IN THE CANTERBURY EARTHQUAKES
INSURANCE TRIBUNAL CEIT-0013-2019

IN THE MATTER OF	CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL ACT 2019
BETWEEN	PFWE AND JEE Applicant
AND	IAG NEW ZEALAND LIMITED First Respondent
AND	INTERNATIONAL STRATEGIC DEVELOPMENT NEW ZEALAND LIMITED (IN LIQUIDATION) Second Respondent
AND	QBE INSURANCE (AUSTRALIA) LIMITED (REMOVED) Third Respondent
AND	MIYAMOTO INTERNATIONAL NZ LIMITED (REMOVED) Fourth Respondent

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DECISION (No 4) OF C D BOYS ON APPLICATION FOR RECALL
Date 7 December 2022

Appearances: On the papers

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APPLICATION FOR RECALL

Background

[1] On 16 December 2021, I issued a decision determining the extent of IAG's liability (the Scope Decision). Following the decision, an independent expert Quantity Surveyor was appointed to chair a conferral involving costing experts for both parties.

[2] Despite the conferral, the parties were unable to agree on the cost of the work identified in the Scope Decision. As a result, the parties indicated that the differences over quantum should be resolved by a deliberation of the Tribunal on review of each parties' written submissions.

[3] On 11 October 2022, I issued a decision quantifying the cost of the work necessary to reinstate the home (Quantum Decision) and made an order that IAG pay Mr and Mrs E that amount. The Quantum Decision addressed the admissibility and weight of additional evidence produced and received after the conferral had been concluded (the Additional Evidence). The decision was issued electronically as a signed PDF document circulated by email to the parties, and an anonymised version was published on the Tribunal's website shortly after.

[4] On 4 November 2022, IAG applied for the recall of the Quantum Decision (the Application), and for a stay on the enforcement of orders made in that decision. This application was accompanied by memoranda setting out the reasons for the application, and affidavit evidence. On the same day, having been supplied with advanced drafts by IAG, Mr and Mrs E filed a memorandum opposing the applications.

[5] On 7 November 2022, I issued a minute staying the quantum decision while I considered the recall application and set a timeframe for the parties to file submissions on the application.

Application

[6] IAG's application asserts that certain paragraphs in the Quantum Decision contain mistakes.[1] It is contended that I made incorrect assumptions about whether particular issues were discussed during the conferral and that these assumptions affected the weight given to the evidence. IAG asserts that the mistakes are indisputable, are objectively ascertainable, and are central to the disposition of the quantum issues. It is asserted that the decision in its current form does not accord IAG natural justice or procedural fairness. IAG says that the decision should be reissued after taking into consideration the evidence excluded or mis-weighted, and rewriting the identified paragraphs.

[7] IAG relies upon statements about the evidence put forward in its memoranda of 6 April and 13 April 2022, the joint memoranda of 6 May 2022, and Mr and Mrs E's memorandum 15 June 2022, as well as minutes issued on 27 April and 15 June 2022. The Application relies on s 49(2) of the Canterbury Earthquakes insurance Tribunal Act 2019 (the Act), *Evans v IAG & Ors*[2]*, Levin v Rastcar*[3], *Erwood v Maxted*[4]*,* and *Horowhenua County (No 2) v Nash*[5]

[8] In response, Counsel for Mr and Mrs E submits that the Tribunal lacks the jurisdiction or power to recall a decision, citing analysis by the Human Rights Review Tribunal (HRRT) in *Reid v New Zealand Fire Service Commission.*[6] Substantively, it is submitted that IAG's assertions do not identify errors or mistakes in the interpretation of the available evidence, rather the objections are to the weight given to the evidence. Moreover, it is argued that the Tribunal does not have an express power to stay the enforcement of a decision. Mr and Mrs E also claim interest for the period between the date of decision and the enforcement of the decision.

[9] In reply, IAG argues that the Tribunal's broad powers of investigation and regulation of its own procedures, when viewed in the context of the Act and the need to comply with the principles of natural justice, allow for decisions to be recalled. IAG cites several cases from

[1] Paragraphs [12], [16], [30], [31], [69], [77], [78], [79], and [81] of the Quantum Decision.
[2] *Evans v IAG & Ors* [2020] NZHC 1466.
[3] *Levin v Rastcar* [2011] NZCA 399.
[4] *Erwood v Maxted* [2010] NZCA 93.
[5] *Horowhenua County (No 2) v Nash* [1968] NZLR 632.
[6] *Reid v New Zealand Fire Service Commission* [2012] NZHRRT 27.

the Employment Relations Authority, including appeals to the Employment Court as examples of a tribunal recalling decisions, with no specific legislative power of recall.

