

[3] On 13 July 2021 I issued a draft decision and invited comment from the parties, each of whom has filed an affidavit and Memorandum of Counsel. That draft decision has been amended by me after reading that material. This is the final version of that decision.

## **Background**

[4] The W's lodged a claim with the Tribunal alleging that EQC's repairs to their earthquake damaged home at XXXX, were defective. That claim was resolved on 19 August 2020 when the W's accepted a cash offer from EQC.

[5] I recorded in a Minute that the claim had been resolved by agreement. I also recorded that the crack investigation I had earlier directed should be continued, this time at the Tribunal's expense. Later the same day, the parties signed the Settlement Agreement which clearly stated that it was in full and final settlement and contained the following clause:

This agreement is in full and final settlement of the EQC Claims and the Dispute and the Proceeding, and all claims which the Customer has or may have (whether known or unknown) in respect of any issues which in any way arise out of or relate to the Natural Disaster Damage, the EQC Claims, or the Dispute, against EQC or any of EQC's related persons, servants, employees, contractors or agents.

[6] The crack investigation I had directed unexpectedly revealed that EQC's repair of the three large earthquake cracks in the W's floor slab was defective.

[7] The W's now want the Settlement Agreement reopened and seek orders that:

- (a) any payment made to them by EQC be regarded as an interim payment;
- (b) they be afforded a reasonable opportunity to obtain quotations and independent technical advice in relation to remediating EQC's defective repairs; and
- (c) EQC pay their costs of making this application.

[8] EQC considers that the Tribunal has no jurisdiction to entertain this application and seeks costs against the W's.

## **Jurisdiction**

[9] EQC submits that the Settlement Agreement cannot be reopened because the Tribunal has no jurisdiction over claims that have been settled by agreement. It relies upon s 46(8)(a) of the Canterbury Earthquakes Insurance Tribunal Act 2019 (Act), which provides:

(8) If a claim is settled by agreement between the parties before the tribunal's decision is given (otherwise than through the mediation process provided in this Act), the tribunal –

- (a) must terminate the claim; and
- (b) if requested by the policyholder or insured person, may record the settlement in the form of a decision of the tribunal.

[10] This provision dovetails with s 8 of the Act which limits the Tribunal's jurisdiction to disputes between policyholders and insurers/EQC.<sup>1</sup>

[11] The Tribunal terminated the claim when advised that the claim had been settled, as it was required to do. The W's do not dispute that they signed the Settlement Agreement, but they ask that it be set aside as having been induced by duress.

[12] I consider that both parties, including the W's, regarded this claim as settled by agreement, at least until the crack testing undertaken on 10 September 2020. In particular, I reject Mrs W's evidence that the applicants had been given guarantees and assurances by the Tribunal and EQC that if the "big ticket items" were worse than had been quoted, they would be able to come back to the Tribunal and would be reimbursed for any amounts in excess of the amount quoted. Although the settlement discussions were without prejudice and confidential, the Tribunal has a recording of what was said at the end of those discussions when the parties returned to the Precinct, and a transcript is attached as Appendix 1.

[13] The combined effects of ss 8(2) and 46(8)(a), therefore, deprive the Tribunal of jurisdiction to entertain this application.

### **Other defences**

[14] EQC also says that the Ws have no prospect of establishing coercion or pressure amounting to duress by Mr P as an agent of EQC because:

- (a) Mr P was not EQC's agent; and
- (b) the events described by the Ws do not amount to duress.

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<sup>1</sup> See *W v EQC* [2020] CEIT 0039 where the Tribunal considered that it did not have jurisdiction to accept a claim which had previously been settled by the signing of a settlement agreement.

[15] If the W's application is to be successful, then they need to establish that they were induced to sign the Settlement Agreement under duress applied by EQC.

*Duress*

[16] The Ws claim that they signed the Settlement Agreement as they had no effective choice but to sign after Mr P told them that:

- (a) he had more power than the Tribunal;
- (b) EQC's proposed repair was the best repair for the Ws house;
- (c) if the W's did not sign the Settlement Agreement, EQC would seek costs against them;
- (d) the Settlement Agreement had to be signed that day; and
- (e) the claim was driving a wedge between the W's at a time when Mr W's father had recently passed away, and his grandson had been diagnosed with a brain tumour.

[17] Moreover;

- (a) the W's were lay litigants and did not have the benefit of effective legal representation;
- (b) the W's support person was unable to attend the meeting;
- (c) when the W's sought a break from the meeting for lunch, Mr P overruled them;
- (d) when the W's sought to terminate the meeting in the Tribunal, Mr P overruled them again; and
- (e) Mr P would not allow the applicants to leave unless the agreement was signed.

[18] The W's are adamant that they would not have signed the agreement had it not been for those threats, because:

- (a) the Settlement Agreement provided for them to pay and complete the repairs which the Tribunal had previously indicated would be paid for and completed by EQC; and
- (b) the crack investigation ordered by the Tribunal had not been completed, so that it was not possible to know the cost of repair.

