, to request".

Action taken by Tauranga City Council

251. On 20 June 2018, after receiving Mr Robertson's report, TCC wrote to Mr Cameron and advised him that it would no longer accept PS1s from him without his work being peer reviewed by another Chartered Professional Engineer. It also advised that PS4s would not be accepted unless all site checks, construction monitoring and supervision had been carried out by another CPEng. TCC noted that it would continue to accept ground confirmation from Mr Cameron, and that this was an interim measure.

252. On 2 October 2018, TCC wrote to Mr Cameron and stated an internal investigation had been undertaken and it had become aware of sites where Mr Cameron had completed grounds checks that had organic matter under the proposed slab. On this basis it advised him that it could no longer accept ground confirmation from him without the work being peer reviewed.

DISCUSSION

THE DISCIPLINARY COMMITTEE'S ROLE

253. Professional disciplinary processes primarily exist to protect the public, uphold professional standards, and maintain public confidence in the profession and its regulation. They do this by ensuring that members of the profession adhere to certain universal (or accepted) professional standards.[30]

254. The role of the Disciplinary Committee in the disciplinary process is to consider whether Mr Cameron has acted in accordance with accepted professional standards and, if not, whether there are grounds for disciplining him in accordance with the Chartered Professional Engineers of New Zealand Act 2002.[31]

[30] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC).

[31] When referring to the Rules or Disciplinary Regulations, we refer to the Engineering New Zealand Rules and the accompanying Disciplinary Regulations that were in place at the relevant time.

THE LEGAL TEST

255. The legal test to assess whether Mr Cameron acted in accordance with acceptable professional standards is whether he acted in accordance with what a reasonable body of his peers would have done in the same situation.

256. The assessment of whether an engineer has acted in accordance with accepted standards may be informed by whether reasonable members of the public would "consider such an act or omission, if acceptable to the profession, were to lower the standard of that profession in the eyes of the public".[32]

257. If the evidence is that Mr Cameron acted in accordance with accepted standards, then we will dismiss the complaint. If the evidence is that Mr Cameron did not act in accordance with accepted standards, then we will uphold the complaint. Where the behaviour meets this criterion, we must consider whether the conduct "falls seriously short of accepted conduct" before imposing a disciplinary sanction.[33]

258. This means that the matter for the Disciplinary Committee to decide in this case is whether the engineering services provided by Mr Cameron, as identified in the complaint, met the standard to be reasonably expected of a Chartered Professional Engineer.

259. Our approach to this question has been to consider the relevant standards that applied to the work undertaken by Mr Cameron at the time and whether his performance met those standards. We have approached our analysis by focussing on the themes identified in TCC's complaint, which were supported by the 33 examples provided.

ANALYSIS

Insufficient supporting information for PS1s

260. Once an engineer has completed their design, they will usually sign a PS1. The PS1 is a statement from the design engineer that they believe on reasonable grounds that their design complies with the Building Code. Their intent is to signal to the BCA that certain design work has been done (or overseen/supervised) by a practitioner who is competent to perform the defined work (most usually, a Chartered Professional Engineer). The PS1 has no legal status under the Building Act 2004 nor the Building Code but is part of the package of information a BCA will consider when deciding whether to issue a building consent.

261. The PS1, along with supporting information[34] will accompany an application to a BCA for a building consent. The Engineering New Zealand Practice Note on Producer Statements states that a PS1:

> *… should always provide full detailed design documentation (drawings, calculations, details, specifications, document register, design features report, other reports, investigation/test results etc) sufficient to enable their methodology to be understood and checked by a practitioner of equivalent or greater competence. The means of compliance with the Building Code should be*

[32] *Robinson v RA* (10 July 2015, *Appeal Ruling* #29) Chartered Professional Engineers Council. Available at: https://www.cpec.org.nz/40-appeal-ruling-29-10-july-2015

[33] Ibid.

[34] Other information that may be provided by an engineer as part of a building consent application includes design features reports (which detail what is and is not included in the engineering design).

clearly demonstrated. In particular any Alternative Solution design (Performance Based Solutions) should be identified.[35]

262. If a BCA is satisfied the requirements of the Building Code will be met if the building is built in accordance with the designs, it will issue a building consent.

263. One of TCC's primary and ongoing concerns relates to the frequent lack of information provided by Mr Cameron in support of PS1s he has submitted as part of the building consent process. TCC provided numerous examples to Illustrate this, discussed above, including addresses one, 23 and 24.

264. In addition, as identified by Mr Robertson, TCC provided several examples[36] where Mr Cameron's calculations were obscure or poorly set out, making review difficult.

265. TCC staff and Mr Cameron have had numerous exchanges, and TCC frequently sent Mr Cameron or his client RFIs to try and obtain further information from him to demonstrate his work, as designed and inspected, met building standards. TCC states that Mr Cameron was often unwilling to provide the information requested and told TCC to instead rely on his professional opinion and experience.

266. Mr Robertson's report states that "over the period of March 2015 to September 2016 (at least) Mr Cameron frequently (in almost all of TCC's examples) provided insufficient information in support of his PS1 Certificates". We agree. We also note that Mr Cameron has stated he agrees with Mr Robertson's report.

