

14 March 2014

269140302

Mr Peter Higgs FIPENZ CPEng
Gisborne District Council
15 Fitzherbert Street
Whataupoko
Gisborne 4010

Dear Mr Higgs

Complaint by Peter Higgs on behalf of Gisborne District Council against Robert Hall CPEng MIPENZ IntPE(NZ)

The complaint received 1 August 2013 has been investigated by an Investigating Committee (IC) under the Chartered Professional Engineers Act 2002 and the appropriate Chartered Professional Engineers Rules (No 2) 2002.

Upon considering the documentation submitted by both parties, the IC has completed their Preliminary Report. You are now invited to make submissions before they finalise their decision.

If you are able to identify any errors or omissions in the report or you can provide new evidence in your support, this is the opportunity to provide that information. Please email to complaints@ipenz.org.nz or post to the address below.

C/o Complaints Administrator,
IPENZ, Ground Floor, 158 the Terrace
PO Box 12 241, Wellington 6144

Submissions are due no later than Friday 28 March 2014.

Yours sincerely,



Becca Barrow
Complaints Administrator

Email: complaints@ipenz.org.nz
DDI: 04 495 1649

Encl. Investigating Committee Preliminary Report
CD containing complaint documentation as tabled in the report
Chartered Professional Engineers of New Zealand Act 2002
Chartered Professional Engineers of New Zealand Rules (No 2) 2002

INVESTIGATING COMMITTEE
PRELIMINARY REPORT
REGARDING THE COMPLAINT
BROUGHT BY Peter Higgs CPEng
FIPENZ
ABOUT Robert (Bob) Hall CPEng
MIPENZ IntPE(NZ)

In accordance with:
Chartered Professional Engineers of New Zealand Act 2002
Chartered Professional Engineers of New Zealand Rules (No 2) 2002
IPENZ Rules
IPENZ Disciplinary Regulations
IPENZ Regulations for Competence Registers
Code of Ethics applying at date of alleged breach

Prepared by:
Andrew McMennamin CPEng MIPENZ
Chair of Investigating Committee

Noel Hanham CPEng FIPENZ IntPE(NZ)
Graham Chapman CPEng FIPENZ
Members of the Investigating Committee

14 March 2014

1. PROPOSED DECISION

- 1.1 This report sets out the proposed decision of the Investigating Committee (IC) appointed to undertake the investigation.
- 1.2 The proposed decision of the IC is that this complaint should be referred to a Disciplinary Committee. The justification of this decision is detailed in this report.
- 1.3 As required by CPEng Rule 63, a copy of this proposed decision and report should now be sent to the respondent to give him the reasonable opportunity to make submissions on the matters set out in the report.
- 1.4 In line with natural justice, a copy of this report should also be sent to the complainant to allow him to make any submissions on matters in the report.
- 1.5 Following consideration of the submissions the IC will then make its final decision on the complaint.
- 1.6 The IC considers that it is not appropriate to provide draft copies of the report to the other engineers involved in the investigation. Once the report is finalised, and with the agreement of both the complainant and the respondent, it may be released to the other engineers.

2. THE COMPLAINT

- 2.1 This investigation relates to a complaint from Peter Higgs FIPENZ CPEng, the deputy chief executive of Gisborne District Council, against Bob Hall CPEng MIPENZ IntPE(NZ) of Hastings.
- 2.2 The complaint is with regard to a building designed by Mr Hall in 2001 at 15 Fitzherbert Street, Gisborne and owned by Gisborne District Council (GDC) (identified as Building C on the GDC plan titled *Fitzherbert Street Site – Building Space Optimisation Project* in document 269130801).
- 2.3 In 2011, GDC engaged a consulting engineering company (“Consultant 1”) to assess the seismic performance of all three buildings making up the council’s complex at 15 Fitzherbert St. This assessment assigned a rating of 28% of the New Building Standard (NBS) to Building C. Note that in this report the IC has chosen to report the ratings for importance level 2 performance which corresponds to general office use. There is no dispute that this was the design criterion agreed at the time of design.
- 2.4 Given the low rating of Building C, GDC engaged a second company (“Consultant 2”) to undertake a peer review of the assessment. This review generally confirmed the assessment (although it assigned a slightly lower rating of 23%).
- 2.5 As a result of this assessment GDC considered it prudent to relocate its operations in Building C to other premises and the building is currently disused.