[19] Many of the allegations made by the W's in the previous paragraphs are unsustainable because;

- (a) I arranged for one of the critical meetings to take place at the Black & White cafe outside the precinct after learning that their support person (their son Joshua) was unable to enter the Justice Precinct when a Covid-19 test revealed that he had an elevated temperature;
- (b) the W's had earlier elected to manage the repairs themselves rather than remain in a continuing fraught relationship with EQC;
- (c) the W's were aware that the crack investigation directed by me on 30 June 2020, had not been undertaken because of settlement negotiations between the parties;
- (d) the eventual crack investigation was offered by me to provide the W's with what I thought would be reassurance that the crack repairs had been properly executed and was only ordered by me after I was told by the parties that the claim was settled;
- (e) I told the W's, before they sought legal advice about signing the Settlement Agreement, that the agreement they were contemplating was in full and final settlement and prevented them from claiming further money from EQC, no matter what the crack investigation revealed;

- (f) the W's decision to accept EQC's cash offer had been made and communicated to EQC by the time the case management conference concluded at 11.38 a.m.; and
- (g) the W's left the case management conference with Mr P to discuss the terms of the Settlement Agreement with a lawyer from Community Law

### *Agency*

[20] The relief sought by the W's, however, would only be available if Mr P had been acting as EQC's agent, which he patently was not:

- (a) Mr P's email address reveals that he is employed by the Greater Christchurch Claims Resolution Service (GCCRS) administered by the Ministry of Business, Innovation and Employment.;
- (b) the emails he has sent to the W's and the Tribunal disclose that he is the manager for settlement support at the GCCRS and had previously been the national manager of the Residential Advisory Service;
- (c) the W's have copied the Tribunal into emails between themselves and Mr P from which it is apparent that he was supporting them in their negotiations with EQC at their request; and
- (d) although the GCCRS may be funded in part by EQC and Southern Response as State-owned entities, the GCCRS and Mr P are both independent of EQC.

[21] I am completely satisfied that Mr P was acting as agent for the W's rather than EQC during the negotiations.

### *Conclusion*

[22] The application to set aside the Settlement Agreement is struck out.

## Costs

[23] EQC seeks an award of costs against the W's under s 47(2)(a)(ii), alleging that the W's caused it to incur costs and expenses unnecessarily by making allegations that were without substantial merit.

[24] The Tribunal recently undertook an in-depth analysis of its cost jurisdiction in *D G Family Trust v IAG New Zealand Ltd.*<sup>2</sup> At [31] of that decision, it listed the following five propositions that could be drawn from the cases it examined:

- (a) “substantial merit” refers to claims that require serious consideration by the Tribunal, and the mere fact that an allegation or argument is not accepted or upheld by the Tribunal will not of itself expose the party concerned to liability for costs;
- (b) claims which have substantial merit, even if ultimately rejected, will not attract an order for costs;
- (c) the proper enquiry when considering whether a claim or a defence has “substantial merit” is to determine, without recourse to hindsight, what the party and their advisers properly considered the strength of the case to be;
- (d) the bar for establishing “substantial merit” should not be set too high as the Tribunal should have the ability to award costs against those making allegations which a party ought reasonably to have known they could not establish; and
- (e) only the costs “incurred unnecessarily” as a consequence of a party advancing arguments that lacked substantial merit are to be recovered.

[25] I have struck out the W's application because it had no prospect of success. Not only was it obvious that the Tribunal had no jurisdiction to entertain the application, but the grounds upon which their application was made did not withstand even rudimentary scrutiny. They ought reasonably to have known that they could not establish those grounds.

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<sup>2</sup> [2019] NZCEIT 37 (#3)

[26] I have no difficulty finding that, because the W's advanced submissions without substantial merit, the costs incurred by EQC in opposing that application were incurred unnecessarily.

### **Exercise of the discretion to award costs**

[27] When exercising the discretion to award costs, there is an obligation to act judicially, not only by determining what is reasonable and just to the parties, but also by taking into account the public interest in the fair and expeditious resolution of disputes.<sup>3</sup>

[28] In exercising this discretion. I will examine:

- (a) the background to the crack investigation;
- (b) what this investigation revealed;
- (c) the impact of this investigation on the W's;
- (d) the significance of this investigation; and
- (e) EQC's response to this investigation.

### *Background to the crack investigation*

[29] In October 2018, EQC's engineers inspected the W's home and prepared a plan showing three large cracks in the concrete slab that had previously been repaired with epoxy grout: a large crack across the north-western end of the living room, a longer but narrower crack from the south-western corner of the lounge into the study, and a similar crack from the south western corner of bedroom 3 into the laundry.

[30] In July 2019, the Tribunal appointed Mr Julius Long, a structural engineer, to assist the Tribunal by providing an expert structural opinion on, inter alia, the significance and cause of the cracks observed to the concrete floor slab. Mr Long's investigation involved a site

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<sup>3</sup> *Aoraki Corp Ltd v McGavin* [1998] 1 ERNZ 601 (CA) at 625.



inspection on 3 December 2019 and perusing a range of documents, including the October 2018 report from EQC's engineer.

[31] Mr Long's report, sent to the W's on 28 February 2020, confirmed the presence of the three cracks, which he described as "tensile" or "tension" cracks. He noted in his report that these cracks had been previously repaired with what appeared to be a rigid epoxy compound and he observed that "all repairs... appeared to be sound and performing as intended." He did not recommend further investigations in relation to the concrete floor slab, but indicated that repairs to those cracks were necessary where they passed beneath walls and other obstructions as no repairs have been carried out in those locations.