Issues

[10] The issues I need to resolve are:

(a) Does the Tribunal have a general jurisdiction or power to recall its decisions?

(b) Does the Tribunal have the jurisdiction or power to recall a perfected decision, and was the quantum decision perfected?

(c) Do IAG's grounds meet the established criteria for recall?

THE LAW

The Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act)

[11] This Tribunal is constituted and governed by the Act. Section 3 states:

> The purpose of this Act is to provide fair, speedy, flexible and cost-effective services for resolving disputes about insurance claims… arising from the Canterbury Earthquakes.

[12] Section 46(1)(b) states:

> **46 Tribunal's decision: substance**
>
> (1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with the following:
>
> (a) the terms of the contract of insurance in dispute between the parties:
>
> (b) the general law of New Zealand, in particular,-
>
> (i) the law of contract as it relates to contracts of insurance:
>
> (ii) the Earthquake Commission Act 1993.

[13] Sections 49 and 50 state:

> **49 Tribunal's decision: form**
>
> (1) The Tribunal's decision must be in writing and include the Tribunal's reason for it.

(2) After a copy of a decision is given to the parties, the Tribunal may correct any minor clerical or typographical errors or errors of a similar nature.

50 Nothing done by or relating to Tribunal invalid because of failure to comply with technicality or legal form

No direction, decision, or order given or anything done by the Tribunal, or anything done by anyone relating to the Tribunal, is invalid because of a failure to comply with a technicality or legal form.

[14] Schedule 2, clause 1 of the Act states:

The Tribunal may regulate its procedures as it thinks fit, subject to-

(a) this Act and any regulations made under it…

The power to recall decisions

[15] Recalling a decision is a significant step for a decisionmaker to take. Such a step goes against the principle of finality. The leading case on the recall of decisions is that of Wild CJ in *Horowhenua County v Nash (No 2)*[7] which was discussed in *Evans v IAG & Ors*[8] (both of which are discussed below at [42]-[43])

[16] Both *Horowehenua County*, and *Evans* are based on r 11.9 of the High Court Rules 2016 (HCR) or on the common law which was codified by the predecessor of HCR 11.9. Under HCR 11.9 the Court has discretion to recall provided that the discretion is exercised before a formal record of the judgment is drawn up and sealed. After a judgment is sealed the High Court has inherent jurisdiction to recall judgements under very limited circumstances.[9] Once a final judgment has been issued, the Court's jurisdiction is exhausted, and its powers discharged.[10] Therefore, for recall to occur after sealing there must be some residual power or jurisdiction which survives a final decision.

[17] The Act does not include provision for the sealing of Tribunal decisions, and there is no formal procedure to perfect a decision. Rather decisions are signed by the Member, and an electronic copy circulated. Section 49(2) of the Act refers to a copy of the decision being given to the parties, after which minor errors may be corrected. This shows that once a Tribunal decision and its reasons are put in writing and circulated to the parties, it is perfected.

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[7] *Horowhenua County v Nash* (No 2) '[1968] NZLR 632 (SC) at 633.
[8] *Evans v IAG* [2020] NZ HC 1466.
[9] See *R v Smith* [2003] 3 NZLR 617.
[10] Also known as being *functus officio.*

[18] In *R v Smith* the Court of Appeal concluded there was a power to recall sealed judgments which was necessary to avoid real injustice in exceptional circumstances. The Court said:

> The Court has inherent power to revisit its decisions in exceptional circumstances when required by the interests of justice. Such power is part of the implied powers necessary for the Court to "maintain its character as a court of justice". Recourse to the power to re-open must not undermine the general principle of finality. It is available only where a substantial miscarriage of justice would result if fundamental error in procedure is not corrected and where there is no alternative effective remedy reasonably available. Without such response, public confidence in the administration of justice would be undermined.[11]

[19] *In Redcliffe Forestry Venture v CIR*, Venning J recognised fraud as a reason why a sealed decision may be recalled. His Honour's decision was reached on the basis that the fraud makes a judgment a nullity, rather than there being there being a relevant mistake.[12]

[20] In *Herron v Wallace* Faire J listed principles on which recall of a sealed judgment could be given. It is noted that all of these principles turn on the High Court's inherent jurisdiction as a Superior Court.[13]

Inherent jurisdiction, inherent power, or implied jurisdiction?