- 2.6 The other buildings in the complex are rated as follows: building A, constructed in 1954, rated 33%; building B, 1980s, 63%.
- 2.7 The building was constructed under a design/build contract with structural design by Mr Hall.
- 2.8 The assessed performance of the building is not consistent with Mr Higgs' expectations for a building 11 years old.
- 2.9 Mr Hall was advised of the assessment findings and remains confident that his design meets appropriate standards.
- 2.10 Mr Higgs notes that Mr Hall was the engineer responsible for the design of an apartment building in Gisborne that suffered damage in the 2007 Gisborne earthquake.
- 2.11 The essence of Mr Higgs' complaint is that the assessment raises questions about Mr Hall's structural engineering competence and his response to the assessment displays a lack of professionalism.

3. APPLICABLE JURISDICTION

- 3.1 Mr Hall became registered as CPEng on 7 November 2007 and his registration is current until 2019.
- 3.2 Mr Hall's latest practice area is described as "*Low level civil & structural. Buildings up to two storeys, earthquake evaluation up to three storeys, small civil works and simple soil reports.*"
- 3.3 This complaint has therefore been investigated under the relevant provisions of the Chartered Professional Engineers of New Zealand Act 2002 and Rules (No 2) 2002 as this legislation takes precedence.
- 3.4 It should be noted that should the matter progress to a Disciplinary Committee then the status of Mr Hall's IntPE(NZ) registration and IPENZ membership will also be considered.
- 3.5 In accordance with the IPENZ Regulations for Competence Registers clause 35(4), if a person registered on a particular register has his or her registration suspended or removed from another register of equivalent competence that is administered by IPENZ, whether under these regulations or not, the institution shall correspondingly and at the same time suspend or remove the registration of the person on the particular register.

4. COMPLAINT RESEARCH OFFICER'S REPORT

- 4.1 IPENZ Complaints Research Officer (CRO) Charles Willmot investigated this complaint and recorded his findings in a report dated 26 August 2013. These are summarised below.
- 4.2 Despite the CRO's best endeavours, at the time he wrote his report, Mr Hall had not provided any response to the complaint. Instead in an email dated 26 August 2013, Morgan Coakle Lawyers advised Mr Willmot that they had been engaged to act for Mr Hall in relation to the complaint. They

also agreed that the next step would be for the complaint to be referred to an Investigating Committee (IC) and confirmed that Mr Hall would make submissions to the IC as soon as possible although he would be overseas on a planned trip until 4 October, 2013.

- 4.3 Consequently, the CRO recommended that the complaint be referred to an IC on the basis that there are no grounds for dismissal under Rule 57.

5. CHAIR OF INVESTIGATING COMMITTEES REPORT

- 5.1 The Adjudicator noted that while Mr Hall had yet to provide a response to IPENZ on the complaint, his legal counsel had advised that a response would be submitted although the timing was uncertain.

- 5.2 Mr Higgs has also raised the matter of the apartment building designed by Mr Hall which was damaged in the 2007 Gisborne earthquake. The Adjudicator declared an interest as he chaired the IC which investigated the complaint lodged with IPENZ on this matter (with the IC's decision being to refer the complaint to a Disciplinary Committee).

- 5.3 The Adjudicator considered the complaint to be very serious and needing to be fully investigated, including consideration of Mr Hall's response. Therefore, the Adjudicator supported the recommendation of the CRO and referred the complaint to an IC.

6. INVESTIGATING COMMITTEE APPOINTMENTS

- 6.1 Under authority delegated by the governing Board of IPENZ, Andrew Read, Vice President of IPENZ, appointed the members of the Investigating Committee as follows:

Andrew McMenamin CPEng, MIPENZ (Chair)
Noel Hanham CPEng, FIPENZ, IntPE(NZ) (Member)
Graham Chapman CPEng, FIPENZ (Member)

7. CONDUCT OF COMMITTEE

- 7.1 The business of the IC was conducted primarily through a meeting held on 16 December 2013 in Auckland. The meeting was attended by the IC, the complainant and the respondent. Also in attendance were:

Sarah-Jane Telford, counsel for Mr Hall, and Peter Johnstone, in support of Mr Hall;
David Dekker and Graeme Salter of Opus International Consultants Ltd;
Ray Patton of Clendon Burns & Park Ltd;
Charles Willmot and Becca Barrow of IPENZ.

- 7.2 The IC also discussed the complaint by teleconference and email.