[32] Although Mr Long's report was not overly technical, I realised during a subsequent telephone conference in June 2020, that the W's did not understand parts of it, so I went through it in detail with them, reading the relevant sections and then explaining them as best I could. There is no substance to their complaint that I should have appointed a second engineer to explain the first engineer's report.

[33] Although I considered Mr Long's report to be reassuring, the W's continued to worry that the tension cracks had not been properly repaired. When these concerns surfaced at a case management conference on 30 June 2020, I directed that Mr Long supervise an investigation of these crack repairs. My Minute records at [9] - [11]:

[9] Despite the assurances given to the W's by Mr Long in his report and recorded by me in my Minute of 19 March 2020, the W's are still concerned about the inadequacies of the crack repairs. They say that some cracks have been only partially repaired, while other cracks had been left unrepaired. Moreover, they seek reassurance that the repairs that have been undertaken have been properly carried out.

[10] Mr Long believes that it would be reasonably simple to carry out an audit of the crack repairs by taking three small core samples across the repaired cracks. He will choose where those samples are to be taken, mark them on a plan, and send that to the Tribunal which will forward it to EQC so that it can commission the investigation at its expense. Mr Long is willing to attend the site to inspect the samples that have been taken so that he can prepare a report to the Tribunal on the adequacy of the repairs.

[11] Despite attempts made in the past to resolve matters, the W's are still raising matters of concern. To provide finality, therefore, I require the following process to be undertaken:

- (a) there will be a meeting on-site between Mr Long, EQC's engineer, and any engineer that the W family chooses to engage;

- (b) during that meeting, the engineers will consider all the concerns raised by the W family and try to reach consensus on the issues raised;
- (c) if they agree that there is earthquake damage that has not been repaired, or has been repaired poorly, they are to reach a consensus on the manner of repair;
- (d) Mr Long is then to prepare a memorandum setting out the matters upon which the engineers agree/disagree and a scope of works for the agreed repairs;
- (e) if there is a disagreement on the scope, Mr Long is to report on the alternative methods proposed and list the comments made by the engineers in respect of each repair;
- (f) the issues on which the parties disagree on will be referred to me for a short hearing at which the engineers will give oral evidence simultaneously;
- (g) the parties will have the opportunity to ask questions and make submissions before I issue my determination;
- (h) to avoid further delay, the case manager will set down a one day hearing in six weeks' time to consider any unresolved issues; and
- (i) leave is reserved to either party to call another case management conference at short notice.

[34] The Case Manager subsequently scheduled that hearing for 19 August 2020.

[35] Although by the end of July 2020 Mr Long had sent EQC his plan showing the location at which the core samples should be taken, nothing was done to further this investigation. Nor did any of the directed meetings take place. Instead, the parties engaged in negotiations that concluded at the case management conference convened for the date on which the hearing had been scheduled.

[36] At the conclusion of that case management conference I directed Mr Long to undertake, at the Tribunal's expense, the crack investigation I had previously directed.

#### *What the crack investigation revealed*

[37] The crack investigation was undertaken on 10 September 2020. Mr Long's report consists of annotated photographs from which it is obvious that EQC's repair of the tension cracks involved the use of an unsuitable, high viscosity epoxy grout that had only penetrated 20% of the crack in the lounge and 10% of the other two cracks. He concluded that these repairs were "effectively only cosmetic."

[38] Mr Long's comments are best understood through the three photographs attached as Appendix 1.

*The impact of this investigation on the W's*

[39] The W family suffered significant distress during the EQC claims process: Mr W suffered a breakdown, their son became suicidal, and Mrs W's fragile mental state has been clearly noticeable during her Tribunal attendances. The typewritten statement she attached to her Tribunal application is testament to the family's ordeal and discloses that this vulnerable family was exposed to a level of incompetence with which most families would be unable to cope.

[40] The first case management conference was unforgettable, as can be seen from this paragraph in my Minute:

Mrs W's emotional wellbeing has been adversely affected, not only by the damage caused to her home which she loved, but also by the inept way in which the EQC repairs were carried out. The three representatives from EQC acknowledged the pain she has experienced and have done their best to apologise. None of those representatives were employed by EQC at the time repairs were carried out and they are ashamed of the way EQC behaved. They are doing their best to make sure that the Ws have their house repaired the way it should have been the first time.

[41] When I asked the EQC representatives why they had chosen to work for EQC, I was most impressed with Mr West's answer that he saw it as a public service.

[42] Although I have had no contact with the W's since they received Mr Long's crack investigation report, it is not hard to imagine that Mrs W feels vindicated by the discovery that EQC's crack repair was defective as she had suspected all along.

*The significance of this investigation*

[43] EQC's repair of the three tension cracks involved filling them with an epoxy grout that should have penetrated to the bottom of each crack. Instead, it filled only 10% of two cracks and 20% of the third. As Mr Long said in his report, the epoxy grout used was unsuitable because of its high viscosity. What should have been a structural repair was only cosmetic.

[44] I am not able to say who is responsible for this defective repair, but there is only a limited range of options. Was that:

- (a) the person who specified this unsuitable grout;
- (b) the person who applied this unsuitable grout; or
- (c) EQC for approving this repair strategy when it knew, or ought to have known, that it would not properly repair the earthquake damage?

[45] In either of the first two situations, EQC would have redress against the responsible party for any loss that it might suffer as a consequence.

[46] It also raises the spectre of other similar repairs undertaken by EQC being similarly defective.