[21] It is important to differentiate between the powers and jurisdiction of the High Court, and of other courts and tribunals. The High Court's powers are derived directly from Royal Charter.[14] It has inherent jurisdiction as a superior court of general jurisdiction. This allows the High Court to declare its own jurisdiction and to control jurisdiction and powers of inferior courts, tribunals, and public bodies. It is this power which permits the High Court to judicially review the decisions of inferior courts, tribunals and public bodies.[15]

[22] The jurisdiction of an inferior courts or tribunal is constituted by and defined in legislation. The jurisdiction of this Tribunal is defined and limited by the Act. However, this Tribunal, in common with other similar statutory entities, possesses inherent powers which enable it to give effect to its substantive jurisdiction.[16] These powers exist as a necessary

[11] *R v Smith* [2003] 3 NZLR 617 at [36].
[12] *Redcliffe forestry venture v CIR* [2011] 1 NZLR 336.
[13] *Heron v Wallace* [2016] NZ HC 2426 at [4].
[14] The Letters Patent of 16 November 1840.
[15] See Philip A Joseph, *Joseph on Constitutional and Administrative Law* (5ed) (Thomson Reuters, 2021, Wellington) at 21.7.2, and Rosara Joseph, *Inherent Jurisdiction and Inherent Powers in New Zealand* (2005) 11 Canterbury. L.R. 220.
[16] P A Joseph, *ibid* at 21.7.3.

consequence of the Tribunal's exercise of the specific jurisdiction defined by the Act. The powers are not defined or limited but include powers to:

(a) regulate procedure;

(b) prohibit abuse of process, and

(c) set procedural guidelines around, for instance, access to the Tribunal or the conduct of hearings and expert conferrals.

[23] An example of these powers was shown in *S v Medical Insurance Society* where the Tribunal found that its powers extended to the regulation of a funding agreement between a party to an application and a non-party litigation funder.[17]

Do Tribunals have the power to recall sealed decisions?

[24] In *Reid v New Zealand Fire Service Commission*[18], the HRRT considered an application for recall. While HRRT decisions are not binding on this Tribunal, the analysis is relevant. The HRRT found it did not have the jurisdiction to recall a decision on three grounds[19]:

(a) it lacked the express power to recall a decision, nor did it have the inherent power to do so;

(b) the remedies of appeal and judicial review were available to protect against error by the HRRT; and

(c) the finality principle prohibited the HRRT from recalling a decision which had been sealed, published, and upheld on appeal.

[25] The HRRT said:

> The [HRRT] is an administrative tribunal with a statutory existence and with statutory powers. It is trite law that, as a statutory tribunal, the tribunal has no inherent jurisdiction…

[17] *S v Medical Insurance Society (No 2)* CEIT-0024-2020 (22 March 2021) at [15].
[18] above n6.
[19] ibid at [28].

> None of the statutes under which the tribunal operates… confer a power to recall or to rehear. Nor do the Human Rights Review Tribunal Regulations 2002… This is significant because such power, if it is to be possessed by a court or tribunal, is invariably conferred by express statutory provision. Even the High Court, possessed as it is of inherent jurisdiction, has an express and highly circumscribed jurisdiction to recall a judgment. See the High Court rules, r 11.9.[20]

[26] The HRRT went on to consider the recall powers of various other tribunals once judgment had been sealed. The Disputes Tribunal can rehear matters under the power granted by s 49 Disputes Tribunal Act 1988. The Employment Relations Authority (the ERA) has the power to reopen investigations and to re-hear matters under sch 2, cl 4 Employment Relations Act 2000. The HRRT concluded:

> No precedent has been cited establishing that, in the absence of an express power, an administrative Tribunal such as the Human Rights Review Tribunal as an inherent power to recall a decision and to order a rehearing once the decision has been sealed and published.[21]

