

INVESTIGATING COMMITTEE DECISION COMPLAINT ABOUT STEVEN KING-TURNER 511

Confidential to parties

In accordance with:

Chartered Professional Engineers of New Zealand Act 2002

Chartered Professional Engineers of New Zealand Act and Rules (No 2) 2002

Engineering New Zealand Rules

Engineering New Zealand Disciplinary Regulations

Prepared by

Dr Carron Blom FEngNZ

Chair of Investigating Committee

Michelle Grant CMEngNZ CPEng IntPE(NZ)

Matt Harris CMEngNZ CPEng IntPE(NZ)

Members of the Investigating Committee

3 February 2020



engineering
new zealand
Institute of Engineering Professionals

CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND	2
INFORMATION GATHERED	3
DECISION	5

EXECUTIVE SUMMARY

1. Steven King-Turner CMEngNZ CPEng, a structural engineer of AMK Limited, was engaged by a home building company (**the client**) to perform design and construction monitoring services on building work for the construction of a residential property (**the Property**) in the Tasman district.
2. Tasman District Council (**TDC**) raised concerns with Engineering New Zealand that Mr King-Turner monitored construction and signed a PS4 for the project, which did not have building consent.

DECISION

3. We do not consider there are any grounds to dismiss the complaint under Rule 57 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (**the CPEng Rules**) and clause 8 of the Engineering New Zealand Disciplinary Regulations (**the Disciplinary Regulations**). Accordingly, we refer the complaint to a disciplinary committee under Rule 60(a) of the CPEng Rules and clause 11(a) of the Disciplinary Regulations.

BACKGROUND

COMPLAINT

4. On 20 November 2018, TDC raised concerns with Engineering New Zealand about Mr King-Turner. The complaint relates to work performed by Mr King-Turner, which TDC became aware of while processing a building consent application for the Property.
5. TDC is concerned that Mr King-Turner:
 - a) conducted site inspections of the building work without a building consent;
 - b) completed and signed a PS4 before building consent was formally accepted by TDC; and
 - c) failed to make enquiries to confirm building consent had been granted, before building works started.

ADJUDICATOR'S DECISION

6. The Adjudicator considered that in the circumstances, Mr King-Turner's failure to alert the owner or builder, during site inspections, that they were acting illegally by starting construction without a building consent was, on its own, insufficiently grave to warrant further investigation.
7. However, the Adjudicator considered that there were no grounds to dismiss the aspect of the complaint that Mr King-Turner signed and issued the PS4 certificate without taking steps to satisfy himself on reasonable grounds that the work complied with an issued building consent. This aspect of the complaint has therefore been referred to us for formal investigation.

INVESTIGATING COMMITTEE

8. Following the initial investigation, the complaint was referred to an investigating committee for formal investigation.
9. The members of the Investigating Committee are:

Dr. Carron Blom FEngNZ (Chair)

Michelle Grant CMEngNZ CPEng IntPE(NZ)

Matt Harris CMEngNZ CPEng IntPE(NZ)
10. The Investigating Committee considered information provided by the parties, including:
 - a) information provided during the initial investigation;
 - b) documents relating to the building consent application provided by TDC; and
 - c) Mr King-Turner's response to questions from the Investigating Committee about his engagement by the client and how he became aware building consent had not been granted.
11. The Investigating Committee has also reviewed the following Engineering New Zealand practice notes in the course of its investigation:
 - a) Construction Monitoring Services¹

¹ https://www.engineeringnz.org/documents/112/Construction_Monitoring_Services.pdf.

- b) Practice Note 1 Guidelines on Producer Statements, Version 3, January 2014²
- c) Using Producer Statements³

INFORMATION GATHERED

ENGAGEMENT

12. Mr King-Turner was engaged to perform design and construction monitoring services for the construction of the Property.
13. Mr King-Turner says there was no formal engagement for the construction monitoring services. He says he typically receives formal purchase orders from the client. However, this job was different because the building owner was the client's local manager. The inspections were undertaken according to the inspection schedule and the resulting PS1 was provided to the client. Mr King-Turner says the inspection schedule is a list of inspections to be completed, and once done, the inspections are dated on the schedule sheet.
14. Mr King-Turner says he is normally contacted directly by the earthworks contractor, so the first purchase order is usually after the first couple of inspections. The second purchase order was generated by the draughting firm requiring the design of the retaining wall.
15. The design work was completed on 29 August 2018 and a PS1 was signed on that date. Design, drawings and a PS1 were delivered to the draughting firm acting as agents for the client on that date.

CONSTRUCTION MONITORING

16. Between 27 August and 26 September 2018, Mr King-Turner signed various elements of a first inspection schedule, verifying that he had inspected:
 - pole hole excavations,
 - poles and rails for a retaining wall,
 - site stripping, and
 - building platform compaction.
17. On 7 September 2018, Mr King-Turner was visiting another project on an adjacent lot and noticed that pole holes had been drilled on the property. He took the initiative and inspected the holes and recorded the visit. He was satisfied that the holes complied with the design.
18. On 26 September 2018, Mr King-Turner visited the site again at the request of the client and inspected the poles and rails for the retaining wall. Again, he was satisfied that the work complied with the design.
19. By 15 October 2018, Mr King-Turner was satisfied that the retaining wall and building platform had been completed in compliance with their design and his PS1.