*EQC's response to this investigation*

[47] EQC has pointed out in its response to this application, that its settlement payment of \$67,500 was \$24,212.42 more than the \$43,749.53 cost of its remedial scope of works. It stresses that the settlement amount had only been paid to avoid the costs and uncertainty of going to litigation., exceeded EQC's view of its statutory liability, and may even have exceeded what EQC would have been ordered to pay if the claim had ultimately been determined by the Tribunal.

[48] That remedial scope of works, which is dated 24 September 2019, was provided to the Tribunal sometime prior to settlement and incorporates \$14,711.57 plus GST for "concrete slab repairs inside and out as per Concrete Solutions quote August 2019." Mr West has provided the Tribunal with a copy of that quotation, from which it can be seen that Concrete Solutions proposed to remove the existing repair product by grinding and then injecting a low viscosity epoxy-based resin into the slab, either by drilling directly into the crack or at a 45° angle to intersect the cracks halfway through the thickness of the floor so that the cracks would be re-filled in their entirety over the estimated 30 m.

[49] In those circumstances, it is understandable that EQC expects the W's to meet the cost of the crack repairs from the cash settlement paid to them.

[50] On the other hand, the costings upon which the offer was based were nearly a year old and it is likely that the settlement amount included allowances for inflation and contingencies, as well as a sum intended to compensate the W's in some small way for the distress they experienced during the claims handling process.

[51] Moreover, I was surprised to be told by Mr Long that the tension crack repairs were defective, as he had previously assured us that they appeared to be sound and were performing as expected. I imagine that EQC and the W's were just as surprised, despite Mrs W's pessimism. It could be argued that relief would have been available to the W's under s 24 of the Contract and Commercial Act 2017 had they applied to a Court rather than to this Tribunal.

[52] It is regrettable that the parties have been unable to resolve the situation for themselves, but scarcely surprising when EQC has long been seeking finality from a dispute involving this vulnerable family. It might have been better if EQC had been willing to compromise by agreeing to pay whatever it cost to repair the three tension cracks, including the costs of professional design and supervision, less the \$14,711.57 plus GST it had already contributed towards this repair.

### *Discussion*

[53] The crack investigation has revealed that the tension cracks in the W's slab remain unrepaired, despite two attempts at repair made by EQC over the last ten years. Although EQC is legally entitled to rely on the Settlement Agreement, it is a step too far to also claim costs for mounting that defence. Its claim for costs is therefore denied.



C P Somerville  
Chair  
Canterbury Earthquakes Insurance Tribunal

## **Appendix 1**

IN THE CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL  
AT CHRISTCHURCH

CEIT007

**BETWEEN**

**C AND D W**

**APPLICANTS**

**AND**

**EARTHQUAKE COMMISSION**

**RESPONDENT**

Hearing Commenced: 19 August 2020 held in Courtroom AG04

Tribunal Members: Chair Somerville

J Long

Appearances: J W And K Pope – in support for the Applicants

D Mcdougall for the Respondent

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**TRANSCRIPT OF PROCEEDINGS**

**BEFORE CHAIR SOMERVILLE**

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**AUDIO NOT RECORDED UNTIL 10.39 AM**

**UNIDENTIFIED MALE SPEAKER TO UNIDENTIFIED MALE SPEAKER:**

- A. ...I'm not sure what to do, and I said well there's two ways to go – you stay in the Tribunal and you present your case and do whatever you're going to do or I can facilitate some sort of resolution with EQC in terms of an agreement that everyone can move on with, so that's how I got involved just recently more so, but in the conversations that I've had with her was very much around the comfort

around the repair strategy for the slab so I think EQC's position was based on concrete solutions: grind out an epoxy and do that to there and there was a lot of other things in terms of showers and bits and pieces but short of that, you know, I'd just probably need to hear from you, your position on the property what your thoughts are structurally.

Q. In a general sense or?

A. Yeah.

Q. Okay. So, the house has an unreinforced slab. In looking at the detailing of that slab which is summarised in my report, it does fall short in a couple of areas and a couple of ways of the requirements of NZS3604, the standard of the day, bearing in mind that the version of that standard that the design was done to is now superseded by the 2011 standard and, of course, unreinforced floor slabs are no longer allowed. There is evidence of a small amount of lateral ground movement. I mean that's the only thing that would reasonably explain the formation of the cracks although when I say: "Minor", I do mean minor. It's quite small. In my assessment because the other thing – essentially I was asked to comment on three things: I was asked to comment on the leaking of the shower; the issues around the slab, and what was the third one? It was relatively minor in the scheme of things. So, the cracks and the voids in the slab, effectively they're related issues. And so a slab like that would normally shrink and there would be some movement and in fact, there are control joints in the slab that are there deliberately for that purpose, recognising that without restraint from reinforcing mesh, that movement is essentially unrestrained. I did some quantitative analysis in the localised area through the house around the bedrooms and the bathroom for the purpose of trying to put some first principle science if you like behind that movement and I'd come to the conclusion that if we looked at typical figures for shrinkage and concrete which are quite well-known for Christchurch that the movement was a bit more than would be expected through shrinkage alone and that that tended to support the position that there could be damage to the shower now. In the last settlement conference it was agreed wasn't it that the shower was earthquake damage and that that would be dealt with. C W had done some tests of his own which were pretty practical and pragmatic, albeit it a bit rudimentary. Those were backed up a bit more formally with a qualified plumber and that was that. I know there's been