[27] In *ACC v Smith*, Nicholas Davidson J, considered whether the Accident Compensation Appeal Authority, an administrative review body constituted under the Accident Compensation Act 1982, had the power to recall judgment on the basis of an underlying error. His honour found that that the power to rehear or recall a matter went to jurisdiction rather than to procedure and that provisions in legislation relating to the ability of the authority to determine its own procedure did not allow the authority to increase its jurisdiction.[22]

[28] In *Jones v ACC*, Muir J considered the same issue with regard to an appeal from the District Court. He concluded:

> Simply, the recall of a sealed decision is an exercise of substantive power that requires jurisdiction; it is not something that can be sourced by necessary implication from the inherent procedural powers which arise from and support the statutory jurisdiction of the authority.[23]

DISCUSSION

[29] IAG contends that the Tribunal has the power to recall its judgements on the basis of powers inferred from the Act. IAG says this is founded on the Tribunal's broad powers of

[20] ibid at [30]-[31].
[21] ibid at [34].
[22] *ACC v Smith* [2016] NZHC 2051 at [67] – [69].
[23] *Jones v ACC* [2022] NZ HC 2083 at [30].

investigation, the power to regulate procedures, and the power to dispose of matters within the bounds of natural justice.

[30] In support of this argument, IAG distinguishes *Reid* on the basis that the HRRT decision in question had been sealed and published, had been upheld on appeal, and that Mr Reid was a vexatious litigant. In support of its application IAG cites two decisions of the ERA, *Carrothers v Jasons Travel Media Ltd*[24] and *JKL v Stirling Anderson Ltd.*[25] In both cases, the issue was recall of a decision so that an order prohibiting publication could be made.

[31] The current case does not involve a decision which has been appealed and there are no issues with vexatious conduct. However, the authorities referred to above show that the issue of recall is a binary one; there is either the power to recall or there is not. The issue does not require a weighing or balancing of competing factors, if the power does not exist the circumstances justifying or opposing recall are irrelevant.

[32] In *Carrothers* the ERA began its analysis of recall with a discussion of the power to reopen an investigation set out in sch 2, cl 4 of the Employment Relations Act 2000.[26] The decision is about whether the ERA possesses the powers to make non-publication orders retrospectively. In *JKL v Sterling* there was no analysis of the authority's powers of recall beyond a citation to *Carrothers*.

[33] Neither ERA case assists IAG. Ignoring the markedly different legislative scheme,[27] it is clear that *Carrothers* was decided based on an analysis of the ERA's power to reopen investigations after deliberations have been issued. In the Employment Court rehearing of *JKL v Sterling Anderson Ltd*[28] Judge Beck did not analyse whether the ERA had the power to recall, she found instead that the order sought could have been made based on the fact that there was no temporal limit on the powers to suppress publication.

[34] In the current case the Act does not grant powers to reopen applications once concluded. There is a limited power to correct mistakes. Section 49(2) of the Act states "[a]*fter a copy of*

[24] *Carrothers v Jasons Travel Media Ltd* (ERA Auckland, AA 30 a/07, 21 March 2017).
[25] *JKL v Stirling Anderson Ltd* [2021] NZERA 551.
[26] Above n24 at [23].
[27] Which includes that the authority produces deliberations which are not appealed per se, rather they are challenged by way of rehearing in the Employment Court.
[28] J*KL v Sterling Anderson Ltd* [2022] NZEmpC 107.

a decision is given to the parties, the Tribunal may correct any minor clerical or typographical errors or errors of a similar nature". As discussed below, the mistakes alleged by IAG do not fall within the description of minor clerical or typographical errors or similar.

[35] Section 46(1) of the Act allows the Tribunal to make substantive orders of the same nature as any New Zealand Court of competent jurisdiction. This power is framed by references to specific terms in a contract of insurance, New Zealand insurance law, and the application of the Earthquake Commission Act 1993. This and the fact that the heading of section 46 refers to "substance" leads me to conclude that this is the limited power relating to the substantive dispute between the parties. It does not enlarge the Tribunal's jurisdiction in the manner necessary for a judgment to be recalled.