267. We accept that engineers are able to draw from their professional experience when preparing a solution for their client. However, this should only form part of an engineer's analysis. An engineer's analysis should also be informed by relevant evidence and applicable standards, guidelines, and regulatory compliance documents. This is at the core of good professional engineering practice.

268. In addition, Engineering New Zealand's Practice Note 1: Guidelines on Producer Statements (2014) states that a PS1 should always provide full detailed design documentation sufficient to enable their methodology to be understood and checked. BCAs rely on PS1s and their accompanying documentation to decide whether to issue a building consent. If engineers do not provide sufficient information, the consenting process can be significantly delayed, which is not good for the client, the engineer, nor the reputation of the profession.

269. Mr Cameron submitted that TCC was requiring more information than was justified in many cases and that, as many of his designs were for routine work, standard designs were sufficient. We do not accept this. TCC was clear with Mr Cameron about what it needed from him in terms of information to support his PS1s.[37] In addition, we consider that a reasonable body of Mr Cameron's peers would agree that, for the time period of the complaint, the Engineering New Zealand Guidelines on Producer Statements set the standard to be expected by professional engineers providing a design and PS1 as part of a building consent process. Mr Cameron repeatedly failed to meet that standard and therefore, in our view, fell short of the standards expected of him as a reasonable Chartered Professional Engineer.

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[35] Engineering New Zealand, Practice Note 1: Guidelines on Producer Statements (2014), page 10. Available at: https://www.engineeringnz.org/engineer-tools/engineering-documents/practice-notes-and-guidelines/

[36] For example, addresses one, two, three, 12, 13, and 22.

[37] For example, address 19.

270. It also concerns us that when TCC asked for further information, Mr Cameron often appeared to be unwilling to provide it. We consider that a reasonable engineer in this situation in the time period of the complaint (and now) would be professional in their dealings with BCAs, and work constructively with them to resolve any questions arising during the consenting process. The evidence does not support Mr Cameron doing this.[38]

271. In our view, Mr Cameron's responses to TCC's RFIs were not consistent with what a reasonable body of Mr Cameron's peers would consider as being of an acceptable standard. His responses did not help his clients, who often had to request additional engineering advice from another engineer to resolve TCC's concerns, and reflected negatively on the profession.

Insufficient supporting information for PS4s

272. Building consent authorities issuing a building consent may require an engineer to monitor construction of the building works. This is commonly referred to as construction monitoring. Construction monitoring is an independent verification method that the building works, or in most cases a portion of the works, have been completed in accordance with specified requirements.

273. As noted in the Engineering New Zealand Guidelines: Construction Monitoring Services (2014),[39] it is important that engineers are involved during the construction phase to ensure that the design is being correctly interpreted, the construction techniques are appropriate and do not reduce the effectiveness of the design, and the work is completed generally in accordance with the plans and specifications

274. When construction monitoring is undertaken a Producer Statement – Construction review (PS4) may be issued by a Chartered Professional Engineer. The PS4 is a statement of opinion based on reasonable and stated grounds that certain aspects of the building work have been completed according to the building consent and amendments. The Engineering New Zealand Practice Note 1: Guidelines on Producer Statements (2014) provides that a PS4 should record the level of Construction Monitoring/Observation carried out by the Chartered Professional Engineer (or by persons acting under their control) and should be accompanied by records of the construction monitoring actually undertaken to support the opinion of compliance. In particular, it states that the PS4 should attach inspection records, any instructions given during the construction phase and any drawings amended during construction.

275. We consider that a reasonable body of Mr Cameron's peers would agree that, for the time period of the complaint, the Engineering New Zealand Guidelines on Producer Statements set the standard to be expected by professional engineers carrying out construction monitoring and providing a PS4 to a building consent authority.

276. Once the building work is completed, the owner/project manager will apply to the BCA for a CCC. The BCA must issue a CCC if it is satisfied on reasonable grounds that the building work complies with the building consent (and the requirements of the Building Code).[40] It will make this assessment based on the inspections it carried out during construction, a final inspection and evidence of any construction monitoring carried out by design professionals.

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[38] For example, addresses six and 10.

[39] Available at: https://www.engineeringnz.org/engineer-tools/engineering-documents/practice-notes-and-guidelines/

[40] Building Act 2004, s 94.

277. Chartered Professional Engineers should be aware that BCAs are likely to rely on producer statements to some extent. Therefore, prior to issuing a producer statement, Chartered Professional Engineers should be mindful that responsibilities and potential liabilities may arise from signing a producer statement, and all work should be subject to an appropriate quality assurance process (checking and review and recording).[41]

278. TCC complained that Mr Cameron signed and submitted PS4s for building work that did not comply with the relevant requirements of the issued building consent and/or without supplying sufficient information. TCC provided evidence that Mr Cameron has provided poor site inspection records.[42]

279. Mr Robertson considered that the information provided with Mr Cameron's PS4s showed what was checked but not what the checks had found. He concluded that Mr Cameron "appeared to resist complying with TCC's current requirements and therefore did not confirm to the norms of the profession". Mr Cameron has stated that he agrees with Mr Robertson's report.