repairs to the brick veneer on the house and look, they're probably not the tidiest repairs I've come across if I was to be absolutely honest, but from a functionality and a structural point of view not really a big-ticket item for me bearing in mind that other than resisting the wind load, being the first port of call that the wind hits when it hits the house, the brick veneer essentially is not a structural item (inaudible 10.04.51) the house. The issue around the voids in the slab, I'm confident that there are no voids. That came down essentially to an issue of the relative resolution of two ground penetrating radar investigations. One was clearly better than the other and in the report that I've written here I have looked at the core tests, some first principles engineering numbers that say, let's say for argument's sake, we take it at face value but the GPR report that says the voids were there is correct. Is the slab actually able to span that far being unreinforced? The answer is absolutely not: inconceivable and then I have – so I've looked at the reports, the core samples and some engineering first principles and they all point in the same direction to say look we don't have a void problem.

**CHAIR SOMERVILLE TO MR POPE:**

- Q. Can I just interrupt? You can see it from the W's point of view is that they got this first ground penetrating radar survey and it showed the existence of voids everywhere. And so Fletcher EQR said we're going to do a couple of holes so they did two holes and there were no voids and so the W's say, well that's because you didn't actually put the holes in the right place so you go and put the holes in the places that they say you ought to and there are still no voids. They're still unhappy with it because they had in their mind that there are voids and so EQC pays for another report and this report is from the best people that you can get. They're the best people in the country. They've got the best equipment and they understand it more than anybody else does. They've got really good software for analysing it and so they go right over the house and say: "No voids". So, there's a consistency between their report and the holes and generally the best evidence is actually what's under the floor. Well they've gone and done that and they've got it and when they did the holes they did a really comprehensive job of analysing it and so they measured the depth of the hole and they measured the depth of the core sample on each side – four different



places on the bottom of it and they're all exactly the same length and they explain that probably the first report was misleading because the stones in it are quite big and so they get gaps around the stones also called clasps and as a result it was a misleading survey but unfortunately the W's had that survey test and they just don't believe anything that EQC says to them and so even though the second report has said there weren't any and the holes proved that there weren't any, they still can't get past their initial feeling that there were voids in it. It's a bit like there's a survey done on 911, 2001 and they asked a whole range of people where were you when you first heard about the twin towers and not only did these people say what they could remember and where they were, they wrote it down and then they came back 10 years later and asked them the same question and they wrote it down again and then the person doing the studies said but that's not what you said last time to a lot of people and they said yes it is and they said well actually you wrote it down. Have a read of what you say – said then, so they read what they said then and they said, no, that's not correct, you know, so it's the way people think about stuff and it's really hard for them to get past this.

A. I think I've managed to move them off that.

Q. Well that's good because they keep feeling they were making a concession about it.

A. Yeah.

**UNIDENTIFIED MALE SPEAKER TO CHAIR SOMERVILLE:**

Yes, one really important thing to understand about that GPR survey and that is that it comes down to the resolution of the data and so I spoke to someone experienced in GPR. I went to some lengths not being a GPR expert, to understand the principles of what was going on behind that because as a neutral technical advisor, I have to sign my name and my reputation to the report that I write and if I'm not confident about what it says, it will not have my name on it. The advice I was given which is consistent with the information in the hand book which is sort of like the Bible of GPR scanning, is that even if, with the lower resolution antennae, the data was analysed correctly, you could still get the wrong answer because it's kind of like

a pixilated view, it's just – there isn't the resolution there to draw the conclusions that are being drawn.

**UNIDENTIFIED MALE SPEAKER:**

Unfortunately, this couple got involved with B G I think at the outset which I think sort of set a mindset for them around what they believe was going to be the repair and what's actually transpired, but I think obviously with the input and lots of professionals and lots of hard work around this thing, I think we've managed to move them back off that paradigm really from where they were at.

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. Yes, so I mean part of this is even though we might settle it today they are still going to have second thoughts, so we've got to do it right.

A. Yes, so I mean I suppose if I understand what you said and all that generally from your report, yes there was some movement which may have cracked the pipe from the shower, so, yeah, we'd draw a long bow to that, that that can be put into the earthquake damage.

**UNIDENTIFIED MALE SPEAKER TO UNIDENTIFIED MALE SPEAKER:**

A. I think on the basis of probability we've reached that conclusion they are related.

Q. You know, four (inaudible 10.50.15) are off the table, but you know, it's an unreinforced foundation slab.

A. Correct.

Q. And so the proposed – so to reinstate it back to what it was before the earthquake is the repair strategy that EQC have presented to the homeowners. Would that restore the structural integrity I suppose of that slab?

1050

A. So as part of my report, I've reviewed the scope of works and a few other documents. They're all listed here. I have not seen recently or reviewed in detail a strategy but in general terms as I understand it, the intent is to do the epoxy injection and to put a flexible sealant in where movement joints have opened up to reinstate where cores were taken and not correctly put back. I think from what

I can gather and D W's reaction when I first inspected the house, I think the standard of workmanship on not repairing those cores probably undermined a lot of trust which is a shame.