[36] Section 50 of the Act exempts decisions of the Tribunal from needing to strictly comply with the technicalities or legal forms. Similar provisions are found in other statutes, for instance s 105 Human Rights Act 2000, and s 85 Residential Tenancies Act 1986, relating to the powers of the HRRT and Tenancy Tribunal respectively. In *Gwizo v Attorney General* the High Court considered s 105 of the Human Rights Act 2000 and said:

> Section 105 means, among other things, that the Tribunal should not adopt a strict approach to pleadings (given the need for the Tribunal to be accessible to laypeople and self-represented litigants)[29]

[37] I conclude that s 50 is a rule that relates to the substantive decision-making power of the Tribunal, allowing the substantive powers to be exercised without being bound by technical rules or formal requirements. It does not enlarge the Tribunal's jurisdiction in a way which will allow for the recall of a decision.

[38] The Quantum Decision was a final determination of the dispute between Mr and Mrs E and IAG. Once the Quantum Decision was signed, and circulated to the parties, it was perfected. At that point the Tribunal's jurisdiction and powers were exhausted. The only remaining jurisdiction which survived the perfection of the decision was to correct minor errors. It is not possible to discern any broader powers, express or implied, which survive the finality of the decision on any reading of the Act. For this reason, IAG's application for recall must fail.

[29] *Gwizo v Attorney General* [2022] NZHC 2717 at [49].

[39] These findings also have a bearing on my order of the stay of 7 November 2022. Having concluded that my powers relating to the issues in dispute were exhausted once judgment was issued, it follows that I have no power to order a stay, or as sought by Mr and Mrs E, to make orders for the payment of interest.

THE SUBSTANTIVE CHALLENGE

[40] While I have concluded that I do not have the power to recall the quantum decision for completeness, I will consider the grounds for recall.

The law

[41] The leading case on the recall of decisions is that of Wild CJ in *Horowhenua County v Nash (No 2)* where he stated[30]:

> Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled — first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[42] In *Evans v IAG & Ors,* Churchman J considered Wild CJ's third category of cases and concluded[31]:

> From these various comments, I discern that, in order to justify a recall, an error or mistake on the part of the Judge must be a material one and one which is central to the disposition of the case.

[43] It is useful to consider the difference between an error, and a finding on disputed evidence. An error is where a clear mistake on an undisputable fact is made. A finding reconciles differences over evidence, or the application of a rule or law. The first is a ground for recall, the second can only be challenged by appeal.

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[30] *Horowhenua County v Nash* (No 2) '[1968] NZLR 632 (SC) at 633.
[31] *Evans v IAG* [2020] NZ HC 1466, at [21]

The grounds for recall

[44] IAG has challenged 9 paragraphs and has made reference in submissions to other alleged errors. I will consider the objections with reference to the building component or issue each objection relates to.

Differing rates and measures, window joinery and the status of the conferral report

[45] At paragraphs [16],[77] [78], [79], and [88] of the Quantum Decision I made comments about challenges to Mr Whyte's estimate which relate to measures and rates which did not appear to have been raised or discussed during the conferral. IAG objects to these paragraphs on the basis that the rates and measure were, it says, raised during the conferral.

[46] IAG's position is that the challenges to the rates and measures were included in responses to Mr Whyte's costing of 30 April 2022, which included:

(a) costings provided by Ms van Eeden on 13 and 29 April 2022:

(b) a joint memorandum of counsel dated on 6 May 2022, which listed 10 items in dispute; and

(c) the challenge to the landscaping measures, which was noted by Ms Goodman Jones and her report.

[47] Ms Goodman-Jones' report of the conferral is not a verbatim record of what was discussed and does not address the full Whyte estimate in detail. The report was circulated to the parties on 1 June 2022, two weeks prior to the teleconference where the parties asked for the quantum issue to be heard on the papers.

[48] The challenges IAG makes are to assumptions I made about the content of the conferral report. I took a view that, as the objections to rates and measures were not referred to in the report, they had not been raised during the conferral process. IAG asserts that they were. I accept that my view on Ms van Eeden's objections to rates and measures may have been inaccurate, however, the inaccuracy was irrelevant to the outcome.

[49] The conferral process was presided over by Ms Goodman-Jones. However, it was up to the parties and their experts to raise any issues which were not addressed by the conferral or captured in the report. During the time frame between the circulation of the conferral report and the teleconference, IAG could have requested that Ms Goodman-Jones revisit those areas where rates and measures were challenged but the challenges were unrecorded. These could then have been resolved by a re-measure of the building components in question. This did not occur. The report was prepared for the purposes of assessing the parties' competing positions, it was part of the evidence and weight was to be afforded to it.

