

From: [Policy MailIn](#)
To: [REDACTED]
Subject: [REDACTED]
Date: Tuesday, 9 July 2019 9:53:26 AM
Attachments: [REDACTED]

From: [REDACTED]
Sent: Monday, 8 July 2019 4:35 PM
To: Policy MailIn
Subject: [REDACTED]
[REDACTED]

[REDACTED]

Dear Director,

Below and attached is an email and letter I have recently sent to the Principal Registrar & Executive Director of NCAT.

I would like this to be part of my submission, that NCAT has behaved disgracefully in this case of [REDACTED] vs [REDACTED] where the [REDACTED] complained about the quality of construction of their cracking house against a Builder [REDACTED].

The NCAT Member who conducted the final hearing and wrote the Decision, [REDACTED] [REDACTED] has, incredibly, managed to get it completely wrong in coming to the conclusion that the [REDACTED] house was structurally sound and NCAT have unfairly put the [REDACTED] thru complete hell, as well as essentially financially bankrupting them, thru no fault of their own.

It was with some disbelief when I read [REDACTED] report that he decided to accept the unproven evidence of an Engineer with a very poor reputation, rather than my own, as I knew with my experience and expertise I was right in stating there were no piers under the house and the footings were indeed only 200mm thick, as the attached letter with photos demonstrates. In fact in some cases there was not even any footings under the brickwork of the house but [REDACTED] [REDACTED] concluded this was all perfectly OK. Admittedly based on perjured evidence from the Builder and his expert witness [REDACTED].

[REDACTED] [REDACTED] based his decision not to accept in full the [REDACTED] complaint against the Builder [REDACTED], primarily only on [REDACTED] [REDACTED] unproven word, that there were piers under the [REDACTED] house footings and the footings were 250mm deep. Except

as myself and the Owner subsequently proved when we excavated under the house footings, they weren't.

I was appalled at the length of time it took for NCAT to process this complaint and the conduct of the on site Conclaves left a lot to be desired. The initial conclave, which we were told was to be the only one, was conducted by a Structural Engineer [REDACTED] [REDACTED] who could easily understand what the problem was, although some of his informal conduct and comments seemed most irregular.

Subsequently we were then advised there would a second on site Conclave following complaints by some of the participants in the first conclave but the second conclave was conducted by an Architect, who clearly had no idea about structural engineering issues. As few architects do and in addition his notebook ran out of power only a few minutes in to the Conclave and he had to use the notebook of one of the expert witness to record the hearing. The lack of professionalism was astounding.

He also failed to note that all the expert witnesses agreed on site that it appeared there were in fact no piers installed under the house, including the expert witness for the defendant who had previously stated in his expert witness report that there were.

I believe there were also instances of individual expert witness asking for and getting revisions to the agreed Conclave notes after they had been agreed upon, which also seemed highly irregular.

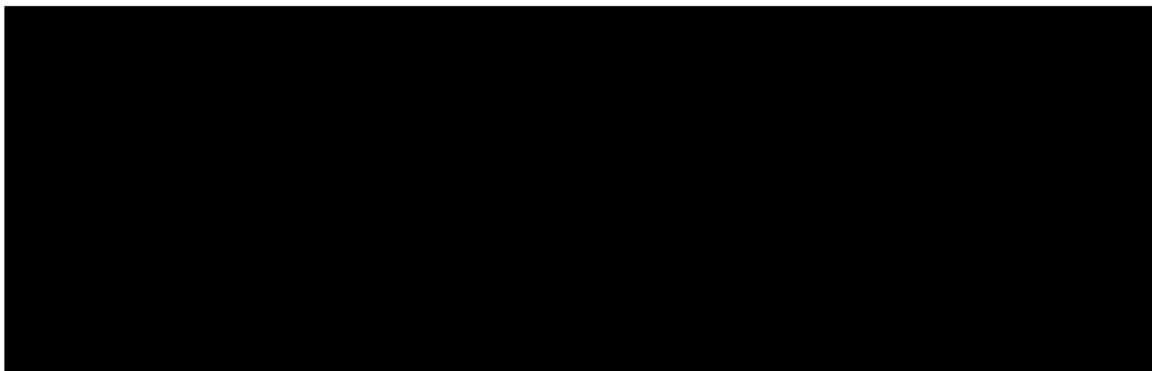
I apologize I do not have more spare time to make a more detailed submission but the excavations at the [REDACTED] house and the subsequent letter attached has taken an enormous amount of my time, which I have not charged the [REDACTED] for but felt was necessary to do, to right the wrongs NCAT have exacted on the [REDACTED]

As I said to NCAT's [REDACTED] below, their behavior has been a disgrace. It is well below what should be reasonably acceptable and their significant shortcomings need addressing in the interests of fairness to the NSW public. It has occurred to me there may well have been some outside influences in this case, such is the obvious flaws in their decision and seemingly irregular mismanagement.

