

**In the matter of the Chartered Professional  
Engineers of New Zealand Act 2002**

**Appeal 06/23**

**AND**

**In the matter of an appeal to the Chartered  
Professional Engineers Council pursuant to  
Section 35**

**Between**

Mr A

**Appellant**

**Against a decision of**

The Registration Authority under the  
Chartered Professional Engineers of New  
Zealand Act 2002

**Respondent**

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Decision of the Chartered Professional Engineers Council  
Dated 17 February 2025

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## Introduction

1. Mr A (“the Appellant”) appealed a decision made by the Competency Assessment Board (“CAB”) of the Registration Authority (“RA”) to decline his application for continued registration as a Chartered Professional Engineer (“CPEng”).
2. The Appeal Panel of the Chartered Professional Engineers Council (“CPEC”) has been provided with a Bundle of Documents held by the RA in relation to the case. References to specific pages within this bundle are annotated “[BOD nn]”.
3. The Appeal Panel suggested the Appeal was suitable for determination on the papers and the Parties agreed. Therefore, with the agreement of the Appellant and the RA, the Appeal Panel conducted the hearing on the papers.
4. Key correspondence and submissions relating to this appeal are listed in Schedule 3.

## The Legislation

5. Legislation considered by the Appeal Panel is presented in Schedules 1 and 2.
6. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers Act 2002 (“the Act”).
7. Appeals to the Council are by way of rehearing (s37(2) of the Act).
8. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the Regulations).
9. The Appeal Panel is entitled to confirm, vary or reverse a decision (s37(5) (a)) and may make any decision that could have been made by the decision authority (s37(5) (c)).
10. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the Appeal Panel is entitled to take a different view from the CAB, but the Appellant carries the burden of satisfying the Appeal Panel that it should do so.
11. The basis for the Council overturning an original judgement at a rehearing is outlined by McMullen J in *May v May* (1982) NZFLR 165,170. The appellant must show that in the original decision, the decision maker:
  - (a) acted on a wrong principle, or

- (b) failed to take into account some relevant material, or
- (c) took into account some irrelevant material, or
- (d) was plainly wrong.

12. Both the Appellant and the RA accepted the Appeal Panel's invitation to provide supplementary submissions on the recent decision of *Nimish Deo v The Chartered Professional Engineers Council* [2024] NZDC 22169. The Appeal Panel refers *Deo v CPEC* at relevant points in this submission.
13. The CAB is appointed by the RA under rule 77 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 ("the Rules") and has delegated authority to make registration decisions.

*Parties' approach to the Appeal process*

14. The parties' differing views on two points regarding the Appeal process merit comment.
15. The first point is the Appeal Panel's task in the Appeal. On this, the Appellant says:<sup>1</sup>

As this appeal is by way of re-hearing, the Appeal Panel (Panel) appointed by the Chartered Professional Engineers Council (Council) will need to commence a review of Mr A's competency afresh. This will involve a thorough assessment of all of the material submitted by Mr A to the CAB in order to determine whether he meets the CPEng standard.

Emphasis added.

16. The RA says in response:<sup>2</sup>

This is out of step with *Lodestar* as nothing in the Act or Rules suggests the CPEC should consider Mr A's competency afresh i.e. on a de novo basis.

17. The Appellant replied:<sup>3</sup>

Counsel accepts the RA's position that the Council will only be justified in interfering with CAB's decision if it considers that the appealed decision is wrong. Counsel also accepts that the onus rests with Mr A to satisfy the Council that it should differ from the decision under appeal. If the Panel is satisfied that the CAB was wrong, however, then it should overturn its decision. This is what *Austin Nichols* anticipates. A wrong decision should not be left undisturbed.

Counsel set out lengthy arguments in the submissions of 19 August 2024 as to why the CAB was wrong to find that Mr A did not qualify for continued registration. Those submissions raise very

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<sup>1</sup> Appellant Submissions paragraphs 5 to 6.

<sup>2</sup> RA Submission paragraph 22.

<sup>3</sup> Appellant Reply Submissions paragraphs 15 to 16.

specific errors committed by the CAB, such as it making incorrect assumptions about Mr A's work samples, misunderstanding his calculations, failing to locate relevant information within the work samples provided and therefore asserting that Mr A failed to provide that information, failing to contact referees, etc. The list goes on.

18. The Appeal Panel accepts the RA's position, which the Appellant has moved towards in Reply. The Appeal Panel is not required to "undertake a wholesale review of the evidence to assess whether [the Appellant] met the minimum standards"<sup>4</sup>.

19. The second issue is whether the Appeal Panel may defer to the Assessment Panel as a specialist tribunal. The RA says:

It is well-established that, where the decision-maker has specialist or technical expertise, an appellate court may approach the resultant decision with due deference.<sup>5</sup>

20. The Appellant initially accepts this point<sup>6</sup> but then makes further submission to the effect the Appeal Panel should, under the Act, be competent to assess engineers. The Appellant says:

The Council is therefore expected to have specialist knowledge in its own right in order to appropriately determine the competency of engineers applying for CPEng status.

The Council also has the ability under section 26 of the Act to regulate its own procedure for making decisions. Mr A specifically requested that the Council appoint mechanical engineers to the Panel for the purpose of hearing this appeal. That request was declined. Mr A has accepted that decision in good faith, but counsel now fairly makes the point that a lack of specialist expertise on the Panel cannot reasonably be used as a reason for giving deference to the CAB.<sup>7</sup>

21. The Appellant's view softened in supplementary submission where the final submission said:

At the very least, if the Council now finds itself in a position where it does not have the specialist knowledge required, it ought to refer the matter back to the Authority for reconsideration in light of its observations. The role of the Council, under the Act, is to provide independent oversight to the RA. It cannot do that by simply deferring to the Authority's specialists. The Council is not subservient to the Authority. That is not what the Act intends.<sup>8</sup>

22. The Appeal Panel considers following findings from *Deo v CPEC* are apposite on this point:

[38] It is also recognised that the Council may have had a particular advantage (such as technical expertise or the opportunity to assess the credibility of witnesses, where such assessment is important). In such a case this court may rightly hesitate to conclude that findings of fact or fact and degree are wrong. This court may take the view that it has no basis for rejecting the

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<sup>4</sup> *Deo v CPEC* at [49].

<sup>5</sup> RA Submission paragraph 23, with the point developed to paragraph 28.

<sup>6</sup> Appellant Reply Submissions paragraph 20.

<sup>7</sup> Appellant Reply Submissions paragraphs 22 and 23.

<sup>8</sup> Appellant Supplementary Submission at paragraph 21.

reasoning of the Council appealed from and that its decision should stand. But the extent of the consideration that this court, exercising a general power of appeal, gives to the Council's decision is a matter for this court's judgment. This Court is not required to pay explicit attention to the reasons of the Council if it comes to a different reasoned result. On general appeal, this court has the responsibility of arriving at its own assessment of the merits of the case.

[AND]

[131] In tandem with grounds 5 & 7, Mr Taylor submits that the Council could not have reached its own conclusions on the evidence as no member sitting on the Council panel was qualified in fire engineering and could only rely on the RA assessors, taking their assessment at face value. This, it is submitted, resulted in an unfair hearing.

[132] I do not accept this submission. As Ms Roland for the Council rightly submits, taken to its logical conclusion, this would mean that no appellate body from a specialist tribunal, including this court, could hear an appeal unless it has members with the relevant specialist expertise.

Emphasis added.

23. Therefore, the Appeal Panel considers the twin issues of deference to a specialist tribunal and appellate bodies not having specialist knowledge do not lead to the Appeal Panel slavishly following the decision of the CAB.

## **Background**

24. The continued registration application subject to this Appeal produced a substantial volume of correspondence and a relatively large volume of substantive documents. Giving the Appeal due regard, the Appeal Panel traversed all the documents, and this is reflected in the lengthy background section that follows. However, many documents in the Bundle are administrative and not relevant to the Appeal, meriting only brief reference in this decision.
25. The Appellant has a Bachelor of Mechanical Engineering, 2002, from the University B (Mechanical Engineering), 2011, from the University of Auckland.<sup>9</sup>
26. The Appellant was originally registered as a Chartered Professional Engineer in 2013<sup>10</sup>. On 15 January 2018, the Appellant applied for continued registration as a CPEng. On 13 February 2020, the Appellant was notified of the CAB's decision to decline his application for re-registration. After an appeal to CPEC, in a decision dated 22 December 2020, the Appellant was granted continued registration with an application for continued registration to be submitted by April 2021.<sup>11</sup>

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<sup>9</sup> BOD 1

<sup>10</sup> Appellant submission paragraph 16.

<sup>11</sup> Appellant submission paragraphs 19 to 20.

27. The Appellant submitted his application to the RA for continued registration on 30 April 2021.<sup>12</sup> From 30 April 2021 to 18 June 2021, the Appellant's then counsel and the RA exchanged emails on the composition of the assessment panel.<sup>13</sup>
28. Documentation associated with his application, and made available to the Assessment Panel, includes:
- a) The Appellant's CV.<sup>14</sup>
  - b) The Appellant's CPD report.<sup>15</sup>
  - c) Two referee statements.<sup>16</sup>
  - d) An application portfolio and further documents including Work Samples.<sup>17</sup>
29. The Appellant's proposed practice areas were:<sup>18</sup>
- Engineering design, assessment and certification of heavy vehicles and equipment.
  - Design, Assessment and Certification of elastic or limited ductility (In Structural sense) mechanical structures.
30. From 30 June 2022 to 23 August 2022, the Appellant's then counsel and the RA exchanged emails on the electronic transfer of documents and the online process.<sup>19</sup> Further emails were exchanged on this matter on 9 and 14 September 2022.<sup>20</sup>
31. On 4 October 2022, the Appellant's then counsel emailed the RA on provision of documents to the assessors.<sup>21</sup> On 4 November 2022, the Appellant's then counsel further emailed the RA on provision of documents to the assessors.<sup>22</sup>
32. Between 22 November 2022 and 22 November 2022, the Appellant's then counsel and the RA exchanged emails on the provision of hardcopy documents.<sup>23</sup>
33. Between 4 November 2022 and 20 December 2022, the Appellant's then counsel and the RA exchanged emails on provision of documents to the assessors and possible confidentiality concerns.<sup>24</sup>

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<sup>12</sup> Appellant submission paragraph 22 & BOD 262.

<sup>13</sup> BOD 178 to 180.

<sup>14</sup> BOD 1 to 5.

<sup>15</sup> BOD 6.

<sup>16</sup> BOD 7.

<sup>17</sup> BOD 8 to 145.

<sup>18</sup> BOD 263.

<sup>19</sup> BOD 181 to 184.

<sup>20</sup> BOD 185 to 186.

<sup>21</sup> BOD 187 to 188.

<sup>22</sup> BOD 189 to 190.

<sup>23</sup> BOD 191 to 192.

<sup>24</sup> BOD 193 to 196.