280. In our view, it is incumbent on an engineer to ensure they create accurate records of their work. In the case of construction monitoring, this includes comprehensive site inspection records and the results of any investigations/tests used to support their professional opinions contained in a PS4. It is in their own interests, and their client's interests, to keep these records. It is also incumbent on engineers to subject their work to appropriate quality assurance processes to ensure high-quality and long-lasting engineering solutions and to avoid future failures.

281. The evidence of Mr Cameron's work provided by TCC does not demonstrate or support that Mr Cameron acted in a way that would reasonably be expected of a Chartered Professional Engineer issuing a PS4.

Act competently

282. The Code of Ethical Conduct for Chartered Professional Engineers states that a Chartered Professional Engineers must undertake engineering activities only within his or her competence.[43] Following 1 July 2016, this requirement was reworded to state that Chartered Professional Engineers must only undertake engineering activities in a careful and competent manner.[44] We consider both obligations impose a general duty on Chartered Professional Engineers to act competently in any engineering work they undertake.

283. TCC complained that Mr Cameron provided engineering services that did not meet a reasonable standard, including applying incorrect design assumptions, failing to apply relevant standards, and submitting standard drawings that were inappropriate for the specific site.

284. It provided evidence that Mr Cameron has:

a. provided calculations that often have basic errors;[45]

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[41] Engineering New Zealand Practice Note 1: Producer Statements (January 2014). See further: https://www.engineeringnz.org/documents/93/Practice_Note_1_Guidelines_on_Producer_Statements.pdf

[42] For example, addresses 29 – 32.

[43] Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (revoked 1 July 2016), r 46.

[44] Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42E.

[45] For example, addresses 18 and 23.

b. not included surcharges or toe slopes in his designs when these would normally have been a standard consideration by other consultants;[46]

c. submitted soakage system designs without site investigations and that do not follow current engineering practice in determining soakage rates;[47]

d. not conducted site specific geotechnical investigations;[48] and

e. signed off building work that had not received building consent.[49]

285. TCC also raised numerous concerns about the standard of Mr Cameron's work. In some cases, Mr Cameron has used standard designs where TCC considers site-specific designs were needed.[50] In other instances, TCC has identified inaccuracies or errors in Mr Cameron's calculations and designs.[51] In some cases, another engineer has been engaged by the owner or developer to take over from Mr Cameron.[52]

286. Many of TCC's examples relate to retaining wall designs, but several also relate to house foundations and structure. TCC often issued repeated RFIs, which Mr Cameron appeared reluctant to respond to, or, in some cases, he refused to acknowledge the issues raised.[53]

287. In respect of the retaining wall design examples complained of, the evidence of Mr Robertson provided helpful insight to the Disciplinary Committee, in that he found that there were differences between Mr Cameron and TCC's approach to calculations. Mr Robertson said that although two different approaches were taken, and Mr Cameron would not be the only engineer to take the approach he did, Mr Robertson would have expected most reasonable engineers to update their practice after the unreliability of their approach had been brought to their attention, as had been done by TCC.

288. In respect of the deck balustrade example[54], Mr Robertson stated that "the errors are so fundamental, going to the very core of structural analysis, that they raise significant concerns with me about the standard of Mr Cameron's competence". It is concerning to the Disciplinary Committee that a peer of Mr Cameron would have such significant concerns about his competence to practise engineering.

289. In *Robinson v RA*[55] the Chartered Professional Engineers Council (CPEC) noted that the Code of Ethical Conduct does not reference negligence or incompetence. CPEC concluded that the standard against which to measure the performance of a Chartered Professional Engineer in relation to the Code of Ethical Conduct is no different to the test it enunciated in relation to negligence, as set out in paragraph 256 and 257 above.

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[46] For example, addresses nine, 10, 24 and 28.

[47] For example, addresses 25 and 33.

[48] For example, address four.

[49] For example, addresses 12, 16 and 27.

[50] For example, Subdivision C, generic retaining wall design.

[51] For example, addresses one, two, three, 18 and 19.

[52] For example, addresses one, 16 and 22.

[53] For example, addresses one, two, three, 18 and 19.

[54] For example, address 23.

[55] *Robinson v RA (10 July 2015, Appeal Ruling #29) Chartered Professional Engineers Council. Available at:* ***https://www.cpec.org.nz/40-appeal-ruling-29-10-july-2015***

290. We have grave concerns about the thoroughness and accuracy of the work that Mr Cameron is producing. What the cases illustrate is a concerning pattern of poor practice. While some examples may seem relatively minor, others are much more concerning. Taken together, they demonstrate an overwhelming lack of rigour and attention to quality practice that is of significant concern to us.

291. We also consider that a Chartered Professional Engineer acting reasonably would take the opportunity following the RFIs to take steps to understand the errors identified in his work. However, Mr Cameron, upon the receipt of RFIs, has not worked with TCC to resolve the issues that they have raised. Instead of reflecting on his practice and improving, Mr Cameron continued operate with the same lack of care, often repeating the same errors previously identified by TCC. This demonstrates either a lack insight about the quality of his work or a conscious decision to dismiss TCC's concerns about his competency and a failure to accept deficiencies in his work.