I urge the Department of Justice to proceed with perjury charges against the Builder in this case [REDACTED] and his expert witness Engineer [REDACTED]. You would be lucky to encounter a clearer and more obvious case.

Please do not hesitate to contract me if you need any further information.

Kindest Regards



From: [REDACTED]
Sent: Sunday, July 7, 2019 5:55 PM
To: 'ncatenquiries@ncat.nsw.gov.au' <ncatenquiries@ncat.nsw.gov.au>
Subject: [REDACTED]



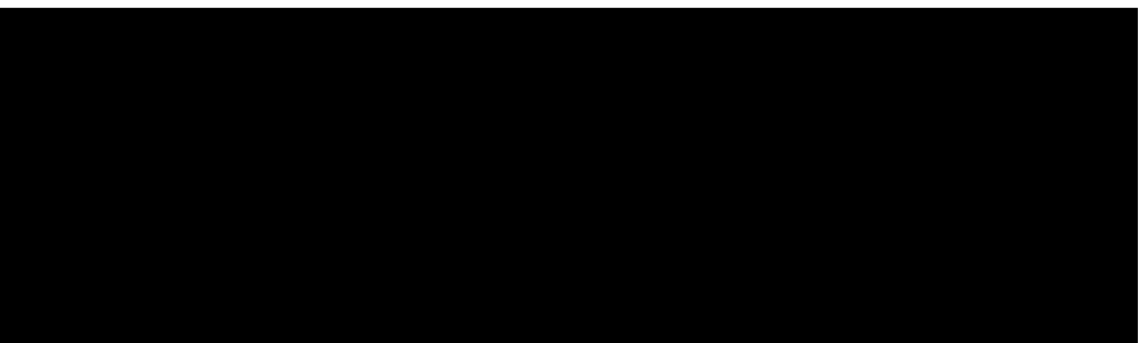
Dear [REDACTED]

Please find attached a letter in response to your letter to me dated 29 May 2019.

I strongly urge you to act on it, wisely.

If you don't, it will ultimately reflect very poorly on yourself and NCAT.

Regards



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[REDACTED]

07/07/19

[REDACTED]

RE: [REDACTED]

Dear [REDACTED]

Thank you for your letter of 29 May 2019. I can understand your sentiments. However, in this case NCAT has made a very serious mistake and have effectively financially bankrupted an innocent couple, [REDACTED] to the tune of almost a million dollars, using false information, such that normal courtesies and conventions need to be ignored.

I provide below irrefutable proof that the defendant [REDACTED], expert witness [REDACTED], and [REDACTED] council staff, have all committed perjury at the hearing for this case.

[REDACTED] and the council staff stated either via sworn statements or under oath that the piers under the [REDACTED] house had been installed and the footings were at least 250mm thick, in accordance with the designing engineer's drawings. The attached photos of excavated footings provide indisputable evidence that this is simply not true.

[REDACTED] decision, based on this perjured testimony, is a gross injustice and is putting great strain on an unfairly victimised couple.

I respectfully request NCAT ask [REDACTED] to review his decision in light of this information and hold the perjuring witnesses to account.

The following section presents key reasons for [REDACTED] decision and responses with photographic proof of the false evidence. A copy of the design engineer's plan is included for reference after the photos.

cont/...

[REDACTED]

On 25 May 2019, [REDACTED] and myself excavated under the [REDACTED] house footings to determine exactly to what extent the piers and footings were in accordance with the original engineering plans.

[REDACTED] gave the following reasons in his decision;

Reason 59

“Clause 43.1 (referring to the building contract for this house) makes it mandatory for the building works to comply with:

- 1. The Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulations or other instrument made under the Act*
- 2. All other relevant codes, standards and specifications that the building works are required to comply with under any law*
- 3. The conditions of any relevant development consent or complying development certificate”*

Response to Reason 59

As the GPS logged photos show, the absence of piers and the footing depths being only 200mm deep means the footings do not comply with Council’s development approvals, which require them to be in accordance with Engineer’s drawings.