34. On 19 January 2023, the RA emailed the Appellant to say that “This information [work samples] has still not been received”.<sup>25</sup> On 31 January 2023, the Appellant’s then counsel forwarded prior correspondence with the RA to the RA, to which the RA replied.<sup>26</sup>
35. On 15 February 2023, the RA emailed the Appellant.<sup>27</sup> The RA informed the Appellant their “application for Continued Registration as a CPEng has been reviewed by a Lead Assessor” and “Your application requires more information to demonstrate your continued competence”. The email from RA explained the reasons for seeking the further information across several categories which were:
- a) Work history.
  - b) Work samples.
  - c) CPD.
  - d) Referees.
  - e) Self-assessment statement.
36. On 2 March 2023, the Appellant provided responses to the further information request from the RA.<sup>28</sup> Attached to this email was the Appellant’s 30 April 2021 application for continued registration<sup>29</sup> and a response to the RA’s email on further information<sup>30</sup>.
37. In an email exchange concluding on 7 March 2023, the Appellant and the RA corresponded on the provision of documents to the RA and composition of the assessment panel.<sup>31</sup> In the concluding email, the RA says among other things:
- We are in the process of assigning your assessment panel. The individuals in list (R) in your email below are no longer available. The criteria for assigning assessment panels is set out in CPEng Rule 75.
- Once you have a confirmed panel, you will receive an email notifying you of their names and will be able to declare any conflicts of interest.
38. Also on 7 March 2023, the RA informed the Appellant than an assessment panel had been appointed to “evaluate your application”.<sup>32</sup> Further on 7 March 2023, the RA and the Appellant exchanged emails regarding the competence assessment advisor.<sup>33</sup>

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<sup>25</sup> BOD 197.

<sup>26</sup> BOD 198 to 201.

<sup>27</sup> BOD 202 to 204.

<sup>28</sup> BOD 205 to 208.

<sup>29</sup> BOD 209 to 240.

<sup>30</sup> BOD 241 to 246.

<sup>31</sup> BOD 250 to 258.

<sup>32</sup> BOD 256.

<sup>33</sup> BOD 257 to 258.

39. On 10 March 2023, [redacted] the Lead Assessor emailed the Appellant to introduce himself.<sup>34</sup> He also introduced the practice area assessors [redacted], and provided the following outline of the process:

The panel will then undertake a review of your submission and the evidence provided. I anticipate that this review will take 2-3 weeks to complete. The outcome of this review may be either that the panel is satisfied that they have sufficient information to schedule and proceed with an interactive interview, or that they require further information. In the case of the later a formal request would be forwarded to you requesting further information and providing a timeline for you to respond.

40. On 5 April 2023, the Lead Assessor informed the Appellant the Assessment Panel has reviewed the evidence provided and “requires further information and/or clarification of some matters”. The Lead Assessor further informed the Appellant the request for further information should be issued in the next 10 days. The Appellant replied on 14 April.<sup>35</sup> To this reply, the Appellant attached a copy of his renewal application.<sup>36</sup>
41. The Appellant, the RA and the Lead Assessor emailed regarding modes of communication between 14 and 18 April 2023.<sup>37</sup>
42. The Assessment Panel provided a Request for Further Information to the Appellant on 18 April 2023.<sup>38</sup>
43. The Appellant responded to the Assessment Panel’s RFI on 14 May 2023.<sup>39</sup> In his covering email the Appellant noted:

I have attached the content of assignment number 2, which addresses all of the questions raised by the panel, as detailed in the attached file. The response in the file covers various aspects, such as the applicability of requested elements to work samples, the presentation of relevant requirements in the New Zealand regulatory environment, and a detailed analysis of technical aspects, including non-requirements.

I saw this assignment as an opportunity to showcase my industry knowledge, understanding of best practices, and familiarity with the regulations, rules, and standards that impact our industry and practice. I appreciate the chance to demonstrate these competencies in my work.

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<sup>34</sup> BOD 259.

<sup>35</sup> BOD 260 to 261.

<sup>36</sup> BOD 262 to 281.

<sup>37</sup> BOD 282 to 286.

<sup>38</sup> BOD 287.

<sup>39</sup> BOD 288.

44. The Appellant's response helpfully includes the Assessment Panel's RFI which he has numbered.<sup>40</sup> The Appellant addresses each RFI in turn. There are five RFI's with each RFI having details the Assessment Panel requires. The five RFI's pertained to<sup>41</sup>:

- a) Work Box Work Sample.<sup>42</sup>
- b) Tipping Bin.<sup>43</sup>
- c) Practice Area Description.<sup>44</sup>
- d) NZTA Performance Review System.<sup>45</sup>
- e) Significant Projects.<sup>46</sup>

45. In the RFI document the Assessment Panel observed:

The Panel notes that, in respect to the design, assessment and certification of Heavy Vehicles, NZTA does not require someone to be a CPEng to undertake this work, nor does it **recognise a CPEng as having standing** in the certification process.<sup>47</sup>

46. The Appellant's response to this observation included:

A while back, I made the choice to become a CPEng even though it is not a legal requirement to operate as an HVS. I have decided to adhere to the codes of conduct for both professions and maintain a professional standard of practice in both fields.

The level of complexity in the fields regulated by Waka Kotahi or ENZ (IPENZ) is equivalent and comparable. The differences in regulatory frameworks and governing bodies do not inherently correspond to variations in the complexity of engineering tasks in either field. In fact, the heavy vehicle certification process involves significant complexity, which is noticeably higher than that involved in general engineering practices of many other fields. Designing mechanical systems using the working stress method and operating them almost continually at higher operational stresses can be significantly more challenging than designing structures that experience elevated stresses only a few times during their lifespan. The intricacy and divergence of the fields involved in the design of heavy vehicles and vehicles, in general, is remarkable and highly complex.

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<sup>40</sup> BOD 290 to 292. The response in full at BOD 289 to 317. The response was emailed to RA; BOD 318 to 319.

<sup>41</sup> BOD 290 to 292.

<sup>42</sup> The Appellant's Response is at BOD 295 to 303.

<sup>43</sup> The Appellant's Response is at BOD 303 to 313.

<sup>44</sup> The Appellant's Response is at BOD 313 to 314.

<sup>45</sup> The Appellant's Response is at BOD 315.

<sup>46</sup> The Appellant's Response is at BOD 316 to 317.

<sup>47</sup> BOD 290.

In summary, the fields of practice discussed are inherently complex and arise from an engineering environment that is riddled with numerous complexities. The regulatory environment has no impact on the quantity or intensity of these complexities.<sup>48</sup>

47. The Appeal Panel highlights this exchange as the equivalency of Heavy Vehicle Certification is a core issue in the Appeal.
48. Between 7 and 8 June 2023, the Assessment Panel and RA corresponded on arranging as assessment interactive with the Appellant.<sup>49</sup>
49. The Appellant and RA exchanged emails on referees on 12 June 2023.<sup>50</sup>
50. The Lead Assessor provided the agenda and proposed date for the interactive assessment to the Appellant on 13 June 2023.<sup>51</sup> The agenda said among other things:

Please note that the Panel, through the evidence you have submitted and the discussion during the interactive, is seeking evidence of your competencies and professional engineering experience since your last assessment, which means that we need to understand the complexity of the engineering work **you personally undertook as opposed to the overall project complexities. We require clarity as to the work you personally were responsible for, how you incorporated new learnings and best practice into the solutions you developed, and how you addressed matters of complexity.**

51. Regarding practice field and practice area description, the agenda said:

Please note that the process is an evidence-based process and the Panel needs to see evidence which will support both your practice area description and practice fields. On the basis of the evidence submitted, the Panel believes that your practice field is Mechanical. The CAB is unlikely to accept your proposed practice area description in its current form. A suggestion from the Panel is:

***“Design, assessment and certification of (elastic or limited ductile) mechanical equipment and heavy vehicles”***

52. In a phone call, the Lead Assessor and the Appellant discussed the proposed interactive assessment.<sup>52</sup>
53. The Appellant emailed the Lead Assessor on 19 June 2023 regarding his practice field description.<sup>53</sup> The Appellant said among other things:

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<sup>48</sup> BOD 294 to 295.

<sup>49</sup> BOD 320 to 321. Drafts documents were attached to these emails BOD 322 to 324.

<sup>50</sup> BOD 325 to 326.

<sup>51</sup> BOD 327. The Agenda is at BOD 329 to 330.

<sup>52</sup> BOD 42.

<sup>53</sup> BOD 332.

I did not find any difference in the practice field description. Both describe mechanical engineering practice, both use same standards, and both have the exact same competencies. I wonder if you could explain your view in order to resolve this matter. I hope that your explanation can help me understand your view point. Please take note that the ductility matter is a structural matter in all cases and machine design philosophy does not consider the same "ductility" in all cases.

54. The Appellant informed the RA and the Lead Assessor the requested further work sample had been prepared and will be delivered the next day. In the same email the Appellant queried some of the arrangements for the interactive assessment such the presence of the RA and recording the session.<sup>54</sup>
55. Between 20 and 30 June the Appellant and the RA exchanged emails regarding scheduling the interactive assessment and the Appellant's concerns over intellectual property protection.<sup>55</sup> The agenda for the interactive assessment is in the Bundle.<sup>56</sup> It is unclear when this was provided to the Appellant however neither party raised a concern as to whether it was provided to the Appellant. Other than minor formatting and date change, the agenda is identical to that previously provide to the Appellant.
56. The CAB recorded an update on the progress of the Appellant's application for continued registration on 2 July 2023.<sup>57</sup>
57. The Appellant uploaded a further work sample on 4 July 2024 and informed the RA by email.<sup>58</sup> The Appellant provided email attachments<sup>59</sup> to demonstrate "these samples were readily available at the time of Assignment 2 submission on 14 May 2023".
58. On 5 July the RA and the Appellant exchanged emails on work samples and scheduling the interactive assessment.<sup>60</sup>

a) The RA said:

**Your work samples**

- In addition to the initial work samples you provided in hard copy for your application, the assessors had asked for further information to be provided by 19 May 2023. Your responded to this assignment on 14 May 2023.
- On 20 June 2023, we then received another hard copy work sample, which you have now confirmed you do not wish us to scan and store in accordance with our usual

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<sup>54</sup> BOD 334.

<sup>55</sup> BOD 337 to 346.

<sup>56</sup> BOD to 348.

<sup>57</sup> BOD 355 to 356.

<sup>58</sup> BOD 357.

<sup>59</sup> BOD 368 to 369.

<sup>60</sup> BOD 370 to 371.

procedure. As such, you are welcome to have this collected – noting that it will not be shared with the assessors.

- You [sic] email dated 4 July mentions you've added another work sample to your assessment. I can confirm the receipt of an activity name 'Crane Related Analysis' together with the 2- page PDF attachment in your email, labelled 'Assign2 Sample3 Cross Reference'. I will share this with your assessors.

### **Interactive**

You were given until 4 July 2023 to confirm a suitable date for your interactive assessment. We have not received any confirmation from you on this. As advised, your assessment panel will now need to proceed to making their recommendation to the Competency Assessment Board based on the information they have received.

- b) The Appellant replied among other things:

Please note that I loaded two additional Work Samples to the portal, These [sic] are **Sample 4** and **Sample 5** as above, not only 'Crane Related Analysis' as you indicated. Please confirm that both samples are on the portal. I CCed [wthheld] in order for her to confirm if there are any issues with the portal.

### **Interactive Assessment**

I had suggested the interactive take place after the PAAs had enough time to consider the above samples (1,2,4,5). Your response confirms that the panel will be able to consider the above four samples. Based on this, I am happy to proceed with the interactive session on Thursday, July 13th, from 4:30pm to 5:30pm. I have not indicated at any stage that I am not attending the interactive but rather keen on granting the PAAs time to properly consider the Work Samples.

Looking forward to attending the interactive on Thursday.

59. The Appellant emailed the Assessment Panel on 5 July 2023 in relation to work samples.<sup>61</sup>
60. The Appellant and the RA exchanged emails on the provision of work samples on 6 July 2023.<sup>62</sup>
61. The Assessment Panel was provided with further evidence files by the Appellant on 7 July 2023.<sup>63</sup>
62. On 7 July 2023, the Lead Assessor emailed the Appellant to confirm the interactive assessment would be on 13 July 2023.<sup>64</sup> The Lead Assessor confirmed the Assessment Panel had received four work samples, being:

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<sup>61</sup> BOD 372.

<sup>62</sup> BOD 375 to 378.

<sup>63</sup> BOD 379 to 416.

<sup>64</sup> BOD 417.