Q. Yeah.

A. But that scope of works if carried out correctly and to a proper standard from a structural point of view will get the slab back to the same position it was pre-earthquake. The slab is not, in terms of its detailing, it isn't compliant with code as it stands now. There are anecdotal pieces of evidence that the standard of construction of the house is not great. I think it was built to a price but ultimately it is what it is and so if your question is, is a strategy along those lines going to restore and address the loss? The answer is yes.

Q. One of the things I remember from this site was that the deepening of the slab around the perimeter, it doesn't show any major cracks or lateral spread so obviously the deepening of the slab around the perimeter would have been reinforced?

A. Yes it has been. It does. Yes, it has it's longitudinal (inaudible 10.52.17) in it.

Q. Yes, yes, so there was no – there might be some fine cracks in the deepening of the slab around that perimeter but there doesn't seem to be any lateral spread so it's only really in that area through the lounge I think and bedroom three that I think the major cracks were weren't they?

A. Yeah, the lounge/kitchen.

Q. Yeah.

A. Look when I inspected the property which was 2019, sorry, early – about a year ago wasn't it, the repairs had been done and the roughcast on the foundation had been repaired so I don't have the benefit of having seen it post-earthquake.

Q. There was only two fines cracks from what I can remember around that perimeter slab.

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. Wasn't there a gully trap that had been pushed sideways slightly?

A. Yes. There is a wee bit of open – one of the gully traps along the back of the house.

Q. Yes, so that indicates that there'd been a bit of outward pressure from the foundations was that?

A. Yeah, look there's definitely been a minimal amount of ground movement. The point is that plumbing which is in-slab plumbing and the slab itself, they are brittle elements by nature. They don't require a lot of movement to actually have damage. The sewer outside, that's a different scenario but presumably we'll get to that in time.

**CHAIR SOMERVILLE TO MR MCDUGALL:**

Q. The other thing about the stretch in the living areas is that the carpet is not as wide as the room now, is that right Doug?

A. Well the carpet was up when I was there so I couldn't comment on that.

**UNIDENTIFIED MALE SPEAKER TO CHAIR SOMERVILLE:**

A. In the proposed settlement is money for...

Q. Money for replacement of the carpet. Yes, that was off and a long time ago and I thought that was a generous offer.

**UNIDENTIFIED MALE SPEAKER TO UNIDENTIFIED MALE SPEAKER:**

A. So, look I mean that's probably what I wanted to hear.

Q. The only other issue I think – you see I was to do a report and for various reasons that hasn't been able to happen since the last settlement conference but the issues I was asked to comment on were some incorrect grading in a sewer going out to the street and damage to window frames or misalignment of window frames and I think there may have been a couple of other minor things that the W's wanted to raise but they weren't put in writing so to speak. I've not been able to do that but in my inspection of the house, there wasn't anything to indicate to me that there was any significant residual racking in the superstructure although I have to be frank and say that that's not what I was asked to comment on so it wasn't the focus of my inspection.

A. Yeah, I mean I have had some conversation with her around the windows mainly from...

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. That bay window is a bane of contention isn't it?

A. Again, it's the Butynol and stuff was included in the settlement, an allowance for that on the bay windows.

**UNIDENTIFIED MALE SPEAKER:**

Yeah, that's in there, yep.

**UNIDENTIFIED MALE SPEAKER TO UNIDENTIFIED MALE SPEAKER:**

A. So, whether it's enough I'm not sure.

Q. I think there's a quote from the aluminium company for that.

A. And when I spoke to Milne who was the previous case manager working with the W's before they came to the tribunal, he said when they went to the site was it with the aluminium man? He tweaked some of the hinges and latches at the time so – but I think her main commentary was you sent a man out who could only do latches and whatever rather than looking at the windows themselves so I think there's some contention in their mind about whether the right professional from the aluminium company came out, but there's certainly an allowance in the settlement for, as I understand it, for aluminium window latching review.

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. And they can choose their own repairer?

A. Yeah. I mean, you know, in my conversations with them they've had a builder come out and had a look. I think that everything they've been talking about, they can do with the money in the builder's view with a bit of tweaking but, you know, that's over to them and it depends on what the final settlement is and where they get to I suspect.

**UNIDENTIFIED MALE SPEAKER:**

I guess the other comment I'd make to try and put it in perspective, my understanding is that the brick veneer on the house hasn't been replaced outright so it's largely original. If there was a significant amount of wracking then there would be

a misalignment and a very obvious misalignment between the window frames when the veneer butts up to them and in some other cases I have seen just that. So, whilst I didn't focus my attention on that issue because that wasn't what I was asked to comment on, if there was anything significantly astray, I would have seen it in my general travel around the house.

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. Did you read the structural report?

A. Yes, that was provided as background.

Q. Yes, and it would have commented on it –

A. Absolutely.

Q. – and it didn't?

A. Not that I recall, no.

Q. No, again, so I think that's a reasonable assumption that it wasn't there.

A. Yep.

Q. Shall we go and see it?

A. Yeah.

Q. Over to the black and white now?

A. Yeah.

Q. You're happy to stay here for a bit?

A. Yeah. I mean I think the homeowners just need to hear...

Q. And you're going to come over? We'll all go out the back door then we don't have to come back in and out through security.

A. Oh okay.

**UNIDENTIFIED MALE SPEAKER:**

Okay, moving around things so bugger I think where we've got to after having a conversation with Julius and also both J and D and C that we've got to the situation where we would accept or on behalf of the W's would accept an offer of 67,500 full and final on the property at XXXXXX. And if you've got some documents we will get those signed up today.