² https://www.engineeringnz.org/documents/93/Producer_Statement_Guidelines_-_Practice_Note_01_ACENZ_and_Engineering_NZ_2014.pdf

³ https://www.engineeringnz.org/documents/113/Using_Producer_Statements.pdf

20. On 24 October 2018, Mr King-Turner signed another inspection schedule, verifying that he had inspected the site stripping once again, and confirming a platform bearing.

PS4 SIGNING

21. On 15 October 2018, Mr King-Turner signed a PS4 for the residential project, declaring that all building work was done according to the appropriate standards and the building consent. The space for the Building Consent number to be entered on the PS4 was left blank.

BUILDING CONSENT APPLICATION

22. The client applied for building consent on 17 October 2018. TDC had some questions about the project and sent a Request for Information (RFI) to the client. The client's response to the RFI included copies of Mr King-Turner's site inspection records and the PS4. The dates on the inspection records and PS4 indicated they had been signed before the consent application was filed.

23. The building consent was formally granted on 16 November 2018.

24. TDC sent Mr King-Turner an infringement notice on 9 November 2018, informing him that he had breached section 40 of the Building Act 2004 (which states that a person may not carry out building work except in accordance with building consent).

25. TDC's view is that it was insufficient for Mr King-Turner to assume that building consent had been granted when he issued the PS4, and that he should have taken reasonable steps to enquire whether consent had been granted.

26. TDC considers that by issuing the PS4, regardless of the draughting firm's involvement, Mr King-Turner failed to follow the Engineering New Zealand guidelines for construction monitoring and signing of producer statements.

27. TDC is also concerned with wider industry practice across the District, and consider Mr King-Turner's approach to be unhelpful in their administration of compliance requirements. TDC considers Mr King-Turner does not fully understand his commitments to the Building Act because he mistakenly prioritised the activities necessary to complete the producer statements over his obligation, under the Building Act, to obtain Council consent first.

MR KING-TURNER'S RESPONSE TO TDC'S CONCERNS

28. In response to TDC's concerns, Mr King-Turner said the work he inspected was merely site preparation work. In his experience, particularly in times of high housing demand, it was common practice for builders and developers to carry out site preparation while waiting for building consent to be approved.

I suspect 90+% of site preparation jobs in this subdivision, and similar flat subdivisions, are completed before building consent is issued. This has happened in Nelson City and Tasman District for the last 25+ years and neither council has had a problem with this until now.

29. Mr King-Turner said he had assumed building consent had been granted when he issued the PS4.

The poles and rails were inspected on 26-9-18 at the request of [the client], which is approximately a month since the documents were provided to the draughting firm for building consent application and I had no reason to believe the consent process hadn't been completed. I was certainly not aware they had not yet applied for building consent. I issued the PS4, in good faith believing the building consent process had been completed and when the work was satisfactorily completed.

30. Mr King-Turner also disagreed with the TDC’s stance that engineers should only inspect building work in accordance with building consent-approved plans.

I have not, in the last 25 years of engineering, had a case where the consented plans take precedence over my PS1 and design drawings. I have had a case where...the consented plans were incorrect and would not have met the Building Code.

In the case of the current “concern” regarding [the Property], the consent has now been granted and the retaining wall complies with the building consent documents, so I am at a loss to what the issue is.

31. Mr King-Turner says he was not aware building consent had not been granted when he signed the PS4 until he received the infringement notice from TDC on 19 November 2018, after he returned from leave.
32. He says TDC had been accepting PS4s for some time without a building consent number noted so he got in the habit of not filling it in, in order to save time trying to obtain it. He said that although it was a simple task to obtain the building consent number, he fills in around two hundred and fifty PS4s per year, and it can be time consuming.
33. Mr King-Turner says there are cases where a PS4 is required but a building consent is not. He says it is now his policy not to issue a PS4 without a building consent number and stamped consent plans if a building consent is clearly required. He says the client has also changed their engagement procedure and now provide an engineer’s order for site inspection which includes the building consent number.
34. He says TDC now has a page on its website where you can check the status of a building consent so this can be checked prior to carrying out inspections.

DECISION

THE INVESTIGATING COMMITTEE’S ROLE

35. As the Investigating Committee, it is our role to determine whether to refer this complaint to a Disciplinary Committee in accordance with the CPEng Rules and the Disciplinary Regulations, or to dismiss the complaint.
36. We make this decision after considering the grounds for dismissal set out in clause 8 of the Disciplinary Regulations and rule 57 of the CPEng Rules. If none of these grounds to dismiss the complaint apply, then the complaint must be referred to a Disciplinary Committee.
37. Having considered all the information gathered, we have decided to refer the complaint to the Disciplinary Committee, as in our view, there are no grounds to dismiss the complaint. The reasons for this decision are set out below.

