

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

Appeal 13/24

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

Decision of the Chartered Professional Engineers Council
Dated 14 November 2025

Introduction

1. Mr A (“**the Appellant**”) has appealed a decision of the Competency Assessment Board (“**CAB**”) to amend the Appellant’s practice area description and require the Appellant to apply for continued registration within 2 years.
2. The Appeal Panel of the Chartered Professional Engineers Council (“**the Appeal Panel**”/ “**the 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 Council convened this Appeal Panel to consider the Application.

Legislation and case law

4. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers Act 2002 (“**the Act**”).
5. Appeals to the Council are by way of rehearing (s37(2) of the Act).
6. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the Regulations).
7. 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)).
8. 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.
9. The District Court in *Deo v Chartered Professional Engineers Council* [2024] NZDC 22169 in applying the Court of Appeal’s judgment in *Green v Green*, stated that the application of *Austin, Nichols* means that while it is an appellant decision-maker’s obligation to “*form its own independent judgment on the merits of an appeal by way of rehearing*” ...“*it is still axiomatic that the appellant bears the onus of persuading the appellate court to reach a different conclusion. Of necessity, in discharging that onus the appellant must identify the respect in which the judgment under appeal is said to be in error.*”

10. 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.
11. 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.
12. The nature of the Appeal is at issue, whether it is advanced akin to a judicial review. An appeal to CPEC is not a judicial review.¹ It is well established an appeal to CPEC is a rehearing in which the ultimate questions is whether “the appealed decision is wrong”.²
13. While an appeal to CPEC is not a judicial review, that does not mean procedural matters, errors or law or issues of natural justice cannot be considered on appeal. Where, in previous appeals, CPEC said it could not procedural matters, errors or law or issues of natural justice we disagree.
14. In an appeal from a CPEC decision, the District Court addressed a submission from the RA that CPEC **could not** consider issues such as procedural matters, errors or law or issues of natural justice. In *IPENZ v Nowak*³, the District Court disagreed “*the Council’s jurisdiction to be hobbled in the way for by the appellant* [the RA]”.⁴
15. The District Court further held in *IPENZ v Nowak*:⁵

...the appropriate approach, supplemented by the principle that for a decision under appeal to be overturned on the basis of an error of law requires that the error materially affected the result, is as summarised by the High Court in *Klepacki v IPENZ*:

¹ *Deo v CPEC* at [50].

² *Deo v CPEC* at [37], applying *Austin Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103.

³ *The Institution of Professional Engineers New Zealand Incorporated Trading as Engineering New Zealand v Piotr Nowak* [2021] NZDC 11697.

⁴ *IPENZ v Nowak* at [76].

⁵ *IPENZ v Nowak* at [78] referring to *WOJCIECH KLEPACKI (VOYTEK KLEPATSKI) v INSTITUTION OF PROFESSIONAL ENGINEERS NEW ZEALAND* [2017] NZHC 3300 at [14].

An error of law is made out if the decision-maker failed to take into account a relevant matter, took into account an irrelevant matter, failed to apply a statutory provision correctly, or the decision-maker made a finding of fact that is so clearly untenable that the only reasonable conclusion contradicts that finding.

Underlining added.

16. That CPEC can consider issues such as procedural matters, errors of law or issues of natural justice does not mean appeals on a technicality would succeed as a matter of course. The error **must materially affect the result.**

Background

17. On 22 March 2024, an appeal panel of CPEC issued its decision in relation to the Appellant's then application for continued registration ("**Previous Appeal Decision**"). In full, the outcome of the Previous Appeal Decision was:

129. The Panels task is to consider whether Mr A's submissions demonstrate he meets the minimum requirement for registration in accordance with Rule 20.

130. The Panel has considered the evidence, the appeal submissions, Mr A's registration application, work samples, response to the assignment, and all further information provided.

131. The test of competency is an objective one made by the people making the assessment. The onus is on an applicant to prove that he meets the appropriate standard for registration as a Chartered Professional Engineer.

132. In this case, the Panel conclude Mr A has not proven to the assessment panel or the CAB that he has met the requisite standard.

133. However, the Panel are concerned that Mr A was not given the opportunity for a second interactive. This would have provided him with the opportunity to talk to his written assignment. This the Panel considers that the assessment may not have yielded a fair and robust result.

