



That sinking feeling

Pea gravel or blue pug? Latest insights from court.

THE CASE IS A TIMELY REMINDER FOR COUNCILS TO ENSURE THEIR INSPECTION PROCESSES ARE APPROPRIATE.

Claims against builders and councils concerning inadequate foundations were more common in the 1980s and the early to mid-1990s than in the 2000s. After the defective foundations case *Hamlin v Invercargill City Council* went all the way to the Privy Council, many councils improved their inspection processes. They also required property owners to engage a structural engineer to inspect and provide a producer statement – construction review for foundation work.

Nevertheless, over recent years claims about inadequate foundations have started to creep back into vogue.

One such case is *Currie v Gordon & Southland District Council* [2015] NZHC 2057. However, the council successfully defended the claim against it as the council's involvement was not the cause of the claimants' losses.

The claimants' house was built for them by a builder friend, Mr Gordon in 2004. In mid-2009, cracks appeared in the house and walls came out of alignment. The perimeter foundation walls were performing but the concrete floor slab had sunk.

The claimants said the reason the slab had sunk was because the builder had failed to remove grass and organic material before placing the fill. They claimed this resulted in the grass and organic material rotting causing a void to develop under the slab. The claimants argued the slab then sunk into the void.

The court preferred the evidence from the witnesses called for the builder that proper practice had occurred which was to scrape 75mm to 100mm of material as a minimum to remove the grass and organic matter before placing the fill.

The claimants also alleged the void and consequent sinking had occurred because the builder had used pea gravel as fill. Pea gravel has been used as fill in the Southland region for many years with no issues ever

arising concerning its use.

Pea gravel is smooth and regular shaped and will not compact. The claimants argued that because of this the soil beneath the fill had been forced up into the voids between the pea gravel which had caused the pea gravel to sink.

The court found that for this theory to be a realistic one, the floor slab would have sunk much sooner than five years after construction.

Accordingly, the claimants did not succeed in proving on the balance of probabilities that the builder's or the council's involvement had been negligent and so the claim failed in its entirety.

While an alternative cause of sinking was not required to be proved by the builder and the council there was evidence that a clay called "blue pug" existed under the house. Blue pug clay is much softer and more prone to shrinkage compared with yellow clay. The court commented that the existence of blue pug under the floor slab was a plausible reason the floor slab had sunk.

While the claimants' case against the council failed, the court commented that the use of the pea gravel as fill may not have complied with the relevant standards because it does not compact and it is uniform in size. The court was made aware that pending the outcome of this case, the council had stopped approving the use of pea gravel as fill in its jurisdiction.

The court commented that the use of pea gravel as fill material should be specifically approved by the council as an alternative solution for it to be allowed to be used in the future.

While the council's involvement in the building work was not at fault, the case is a timely reminder for councils to ensure their inspection processes are appropriate and, where necessary, for councils to obtain producer statements from the engineers involved where they can. **LG**