- Work Sample 1 - Crane Workbox
- Work Sample 2 - Tipping Bin Setup
- Work Sample 4 - Crane Related Analysis
- Work Sample 5 - Impact Analysis

63. There was a further revised agenda for the interactive assessment.<sup>65</sup>

64. The Appellant and the RA exchanged emails on a support person attending the interactive assessment.<sup>66</sup>

65. The interactive assessment was held on 13 July 2023, attended by the Appellant, their support person and the Assessment Panel.<sup>67</sup>

66. Subsequently, the Appellant requested the recording of the interactive assessment.<sup>68</sup> In this email exchange the Appellant raised matters from the interactive they wish to address. The RA responded:

Your assessment panel will contact you if they require any further information. Please do not send any further information at this time. If more information is needed, you will be given reasonable opportunity to provide this through an official Request for Information.

67. The RA provided the recording of the interactive assessment to the Appellant on 19 July 2023.<sup>69</sup>

68. The CAB recorded an update on the progress of the Appellant's application for continued registration on 2 July 2023.<sup>70</sup>

69. On 3 August 2023 the Appellant emailed the RA with the annotated transcript of the interactive assessment and further information the Appellant considered important for the Assessment Panel to consider.<sup>71</sup> The Appellant said:

I am writing to confirm that I have submitted the interactive transcript, along with important technical and peripheral matters that were raised during the interactive. I kindly request that you make this submission available to the panel and subsequently to the CAB for their careful evaluation and consideration. The submission was uploaded as an additional Work Record **on the portal.**

Emphases in original.

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<sup>65</sup> BOD 418 to 420.

<sup>66</sup> BOD 425 to 422.

<sup>67</sup> BOD 437 to 463 is an annotated transcript of the interactive. The annotations are by the Appellant.

<sup>68</sup> BOD 422 to 421.

<sup>69</sup> BOD 426.

<sup>70</sup> BOD 433 to 434.

<sup>71</sup> BOD 435 to 436.

70. The RA responded:

The Panel had not asked for and was not expecting any further information from you. The Panel's recommendation has already been provided to the CAB in order to meet the deadline for consideration at CAB's next meeting. I will update you on your application's status as soon as I am able.<sup>72</sup>

71. On 16 August 2023, the RA informed the Appellant the "Competence Assessment Board (CAB) reviewed the recommendation from your assessment panel (attached) and proposed to decline your application for Continued Registration as a Chartered Professional Engineer New Zealand (CPEngNZ)" and "advised you may make a written submission on this matter within 28 days of receiving this notification (13 September 2023). The submission should include a statement on how you believe that the assessment was not carried out in accordance with the CPEng Rules 2002"<sup>73</sup>. The RA gave the following grounds for the proposed declination:

A. Rule 20(a)(i): Insufficient evidence to demonstrate they are able to practise competently in their current practice area to the standard of a reasonable professional engineer; specifically

- Insufficient evidence to demonstrate competency in Managing Engineering Work as required under the Chartered Professional Engineers Rule 6(2)(d)-(g)
  - 6(2)(d): Failed to demonstrate sound professional engineering judgement
  - 6(2)(e): Failed to demonstrate responsibility for making decisions on part or all of one or more complex engineering activities
  - 6(2)(f): Failed to demonstrate managing part or all of one or more complex engineering activities in accordance with good engineering management practice
  - 6(2)(g): Failed to demonstrate how you identify, assess, and manage engineering risk
- Insufficient evidence to demonstrate competency in Developing Technical Solutions as required under the Chartered Professional Engineers Rule 6(2) (b)-(c)
  - 6(2)(b): Failed to demonstrate you define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering
  - 6(2)(c): Failed to demonstrate you design or develop solutions to complex engineering problems in accordance with good practice for professional engineering

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<sup>72</sup> BOD 435.

<sup>73</sup> BOD 476 to 477.

- Rule 7: Insufficient evidence to demonstrate capability to define, investigate and analyse complex engineering problems or to design or develop solutions to complex engineering problems in accordance with good practice for professional engineering.

B. Rule 20(b): Insufficient evidence to demonstrate that you have taken reasonable steps to maintain the currency of your professional knowledge and skills within your practice area since the last assessment in 2018.

72. The Proposed decline – Assessment Report is in the Bundle.<sup>74</sup>
73. On 13 September 2023, the Appellant provided a detailed response to the proposed decline of continued registration.<sup>75</sup> Among other things, the Appellant responded to Assessment Panel’s observations and conclusions.<sup>76</sup>
74. Also on 13 September 2023, the Appellant sent three emails to the RA. The first email<sup>77</sup> provided:
- a) A review Report.<sup>78</sup>
  - b) A Risk Analysis Report.<sup>79</sup>
  - c) FEA and V&V Extract.<sup>80</sup>
  - d) Review of Quality Systems.<sup>81</sup>
75. The second email<sup>82</sup> provided:
- a) A Stability Analysis.<sup>83</sup>
  - b) A Stress Criteria Differential Review.<sup>84</sup>
76. The third email<sup>85</sup> provided:
- a) A Tipper Chassis Loading Scenarios.<sup>86</sup>
  - b) A Main Beam Analysis.<sup>87</sup>

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<sup>74</sup> BOD 146 to 159.

<sup>75</sup> BOD 488 to 551.

<sup>76</sup> BOD 492 to 506.

<sup>77</sup> BOD 552.

<sup>78</sup> BOD 553 to 578.

<sup>79</sup> BOD 579 to 635.

<sup>80</sup> BOD 636 to 650.

<sup>81</sup> BOD 651 to 652.

<sup>82</sup> BOD 653.

<sup>83</sup> BOD 654 to 681.

<sup>84</sup> BOD 682 to 707.

<sup>85</sup> BOD 708.

<sup>86</sup> BOD 709 to 750.

<sup>87</sup> BOD 751 to 799.

77. On 14 September 2023, the RA confirmed receipt of the Appellant’s response and said, “I will provide your response to CAB and will be in touch with you on next steps in due course”.<sup>88</sup>

78. The CAB met on 14 September 2023. The CAB minutes record the Appellant provided a response to the proposed decline and “The CAB decided to send the response back to the panel to review”.<sup>89</sup> Accordingly, the CAB “Update on Previous Decisions” recorded among other things:<sup>90</sup>

The CAB reviewed the Panel’s recommendation to decline continued CPEng recommendation at the August 2023 meeting.

The proposed decline was sent to the applicant on 16 August 2023.

The applicant submitted a response to the proposed decline. In September, the CAB decided to send the response to the Panel for them to reconsider their recommendation in light of the applicant’s submission.

[AND]

Note that the request for reconsideration is currently in progress with the panel.

79. On 26 September 2023, the RA informed the Appellant the CAB “referred your response back to the assessment panel for them to review”.<sup>91</sup> On 4 October 2023, the Appellant responded saying among other things:

I kindly request, in accordance with principles of natural justice, and peer review code of conduct, that the panel share their assessment findings with me before formally submitting their report to the Competence Assessment Board (CAB).<sup>92</sup>

80. On 10 October 2023, the Appellant emailed the Lead Assessor copying the email to the RA and several legal advisors.<sup>93</sup> The Appellant requested an interactive session with the Assessment Panel:

I kindly request the organization of an interactive session to facilitate a direct exchange between the panel and myself. This session would serve as an opportunity for the panel to convey any earlier uncommunicated concerns they may have and for me to address them directly. I also propose that this session be recorded for clarity and transparency.

81. On the same day, the RA responded:

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<sup>88</sup> BOD 800.

<sup>89</sup> BOD 802.

<sup>90</sup> BOD 810 to 812.

<sup>91</sup> BOD 818 to 819.

<sup>92</sup> BOD 817 to 818.

<sup>93</sup> BOD 820 to 821.

The panel will contact you if they require any further information. In accordance with CPEng Rule 14(b), the panel will carry out any further steps it considers necessary under Rule 11 and will then report back to the CAB on whether or not its recommendation should be amended.

You've had the opportunity to provide your submission, which the panel are reviewing. They will let you know if they require a new interactive interview, or any further information.

The assessment process must follow the CPEng Rules.<sup>94</sup>

82. Also on the same day, the Appellant reiterated his request regarding the "communication of the panel's findings to the applicant before reporting to the CAB".<sup>95</sup>

83. Finally on 10 October 2023, the RA emailed the Appellant saying among other things:

The assessment process is not an iterative, interactive, or collaborative process where stepwise guidance is provided by the RA or Assessment Panel. It is up to applicants to submit adequate material to demonstrate competency. The Assessment Panel's recommendation will be based on the evidence you have provided throughout the process.

Following a final decision from CAB, you will be notified and that notification will set out the avenues available to you, should the final decision be a decline. These avenues are provided below, as requested:

If you wish to appeal the decision, you have the option to submit an appeal to the Chartered Professional Engineers Council (CPEC), you can read about the process here. The appeal must be submitted within 28 days of the notification.

...

84. On 12 October 2023, the RA informed the Appellant the CAB had declined his application for continued registration as a Chartered Professional Engineer (CPEng).<sup>96</sup> The email said among other things:

- At its August 2023 meeting the Competence Assessment Board (CAB) reviewed the recommendation from your assessment panel and proposed to decline your application for continued registration as a Chartered Professional Engineer (CPEng).
- On the 13 September, you submitted a response to the proposed decline.
- We sent your submission to the CAB and they referred the matter back to your assessment panel to review your submission.

After careful reconsideration of all of the information provided in your submission, the assessment panel have not changed their original recommendation (see report attached). The Competency Assessment Board reviewed this recommendation at their October 2023 meeting

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<sup>94</sup> BOD 820.

<sup>95</sup> BOD 822 to 823.

<sup>96</sup> BOD 828 to 829.

and have confirmed the decision to decline your application for continued registration as a CPEng New Zealand for the reasons below:

**A. Rule 20(a)(i):** Insufficient evidence to demonstrate you are able to practise competently in your current practice area to the standard of a reasonable professional engineer; specifically:

- Insufficient evidence to demonstrate competency in Managing Engineering Work as required under the Chartered Professional Engineers Rule 6(2)(d)-(g)
  - 6(2)(d): Failed to demonstrate sound professional engineering judgement
  - 6(2)(e): Failed to demonstrate responsibility for making decisions on part or all of one or more complex engineering activities
  - 6(2)(f): Failed to demonstrate managing part or all of one or more complex engineering activities in accordance with good engineering management practice
  - 6(2)(g): Failed to demonstrate how you identify, assess, and manage engineering risk
- Insufficient evidence to demonstrate competency in Developing Technical Solutions as required under the Chartered Professional Engineers Rule 6(2)(b)-(c)
  - 6(2)(b): Failed to demonstrate you define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering
  - 6(2)(c): Failed to demonstrate you design or develop solutions to complex engineering problems in accordance with good practice for professional engineering
- Rule 7: Insufficient evidence to demonstrate capability to define, investigate and analyse complex engineering problems or to design or develop solutions to complex engineering problems in accordance with good practice for professional engineering.

**B. Rule 20(b):** Insufficient evidence to demonstrate that you have taken reasonable steps to maintain the currency of your professional knowledge and skills within your practice area since the last assessment in 2018.

85. The Assessment Panel's considered the Appellant's further evidence after the Appellant was informed of the proposed decline.<sup>97</sup> However, the Assessment Panel decided:

The Panel's recommendation is that the application for continued CPEng registration be declined. The reason is that the submission from the applicant has not changed the proposed decision. The information presented has not provided evidence of competence in the

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<sup>97</sup> BOD 169 to 172. This is within the full Assessment Report starting at BOD 160, ending at BOD 177.

applicant's practice area to the standard of a reasonable professional engineer as defined by the CPEng Rules (No. 2) 2002,...