134. The Panel, therefore, directs the RA, subject to Mr A's agreement, to convene a new Assessment Panel of different members from the previous panel and conduct a new assessment, at no additional cost to Mr A.

135. Given the timing since his last approved certification, Mr A is encouraged to provide updated or more recent work samples, and any other information he considers necessary to demonstrate he meets the requirements of r20.

136. The new assessment is to include a face-to-face (not virtual) interactive, held in Auckland unless otherwise agreed by Mr A, in the event any issues raise the possibility of the non-renewal of CPEng.

137. This new assessment is to be concluded as quickly as possible and no later than 12 weeks after this decision.

138. The RA is to suspend the removal of Mr A's CPEng registration until such time as the new assessment is concluded or 31 June 2024, whichever is the earlier.
139. In the event Mr A declines a new assessment, or the timing allocated for it, the CAB's decision is upheld.
18. For reasons which will be apparent later, we observe the Previous Appeal Decision was not appealed to the District Court, nor was an application made to the High Court for judicial review of the Previous Appeal Decision.
19. Between 1 and 2 April 2024 the RA and the Appellant exchanged on the assessment of the Appellant [BOD 2 – 5]. The emails discussed the timing of the Appellant providing his application, asking to be given until 10 May [2024]. In the final email, the RA said among other things:
- Ultimately, the choice is yours. I provided you with the due date of 10 April as I believe this is the latest we can receive your application in order to finalise the decision by 31 June. You can submit later than this, but please do so in the knowledge that the process may run over the 31 June date set in the CPEC decision and if this happens, you would be removed from the Register until your assessment is finalised.
20. The Appellant provided the RA with:
- (a) An Applicant Portfolio [BOD 6 – 12].
 - (b) CPD Records [BOD 13 – 16].
 - (c) A CV [BOD 17 – 27].
21. On 9 April 2024, the Appellant provided:
- (a) Work Sample 1: Property 1 Submitted 9 April [BOD 28-115].
 - (b) Work Sample 2: Swimming Pool and Retaining Wall Submitted [BOD 116-145].
 - (c) Work sample 3: Property 2 Submitted [BOD 146-194].
22. On 10 April 2024, the Appellant provided Work Sample 4: Residence Housing Development Submitted [BOD 195-302].
23. On 26 April 2024, the Lead Assessor emailed the Appellant by way of introduction [BOD 303].
24. On 8 May 2024, the Lead Assessor emailed the Appellant to say the interactive had been scheduled for 2pm on 5 June 2024 and asking the Appellant to confirm if the date and time worked for the Appellant [BOD 304].
25. In May 2024, a request for further information was issued to the Appellant ("RFI 1") [BOD 305 – 308].

26. The Appellant provided a response to RFI 1 [BOD 309 – 314] with the following attachments:
 - (a) A revised CV [BOD 315 – 317].
 - (b) Attachment: 1a – Property 1 ARCH [BOD 318 – 369].
 - (c) Attachment: 1b – GP558 Geotechnical Report [BOD 370 – 410].
 - (d) Attachment: 2a - ARCH [BOD 411 – 425].
 - (e) Attachment: 2b – GO535 Final Report [BOD 426 – 454].
 - (f) Attachment: 2c – EQ on swimming pool and retaining wall [BOD 455 – 466].
 - (g) Attachment: 3a – Property 3 RC [BOD 467 – 488].
 - (h) Attachment: 3b - 4928G_Geotech Report_Property 3 [BOD 489 – 518].
 - (i) Attachment: 3c – IS – 1 – Last version [BOD 519 – 638].
27. On 24 May 2024, the Lead Assessor emailed the Appellant on RFI 1 and finalising preparations for the interactive [BOD 639].
28. On 30 May 2024, the Lead Assessor emailed the Appellant [BOD 640] attaching the agenda for the interactive [BOD 641 – 643].
29. The interactive took place on 5 June 2024.
30. On 10 June 2024, there was a further request for information as issued asking the Appellant about an email and a referee (“RFI 2”) [BOD 644 – 645]. RFI 2 also addressed the Appellant’s request for a copy of the recording the initiative.
31. In response to RFI 2, the Appellant provided the requested email [BOD 646].
32. On 14 June 2024, a further request for information was issued (“RFI 3”) [BOD 647]. This occurred as the Appellant’s nominated referee advised, when contacted, that he was retired, completely out of engineering, that he talks with the Appellant now and then but not specifically about the Appellant’s projects.
33. On 3 August 2024, the CAB Update on Previous Decisions was again updated [BOD 648 – 649].
34. On 12 September 2024, the assessors produced an Assessment Report with a proposed decision [BOD 656 – 670], at which time it was provided to the Appellant [BOD 674].
35. On 7 October 2024, the Appellant emailed the RA identifying issues he considered lay in the Assessment Report and the process. He forwarded the email again on 10 October [BOD 672 – 673].