[50] IAG provided additional evidence with its submissions rather than asking for the report to be amended to address Ms van Eeden's objections to measures and rates. This evidence could not be tested. Challenges to measures can be simply resolved on site, and this occurred with a number of items addressed by the report[32]. However, once the submissions had been received, the choice before me was to either to weigh the competing evidence, or to reopen the conferral to allow IAG to challenge measures. I specifically considered these options, at paragraph [80], and chose the former.

[51] The treatment of the evidence relating to rates and measures in the quantum decision is one of weight. This is not an error which would lead to a recall even if made out.

Stucco cladding

[52] IAG objects to my conclusion at paragraph [12] that statements made by both parties about the depth and availability of cladding systems were hearsay. This finding was specific to a comparative cladding quote referred to in Mr Cuff's submissions, but which was not provided, and comments about the availability of alternative cladding systems made in Mr Johnstone's submissions. The final sentence of paragraph [12]: "*Mr Cuff's statements about the alternative quote, and the depth of the cladding are hearsay, as are Mr Johnstone's statements about the availability of Rockcote*". At paragraph [14] I observed that the statements referred to were contained in submissions of counsel and providing evidence was not compatible with the role of counsel. This observation, and the treatment of the evidence referred to, are not errors.

[32] Landscaping, skirting, and Gib linings, amongst others.

[53] IAG has objected to the costing of the stucco on the basis that "[t]*he chair has accepted the full 117 m² replacement cost despite the experts agreeing that only 96 m² required replacement".* This objection is without basis. The 117m² measure was used only to derive a per meterage rate, which was then applied to the agreed 96 m² area for replacement.

[54] IAG objects to my comment in paragraph [30] regarding the assessment of the comparative technical merits of the stucco systems. I concluded that no admissible evidence had been adduced regarding the alternatives to Integra and for this reason I was unable to assess the comparative technical merits of the stucco systems. IAG states that Mr Wason gave evidence during the hearing on the Sto products available, and that it was a STO product costed by Ms van Eeden.

[55] This objection is misconstrued. Firstly, the issue is a technical issue relating to which cladding system is an appropriate replacement for the stucco. It is not a costing issue. Secondly, the evidence giving during the Scope Hearing does not assist IAG's protest. Mr Wason's evidence relating to the profile of the cladding was about the STO Armat system, which is an over rendering system used to repair existing stucco. In the Scope Decision I found that the affected areas needed to be re-clad, not repaired. In his evidence Mr Wason refers to the thickness of the existing plaster. He made comments about whether window joinery would need replacement in the event of a reclad. However, neither he nor Mr Flewellyn discussed the profile, thickness or depth of any of the replacement cladding systems.

[56] At paragraph [31] I commented that Mr Creighton could have raised the issue of cladding depth during the conferral but did not do so. IAG says that the issue was raised during the conferral and was raised in the joint memorandum of counsel of 6 April 2022. I accept that the issue of cladding thickness was raised in the joint memorandum at paragraph [3] where the parties' disagreements are listed. However, no additional evidence was provided beyond the hearsay comments referred to at [53] above. Even had these brief comments been admissible, there was no technical evidence provided which would have displaced the detailed architectural drawings provided by Mr and Mrs E, which specified Integra.

Brick veneer cladding

[57] At paragraph [69] I commented that Ms van Eeden's claims that the rates for brickwork replacement were excessive was not raised during the conferral. IAG says the issue was in fact raised at conferral but was not recorded by Ms Goodman-Jones.

[58] I acknowledge that issues of rates and measures may have been raised during the conferral process but are not recorded in the report. However, the alleged error does not change the outcome. In the penultimate sentence of paragraph [69] I found that "*Mr Whyte's rate of $275 per metre squared is comparable with the* [$]*270 m² rate used by Mr Creighton in his costing dated 28 June 2022"*. Any error made was not a material one which was central to the disposition of this case. Therefore, even accepting for the benefit of doubt that the issue was raised at conferral but was not recorded, such an error would not meet the test for recall.

OUTCOME

[59] IAG's application for recall is declined.

C D Boys
Chair
Canterbury Earthquakes Insurance Tribunal