292. We consider that a reasonable body of Mr Cameron's peers would not accept his engineering services across all these cases to be at a standard expected or acceptable to the profession. We also consider that the public should reasonably be able to expect better from a Chartered Professional Engineer.

Behave appropriately

293. The Code of Ethical Conduct for Chartered Professional Engineers states that Chartered Professional Engineers, must act honesty and with objectivity and integrity in the course of their engineering activities.[56] Following 1 July 2016, an additional requirement was included in Code of Ethical Conduct for Chartered Professional Engineers to treat people with respect and courtesy.[57] This principle to treat people with respect and courtesy covers all professional relationships an engineer may have, across all areas of their engineering activities, including relationships with clients, colleagues, project team members and other professionals. It also applies to communications in any form, whether face-to-face, by phone (including voicemails) or otherwise, including email, texts and social media posts. Even if, during an engineer's work, they experience poor or inappropriate behaviour from someone else, they must maintain their own professionalism.

294. We consider that the obligation to treat people with respect and courtesy is inherent in the obligation to undertake engineering activities with objectivity and integrity. We consider acting with objectivity and integrity necessarily requires a Chartered Professional Engineer to give dispassionate advice.

295. TCC complained about the way Mr Cameron has responded to and engaged with TCC staff, including several instances when he was asked for further information to support producer statements he had issued. TCC provided evidence that Mr Cameron responded to RFIs by either questioning the competency of TCC staff;[58] making comments TCC considered unprofessional;[59] signalling that he thought that TCC was threatening him by advising his work may be peer reviewed;[60] or applying to have matters determined by MBIE (but failed to provide the necessary evidence, and eventually withdrew his applications).[61]

[56] Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (revoked 1 July 2016), r 45.

[57] Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42F.

[58] For example, address nine.

[59] For example, addresses 18 and 33.

[60] For example, address 11.

[61] For example, addresses six, nine, 10 and 11.

296. We have not seen any evidence to suggest that TCC staff have acted unprofessionally towards Mr Cameron.

297. Similar to our reasoning in paragraph 291, we consider that a Chartered Professional Engineer acting reasonably would take the opportunity following the RFIs to consider the issues raised by a BCA carefully, including taking steps to understand the issues that needed to be resolved for their client; that is, we consider that a reasonable Chartered Professional Engineer should work constructively with a BCA to resolve RFIs. However, Mr Cameron, upon the receipt of RFIs, has not worked with TCC to resolve the issues that they have raised. We accept that a difference of engineering opinion is not uncommon and should be encouraged within the profession. Nevertheless, it is not acceptable for an engineer, as a professional, to be rude or obstructive in the manner that Mr Cameron has been when dealing with a BCA. This approach suggests to us that Mr Cameron does not appear to want to engage nor resolve the matters for his clients, instead becoming unhelpful, aggravated, or launching personal attacks on TCC staff.[62]

298. Mr Cameron has given us reasons for why he acted in this way; that is, he adopted an adversarial role for his clients, which he saw as part of his professional role. In respect of one example[63] Mr Cameron has accepted that his comments were unprofessional and said he had made these unprofessional comments because he was frustrated at TCC's RFI. Mr Cameron accepts that it is not possible to be objective "in an expert sense if one is adopting an advocacy role".

299. We have not been provided with evidence to suggest that Mr Cameron intended to be dishonest, and Mr Cameron says that he has not "knowingly acted dishonestly".

300. In respect of the applications that Mr Cameron made to MBIE for determination, we accept that it is open to any engineer to make an application to MBIE for a determination, especially if what is being asked of them by a BCA raises questions in their mind. Mr Cameron has said that he took these up when he had time on his hands but abandoned them when they were "no longer relevant" to his client. Nevertheless, these applications have clearly added to TCC's dissatisfaction and the relationship breakdown with Mr Cameron.

301. We consider that Mr Cameron, by acting as an advocate for his clients, has not given dispassionate advice, and has therefore not acted with objectivity and integrity. Even if Mr Cameron did not intend for TCC to see his correspondence with his client, it is still incumbent on him, as a Chartered Professional Engineer, to treat people with respect and courtesy, across all of his professional relationships. We consider the way that Mr Cameron has interacted with TCC has lacked the respect and courtesy expected of a professional.

302. In respect of Mr Cameron's claim that he has been singled out by TCC, we do not consider this a relevant issue for us to decide. Engineering New Zealand is the correct avenue for any complaint regarding an engineer's conduct or competency.

303. We consider that a reasonable body of Mr Cameron's peers would not accept his behaviour across all these examples to be at a standard expected or accepted to the profession.

[62] For example, addresses six, nine, seven, 11, 18 and 38.

[63] For example, address 18.

Conclusion

304. Mr Cameron has exhibited a concerning pattern of poor and unacceptable practice over a long period of time. He did not provide sufficient information with his PS1s and PS4s, and then behaved unprofessionally when questioned by TCC staff. This is despite many attempts by TCC to assist Mr Cameron and is an aggravating factor to the complaint. Mr Cameron did not respond to TCC in a meaningful way, nor change his record keeping practices when advised by TCC that his site inspection records were insufficient to achieve CCC. The scale of Mr Cameron's misconduct, his apparent lack of insight into his actions and his unwillingness to change throughout this process deeply concerns us.