8. DOCUMENTATION REVIEWED

- 8.1 The Investigating Committee reviewed the following documentation:

IPENZ ref #	Dated	Description	Date sent/rec
269130801	01/08/13	Statement of Complaint	01/08/13
269130803	02/08/13	CRO initial email to respondent	02/08/13
269130804	26/08/13	Complaint Research Officer's Report	26/08/13
269130805	26/08/13	Email from Sarah-Jane Telford, counsel for Mr Hall	26/08/13
269130806	26/08/13	CRO response to Ms Telford	26/08/13
269130807	29/08/13	Adjudicator's Decision	29/08/13
269130901	02/09/13	Mr Willmot, email to Graeme Salter of Opus	02/09/13
269130902	02/09/13	Mr Willmot, email to Ray Patton and Simon Burrough of Clendon Burns Park	02/09/13
269131001	02/10/13	Letter to Ms Telford with questions from the IC	02/10/13
269131002	21/10/13	Mr Hall's response to the IC questions	21/10/13
269131003	21/10/13	Letter from Ms Telford with attached report from Peter Johnstone	21/10/13
269131201	16/12/13	Agenda for 16 December 2013 meeting	16/12/13
269131203	Multiple dates	Calculations for 2001 extension, provided by Gisborne District Council	18/12/13
269140201	03/02/2014	Response to Mr Johnstone's report from Mr Dekker CPEng MIPENZ Principal Structural Engineer, Opus	04/02/2014
269140202	04/02/2014	Response to Mr Johnstone's report from Mr Patton CPEng MIPENZ Director, Clendon Burns Park	04/02/2014
269140203	20/02/14	Peter Johnstone's review for Gisborne District Council v Bob Hall	21/02/14

9. DISCUSSION

- 9.1 The building was designed prior to the Chartered Professional Engineers of New Zealand Act coming into force on 1 July 2002. Therefore the Registration Authority has no jurisdiction to investigate the design of the building, and the Investigating Committee's work was limited to consideration of Mr Hall's response to the concerns raised by Mr Higgs.
- 9.2 The IC noted that if the matter is referred to a Disciplinary Committee, the design of the building could be considered in respect of Mr Hall's membership of IPENZ. Without prejudice to its deliberations, the IC sought to understand the issues relating to the design so that a DC would have before it sufficient information to discharge its duties.
- 9.3 The IC noted Mr Higgs' statement at the meeting that Gisborne District Council had already determined that it would not seek commercial redress regardless of the outcome of the investigation.
- 9.4 Mr Hall has consistently stated in his response that the building was designed for a structural ductility factor of three, with the required energy dissipation achieved through rocking foundations. The IC noted page 7 of the calculations submitted for building consent shows ductility of three was adopted in calculating the design loading.
- 9.5 However, the use of rocking for energy dissipation at this ductility level was permitted by the loadings code at the time (NZS 4203:1992) only in conjunction with a special study. Rocking foundations were allowed by NZS 4203:1992 for a ductility of 2.0 or less, a fact that Mr Hall relied on quite heavily in his submissions to the IC although this is not referred to in his contemporaneous calculations. The IC noted that the current loadings code (AS/NZS 1170) is more restrictive.
- 9.6 Mr Hall has also consistently stated that he considers the assessment commissioned by GDC to be too conservative, and that the building is not earthquake-prone (as defined by the Building Act).
- 9.7 The IC acknowledges the points made by Mr Johnstone (document 269131003), particularly the significant effect of the assumptions on the outcome of the assessment. However the view of the IC is that even on the most optimistic assumptions put forward by Mr Johnstone the building performance falls short of reasonable expectations.
- 9.8 The IC is concerned that Mr Hall has failed to recognise the severity of the issue identified by Mr Higgs. This issue is that the building has an unusually low resistance to ground shaking given its age.
- 9.9 The IC is also concerned that in responding to Mr Higgs' concerns, Mr Hall has sought to show that the assessments are incorrect (ie that the building is not earthquake prone) rather than addressing the possible deficiencies in his design.

10. PROPOSED RECOMMENDATION

- 10.1 The Investigating Committee has considered the applicable grounds of discipline under section 21(1)(a) to (d) of the Act and the grounds for dismissal set out under Rule 57.
- 10.2 Its conclusion is that no grounds exist for dismissing the complaint, and therefore, in accordance with Rule 60(a), the complaint should be referred to a Disciplinary Committee.
- 10.3 This recommendation should now be sent to both parties for any further comment or submissions on matters discussed in this report.

Insert signature

Andrew McMenemy CPEng, MIPENZ
Chair of Investigating Committee

On behalf of the Investigating Committee =

Noel Hanham CPEng, FIPENZ, IntPE(NZ)
Graham Chapman CPEng, FIPENZ
Members of the Investigating Committee

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