**UNIDENTIFIED MALE SPEAKER TO UNIDENTIFIED MALE SPEAKER:**

A. I was told not to bring them today but I can organise that.

Q. Have you got the other ones that have the 55 on?

A. No I haven't. No, I was told that you would have the documents. No?

Q. No.

**CHAIR SOMERVILLE TO UNIDENTIFIED MALE SPEAKER:**

Q. Can we have them emailed through? Can you do that?

A. Yeah I can do that in half an hour.

**MR POPE TO UNIDENTIFIED MALE SPEAKER:**

Q. Well if you send them to me I'm going to take the W's over to GCCRS to meet our lawyer.

A. Yep.

Q. To go through the documents.

A. Right.

Q. And execute them and get it all signed up.

A. Okay.

Q. So if maybe you want to ring back to the office and get someone to do that?

A. Yep.

Q. Send them to my email. By the time we wander back and get ourselves settled we can have those executed hopefully subject to legal advice.

A. Yep.

Q. And have those returned back to the Tribunal, to you Emma? To Emma and then we can formally do whatever.

**CHAIR SOMERVILLE TO MR POPE:**

Q. I'll wait 'til I get it?

A. Yeah.

Q. And I have agreed that I will pay for Julius to organise the drilling of the cracks so that they know exactly what they're doing but this is in full and final settlement. Whatever they find when they do the drilling won't let them come back and ask for more. We know that don't we?

A. So, do you want me to get the documents sent through to you?

Q. Through to Tim. We don't need to see them.

A. Right, I'll ring the...

**UNIDENTIFIED MALE SPEAKER:**

And subject to that, that will conclude the claim?

**MRS W:**

Yep. It's a shame it had to take nearly 10 years to sort it out but the anniversary this year of (inaudible 11.35.17).

**MR W:**

And Charlotte was a (inaudible 11.35.24).

**CHAIR SOMERVILLE:**

Not that far away.