DECISION OF THE DISCIPLINARY COMMITTEE

GROUNDS OF DISCIPLINE

305. The Disciplinary Committee may make an order for discipline against a Chartered Professional Engineer if it is satisfied that the Chartered Professional Engineer has performed engineering services in a negligent or incompetent manner.

306. To determine whether Mr Cameron acted negligently or incompetently we refer to the decision of the Chartered Professional Engineers Council in *R v K*:[64]

> *The starting point is to consider what standard sets the benchmark for negligent or incompetent behaviour. We consider that incompetence is a more serious allegation than negligence. One can be negligent without being incompetent, but it is highly unlikely that someone who is incompetent is not also negligent.*

307. Further, *Robinson v RA* states:[65]

> *Whether engineering services have been performed in an incompetent manner is a question of whether there has been a serious lack of competence (or deficit in the required skills) judged by the areas of competence which in this case are encapsulated by Rule 6* [of the Chartered Professional Engineers Rules (No 2) 2002 (the Rules)].

308. Chartered Professional Engineers are assessed against the 12 elements set out Rule 6 of the Rules to establish their competence, they are:

> *(a) comprehend, and apply his or her knowledge of, accepted principles underpinning—*
>
> *(i) widely applied good practice for professional engineering; and*
>
> *(ii) good practice for professional engineering that is specific to New Zealand; and*
>
> *(b) define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering; and*
>
> *(c) design or develop solutions to complex engineering problems in accordance with good practice for professional engineering; and*
>
> *(d) exercise sound professional engineering judgement; and*

[64] *R v K,* Appeal Ruling 11/14, Chartered Professional Engineers Council at [36] and [38].
[65] *Robinson v RA* (10 July 2015, *Appeal Ruling* #21) Chartered Professional Engineers Council at [40(c)].

(e) be responsible for making decisions on part or all of 1 or more complex engineering activities; and

(f) manage part or all of 1 or more complex engineering activities in accordance with good engineering management practice; and

(g) identify, assess, and manage engineering risk; and

(h) conduct his or her professional engineering activities to an ethical standard at least equivalent to the code of ethical conduct; and

(i) recognise the reasonably foreseeable social, cultural, and environmental effects of professional engineering activities generally; and

(j) communicate clearly to other engineers and others that he or she is likely to deal with in the course of his or her professional engineering activities; and

(k) maintain the currency of his or her professional engineering knowledge and skills.

309. For the reasons set out above, we find that Mr Cameron failed to provide engineering services at a competent and accepted standard reasonable to be expected of a Chartered Professional Engineer. In particular, Mr Cameron consistently failed to provide sufficient information with his PS1 and PS4s, his designs often contained errors, and when TCC tried to engage with him on these matters his behaviour was unprofessional.

310. In our view, Mr Cameron's actions were not consistent with the elements of competence required of a Chartered Professional Engineer found in Rule 6(a) – (d) and (h).

311. We therefore conclude that Mr Cameron has met the grounds for discipline under section 21 of the Chartered Professional Engineers of New Zealand Act 2002 (the Act).

DECISION

312. Having considered all the evidence, including written submissions and the oral evidence provided at the hearing on 12 and 13 November 2018, we have decided to uphold all aspects of the complaint about Mr Cameron, except the element of dishonesty in respect of the complaint about his behaviour.

313. We find that Mr Cameron has not acted as a reasonable Chartered Professional Engineer and breached his professional obligations to act competently and behave appropriately. Accordingly, we find that there are grounds for disciplining Mr Cameron under section 21(1)(b) and (c) of the Act.

314. Having found Mr Cameron in breach of section 21(1)(b) and (c) of the Act, we need to determine what orders, if any, should be made against him.

ORDERS

315. There are a range of disciplinary actions available to us as set out in section 22 of the Act.

316. On 18 April 2019, our reserved decision was sent to the parties and they were invited to make submissions on penalties. TCC provided its submissions on 8 May 2019. Mr Cameron provided his submissions on 31 May 2019.

RELEVANT LAW

317. In *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*[66] the High Court outlined a number of principles to be applied by the Health Practitioners Disciplinary Tribunal in determining the appropriate penalty to impose in disciplinary proceedings. The High Court determined that a disciplinary penalty must:

a. protect the public (including through deterrence of other practitioners from engaging in similar conduct);

b. set and maintain professional standards;

c. where appropriate, rehabilitate the practitioner back to the profession;

d. be comparable with penalties imposed on practitioners in similar circumstances;

e. reflect the seriousness of the practitioner's conduct, in light of the range of penalties available;

f. be the least restrictive penalty that can reasonably be imposed in the circumstances; and

g. be fair, reasonable, and proportionate in the circumstances.

318. The High Court also stated that while penalty may have the effect of punishing a practitioner, punishment is not a necessary focus for the Tribunal in determining penalty.

319. The principles in *Roberts* are broadly applicable to our power to make disciplinary orders under section 22 of the Act and they are the principles we rely on when considering the appropriate penalty orders in this case.