I have included a marked up copy of the design engineer’s footing design ([REDACTED] Missing Piers) showing locations of proposed piers, which are in fact all missing.

Reason 77

“Section 18B(a) of the Act implied a warranty at the time the contract was signed – ‘that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract”

Response to point 77

As the photos show, the absence of piers and the footing depths being only 200mm deep (instead of being the specified 250mm depth) means the footings work has not been performed in a proper and workmanlike manner.

Reason 79

“The particulars to paragraph 12 on the Points of Claim (by the Owner) raise the following matters:

- 1. The site material was incorrectly classified as Class S when the site should have been classified as Class H2*
- 2. The slab and footings system was structurally inadequate to support loads from the dwelling and*
- 3. The piers to the dwelling if they have been constructed, have failed and do not support the structure.”*

cont/...

Reason 81

"I find the matters raised by the Owners in (b) and (c) would, if established, be persuasive evidence that the builder breached the warranty in section 18B(a) of the Act."

Response to Reason 81

As the photos show, the matters raised by the Owners of there being no piers installed and footings being only 200mm deep and not 250mm deep as specified, show there is indeed persuasive evidence that the builder breached the warranty in section 18B(a) of the Act.

██████████ conclusions and decision are therefore wrong.

Reason 91

"I find that the owners have not established by evidence that gives me a sense of actual persuasion in favour of their contention that the slab and footings system was structurally inadequate to support loads from the dwelling."

Response to Reason 91

The photos show that the slab and footings system, with no actual piers and only being 200mm deep – despite piers and 250mm deep footings being specified by the designing engineer's drawings – is clearly structurally inadequate to support loads from the dwelling.

Indeed, as photos W-15N and W-16N show, there is not even any footing, only a thin layer of brick mortar if that, under the engaged brickwork columns at the front of the house, let alone piers under same as specified.

Reason 93

██████████ states: *"In addition ██████████ raises another issue which, if accepted, would establish a breach of this warranty. That is, if the footings are only 200mm deep not 250mm deep as shown on the engineer's drawing"*.

Response to Reason 92

Photos W-2N, W-3N, W-4N, W-5N, W-6N, W-7N, W-8N and W-9N clearly show the footings are in fact only 200mm deep. The locations where these footings depths were measured are marked up on the designing engineer's drawings (██████████ Missing Piers).

There is a clear breach of the warranty.

Reason 93

██████████ addresses this issue in his September 2016 report. He states that he had an excavation undertaken adjacent to the footings at the point where ██████████ had nominated a 200mm footing and no piers. He also states that he undertook excavations at 4 other locations along the eastern side of the house to check footing depths and pier locations. He states that he found minimum footing depths of 250mm and maximum depths of 300mm.

Response to Reason 93

As the photos show, ██████████ lied under oath, as did the builder ██████████ who also claimed the footings were at least 250mm deep as specified.

I will be raising this with the Department of Justice.

Reason 94

"I accept [REDACTED] evidence in connection with issue of footing depth. As a result, I reject [REDACTED] evidence that footings are only 200mm deep. [REDACTED] indicates that he examined this issue by the undertaking of excavations along the eastern side of the house. [REDACTED] evidence was that he dug adjacent to the footings and probed with a metal rod. I prefer and accept [REDACTED] evidence since in my view he went about the investigation of these issues in a more systematic and careful way."

Response to Reason 94

Again, the photos clearly show that the footings are only 200mm deep. [REDACTED] evidence was a lie.

In my 35 years as a consulting structural year, I have maintained an impeccable record and my ethical standards are used as an example for others in university ethics courses. I am flabbergasted that [REDACTED] would preference the unproven evidence of [REDACTED], who has been previously described as very foolish by the Board of Professional Engineers Queensland – a point which was highlighted in the NCAT hearing conducted by [REDACTED].

Reason 95

"In addition, witnesses from the [REDACTED] Council were called as witnesses regarding their inspections of footings and slab. I find based on their evidence that they checked the footing and piers and that the work the builder had carried out in the construction of the footings, piers and slab complied with the details shown on the engineer's drawings. Exhibit E confirms this evidence."