86. On 23 October 2023, the Appellant responded to the RA's 10 October 2023 email in which the Appellant raised concerns about communication during the assessment process.<sup>98</sup>
87. Also on 23 October 2023, the Appellant sent the RA a further email.<sup>99</sup> Among other things, the email said:

I appreciate your recent email and wish to reiterate my disappointment and concern regarding the handling of my application for renewal. I hold a strong belief in my competence as a professional engineer, backed by an impeccable track record of accomplishments in my field both professionally and academically. It is disheartening to find myself in this situation, especially while presenting a robust case supported by excellent evidence and maintaining a professional and transparent approach throughout the process.

....

**Request of Assignment of New Panel**

In light of the circumstances outlined above, I hereby request the **appointment of a fresh panel to re-evaluate the same body of evidence in accordance with established procedures**. This request comes in compliance with earlier proposal by the registrar as emailed in several exchanges. Kindly, I respectfully propose the inclusion of Mr. [redacted] in the deliberations concerning the **constitution of this new panel**. I am willing to utilize the same body of evidence for this reassessment, as I remain steadfast in my confidence that it unequivocally reflects my competence and excellence in my engineering practice.

**Bold in original**

88. On 23 October 2023, the Appellant emailed Richard Templar, Chief Executive of Engineering New Zealand.<sup>100</sup>
89. On 24 October 2023, the RA emailed the Appellant.<sup>101</sup>
90. The Appellant lodged a Notice of Appeal of the CAB decision on 9 November 2023.<sup>102</sup>

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<sup>98</sup> BOD 830.

<sup>99</sup> BOD 832 to 833.

<sup>100</sup> BOD 836.

<sup>101</sup> BOD 838.

<sup>102</sup> BOD 839 to 845. CPEC has the power under section 36 of the Act to order a decision not have effect until an appeal is determined. An application for a section 36 Order is often referred to as a stay application.

### *The Urgent Application For A Stay Of Decision*

91. On 9 November 2023, the Appellant made an Urgent Application for A Stay of Decision (“Urgent Application”).<sup>103</sup> The Appellant provided an affidavit to support the Urgent Application.<sup>104</sup> The Appellant’s affidavit and its seven exhibits are in evidence in this Appeal.
92. The Urgent Application was declined. The Appeal Panel makes no further reference to the Urgent Application as it is not relevant to the Appeal.

### **Evidence received**

93. Under clause 15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.
94. The evidence considered by the Appeal Panel in arriving at its decision included:
- (a) Notice of Appeal dated, and received on, 9 November 2023
  - (b) The paginated Bundle of Documents [BOD 1 to 931], provided by the RA, and updated in August 2024 to include the exhibits to the Appellant’s affidavit supporting the Urgent Application.
  - (c) Appellant Submissions dated 20 August 2024.
  - (d) RA Submissions dated 2 September 2024
  - (e) Appellant Submissions in strict reply to the RA Submissions dated 10 October 2023.
  - (f) RA supplementary submissions dated 4 December 2024 considering *Deo v CPEC*<sup>105</sup>.
  - (g) RA supplementary submissions dated 5 December 2024 considering *Deo v CPEC*.
95. The Appeal Panel notes it received no further evidence from Appellant after the affidavit supporting the Urgent Application, including the exhibits therein.

### **Grounds of appeal and outcome sought**

96. The Appellant’s Notice of Appeal cited the following grounds of appeal:

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<sup>103</sup> BOD 846 to 849.

<sup>104</sup> BOD 877 to 931. There is also an unsworn affidavit in the Bundle which is almost identical to the affidavit; BOD 850 to 876.

<sup>105</sup> *Nimish Deo v The Chartered Professional Engineers Council* [2024] NZDC 22169.

1. Mr A [sic] was first registered as a CPENG [sic] in 2013, and in becoming so registered he met the minimum standard for registration as a CPENG [sic] set out in r 6 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (the Rules).
2. As at the date of this appeal, Mr A [sic] meets the minimum standard for continued registration as a CPENG [sic] set out in r 20 of the Rules.
3. Mr A [sic] is able to practice competently in his practice areas to the standard of a reasonable professional engineer, those practice areas being the design, assessment and certification of (elastic or limited ductile) mechanical equipment and heavy vehicles.
4. Mr A [sic] has demonstrated competency in his practice areas in each of the matters set out in r 6(a) to (k) of the Rules.
5. Mr A's [sic] practice area has not changed materially since his last assessment.
6. Mr A [sic] has taken reasonable steps to maintain the currency of his professional engineering knowledge and skills within his current practice area since his last assessment.
7. As set out by A [sic] in the various submissions, reports, and other documents submitted to the Competence Assessment Board in advance of its final decision to decline Mr A's [sic] application for continued registration as a CPENG [sic], the complete file of which is to be made available to Chartered Professional Engineers Council.<sup>106</sup>

97. In addressing the outcome sought, the Appellant is seeking:

The decision to decline my application for registration or continued registration be reversed, to be registered as a Chartered Professional Engineer.<sup>107</sup>

## Discussion – Consideration of grounds of appeal

### Structure of the Submissions

98. The parties' submissions have different structures. The Appellant does not follow his grounds of appeal instead using a largely chronological structure of the application process. The Appellant describes the submissions as a guide to the relevant materials.<sup>108</sup>

99. On the other hand, the RA structured its submissions using the grounds of appeal. The Appellant comments on the RA's approach in submission:

As a matter of law, once Mr A raises identifiable issues with the CAB's decision, the onus shifts onto it to rebut those issues. The RA has not even attempted to do so. The conclusion which the Panel must therefore reach is that the alleged errors have been established.<sup>109</sup>

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<sup>106</sup> Notice of Appeal Section 5.

<sup>107</sup> Notice of Appeal Section 6.

<sup>108</sup> Appellant Submission at paragraph 5.

<sup>109</sup> Appellant Reply Submissions at paragraph 18.

100. We disagree that the alleged errors have been established. First, if this were a matter of law that an unchallenged assertion was established, the Appeal Panel would expect an authority on the point to have been provided. Second, it is for the Appellant to demonstrate that the Assessment Panel was wrong.

### **Consideration of grounds of appeal**

101. For the Appellant’s application for continued CPEng registration to have been successful, he needed to demonstrate to the Assessment Panel, and ultimately to the CAB, that he meets the minimum standard for continued registration<sup>110</sup> as set out in Rule 20 and 6 (Schedule 2).<sup>111</sup>

102. The Appellant says the CAB:<sup>112</sup>

4.1 Failed to properly to consider and understand the work samples he provided;

4.2 Ignored the detailed written explanations he provided in response to the CAB’s queries and concerns – such as Assignment 2,6 his lengthy written response to the CAB’s proposal to decline his registration,7 and the additional work samples that response attached – none of which featured in the CAB’s decision;

4.3 Improperly elevated the gravity of minor issues, such as typos in calculations that were illustrative only and did not impact the accuracy or correctness of the calculations themselves nor the compliance of the overall work;

4.4 Improperly concluded that Mr A lacked competence based on erroneous findings and unsupported assumptions; and

4.5 Failed to carry out a rule-based assessment of Mr A's competence.

103. The RA argues that “the assessment panel will evaluate an application for registration to assess “whether or not the candidate has demonstrated that he or she meets the minimum standards for continued registration””.<sup>113</sup>

104. The RA further states that “Complex engineering activities” and “complex engineering problems” are defined at r 7”<sup>114</sup>

105. The Appeal Panel largely adopts the structure of the Appellant’s submission although they do not follow the grounds of appeal. Some sections of the submissions are more relevant than others.

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<sup>110</sup> Section 11 of the Act

<sup>111</sup> The Chartered Professional Engineers of New Zealand Rules (No 2) 2002

<sup>112</sup> Appellant Submissions at paragraph 4.

<sup>113</sup> RA Submissions paragraph 32.

<sup>114</sup> RA Submissions paragraph 33.

## Background

106. The Appellant says that:

Mr A first became registered as a CPEng in 2013. He was assessed by the CAB as meeting the minimum standards of competency to be a CPEng at that time. It is worth noting that the CAB assessed Mr A as being an engineer who “consistently demonstrates competence” against all 12 of the engineering competency criteria under which he was assessed. In other words, there was no question that he exceeded the standards for registration as a CPEng.

The above point is noteworthy because, as a matter of common sense, it is unlikely that Mr A will have lost competency in the course of obtaining a further decade of practical experience. Typically, one’s competency increases with experience.

The CAB has suggested, specifically, that Mr A has lost competency in the mechanical engineering aspect of his practice while retaining it in vehicle certification. Mr A, however, only needs to demonstrate competence in **any** practice area to qualify for registration as a CPEng. If he was competent in the vehicle certification practice, area, he ought to have been registered. Moreover, as will be explained in greater detail in these submissions, vehicle certification is a subset of mechanical engineering, and the skills and knowledge required are fundamentally the same. It is irrational to suggest that competency could be maintained in one area while lost in another when both fields overlap significantly.<sup>115</sup>

Emphasis added.

107. The Appeal Panel has two observations on these submissions which are relevant to our overall conclusion. First, we do not accept that competence can be assumed from experience. If this were the case, there would be no need for continued registration assessment. Second, an issue in this Appeal is the equivalency of being a registered Heavy Vehicle Certifier and a Chartered Professional Engineer. Despite the submission emphasised above, this point is not “explained in greater detail”. It is only expressly addressed again at paragraph 115 where the Appellant says:

Mr A is clearly competent in the design, assessment and certification of heavy vehicles. There can also be no serious suggestion that he is not also competent in general mechanical engineering, given the former is a subset of the latter. He therefore ought to be registered.

108. The Appellant did not in submission develop the issue of equivalency. The Appeal Panel considers the submission consisted of general statements lacking substance such as:

We reiterate that the CAB also accepted that Mr A has *“a high level of competence as assessed by NZTA in respect to the undertaking of investigation, design and analysis associated with*

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<sup>115</sup> Appellant Submissions paragraphs 16 to 18.

*heavy vehicle certification*". It is difficult to understand, therefore, how the CAB can assert that Mr A has significant mathematical and modelling knowledge, a high level of competence in the investigation, design and analysis of heavy vehicles, yet is somehow not competent in general mechanical engineering such that his CPEng registration ought to be declined. The fundamental engineering principles that apply to heavy vehicles and other mechanical structures are the same.<sup>116</sup>

### **Application for continued registration & the CAB's proposal to decline**

#### Practice Area Description

109. The Appellant says:

The CAB's act of crafting its own practice area for Mr A and then arbitrarily categorising the evidence in a way that was unfavourable was therefore a serious [error] during this application process.<sup>117</sup>

110. The Appellant also says:

This is despite Mr A only needing to demonstrate competence in **any** practice area to qualify for registration as a CPEng. There does not appear to be any serious dispute that he qualifies in relation to the design, assessment and certification of heavy vehicles.<sup>118</sup>

111. This is an important submission as it goes to the crux of the appeal which is whether being an NZTA registered Heavy Vehicle Certifier is the equivalent of being a Chartered Professional Engineer. The Appellant says it is equivalent whereas the Assessment Panel decided it was not equivalent.

112. The RA provides detailed submission on Practice Area Descriptions.<sup>119</sup> The Appeal Panel notes the RA's submission:

Ultimately, regardless of the PAD's exact phrasing, the assessment panel consider whether a candidate meets the overall standard for CPEng.<sup>120</sup>

113. This illustrates effective common ground between the RA and the Appellant, which is the assessment of competence/overall standard to be a Chartered Professional Engineer is the important point.

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<sup>116</sup> Appellant Submissions paragraph 61.

<sup>117</sup> Appellant Submissions paragraph 26. The point is developed in paragraphs 22 to 26.

<sup>118</sup> Appellant Submissions at paragraph 24.