**HEARING CONCLUDED: 11.38 AM**



## Appendix 2

*Figure 1: Tension crack in the living room*

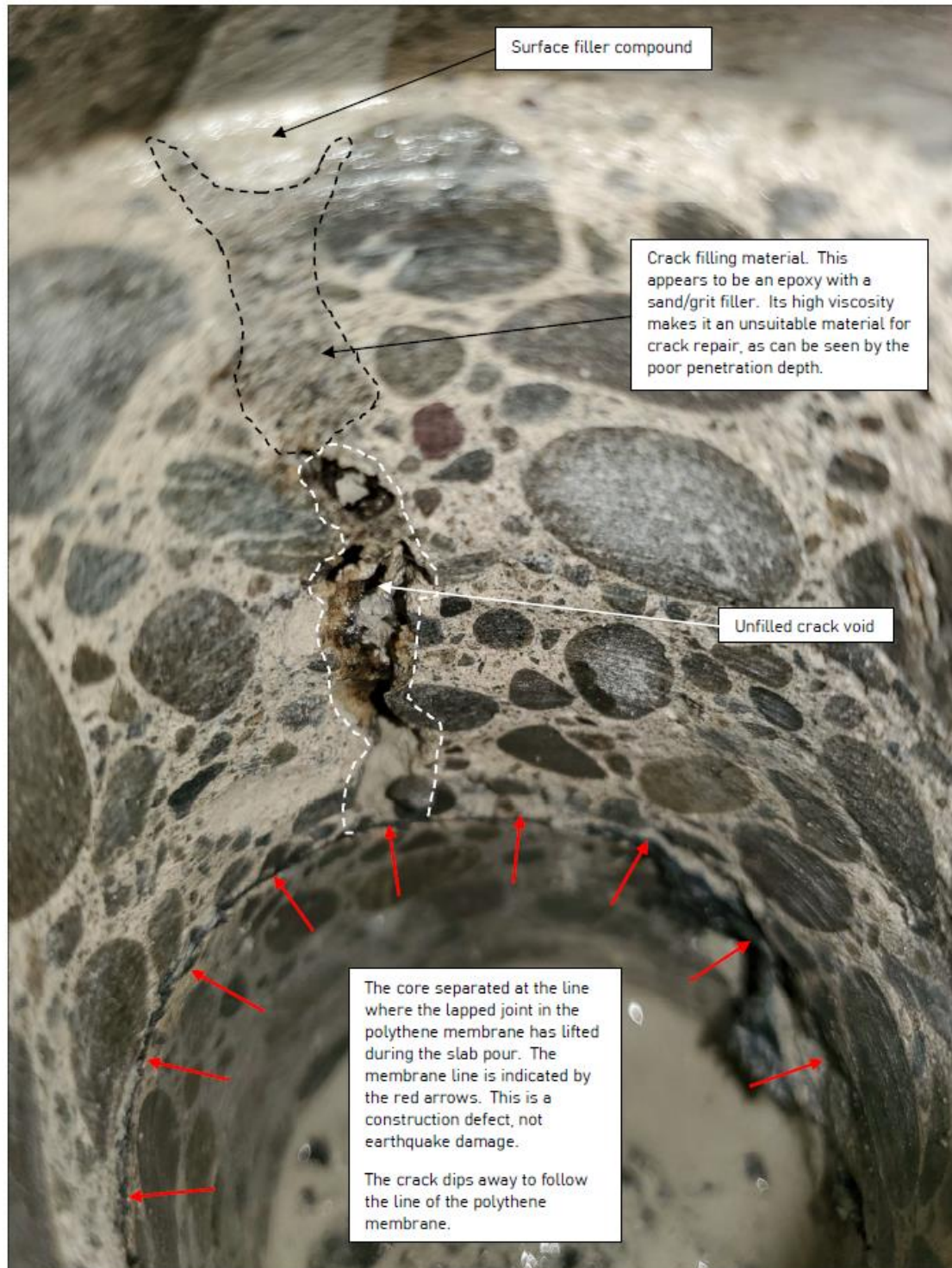


Photo 4: Core hole in Living Room, looking southwards. The crack repair looks as expected at the surface. The filler material has penetrated approximately 20 mm only (one-fifth of the nominal slab thickness), making this repair effectively only cosmetic.

Figure 2: Tension crack in the lounge by door to the entry



Photo 7: Close up view of cored hole. The penetration of the epoxy repair at this location is approximately 10 mm. There appears to be little in the way of structural epoxy filler material below the surface filler compound. This is a superficial surface repair.



Figure 3: Tension crack in bedroom 1

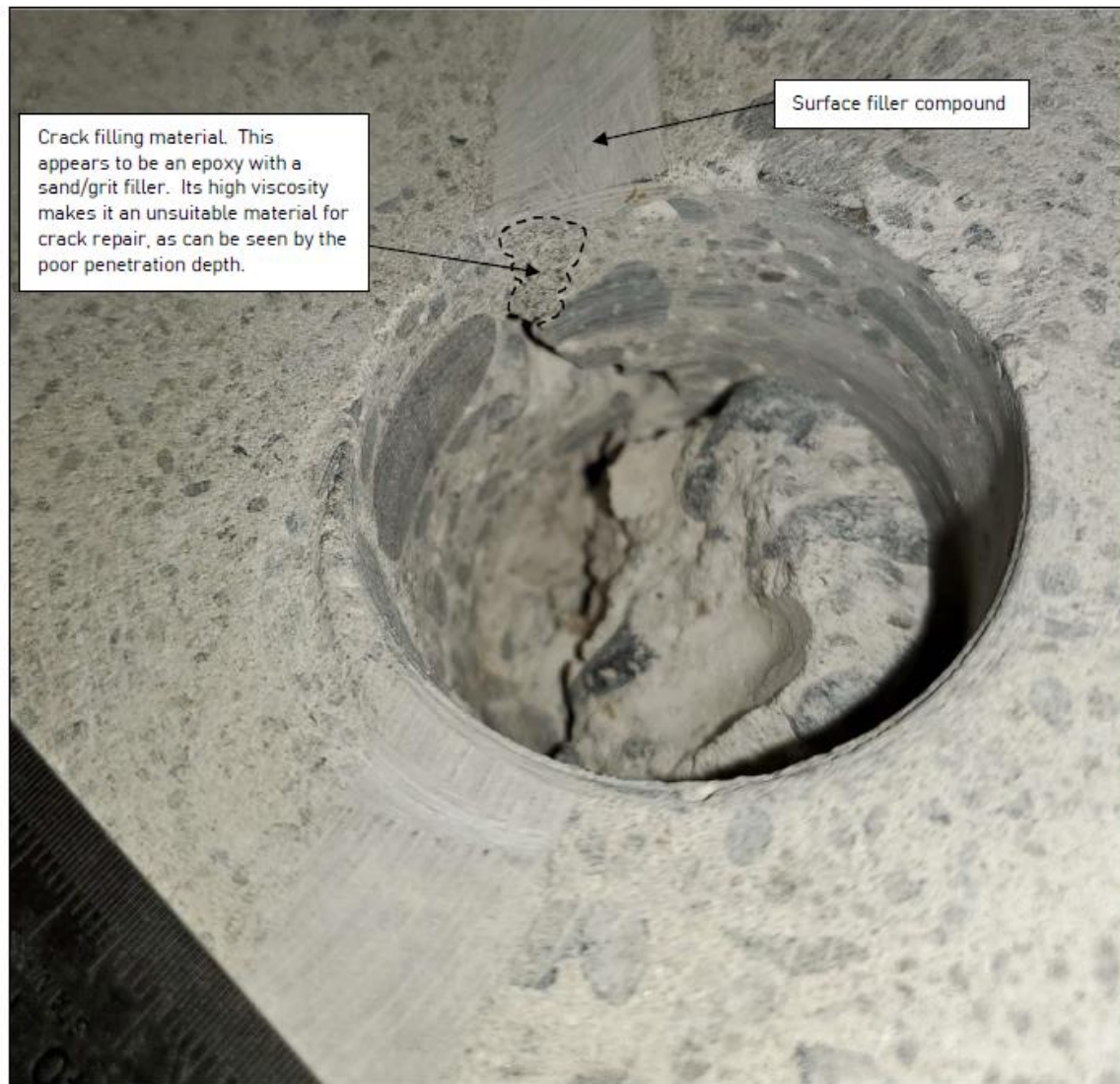


Photo 11: Similar to photo 10. Refer to annotations. The effective depth of the crack repair is approximately 10 mm.