Response to Reason 95

The photos show that the witnesses from the [REDACTED] Council were lying on oath.

Reason 96

"I find that the Owners have not established that contrary to the engineer's drawings the footings were only 200mm deep".

Response to Reason 96

The Owners did in fact obtain expert witness reports and opinion from an experienced engineer with specialised structural engineering knowledge and an impeccable record.

Reason 99

"I accept [REDACTED] evidence in connection with issue of the existence of piers. As a result, I reject [REDACTED] evidence that there is no sign of any piers. [REDACTED] indicated that he examined this issue by the undertaking of excavations along the eastern side of the house. [REDACTED] evidence was that he dug adjacent to the footings and probed with a metal rod. I prefer and accept [REDACTED] evidence since in my view he went about the investigation of this issue in a more systematic and careful way."

Response to Reason 99

Photos W-10N, W-11N, W-12N, W-13N, W-14N, W-15N, W-16N, W-17N, W-18N and W-19N all show that [REDACTED] conclusion is based on false evidence provided by [REDACTED].

I trust that you can see the injustice that has occurred.

By all means, bury your head in the sand and pretend NCAT has acted fairly and equitably but I will be submitting this to the Department of Justice NSW and the Premier, as well as approaching media contacts to ensure NCAT does not continue with this unfortunate, cruel and injurious treatment of the [REDACTED].

It has been a disgrace.