<sup>119</sup> RA Submissions paragraph 40 to 55.

<sup>120</sup> RA Submissions paragraph 40.

### *Appeal Panel discussion in relation to Practice Area Description*

114. The minimum standard for continued registration is defined by Rule 20 where the candidate is required to demonstrate that they are “...still able to practice competently in his or her current practice area to the standard of a reasonable professional engineer...”<sup>121</sup>
115. Rule 24(1)(a) puts the onus on the candidate to demonstrate to the Assessment Panel that they meet the minimum standard for continued registration.
116. The Assessment Panel did not conclude a heavy vehicle engineer per se could not be a Chartered Professional Engineer. The Assessment Panel concluded the Appellant, who is a heavy vehicle engineer, did not meet the overall standard to be a Chartered Professional Engineer. There is a substantial difference.
117. The Appeal Panel is satisfied that the RA has not erred regarding the Practice Area Description and even if it was proven, it could not provide a basis for the decision of the CAB to be overturned, as it relates to the actions of the RA, not to Appellant’s competence.

### Work Samples

118. The Appellant address his Work Samples three times in his submissions.<sup>122</sup> The Appellant’s detailed submission responds to the Assessment Panel’s conclusion:

On the basis of the evidence provided and the discussion, the Panel was not satisfied that these work examples demonstrate that the applicant is undertaking complex engineering work which requires the resolution of critical problems arising from wide ranging technical, engineering and other issues which could not be resolved without in-depth engineering knowledge.<sup>123</sup>

119. The Appellant’s submissions address the four Work Samples in turn, which the Appeal Panel addresses first before turning to the RA’s response.
120. Regarding Work Sample 1 – Tipping Bin, the Appellant addresses this in submission<sup>124</sup> and in his response to the Assessment Panel<sup>125</sup>. The submission concludes:

What should be clear already, however, is that the CAB has not properly engaged with the materials provided to it.<sup>126</sup>

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<sup>121</sup> The Chartered Professional Engineers of New Zealand Rules (No 2) 2002

<sup>122</sup> Appellant’s Submissions paragraphs 29 to 36, paragraph 46, and paragraphs 76 to 103. The final paragraphs are the substantive submission on the Work Samples.

<sup>123</sup> BOD page 159.

<sup>124</sup> Appellant Submission paragraphs 77 to 78.

<sup>125</sup> BOD 478 to 551. The Appellant’s response on Work Sample 1 is throughout the response but a focus is at section 25 BOD 525 to 527.

<sup>126</sup> Appellant Submission paragraph 78.

121. Regarding Work Sample 2 – Crane Mounted Workbox, the Appellant addresses this in submission<sup>127</sup> and in his response to the Assessment Panel<sup>128</sup>. The thrust of the submission is:

The CAB maintained that there were “a lot of errors” in this work sample. The CAB, however, has provided no list of errors. Mr A has therefore been unable to address these alleged errors in any detailed way. From what Mr A has been able to ascertain, however, most of the claimed “errors” are not errors at all.<sup>129</sup>

122. Work Sample 2 is one of two work samples for which [redacted] reviewed the design assessment reports.<sup>130</sup> The letter in evidence is brief, saying among other things “Both examples exhibit considerable complexity”<sup>131</sup>. No additional detail was provided to elaborate on the statements in the letter.

123. Regarding Work Sample 4 – Impact Analysis, the Appellant addresses this in submission<sup>132</sup> and in his response to the Assessment Panel<sup>133</sup>. The thrust of the submission is:

Perhaps the most important point in Mr A's Response is that the CAB misunderstood the purpose of this work sample.<sup>134</sup>

124. Work Sample 4 is the second of two work samples for which [redacted] reviewed the design assessment reports.<sup>135</sup> The letter in evidence is brief, saying among other things “Both examples exhibit considerable complexity”<sup>136</sup>.

125. Regarding Work Sample 5 – Crane Related Analysis, the Appellant addresses this in submission<sup>137</sup> and in his response to the Assessment Panel<sup>138</sup>. The thrust of the submission is:

The CAB appears to have disregarded this work sample entirely, dismissing it on the grounds that it was a peer review conducted for another company.<sup>139</sup>

126. The RA's submission on the Work Samples<sup>140</sup> is bookended as follows:

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<sup>127</sup> Appellant Submission paragraphs 79 to 88.

<sup>128</sup> BOD 478 to 551. The Appellant's response on Work Sample 2 is throughout the response but a focus is at section 28 BOD 530 to 538.

<sup>129</sup> Appellant Submission paragraph 78.

<sup>130</sup> BOD 905.

<sup>131</sup> BOD 905.

<sup>132</sup> Appellant Submission paragraphs 89 to 92.

<sup>133</sup> BOD 478 to 551. The Appellant's response on Work Sample 4 is at section 29 BOD 538 to 541.

<sup>134</sup> Appellant Submission paragraph 90.

<sup>135</sup> BOD 905.

<sup>136</sup> BOD 905.

<sup>137</sup> Appellant Submission paragraphs 93.

<sup>138</sup> BOD 478 to 551.

<sup>139</sup> Appellant Submission paragraph 93.

<sup>140</sup> RA's Submissions paragraphs 56 to 69.

At paragraph 4 of his written submissions the appellant states that the assessment panel and the CAB: did not consider his work samples, did not understand his work samples, ignored his responses to the proposed decline decision, improperly elevated the gravity of minor issues like typos, improperly concluded that the appellant lacked competence based on erroneous findings and unsupported assumptions and failed to carry out a rule-based assessment of the appellant's competence.

...

There were no material errors in the decision by the CAB to decline his application. Ultimately though, despite the efforts of the RA and the assessment panel to accommodate Mr A, the assessment process is not infinitely iterative. The onus is on a candidate to demonstrate they meet the CPEng standard, per the statutory threshold, which Mr A did not. On this basis, the assessment panel and the CAB correctly considered, and subsequently declined, Mr A's application for reassessment as a CPEng.<sup>141</sup>

#### *Appeal Panel discussion in relation to Work Samples*

127. The Appeal Panel considers the Appellant has provided evidence of many disagreements between the Assessment Panel and Appellant but not a "raft of errors"<sup>142</sup>. The Appeal Panel does not agree the evidence demonstrates that the Assessment Panel misunderstood or disregarded the Work Samples.
128. The agenda for the Interactive includes queries on two of the Work Samples demonstrating the Assessment Panel had considered the Work Samples and identified matters to be discussed pertaining to the Work Samples. The queries pertained to demonstrating competency and were:
- a. Using your work sample, WorkBox LA,
    - i. identify the most challenging problem or activity which you were responsible for resolving. Discuss the processes you used to identify and define the issue, how risk was identified, evaluated and managed, how you exercised engineering judgement to resolve or solve the issues and how you have taken responsibility for the outcomes.
    - ii. Tell us what verification checks you performed on the workbox FEM.
    - iii. Tell us how you manage risk when undertaking design work.
  - b. Using your work sample, TIPPING BIN SETUP,
    - i. identify the most challenging problem or activity which you were responsible for resolving. Discuss the processes you used to identify and define the issue, how risk was identified,

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<sup>141</sup> RA's Submissions paragraphs 56 and 69.

<sup>142</sup> Appellant Supplementary submission paragraph 12.

evaluated and managed, and how you exercised engineering judgement to resolve or solve the issues.

ii. Describe the load cases that have been considered and explain the rationale for using these load cases.

iii. Describe and discuss any other design considerations and explain what bearing, if any they have had on the overall design outcomes evidence,<sup>143</sup>

129. The Appeal Panel carefully considered the transcript of the interactive.<sup>144</sup> The discussions on Work Samples during the interactive do not demonstrate the Assessment Panel misunderstood the work samples. There were principally discussions on Work Sample 1 – Tipping Bin, Work Sample 2 – Crane Mounted Workbox, and Work Sample 4 – Impact Analysis.

130. The Appeal Panel observes the following sample exchange evidences an informed interactive:

Panel member 1: Did you do those checks? Like I if I could jump to another FEA example, we've got there, around the Kingpin analysis. I am looking at that mesh that looks very under converged.

Mr A: All right. Now that....that analysis I'll just go to the sample. All right. Where is it?

Panel member 1: Sorry for jumping around, Panel member 2. Oh.

Panel member 2: No, no, no. It's a very helpful discussion.

Mr A: It is indeed. I'm enjoying it. Thank you. So with the kingpin stresses. The first thing to remember is that normal analytical solution does not help because you need a plate theory to analyse something like that....<sup>145</sup>

131. Regarding the Work Samples, the Appeal Panel does not agree with Appellant's various assertions regarding the substantive assessments by the Assessment Panels. Having said this, some of the Appellant's assertions appear valid such as response to the observation "There were no details of the vehicle, including its make, model, year, prior use, etc."<sup>146</sup> when the details appear to be at BOD 44. The Appeal Panel does not consider these matters undermine the Assessment Panel's substantive assessment.

132. The Appeal Panel considers the issues identified by the Assessment Panel are substantive. We do not agree with the Appellant that the Assessment Report<sup>147</sup> "indicates the CAB has

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<sup>143</sup> BOD 330.

<sup>144</sup> BOD 438 to 463.

<sup>145</sup> BOD 448 to 449.

<sup>146</sup> Appellant Submission table at paragraph 77.

<sup>147</sup> BOD 160 to 177, the Final Decision.

not properly reviewed the sample”<sup>148</sup> [referring to Work Sample 1]. This decision will deal with the issue of complexity separately, but the Appeal Panel observes the Assessment Panel could not have concluded the “evidence presented lacks sufficient complexity”<sup>149</sup> without considering the Work Samples carefully and in detail.

133. This decision does not address every assertion the Appellant made but the Appeal Panel observes the points below demonstrate the Assessment Panel properly considered the Work Samples.

134. Regarding Work Sample 1, the Assessment Panel observed:

...the Panel noted that he had only identified and considered three loading cases and that the evidence lacked clarity around identifying and considering the critical load case. The Panel also noted the lack of fatigue calculations to assess the effect of adding a tipper body to the chassis, no consideration of stability or a lack thereof which can be exacerbated when there is an airbag suspension system, and no consideration of eccentric loading on chassis rails.<sup>150</sup>

135. On Work Sample 2, the Assessment Panel had numerous observations<sup>151</sup> with the “recertification” limitation of the Work Sample observed as follows:

The Panel understands that the workbox was used for two projects in the period 2015-2017 which is prior to the applicant’s current assessment period and has not been used since, although certification is maintained. Further the Panel understands that the applicant’s involvement with the recertification has been limited to the workbox connection to the crane boom. The Panel does not consider recertification to be complex engineering.

136. On work Sample 4, the Assessment Panel observed among other things:

FEA result images are included in the report. The author again confuses von Mises stress and Principalle [sic] stress. The mesh shown in the images is clearly not refined enough for accurate results. When queried on this during the interview, the applicant stated the analysis was related to stiffness only. However, if this was the purpose, it does not make sense to show a von Mises stress plot cross section in the report of von Mises stress; as the stress values are not valid.<sup>152</sup>

137. On Work Sample 5, the Assessment Panel observed:

The Panel understands that this work example is in fact a peer review undertaken for another company. The Panel is satisfied that technically this work is undertaken to the standard expected of a competent Heavy Vehicle certifier. The work undertaken is considered routine rather than complex, however.<sup>153</sup>

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<sup>148</sup> Appellant Submission table at paragraph 77.

<sup>149</sup> BOD 166.

<sup>150</sup> BOD 166.

<sup>151</sup> BOD 174 to 175.

<sup>152</sup> BOD 176.

<sup>153</sup> BOD 176.