320. The principles have general application to professional disciplinary proceedings in the light of the Supreme Court's decision in *Z v Dental Complaints Assessment Committee*.[67] In *Z,* the Supreme Court makes general statements about the purposes of professional disciplinary proceedings, noting that such proceedings are designed 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.*

321. This is consistent with *Roberts*, as *Roberts* lists public protection and the maintenance of professional standards as the foremost considerations relevant to penalty.

322. The Supreme Court in *Z v Dental Complaints Assessment Committee*[68] also states that while professional disciplinary proceedings are not intended to punish practitioners, they may have a punitive effect in practice. This is also consistent with the principles set out in *Roberts*, in that the penalty must be the least restrictive penalty and that punishment is not a necessary focus of a disciplinary penalty.

323. The reasoning underlying *Roberts'* focus on practitioner rehabilitation is less relevant to penalties under the Act in light of the fact that the removal or suspension of a Chartered Professional Engineer's registration does not prevent the individual practising as an engineer but does prevent use of the Chartered Professional Engineer title.

[66] [2012] NZHC 3354.
[67] [2008] NZSC 55.
[68] Ibid.

324. It is appropriate that disciplinary penalties mark the profession's condemnation of the relevant conduct, noting that to do otherwise would not be consistent with the purpose of the Act to establish the title of Chartered Professional Engineer as a mark of quality.[69]

TAURANGA CITY COUNCIL'S SUBMISSIONS

325. TCC submitted that:

a. Mr Cameron be removed from the register of Chartered Professional Engineers for a period of 15 years;

b. the Disciplinary Committee's decision be published with Mr Cameron identified, and the decision be published in any Engineering New Zealand publications and journals, and by any other means it deems appropriate; and

c. Mr Cameron be ordered to pay the full costs of the inquiry.

MR CAMERON'S SUBMISSIONS

326. Mr Cameron submitted that:

a. he should not be suspended from the register of Chartered Professional Engineers, but if the Disciplinary Committee choses to suspend him, three months would be an appropriate period;

b. his name suppression should be continued permanently;

c. he should receive only a fine in penalty; and

d. he should contribute towards the costs of the inquiry, discounted due to his financial situation.

327. Mr Cameron did not suggest what he considered an appropriate amount in terms of the quantum of fine or costs imposed but did supply information regarding the financial position of his business.

DISCUSSION

328. Engineers hold significant knowledge and specialised expertise. They are capable of making judgements, applying their skills and reaching informed decisions in relation to their work that the general public cannot. The decisions engineers make and the services they provide often do not just impact the engineer and their client but have wide-reaching effects on the public.

329. The public places significant trust in engineers to self-regulate. As a professional, an engineer must take responsibility for being competent and acting ethically. The actions of an individual engineer also play an important role in the way in which the profession is viewed by the public.

330. The Disciplinary Committee has found that Mr Cameron has departed from what could be expected of a reasonable engineer, and this departure is serious. That is, Mr Cameron has breached his professional obligation to act competently, and behave appropriately.

331. In our view, Mr Cameron's actions, if condoned, would undermine the public's trust in the engineering profession and reduce the public confidence in the Chartered Professional Engineer title.
Mr Cameron's actions are serious, and our orders need to reflect our view of the seriousness of the breach of his obligation to act competently and behave appropriately.

[69] Chartered Professional Engineers of New Zealand Act 2002, s 3.

Registration

332. In respect of orders relating to registration, the Disciplinary Committee may order that: an engineer's registration be removed, and that they may not apply for re-registration before the expiry of a specified period; that their registration be suspended for a period of no more than 12 months or until they meet specified conditions relating to the registration; that the engineer be censured; that the engineer must pay a fine not exceeding $5,000. Where the Disciplinary Committee orders that the engineer's registration be removed they may not order a fine.[70]

333. In *A v Professional Conduct Committee*[71] the High Court said, in relation to a decision to cancel or suspend a professionals' registration, that four points could be expressly and a fifth impliedly derived from the authorities:

> *First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element.' Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amendable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.*

334. In the recent decision of *Attorney-General v Institution of Professional Engineers New Zealand Incorporated and Reay*[72] the High Court set out the standard the public expects when an engineer is a member of Engineering New Zealand:

> *[M]embership of a professional body, such as the Institution, can confer a status that signals trustworthiness to the public. This status reflects the value that society places upon the training and skill acquired by members and upon the Institution's ability to maintain the standards of its members through ongoing education, training and disciplinary processes.*

335. The Court also went on to set out the public expectation of Engineering New Zealand's role in maintaining the standard of the profession:[73]

> *There is, however, a counterbalance to the public trust that is reposed in members of professional bodies such as the Institution. That counterbalance is the public expectation that the Institution will tightly regulate admission into its ranks and ensure members maintain high professional standards. The public expects that if a person is to be afforded the status of membership of the Institution, then those individuals will maintain professional standards and that those standards will be enforced by the Institution through, if necessary, disciplinary proceedings. If a professional body, such as the Institution, wishes to maintain that public trust, and the value associated with membership status, then it must act in accordance with this expectation.*

[70] Chartered Professional Engineers of New Zealand Act 2002, s 22.
[71] *A v Professional Conduct Committee* [2008] NZHC 1387 at [81].
[72] [2018] NZHC 3211 at [52] and [55].
[73] Ibid at [56]

336. We consider that the Court's comments in respect of membership with Engineering New Zealand are equally applicable to its role as the Registration Authority and regulator of Chartered Professional Engineers.