Regards

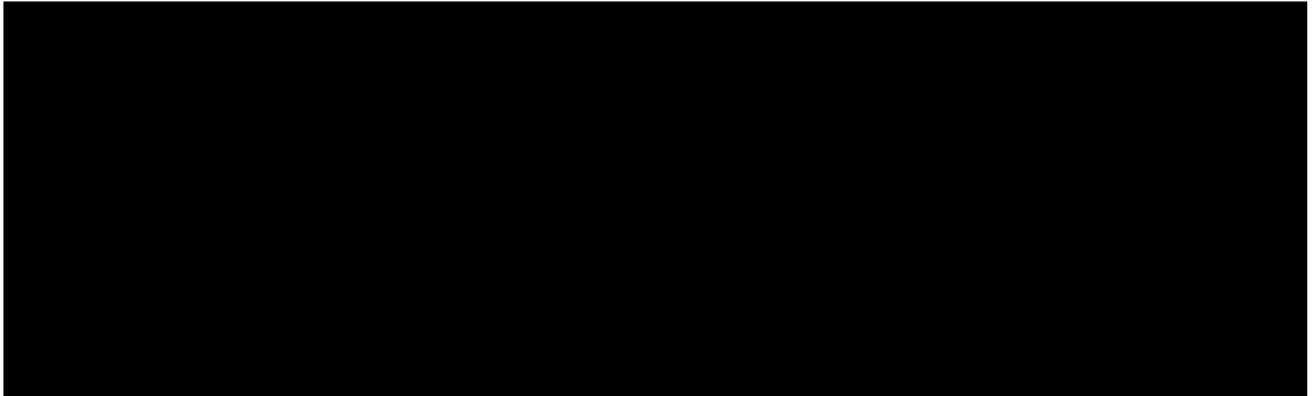


PHOTO 1 W-1N



PHOTO 2 W-2N



PHOTO 3 W-3N



PHOTO 4 W-4N



PHOTO 5 W-5N



PHOTO 6 W-6N



PHOTO 7 W-7N

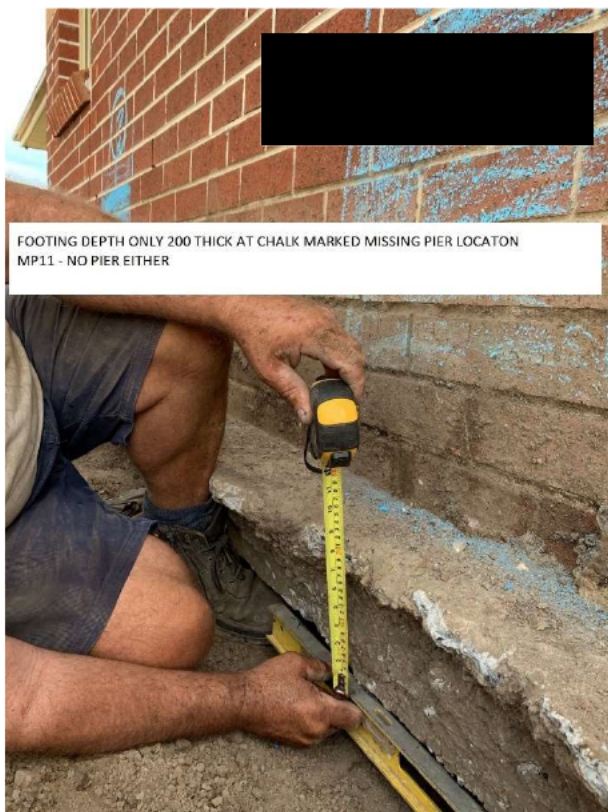


PHOTO 8 W-8N



PHOTO 9 W-10N



PHOTO 10 W-10N



PHOTO 11 W-11N



PHOTO 12 W-12N



PHOTO 13 W-13N



PHOTO 14 W-14N



PHOTO 15 W-15N



PHOTO 16 W-16N



PHOTO 17 W-17N



PHOTO 18 W-18N

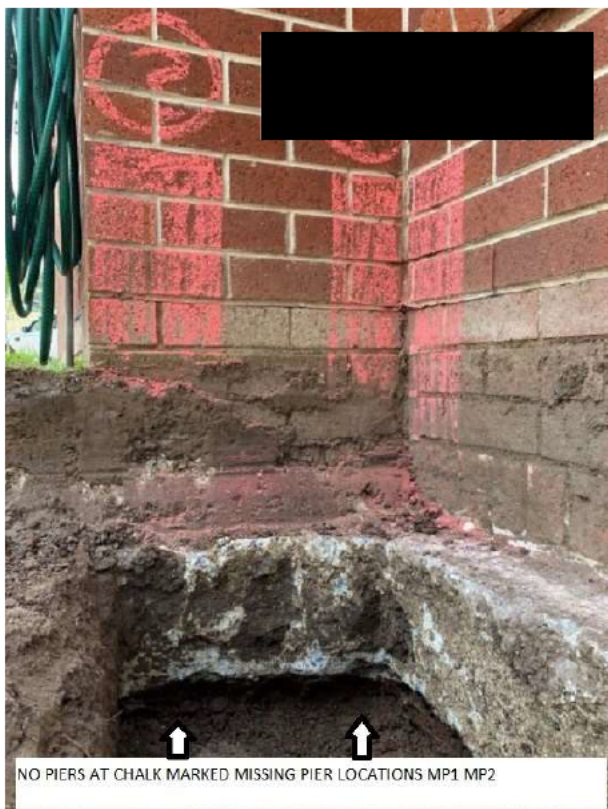


PHOTO 19 W-19N



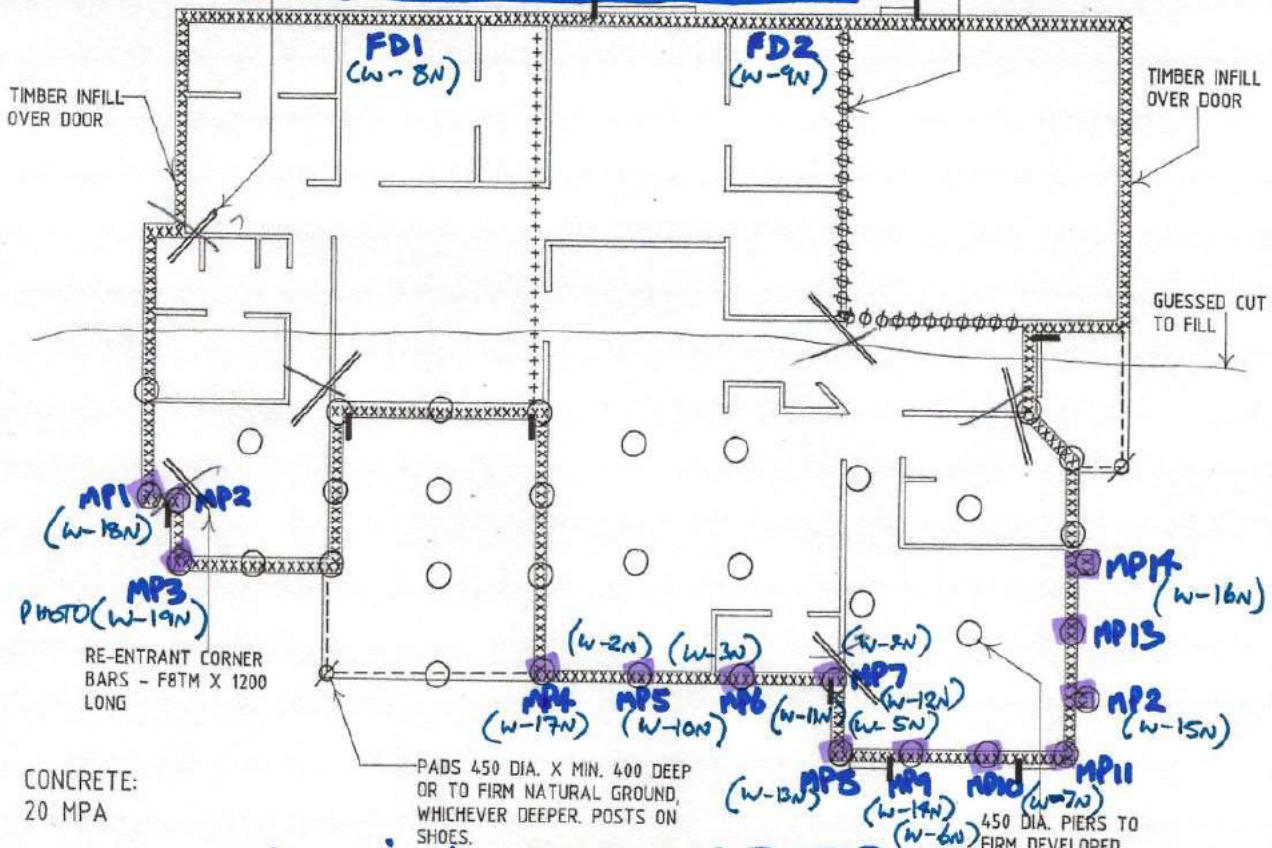
NO PIER AT CHALK MARKED MISSING PIER LOCATION MP3
- STRAIGHT EDGE SHOWN UNDER FOOTING

RE-ENTRANT CORNER
BARS - F8TM X 1200
LONG

IF IN DOUBT - ASK

COLD OR CONSTRUCTION
CONTRACTION JOINT PER
DETAIL E SHEET 2

**ORIGINAL ENGINEERING FOR
SUB, FOOTINGS, PIERS**



MP = MISSING PIERS INVESTIGATED. IE. NOT CONSTRUCTED
(W-N) - LOCATION OF PHOTO.

STANDARD DETAILS APPLICABLE:

xxxx DETAIL 1 or B

— EXPANSION JOINT