DISCUSSION

38. PS4s are critical checks to ensure processes run smoothly and the applicable laws are followed. Building Consent Authorities (**BCAs**) rely on engineers and other professionals involved in the construction process to ensure that if a project does not have building consent, it will not be constructed.
39. Therefore, issuing a PS4 without a building consent (where building consent is required) is not good practice, and potentially breaches the law.

40. Although producer statements are not statutorily required documents, they are routinely used by BCAs and construction professionals to demonstrate that building work complies with the Building Act and Code, and any relevant consents.
41. When an engineer signs a PS4, they are declaring that they believe on reasonable grounds that building work complies with the building consent and the building code. By signing a PS4 for building work that does not have a building consent, the engineer is making a false declaration and risks misleading the BCA. When an engineer completes a PS4, they are declaring they have gathered and checked all relevant information for the form. An engineer cannot and should not just assume missing information. Consequently, this matter is more than a question of incorrect form filling.
42. The Engineering New Zealand Code of Ethical Conduct obliges engineers to act with honesty and integrity. Knowingly signing a PS4 or supervising work that has no building consent risks breaching this obligation.
43. Where an engineer has assumed building consent existed, without explicitly asking the client or sighting the consent before signing a PS4, it can be difficult for the engineer to show they had reasonable grounds for believing that the work complied with the building consent. To merely assume without asking and confirming whether building consent has been granted may not be sufficient.
44. It is an offence to carry out any building work except in accordance with a building consent.⁴ The only exception to this is where work is classified as 'exempt work'.⁵ Exempt work, as defined in Building Act Schedule 1 Part 1, does not require building consent before work can be carried out.
45. If non-exempt building work is carried out without consent, a person can be fined up to \$200,000. If this continues, a person could be liable for up to \$10,000 for every additional day or part of a day the offence has continued. Additionally, Council can issue an infringement notice for carrying out building work without consent (as it did with Mr King-Turner), impose a fee of \$1,000 and remove the building work if it is dangerous or insanitary.
46. Mr King-Turner issued a PS4 before a building consent application had even been lodged. Mr King-Turner says he issued the PS4 because he was unaware building consent had not been sought and he assumed consent had been applied for and granted. He says he was first made aware when he saw the infringement notice from TDC on 19 November 2018.
47. The standard form PS4 includes a blank line for the PS4 issuer to write the building consent number in. This serves as a cue for the PS4 author to enquire whether consent has been granted. Mr King-Turner left this space blank and ignored any duty to enquire before issuing the PS4.
48. We are concerned by Mr King-Turner's comments that he does not understand the underlying issue with the complaint, since consent has now been granted for the building work. This signals a misunderstanding of the critical role engineers and the PS4s they sign play in ensuring the integrity of our building regulatory processes.
49. We are also concerned by his comments that obtaining consent numbers is time-consuming, and that he had been in the practice of not entering this information on PS4s. We acknowledge Mr King-Turner says he has improved his practice and now includes consent numbers on PS4s that relate to work requiring a consent. However, his apparent failure to turn his mind to whether consent had been

⁴ Building Act 2004, section 40(1).

⁵ Building Act 2004, section 42A.

applied for, or granted, when signing a PS4, raises serious concerns to us, and we consider it represents a significant departure from the standards expected of a chartered professional engineer.

50. Mr King-Turner's position is that TDC had previously accepted PS4s without consent numbers filled in. If this is the case, TDC is right to be making efforts to improve industry practice – as the BCA, it has ultimate responsibility for ensuring building work is conducted in accordance with the Building Act and Code.

CONCLUSIONS

51. Considering all the information, it is our view that a reasonable engineer should have checked whether building consent had been applied for and granted before issuing a PS4.
52. Mr King-Turner may have had good intentions, but overlooked his duty to check building consent had been granted before signing off on the completion of these building works. Mr King-Turner also missed the opportunity to enquire about the existence of a building consent by ignoring parts of the PS4, thereby inadequately filling it in.
53. Construction should not occur without consent. This is a behaviour which should be deterred, given engineers play a vital role in maintaining the building consent process. It is important to uphold these standards where such practice is at risk of becoming common place.
54. We do not consider there are any grounds to dismiss the complaint under Rule 57 of the CPEng Rules and clause 8 of the Disciplinary Regulations.
55. Accordingly, we refer the complaint to a disciplinary committee under Rule 60(a) of the CPEng Rules and clause 11(a) of the Disciplinary Regulations.
56. In our view, the matter for determination by a disciplinary committee is whether Mr King-Turner acted in a careful and competent manner, in accordance with accepted standards and/ or his ethical obligations by issuing a PS4 when building consent had not been applied for or granted, and by failing to make any enquiries as to whether consent had been granted.



Dr Carron Blom FEngNZ

Chair of Investigating Committee

Michelle Grant CMEngNZ CPEng IntPE(NZ)

Matt Harris CMEngNZ CPEng IntPE(NZ)

Members of the Investigating Committee