138. Therefore, the Appeal Panel considers the Assessment Panel did consider Work Sample 5, contrary to the Appellant's submission that Work Sample 5 was "disregarded"<sup>154</sup>.
139. The Appeal Panel concludes that the Assessment Panel did consider the "Additional Work Samples" contrary to the Appellant's submission<sup>155</sup>. This is demonstrated by the list of information the Assessment Panel considered after it had issued its proposed decline.<sup>156</sup> The Assessment Panel listed the information using the name of the email attachments from the Appellant's emails.
140. The Appeal Panel considers the Assessment Panel has not erred in considering the Work Samples
141. Furthermore, the way that the Assessment Panel must evaluate a candidate for continued registration is stated in Rule 25. The Appeal Panel is satisfied, based on review of the Bundle, that the Assessment Panel followed the requirements of Rule 25.

#### Learning Records

142. The Appellant addressed this topic twice in his submissions.<sup>157</sup>
143. The Appeal Panel concludes the Assessment Panel has not made adverse determinations on the Appellant's Learning Records. On the contrary, the Assessment Panel determined:

The Panel is satisfied that the evidence demonstrates that the applicant is committed to maintaining currency and applying current knowledge within his heavy vehicle practice area.

[AND]

During the interactive, the applicant demonstrated a detailed, current knowledge of the standards and codes of practice relevant to his role as a heavy vehicle certifier. From the evidence provided, the Panel is satisfied that the applicant is taking reasonable steps to maintain currency of professional engineering knowledge and skills within the Heavy Vehicle Certification area of his practice since his last assessment.<sup>158</sup>

144. The Assessment Panel observed the limitations in the Learning Records saying:

During the interactive, the applicant demonstrated a detailed, current knowledge of the standards and codes of practice relevant to his role as a heavy vehicle certifier. From the evidence provided, the Panel is satisfied that the applicant is taking reasonable steps to

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<sup>154</sup> Appellant Submission paragraph 93.

<sup>155</sup> Appellant Submission paragraph 94.

<sup>156</sup> BOD 169 to 170.

<sup>157</sup> Appellant Submissions paragraph 37 and 38, and paragraph 52 to 57.

<sup>158</sup> BOD 163.

maintain currency of professional engineering knowledge and skills within the Heavy Vehicle Certification area of his practice since his last assessment.<sup>159</sup>

145. The Appeal Panel observes for completeness the evidence in the BOD is the Assessment Panel made no adverse conclusion on the Appellant's Learning Records including 78% self-study.<sup>160</sup>
146. Again, this appeal point goes to the issue of whether Heavy Vehicle Certification is equivalent to Chartered Professional Engineer. The Assessment Panel did not conclude a heavy vehicle engineer per se could not be a Chartered Professional Engineer. The Assessment Panel concluded the Learning Records were adequate for Heavy Vehicle Engineering, but the Appellant was not competent to be a Chartered Professional Engineer for other reasons.
147. The Appeal Panel concludes no actions by the Assessment Panel regarding Learning Records support the Appeal being successful.

### Complexity of the Work Samples

#### *The Submissions*

148. The Appellant addresses complexity in submission<sup>161</sup> and in the response to the proposed decline<sup>162</sup>. The Appellant's submissions do not have a section on the equivalence of Heavy Vehicle Certification with Chartered Professional Engineer. This point is addressed at several points. The Appellant addressed it in his Assignment 2.<sup>163</sup>
149. The Appeal Panel considers complexity goes hand in glove with the issue of equivalency and addresses both together. Turning first to the Appellant's criticism of the Assessment Panel, which in relation to the Work Samples said among other things:

The work examples 1 and 2 comprise calculations and computer generated data, while work sample 4 comprises a design assessment report and work sample 5 is a Chassis Compliance Report. All work samples are undated and do not contain any evidence of review and verification processes followed prior to issue. Work Samples 1, 4 and 5 are relevant to the applicant's role as an NZTA accredited Heavy Vehicle Certifier while Work Sample 2 falls within the mechanical equipment area. Work sample 3 was withdrawn by the applicant and not considered by the Panel.<sup>164</sup>

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<sup>159</sup> BOD 163.

<sup>160</sup> The Appellant Submission paragraph 57 appears to suggest otherwise.

<sup>161</sup> Appellant Submission paragraphs 96 to 103.

<sup>162</sup> BOD 547 to 549.

<sup>163</sup> BOD 294 to 295.

<sup>164</sup> BOD 163.

150. Regarding Work Sample 1 – Work Box Sample, the Appellant’s submission is summarised as:

The CAB maintained, however, that Work Sample 1 – being the Tipping Bin analysis – was not complex. This is despite Mr A's initial assessment panel for CPEng registration in 2013, and the assessment panel in 2018, both having considered a similar tipping bin analysis to be complex. The view of the current CAB is therefore inconsistent with those of the previous assessors.<sup>165</sup>

151. Also, regarding Work Sample 1 – Work Box Sample, the Assessment Panel asked for “Confirmation of the dates (start and end date for the design calculations provided as evidence”.<sup>166</sup> The Appellant said among other things:

...the work sample remains current as the workbox is being maintained throughout its lifetime by TranzEC. TranzEC has been conducting recertification on the workbox since May 2022, including a thorough review of the structure for recertification in accordance with the original certification arrangement.

[AND]

This sample was conducted across multiple projects and extended in its application for a duration that spans beyond January 2015.<sup>167</sup>

152. Regarding Work Samples 4 and 5, the Appellant says:

The CAB’s position on Work Samples 4 and 5 is unclear, but the CAB appears to suggest that these too are not complex.<sup>168</sup>

153. On assessing complexity, the Appellant’s submissions refer to the response to proposed decline.<sup>169</sup> The Appellant prepared a series of tables.<sup>170</sup>

154. [redacted] reviewed the design assessment reports for Work Sample 2 and Work Sample 4.<sup>171</sup> The letter in evidence is brief, saying among other things “Both examples exhibit considerable complexity”<sup>172</sup>. The Appeal Panel again observes no further detail from [redacted] underpinning the letter’s conclusions was provided.

155. On the issue of equivalency, the Appellant’s submissions do not address this in depth, largely stated as follows:

The CAB has suggested, specifically, that Mr A has lost competency in the mechanical engineering aspect of his practice while retaining it in vehicle certification. Mr A, however, only

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<sup>165</sup> Appellant’s Submission paragraph 97.

<sup>166</sup> BOD 291.

<sup>167</sup> BOD 295.

<sup>168</sup> Appellant Submissions paragraph 100.

<sup>169</sup> Appellant’s Submissions paragraph 102 and 103.

<sup>170</sup> BOD 547 to 549.

<sup>171</sup> BOD 905.

<sup>172</sup> BOD 905.

needs to demonstrate competence in **any** practice area to qualify for registration as a CPEng. If he was competent in the vehicle certification practice, area, he ought to have been registered. Moreover, as will be explained in greater detail in these submissions, vehicle certification is a subset of mechanical engineering, and the skills and knowledge required are fundamentally the same. It is irrational to suggest that competency could be maintained in one area while lost in another when both fields overlap significantly.<sup>173</sup>

[AND]

This Rule underscores the point that that the practice area must be defined by the engineer's skills and professional scope, not the reverse. The practice area does dictate or limit the engineer's competence. Rather, the engineer's competence defines his practice area. Mr A is clearly competent in the design, assessment and certification of heavy vehicles. There can also be no serious suggestion that he is not also competent in general mechanical engineering, given the former is a subset of the latter. He therefore ought to be registered.<sup>174</sup>

156. The Appellant in Assignment 2 said among other things:

The level of complexity in the fields regulated by Waka Kotahi or ENZ (IPENZ) is equivalent and comparable. The differences in regulatory frameworks and governing bodies do not inherently correspond to variations in the complexity of engineering tasks in either field. In fact, the heavy vehicle certification process involves significant complexity, which is noticeably higher than that involved in general engineering practices of many other fields. Designing mechanical systems using the working stress method and operating them almost continually at higher operational stresses can be significantly more challenging than designing structures that experience elevated stresses only a few times during their lifespan. The intricacy and divergence of the fields involved in the design of heavy vehicles and vehicles, in general, is remarkable and highly complex.

In summary, the fields of practice discussed are inherently complex and arise from an engineering environment that is riddled with numerous complexities. The regulatory environment has no impact on the quantity or intensity of these complexities.<sup>175</sup>

*Appeal Panel discussion in relation to the Complexity of Work Samples*

157. The Appeal Panel observes the Assessment Panel said:

The three HV certification projects appear to have been undertaken competently within the NZTA Vehicle Certification framework but lack complexity as defined by CPEng Rule 7.<sup>176</sup>

158. On the Work Sample 2 – Work Box the Assessment Panel concluded the “calculations undertaken are relatively basic”, and “The level of engineering calculations presented could

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<sup>173</sup> Appellant Submissions 18.

<sup>174</sup> Appellant Submissions 115.

<sup>175</sup> BOD 294 to 295.

<sup>176</sup> BOD 167.

reasonably be expected by an engineer in their first year of practice following graduation”.

The Assessment Panel further said:

The project has the potential to meet the Engineering New Zealand complexity threshold, if the complex aspect had been addressed; that is both designing a robust workbox, but most critically designing a safe workbox. In this latter regard, the evidence provided by the applicant appears to demonstrate the opposite. The Panel’s conclusion is that this work example did not demonstrate complexity as defined by CPEng Rule 7.<sup>177</sup>

159. The Assessment Panel was also concerned that the work for the Work Sample “was not undertaken in the period since last assessment”<sup>178</sup>. The Appellant appears to acknowledge this at BOD 164 that recent work on this Work Sample was recertification, to which the Assessment Panel said:

...the applicant undertook the re-certification of an aspect of this work box in 2022, but again the Panel does not ascribe any complexity to this work.<sup>179</sup>

160. Work Sample 5 was a peer review conducted by the Appellant. Regarding Work Sample 5, the Assessment Panel “considered [the peer review] routine rather than complex”.<sup>180</sup>

161. The Appeal Panel does not consider the Assessment Panel erred in assessing complexity. On Work Sample 2, the conclusions the calculations are simple, not complex. There is the additional issue that the “recent”<sup>181</sup> work on Work Sample 2 was recertification, not the original design. The letter from [withheld] does not say whether the recertification work or the original design was reviewed.

162. The Appeal Panel is concerned Work Sample 1 is possibly also not recent. The Appellant’s table at BOD 548 suggests the same Work Sample 1 was assessed by the 2018 Assessment Panel.

163. As to the equivalence issue, after reviewing the evidence in the Bundle, the Appeal Panel considers the Assessment Panel did not err on this point. The Appeal Panel concludes it was not the fact the Appellant was a Heavy Vehicle Certifier which counted against him, but the substantive assessment of the Work Samples. The Appeal Panel notes the following examples of this:

The applicant provided three work samples which relate to his work as a Heavy Vehicle Certifier and one which relates to work in the Mechanical Equipment area. The three HV certification

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<sup>177</sup> BOD 168.

<sup>178</sup> BOD 168.

<sup>179</sup> BOD 168.

<sup>180</sup> BOD 176.

<sup>181</sup> Rule 23(2) (bb) requires “work samples from recent engineering activities”.

projects appear to have been undertaken competently within the NZTA Vehicle Certification framework but lack complexity as defined by CPEng Rule 7.<sup>182</sup>

[AND]

The project [Work Sample 2] has the potential to meet the Engineering New Zealand complexity threshold, if the complex aspect had been addressed; that is both designing a robust workbox, but most critically designing a safe workbox. In this latter regard, the evidence provided by the applicant appears to demonstrate the opposite.<sup>183</sup>

[AND]

These measures are assessed on a regular basis by way of NZTA appointed Auditors and each certifying engineer is marked on his or her ability to meet these. Certifiers need to be meticulous in showing by analysis that the vehicle or component meets these requirements and also the minimal requirement to do a hazop assessment for each job unless they have good reason to believe that the Act, Rules ACOPS or standards are incorrect or need clarification in a specific application.