oooo DETAIL E

++++ KEY JOINT

---- DETAIL D

DETAIL H alternative to DETAIL 1 or B

NOTE:

COMPULSORILY CHECK FOR SOFT SPOTS
WITH PROBE AT ALL CORNERS & MAX.
2.5 CTS UNDER PERIMETER WALLS &
SLAB - BUILD PIERS TO FIRM DEVELOPED
GROUND IF NEEDED.

FOOTING & SLAB PLAN

NOTE:

CERTIFIED DESIGNED TO ALL AUSTRALIAN STANDARDS INCLUDING
AMONGST OTHERS AS1726, AS2870, AS1170 PARTS 1 & 2, AS4055**,
AS1684, AS1720 AND AS3600

** WIND SPEEDS ASSESSED PER AS1170 PART 2 & CONVERTED TO
AS4055 FORMAT.

NOTE:

KEY JOINTS OPENED UP IN SPACING. EXTRA CURING
REQUIRED BEING ONE OF:
A. FLOODING INSIDE RETAINING SAND.
B. SPECIAL REDUCED SHRINKAGE ADDITIVE IN CONCRETE.
C. SPRAY ON CURING AGENT.
ALSO LAPS CORRECT (NOT UNDER NOR OVER) & MESH
PLACEMENT CRITICAL.
ALSO CRITICAL COLD JOINT AROUND GARAGE.

CONTROL JOINTS (KEY) PREFERRED NOT UNDER TIMBER FRAME WALLS PARALLEL WITH SUCH JOINTS. WHERE UNDER WALLS SPECIAL TERMITE PROOFING REQUIRE