337. TCC submitted that Mr Cameron be removed from the register for a period of 15 years. Mr Cameron did not make a submission on whether he should be removed from the register, rather, he submitted that he should not be suspended, but if the Disciplinary Committee did decide to suspend him, a period of three months would be appropriate. Mr Cameron also submitted that he be penalised by fine only.

338. The Disciplinary Committee is concerned that Mr Cameron's actions, if condoned, would have a significant negative effect on the value and trust society places upon Chartered Professional Engineers. We do not consider that removal from the register for 15 years to be a reasonable response. We also do not consider suspension or a fine only to be reasonable. With the seriousness and extent of Mr Cameron's actions, the possibility of de-registration is clearly within range here. The quantity of examples of inadequate work Mr Cameron completed are sufficiently serious to warrant removal from the register.

339. In this case, greater weight must be given to the public interest, public protection and the need to maintain public confidence in the profession, than to the consequences of the imposition of the penalty on Mr Cameron. We have therefore decided that Mr Cameron's registration be removed, and that he may not apply for re-registration for a period of two years. The Disciplinary Committee considers that this is a proportional response to the severity and ongoing nature of Mr Cameron's breaches, which are at the upper end of the scale.

Costs

340. The Disciplinary Committee can order that the engineer pay costs and expenses of, and incidental to, the inquiry by the Registration Authority.[74] The ordering of payment of costs is not in the nature of penalty.

341. When ordering costs, it is generally accepted that the normal approach is to start with a 50% contribution. That, however, is a starting point and other factors may be considered to reduce or mitigate that portion. Those factors include whether the hearing was able to proceed on an agreed statement of facts, any co-operation from or attendance at the hearing by the engineer, and consistency with the level of costs in previous decisions. The balance of costs after the orders must be met by the profession itself.[75]

[74] Chartered Professional Engineers of New Zealand Act 2002, s 22(4).

[75] *PCC v Van Der Meer* 1019/Nur18/422P. Available at: https://www.hpdt.org.nz/portals/0/1019Nur18422P.pdf

342. In respect of the medical profession, the Court in *Vatsyayann v PCC* said:[76]

> *[P]rofessional groups should not be expected to bear all the costs of a disciplinary regime and that members of the profession who appeared on disciplinary charges should make a proper contribution towards the costs of the inquiry and a hearing; that costs are not punitive; that the practitioner's means, if known, are to be considered; that a practitioner has a right to defend [themselves] and should not be deterred by the risk of a costs order; and that in a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.*

343. TCC has made submissions that Mr Cameron should be ordered to pay the full cost of the inquiry. Mr Cameron's submits that he accepts "a contribution towards the Committee's costs is inevitable" but asked for a substantive discount based on the expenses he has incurred to date. Mr Cameron has provided details of his financial position since TCC's decisions to no longer accept his producer statements; require peer reviews from another CPEng; and refuse to accept his inspections.

344. The expenses incurred by Mr Cameron based on TCC's decisions to no longer accept his work, or place conditions on the work it would accept from him, have no bearing on our decision because they are not relevant factors in determining a costs award. The costs incurred by the Registration Authority exist due to the investigation of the complaint. That complaint has been upheld.

345. The statement of financial position is, however, relevant to the consideration of Mr Cameron's means, and whether there is an inability to pay. Although the statement shows that Mr Cameron's income has decreased, there is no evidence of financial hardship or his inability to pay.

346. We have considered the parties' submissions and the factors set out in paragraph 341 as they relate to Mr Cameron's level of co-operation and attendance at the hearing, along with maintaining consistency with other Disciplinary Committee orders for costs. In terms of mitigating factors, we are cognisant of the length of time that it has taken for Engineering New Zealand to hear this matter.

347. Taking all factors into account, it is the decision of the Disciplinary Committee that Mr Cameron pay 50% of costs incurred by Engineering New Zealand, which is consistent with previous disciplinary orders.

Naming

348. In addition to notifying any orders made against an engineer on the register of Chartered Professional Engineers, the Registration Authority must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it and may publicly notify the order in any other way that it thinks fit.[77]

[76] [2012] NZHC 1138 at [34].
[77] Chartered Professional Engineers of New Zealand Act 2002, s 22(5).

349. Naming is the starting point and will only be inappropriate in a limited number of circumstances where the engineer's privacy outweighs the public interest. In *Y v Attorney-General*[78] the Court of Appeal explored the principles that should guide the suppression of the names of parties, witnesses, or particulars in the civil context. The starting point is the principle of open justice.[79]

350. The question is then, do the circumstances justify an exception to the principle of open justice. In a professional disciplinary context, a practitioner is "likely to find it difficult to advance anything that displaces the presumption in favour of disclosure".[80] This is because the practitioner's existing and prospective clients have an interest in knowing details of the conduct, as this allows them to make an informed decision about the practitioner's services.[81]

351. The Act does not prescribe factors the Disciplinary Committee should consider when deciding whether to name an engineer. Although the legislative powers afforded to us differ, we are guided by the public interest factors considered by the medical profession when deciding whether to name a practitioner. These include openness and transparency in disciplinary proceedings; accountability of the disciplinary process; public interest in knowing the identity of the practitioner; the importance of freedom of speech; unfairly impugning other practitioners; and that where adverse disciplinary finding has been made, it is necessary for more weighty private interest factors (matters that may affect a family and their wellbeing, and rehabilitation of the practitioner) to be advanced to overcome the public interest factors for publication.[82]

352. Consistent with these precedents, the starting point is that naming of engineers subject to a disciplinary order is the normal expectation. This is because public protection is at the heart of disciplinary processes, and naming supports openness, transparency, and accountability.