The Panel acknowledges that the applicant fulfils the requirements for a Heavy Vehicle certifier, including the management of his QMS. However, the Panel is not satisfied that the applicant has demonstrated that the work he is undertaking is complex as measured by the requirements for continued registration as a CPEng and has concerns as to the review and signoff of his work, the demonstrated use of engineering judgement, and identification and management of risk. In the applicant's view, risk is managed by compliance with standards and codes. For the above reasons the Panel is not satisfied that the applicant is still able to practice competently.<sup>184</sup>

Emphasis added.

164. The Appeal Panel considers the Assessment Panel has not erred in assessing complexity. The Appeal Panel concludes this based on the matters addressed above, and in the previous section of this decision on the consideration of Work Samples.
165. Furthermore, the way that the Assessment Panel must evaluate a candidate for continued registration is stated in Rule 25. The Appeal Panel is satisfied, based on review of the Bundle, that the Assessment Panel followed the requirements of Rule 25.

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<sup>182</sup> BOD 167.

<sup>183</sup> BOD 175.

<sup>184</sup> BOD 176 to 177.

## Referees

### *The Submissions*

166. The Appellant addresses referees in submission<sup>185</sup>. The Appellant's criticisms are largely two-fold. First, that the Assessment Panel arbitrary disregarded the Appellant's initial referees. For example, the Appellant says:

For instance, this division led the CAB to conclude that Mr [redacted] could not comment on Mr A's technical capabilities, despite Mr [redacted] having worked closely with Mr A on a complex engineering project.

167. Second, the Appellant says that the Assessment Panel has not considered the further referees he provided in his response to the proposed decline.<sup>186</sup> The Appellant says:

As detailed in counsel's submissions of 19 August 2024, Mr A provided numerous referees who have confirmed his competence. The CAB did not even bother to contact some of these referees, namely Mr [redacted], Mr [redacted] and Mr [redacted].<sup>187</sup>

168. The RA says in submission:

It was reasonable for the assessment panel and the CAB to review the response provided by the appellant and retain their initial view that his CPD, verification and validation processes, references provided by referees, calculation errors, and level of work complexity, meant he did not meet the r 6 requirements. Likewise, the panel do not need to repeat material in their revised report.<sup>188</sup>

### *Appeal Panel discussion in relation to Referees*

169. Rule 25 does not mandate contacting referees. In any event, the Appeal Panel concludes the Assessment Panel gave due regard to the two referees proposed by the Appellant. From the evidence in the Bundle, the Appeal Panel concludes it was the referees who identified limitations as to what they could attest. The Assessment Panel recorded:

One referee is a CPEng working within the Structural practice area and was therefore only able to discuss the applicant's professional attributes, not his technical competency.

[AND]

The other works within the same practice area as the applicant and attested to the applicant's knowledge and technical competency in the heavy vehicle area of his practice. He was unaware

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<sup>185</sup> Appellant Submission paragraph 39, paragraph 45, and paragraphs 104 to 109.

<sup>186</sup> Appellant Reply Submission paragraph 16.

<sup>187</sup> Appellant Reply Submission paragraph 16.

<sup>188</sup> RA Submission paragraph 62.

of work undertaken by the applicant in the area of mechanical structures and advised that he was of the impression that the applicant is focusing on his HV certification work.<sup>189</sup>

170. The Assessment Panel said:

Both eligible referees confirm the applicant's competency.<sup>190</sup>

171. There is no evidence the Assessment Panel disregarded the referees.

172. The Appeal Panel concludes the Assessment Panel did consider the additional information provided by Appellant in his response to the proposed decline. This is demonstrated by the list of information the Assessment Panel considered after it had issued its proposed decline.<sup>191</sup> The Assessment Panel has listed the information using the name of the email attachments from the Appellant's emails.

173. The Appeal Panel notes Mr [redacted]'s report provided in response to the proposed decline is redacted so it is unclear whether he could be contacted by the Assessment Panel.<sup>192</sup> The Assessment Panel also observes that on reviewing the Bundle, it is not apparent that Mr [redacted] and Mr [redacted]'s report were provided with the response to the proposed decline. Mr [redacted]'s report is dated 27 September 2023<sup>193</sup> and it appears the Appellant provided all his response to the proposed decline by 13 September 2023.

174. The RA confirmed receipt of the response on 14 September 2023.<sup>194</sup>

175. The Appeal Panel considers the Assessment Panel has not erred in considering the Referees. There is no evidence the Assessment Panel disregarded valid referees or failed to contact valid referees.

176. Furthermore, the way that the Assessment Panel must evaluate a candidate for continued registration is stated in Rule 25. The Appeal Panel is satisfied, based on review of the Bundle, that the Assessment Panel followed the requirements of Rule 25.

#### *The CAB'S Assessment Method & the CAB's Final Decision*

177. The Appeal Panel briefly addresses these submissions together.<sup>195</sup> Objectively, these submissions add little of substance to the Appeal. One criticism by the Appellant is:

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<sup>189</sup> BOD 165.

<sup>190</sup> BOD 165.

<sup>191</sup> BOD 169 to 170.

<sup>192</sup> BOD 553 to 578.

<sup>193</sup> BOD 905

<sup>194</sup> BOD 800.

<sup>195</sup> Appellant Submissions paragraph 110 to 119.

It is difficult to fathom how the lengthy, detailed, Response provided by Mr A did not warrant a single follow-up question or comment to Mr A, nor to the additional referees that had been provided.<sup>196</sup>

178. There is no evidence the Assessment Panel did not consider the Response; the evidence records the contrary.<sup>197</sup> The Appeal Panel concludes the Appellant considers the assessment process to be infinitely iterative. The evidence in the Bundle illustrates there was significant interaction with the Appellant.

179. A second criticism by the Appellant is:

The CAB's Proposal, the Decision and its considerations during the review process lack any meaningful detail. This has made it impossible for Mr A to properly address the critical aspects of this review and to challenge its findings. Natural justice issues of course arise from this.<sup>198</sup>

180. The Appellant does not develop the "natural justice issues" further. The Appeal Panel concludes it was not "impossible for Mr A to properly address the critical aspects of this review and to challenge its findings". The evidence in the Bundle demonstrates the opposite. Pages 478 to 799 of the Bundle are the Appellant's documents in response to the proposed decline. The evidence demonstrates the Appellant was able to address the Assessment Panel's proposed decline.

181. The Appeal Panel considers the Assessment Panel has not erred in its procedures. There is no evidence to this effect in the Bundle.

182. Furthermore, the way that the Assessment Panel must evaluate a candidate for continued registration is stated in Rule 25. The Appeal Panel is satisfied, based on review of the Bundle, that the Assessment Panel followed the requirements of Rule 25.

## Findings

183. The Appeal Panel has considered the grounds of appeal cited by the Appellant, has considered the Appellant's Submissions, along with the related submissions of the RA and the Appellant's Submissions in response, and the contents of the Bundle.

184. The Appeal Panel finds that none of the grounds for appeal were proven, to the extent, the Appeal Panel considered overturning the decision or returning the matter back to the RA, for reconsideration.

185. The appeal is dismissed and the CAB's decision to decline continuation of the Appellant's

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<sup>196</sup> Appellant Submission paragraph 117.

<sup>197</sup> BOD 167.

<sup>198</sup> Appellant Submission paragraph 118.

CPEng registration is upheld.

### Costs

186. CPEC is empowered to award costs on determining an appeal.<sup>199</sup> If the RA wishes to make submission on costs, it must do so within 5 Working Days of this decision. The Appellant may make submission in reply within a further 5 Working Days.
187. Submissions are to be no longer than 5 pages including any schedules or appended information.
188. The Appeal Panel will decide costs on the papers.

### Right of appeal

189. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

**Dated 17 February 2025**

Signed by the Appeal Panel



Mark Holland  
Principal



Simonne Eldridge



Sandra Hardie

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<sup>199</sup> Section 37 (5)(d) of the Act.

## Schedule 1 – Legislation

1. The right of appeal is contained in s35 of the Chartered Professional Engineers Act 2002 (“the Act”). S37 of the Act sets out the scope of the Chartered Professional Engineers Council’s (the Council) jurisdiction which is to deal with the matter by way of rehearing.
2. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002.
3. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (“the Rules”) and were enacted pursuant to s40 of the Act.
4. Part 2 of the Rules (Rules 6 to 42) outlines the process for registration of chartered professional engineers. Subpart 1 (Rules 6 to 15), Subpart 2 (Rules 20 to 30) relate to the assessment of initial registration and continued registration respectively.
5. Rule 6 defines the minimum standards for registration as a Chartered Professional Engineer.
6. The overriding consideration is that expressed in Rule 6(1), that a Chartered Professional Engineer should be able to practise competently in his or her practice area to the standard of a reasonable professional engineer.
7. The matters listed in Rule 6(2) must be taken into account in making an overall assessment required by Rule 6(1). However, the Rules do not provide for a mandatory “pass mark” for these matters, and nor could they. Ultimately, taking the matters in Rule 6 (2) into account, an objective decision still needs to be made as to whether an applicant meets the overall standard prescribed in Rule 6(1).
8. The onus in rule 6 (1) is on the applicant demonstrating competence. The Rules do not provide for a mandatory “pass mark” for these matters. Ultimately, taking the matters in rule 6(2) into account, an objective decision still needs to be made as to whether an applicant meets the overall standard prescribed in rule 6(1).
9. Rule 7 which addresses complex engineering activities and complex engineering problems.
10. Rules 8, 9 and 9A outline the the requirements for an initial application for registration.
11. Rules 10 to 15 outline the way in which an application for registration must be evaluated and decisions made and implemented.
12. Rule 20 outlines the minimum standards for continued registration as a chartered professional

engineer.

13. Rule 21 specifies the frequency of reassessment to determine continued registration.
14. Rule 22 requires the RA to notify a person that a reassessment before starting the process.
15. Rule 23 details the information a candidate must provide to the RA for demonstrate current competence.
16. Rules 24 to 34 outline the way in which continued registration must be evaluated and decisions made and implemented.
17. Section 45 of the Act states one of the functions of the Council is to hear appeals from decisions of the RA.
18. The Council must deal with an appeal by way of a rehearing, as described in Section 37 of the Act, conducted in accordance with regulations made under Section 65.
19. The Council can confirm, vary or reverse the decision, or parts of the decision to which the appeal relates. The Council may refer the matter back to the decision authority for it to reconsider, either generally or in relation to specific matters, the whole or any part of the decision (together with any direction on that whole or part that the Council thinks fit).
20. The Council may make any decision that could have been made by the Registration Authority.
21. The Council does not have the power to review any part of the decision other than the part to which the appeal relates.

**Part 2**  
**Registration of chartered professional engineers**

**Subpart 1—Assessment for initial registration**

*Minimum standard for registration*

**6 Minimum standard for registration as chartered professional engineer**

- (1) To meet the minimum standard for registration, a person must demonstrate that he or she is able to practise competently in his or her practice area to the standard of a reasonable professional engineer.
- (2) The extent to which the person is able to do each of the following things in his or her practice area must be taken into account in assessing whether or not he or she meets the overall standard in subclause (1):
  - (a) comprehend, and apply his or her knowledge of, accepted principles underpinning—
    - (i) widely applied good practice for professional engineering; and
    - (ii) good practice for professional engineering that is specific to New Zealand; and
  - (b) define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering; and
  - (c) design or develop solutions to complex engineering problems in accordance with good practice for professional engineering; and
  - (d) exercise sound professional engineering judgement; and
  - (e) be responsible for making decisions on part or all of 1 or more complex engineering activities; and
  - (f) manage part or all of 1 or more complex engineering activities in accordance with good engineering management practice; and
  - (g) identify, assess, and manage engineering risk; and
  - (h) conduct his or her professional engineering activities to an ethical standard at least equivalent to the code of ethical conduct; and
  - (i) recognise the reasonably foreseeable social, cultural, and environmental effects of professional engineering activities generally; and
  - (j) communicate clearly to other engineers and others that he or she is likely to deal with in the course of his or her professional engineering activities; and
  - (k) maintain the currency of his or her professional engineering knowledge and skills.