36. On 21 October 2024, the RA responded to the emails [BOD 671].
37. On 10 October 2024, the Appellant telephoned the RA, with the RA recording a file note [BOD 676].
38. On 4 November 2024, the CAB updated its table Update on Previous Decisions 4 November [BOD 684 – 685].
39. On 8 November 2024, the Appellant again telephoned the RA, with the RA recording a file note [BOD 687].
40. On 18 November 2024, the RA wrote to the Appellant [BOD 688 – 689] enclosing the Final Decision – Assessment Report [BOD 690 – 700].
41. On 26 November 2024, the Appellant again telephoned the RA, with the RA recording a file note [BOD 701].

Evidence and submissions received

42. Under clause 15 of the Regulations, CPEC may receive any evidence that the RA would have been entitled to receive on the decision being appealed.
43. The evidence and submissions considered by the Appeal Panel in arriving at its decision included:
 - (a) The Amended Notice of Appeal dated 17 June 2025.
 - (b) The paginated Bundle of Documents [BOD 1 to 701], provided by the RA on 28 January 2025.
 - (c) Appellant Submissions dated 16 June 2025.
 - (d) RA Submissions dated 1 July 2025.
44. We record some procedural matters in the lead up to the hearing. The Appellant sought an extension of time to file reply submissions. The RA objected to the extension and the Appeal Panel upheld the objection. The Appellant’s Counsel noted disagreement with this and advised reply submissions would be addressed at the hearing.
45. As requested by the Appeal Panel, the RA provided an outline of its oral submissions prior to the hearing. The Appellant did not provide an outline of oral submissions. The Appellant provided two authorities, one text and one case, very close to the date of the hearing.

46. An in-person hearing was held on 22 August 2025. The hearing was conducted online using Zoom.
47. At the start of the hearing the RA's Counsel raised the above points. The Appellant's Counsel reiterated they disagreed with the decision not to extend the time for reply submission. The Appellant's Counsel said because of this they did not provide an outline of oral submissions, and this was the reason for the late provision of authorities.
48. We do not accept the Appellant's Counsel's position. Irrespective of the issue of reply submissions, there was no reason not to provide an outline or oral submissions, and no reason to provide further authorities so close to the hearing. The conduct was unsatisfactory, but we put it no higher than that and it had no bearing on our decision.
49. We heard submission from the Appellant's Counsel and the RA's Counsel. The Appellant also spoke on his own behalf. Regarding our observations above on the Appellant and reply submissions, we understood at the end of the hearing the Appellant had made all desired submissions and statements, including submissions in reply to the RA's submissions. We consider the Appellant fully made the case he wished to make regarding the Appeal.
50. Finally, we record the Appeal was subject to a successful application under section 36 of the Act. The order under that section 36 application is dealt with in our decision below.

Grounds of appeal and outcome sought

51. The grounds of appeal and ruling sought are in the Amended Notice of Appeal dated 17 June 2025.
52. The first ground of appeal is:

Did the Registration Authority (RA) / Engineering New Zealand (ENZ)'s timeframe for the Appellant to submit his application information for his new assessment comply with the mandatory timeframes under rule 22 of the Chartered Professional Engineers of New Zealand Rules (No. 2) 2002 (the Rules)? In particular, was the 7 working days within which he was directed to provide his information sufficient.