353. TCC has made submissions that the Disciplinary Committee's decision be published with Mr Cameron identified, and the decision be published in any Engineering New Zealand publications and journals, and by any other means it deems appropriate.

354. Mr Cameron has made an application for permanent name suppression. He advises that TCC has brought proceedings against him under the Building Act 2004 in the District Court. He submitted that this complaint and the District Court proceedings are "double jeopardy", and that publication should be withheld, at least until the District Court proceedings have been determined, as it creates a risk that he will not face a fair trial. Mr Cameron submits that TCC's prosecution relates to four of the examples given in this decision. He argues that if he is found guilty of breaches of the Building Act 2004 his name would be published, and "that would be sufficient."

355. We do not agree with Mr Cameron's submission that facing a professional disciplinary process and a District Court prosecution is double jeopardy. As the Law Commission has noted, a complaint in this

[78] [2016] NZCA 474.

[79] Ibid at [25].

[80] Ibid at [32].

[81] Ibid.

[82] *Professional Conduct Committee of the Pharmacy Council of New Zealand v El-Fadil Kardaman* 100/Phar18/424P at [113] – [114]. Under s 95(2) of the Health Practitioners Competence Assurance Act 2003, the Tribunal is required first to consider whether or not it is desirable to make an order under the section, "*after having regard to the interests of any person […] and to the public interest*." The Tribunal is then given discretion to make an order prohibiting the publication of the name of any person. We note the orders available in our jurisdictions are different. Tribunals must undertake a two-stage test before making orders to prohibit publication, whereas the Disciplinary Committee is not required to undertake any test before publicly notifying the order in any other way that we think fit.

context is not subsumed or replaced by an external process such as Court proceedings.[83] The District Court prosecution relates to alleged noncompliance with the Building Act 2004, whereas this complaint relates Mr Cameron's professional obligations as a Chartered Professional Engineer. Although Mr Cameron has advised that there is some overlap in their subject matter, the two processes are distinct and the outcome of one does not predetermine the outcome of the other.

356. After considering the above factors, the Disciplinary Committee does not consider that there exists reason to justify the departure from the fundamental principle of naming. The public interest outweighs any risk of potential prejudice. The pattern of behaviour exhibited by Mr Cameron in these circumstances is serious; given the seriousness of Mr Cameron's departure from expected standards, the weight falls heavily in favour of publication. We consider it appropriate for Mr Cameron to be named.

SUMMARY OF ORDERS

357. In exercising our delegated powers, we order that:

a. Mr Cameron's registration as a Chartered Professional Engineer is removed, and he may not apply for re-registration before the expiry of a two-year period; and

b. Mr Cameron is to pay $19,000 towards the costs incurred by the Registration Authority in inquiring into Mr Cameron's conduct (approximately 50% of Engineering New Zealand's total costs).

358. In addition to notifying these orders in the register, the Registration Authority will, subject to any appeal by Mr Cameron:

a. notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it; and

b. publish the Disciplinary Committee's final decision on this complaint on its website, in a public press release and in any other communication it considers appropriate.

359. Mr Cameron's interim name suppression is lifted.

Peter McCombs CPEng DistFEngNZ IntPE (Chair)
On behalf of the Disciplinary Committee

[83] Law Commission Report, *A New Act for Incorporated Societies*, p 127 at [8.8]. Available at: https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R129.pdf

GLOSSARY

AS/NZS 1170	AS/NZS 1170 Structural design actions: A Standards New Zealand publication which provides the procedure for structural design. It includes design procedures, reference to design actions (other parts of the series), combinations of actions, detailing for robustness, methods of analysis and methods for confirmation of a limit states design.
BCA	Building Consent Authority
CCC	Certificate of Code Compliance
COA	Certificate of Acceptance
E1/VM1	E1/VM1 is set out in the MBIE Acceptable Solutions and Verification Methods for New Zealand Building Code Clause E1 Surface Water.
IPENZ	The Institution of Professional Engineers New Zealand
MBIE	Ministry of Business, Innovation and Employment
NZS 3604	NZS 3604 Timber framed buildings: A Standards New Zealand publication which is referenced, with some modification, as an Acceptable Solution for Building Code clause B1 Structure.
PS1	Producer Statement – Design
PS2	Producer Statement – Peer review
PS4	Producer Statement – Construction Monitoring
RFI	Request for Information
TA	Territorial Authority
TC2	MBIE defines TC2 ground located in Canterbury as “liquefaction damage is possible in future large earthquakes”.
TCC	Tauranga City Council