**7 Definitions for purpose of minimum standard for registration**

For the purposes of [rule 6](#),—

**complex engineering activities** means engineering activities or projects that have some or all of the following characteristics:

- (a) involve the use of diverse resources (and, for this purpose, **resources** includes people, money, equipment, materials, and technologies);
- (b) require resolution of significant problems arising from interactions between wide-ranging or conflicting technical, engineering, and other issues;
- (c) have significant consequences in a range of contexts;
- (d) involve the use of new materials, techniques, or processes or the use of existing materials, techniques, or processes in innovative ways

**complex engineering problems** means engineering problems that have some or all of the following characteristics:

- (a) involve wide-ranging or conflicting technical, engineering, and other issues;
- (b) have no obvious solution and require originality in analysis;
- (c) involve infrequently encountered issues;
- (d) are outside problems encompassed by standards and codes of practice for professional engineering;
- (e) involve diverse groups of stakeholders with widely varying needs;
- (f) have significant consequences in a range of contexts;
- (g) cannot be resolved without in-depth engineering knowledge.

## 20 Minimum standard for continued registration as chartered professional engineer

To meet the minimum standard for continued registration, a person must demonstrate that—

- (a) he or she—
  - (i) is still able to practise competently in his or her current practice area to the standard of a reasonable professional engineer; or
  - (ii) if the person's practice area has changed materially since the last assessment, meets the minimum standard for registration within his or her current practice area; and
- (b) he or she has taken reasonable steps to maintain the currency of his or her professional engineering knowledge and skills within his or her current practice area since the last assessment.

## 23 Information that must be provided to demonstrate current competence

- (1) Each candidate who receives a notice under [rule 22](#) must provide to the Registration Authority, by the specified date,—
  - (a) a form containing the information set out in [Schedule 1](#); and
  - (b) the supporting information set out in subclause (2); and
  - (c) a statement signed by the candidate to the effect that all the information is accurate and any evidence provided is genuine; and
  - (d) consent from the candidate for the candidate's name to be published on the Registration Authority's Internet site for a period not exceeding 21 days, along with an invitation to the public to provide evidence about whether the candidate meets the minimum standard for continued registration.
- (2) A candidate must provide the following supporting information:
  - (a) evidence of the following (if applicable):
    - (i) academic and other relevant qualifications obtained since his or her last assessment; and
    - (ii) current registration on other professional engineering registers; and
    - (iii) results from other relevant competency assessments since his or her last assessment; and
    - (iv) professional development activities undertaken since his or her last assessment; and
  - (b) a chronological summary of the candidate's work history since his or her last assessment (including a description of employment positions and professional engineering activities in that period); and
  - (ba) any evidence provided by the public in response to the invitation described in subclause (1)(d), along with any statement by the candidate in reply; and
  - (bb) 2 or more work samples from recent engineering activities with annotations explaining how the samples demonstrate that the candidate meets the minimum standard for continued registration; and
  - (c) any other information that the candidate wishes to be considered.
  - (d) *[Revoked]*
- (3) The candidate may provide information in hard copy (in which case 3 copies must be provided) or in electronic form.

Rule 23(1)(c): amended, on 1 January 2012, by [rule 11\(1\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(1)(c): amended, on 1 January 2012, by [rule 11\(2\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(1)(d): inserted, on 1 January 2012, by [rule 11\(2\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(2)(ba): replaced, on 1 January 2012, by [rule 11\(3\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(2)(bb): inserted, on 1 January 2012, by [rule 11\(3\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(2)(c): amended, on 1 January 2012, by [rule 11\(4\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(2)(d): revoked, on 1 January 2012, by [rule 11\(5\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 23(3): replaced, on 1 January 2012, by [rule 11\(6\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

## 24 Assessment panel must evaluate continued registration

- (1) An assessment panel must evaluate each candidate for continued registration to assess—
  - (a) whether or not the candidate has demonstrated that he or she meets the minimum standard for continued registration; and
  - (b) if so, whether the candidate's continued registration should next be assessed by the end of the sixth year from 31 December of the year of this assessment, or in an earlier year; and
  - (c) if not, whether the candidate's registration should be suspended or removed.
- (2) However, if the candidate does not provide the information required under [rule 23](#) by the specified date,—
  - (a) only 1 assessor must evaluate the candidate's continued registration; and
  - (b) this subpart applies as if the assessor were the assessment panel (with any necessary modifications).

Rule 24(1)(b): amended, on 1 January 2012, by [rule 12](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

## 25 Way in which assessment panel must evaluate continued registration

- (1) The assessment panel must evaluate the candidate's continued registration in the following way:
  - (a) carry out a preliminary evaluation of the information provided and assess whether or not the panel needs more information to complete the assessment; and
  - (aa) conduct an interactive assessment with the candidate by any meeting method; and
  - (b) if the panel thinks it necessary, do both of the following or only a further interactive assessment:
    - (i) require the candidate to pay the further interactive assessment charge set out in [Schedule 2](#) and carry out a further interactive assessment with the candidate by any meeting method;
    - (ii) require the candidate to carry out a written assignment; and
  - (c) if the panel thinks it necessary, invite the candidate to provide, within a specified period, any or all of the following information:
    - (i) other information (which may include a statement of self-review explaining how the candidate meets the minimum standard for continued registration);
    - (ii) the candidate's information in another form;
    - (iii) the contact details of up to 2 further independent referees; and
  - (d) evaluate the information provided and any relevant information that the Registration Authority has about the candidate; and
  - (e) have regard to any advice provided by a member of the Competency Assessment Board for the purposes of moderating between assessments.
  - (f) *[Revoked]*
- (2) The assessment panel may take these steps in a different order, repeat or combine any steps, or take additional steps to carry out the assessment.
- (3) After completing the actions required by subclause (1), the assessment panel must make a recommendation to the Competency Assessment Board on the candidate's continued registration.

Rule 25(1)(aa): inserted, on 1 January 2012, by [rule 13\(1\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(b): amended, on 1 January 2012, by [rule 13\(2\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(b)(i): amended, on 1 January 2012, by [rule 13\(3\)\(a\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(b)(i): amended, on 1 January 2012, by [rule 13\(3\)\(b\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(c): replaced, on 1 January 2012, by [rule 13\(4\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(d): replaced, on 1 January 2012, by [rule 13\(5\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(e): amended, on 1 January 2012, by [rule 13\(6\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

Rule 25(1)(f): revoked, on 1 January 2005, by [rule 8\(2\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2004 (SR 2004/413).

Rule 25(3): added, on 1 January 2005, by [rule 8\(3\)](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2004 (SR 2004/413).

### Schedule 3 - Key correspondence and submissions

- (a) Email from Appellant's Counsel with Notice of Appeal and making Urgent Application (8 November 2023).
- (b) Letter from then CPEC Chair on the Appeal and appointment of panel for Urgent Application (9 November 2023).
- (c) The parties confirmed receipt of the letter (9 November 2023).
- (d) Email from Appellant's counsel regarding Urgent Application (10 November 2023).
- (e) Email from Counsel for the RA on the Urgent Application (10 November 2023).
- (f) Email from then CPEC Chair on Urgent Application (13 November 2023).
- (g) Email from RA disputing Urgent Application (13 November 2023).
- (h) Email from RA regarding future correspondence (13 November 2023).
- (i) The Appeal Panel confirmed a hearing would heard to determine the Urgent Application (13 November 2023).
- (j) Counsel for Appellant filed submissions for the Urgent Application and additional peer reviews (14 November 2023).
- (k) The Appeal Panel acknowledge receipt of the Appellant's submissions for the Urgent Application and noted CPEC has the power to order a "Stay"(14 November 2023).
- (l) The RA confirmed it wished to make submission that CPEC has no power to order a "Stay" (15 November 2023).
- (m) the Appeal confirmed its preliminary view is CPEC could order a "Stay" but the RA was not precluded from submitting otherwise (15 November 2023).
- (n) The RA filed its submissions regarding the Urgent Application (17 November 2023).
- (o) The Appeal Panel provided the parties with the details for the Urgent Application hearing (17 November 2023).
- (p) The Appeal Panel acknowledged receipt of the RA's submissions for the Urgent Application and requested the parties confirm attendees for the hearing (20 November 2023).

- (q) Both parties confirmed attendances for the Urgent Application hearing (20 November 2023).
- (r) The Appeal Panel confirmed Zoom invitations would be issued for the Urgent Application hearing (21 November 2023).
- (s) The parties exchanged emails confirming the Appellant would not be serving submissions in reply to the RA's submissions on the Urgent Application (22 November 2023).
- (t) The Urgent Application was heard by Zoom online conference (24 November 2023).
- (u) Counsel for the Appellant requested and was provided with a copy of Talley's Group v WorkSafe (24 November 2023).
- (v) Counsel for the Appellant provided submission on Talley's Group v WorkSafe (27 November 2023).
- (w) The Appeal Panel issued its decision to decline the Urgent Application (28 November 2023).
- (x) Both parties acknowledged receipt (28 November 2023).
- (y) The Appeal Panel issued its decision with reasons declining the Urgent Application (1 December 2023).
- (z) The RA provided the Bundle noting "There were difficulties in determining whether we still held relevant information" (21 May 2024).
- (aa) The Appeal Panel wrote to the parties addressing the timetable among other things (11 June 2024).
- (bb) The Appeal Panel issued a letter with a revised agreed timetable and requesting the RA seek permission to be heard on the Appeal (18 June 2024).
- (cc) The parties confirmed receipt of the letter (18 June 2024).
- (dd) The RA sought permission to be heard on the Appeal (20 June 2024).
- (ee) The Appeal Panel issued a letter giving the RA permission to be heard on the Appeal (27 June 2024).
- (ff) Counsel for the Appellant requested that more engineers be appointed to the Appeal Panel (8 August 2024).

- (gg) The RA updated the Bundle to include the Appellant's affirmed affidavit (14 August 2024).
- (hh) The Appellant filed his submissions through his counsel (19 August 2024).
- (ii) The Appellant filed revised submissions through his counsel (20 August 2024).
- (jj) The Appeal Panel confirmed receipt of the Appellant's submissions (20 August 2024).
- (kk) The Appeal Panel wrote to the parties declining the Appellant's request to add more engineers to the Panel (21 August 2024).
- (ll) The RA filed its submissions (2 September 2024).
- (mm) The Appeal Panel confirmed receipt of the RA's submissions (2 September 2024).
- (nn) The Appeal Panel, after a request, extended the time for submissions in reply by one day (10 September 2024).
- (oo) The Appellant filed his submissions in reply through his counsel (10 September 2024).
- (pp) The Appeal Panel wrote to the parties suggesting the Appeal could be decided on the papers (1 October 2024).
- (qq) The RA agreed to the Appeal being decided on the papers (2 October 2024).
- (rr) The Appellant agreed with the Appeal being decided on the papers (15 October 2024).
- (ss) The Appeal Panel wrote to the parties informing them the Appeal Panel would convene no later than 11 December and offering the opportunity to make supplementary submissions considering the decision in *Deo v CPEC* (26 November 2024).
- (tt) The RA provided supplementary submissions (4 December 2024).
- (uu) The Appellant provided supplementary submissions through his counsel (5 December 2024).