53. The second ground of appeal is:
- Did the CAB apply the correct assessment criteria for [The Appellant's] continued registration under rule 20(a)(i)? Did the Assessment Panel and CAB misapply the legal test for re-registration by failing to give effect to the meaning of the words "still able" in rule 20(a)(i) when they noted that the work samples provided within the time since [The Appellant's] last assessment did not cover the extent of his PAD.
54. The third ground of appeal is:
- Did the CAB carry out a new assessment afresh as directed by CPEC in its March 2024 decision, or did it have wrongly have [sic] reference to and incorporate issues raised from its previous assessment in 2022 into the new assessment?
55. The fourth ground of appeal is:
- Was it open to CAB to unilaterally vary [The Appellant's] PAD under rule 26?
56. In addressing the outcome sought, the Appellant is seeking the following rulings:
- (a) Approving the Appellant's reregistration on its original terms for a period to be decided by CPEC;
 - (b) Ordering that the Appellant remains registered during the appeal and reassessment process on the original terms with restoration to the register if so required; or
 - (c) In the alternative, a reassessment is directed with the CAB directed to apply the appropriate legal test to its assessment in rule 21; and
 - (d) Costs.

Discussion – Consideration of grounds of appeal

57. 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 as set out in Rules 6 and 20(Schedule 2).⁶
58. In the following part of the decision, we summarise the parties' submissions on each ground and discuss these submissions. We do not summarise every point made by the parties, but they have been considered in reaching our decision.

First ground of appeal

The Appellant's Submission

59. The Appellant submits the Previous Appeal Decision ordered a new assessment, but the RA's notice provided 7 working days for the Appellant to provide the information for the new

⁶ The Chartered Professional Engineers of New Zealand Rules (No 2) 2002.

assessment. Given a new assessment was directed by CPEC and new information required by the RA/ENZ, the Appellant submits rule 22 clearly applied.

60. The minimum three-month time period provided in rule 22 is mandatory. 7 working days as opposed to the minimum approximately 60 working days in rule 22(2) was a very significant breach and highly prejudicial to the Appellant.
61. The submission was developed at the hearing to say this was a breach of natural justice, the only remedy for which is to quash the decision.

The RA's submission

62. The RA submitted that the "*preceding assessment process took place outside of the usual context for continued registration assessments and under the CPEC's direction that the process take no more than 12 weeks*". The RA argued this provides context against which the matter must be considered, observing that in their view the Appellant did not expand on why there was a significant breach, how it was highly prejudicial to him, and why the Decision was wrong.

Appeal Panel discussion in relation to the first ground of appeal

63. We start with rule 22, which says in full:

Commencement of assessment

22 Registration Authority must notify chartered professional engineers of assessment

(1) Before undertaking an assessment of a person's continued registration, the Registration Authority must notify the person (the candidate)—

- (a) that it intends to carry out the assessment; and
- (b) that the candidate must provide the information required under rule 23 by a specified date; and
- (c) of the consequences of not providing the information.

(2) The specified date for providing information must be at least 3 months after the notice under subclause (1).

64. We conclude Rule 22 is not triggered by the Previous Appeal Decision. The reasons for our conclusion are as follows.
65. The Previous Appeal Decision did not commence the Appellant's assessment for continued registration. The assessment commenced when the Appellant applied for continued

registration in 2019. He was informed on 11 January 2019 that his registration was about to expire, and his continued registration submission was accepted on 28 June 2019.⁷

66. Under s37(5)(b) of the Act, when determining an appeal, 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 or District Court, as the case may be, thinks fit):

67. When it issued the Previous Appeal Decision, the previous appeal panel referred the matter back to the decision authority to reconsider. That did not commence a new assessment. It was continuing an existing assessment and therefore rule 22 is not triggered.

68. To be complete, we considered the situation where we are wrong on which subsection of s37(5) applies to the Previous Appeal Decision. As we see it, the only alternative is the Previous Appeal Decision reversed the CAB's assessment under s37(5)(a) of the Act. Reversing the CAB's assessment still does not have the effect of commencing the assessment and therefore rule 22 is not triggered.

69. We note that the Appellant has been provided multiple opportunities over several years to furnish adequate and appropriate additional information – whether through the process itself or the time elapsed – and has not elected to do so. During the Appeal, the Appellant did not tell us what information he would have provided had he been given more time. The Appellant was entitled to, but did not, put such information before us.⁸

70. What he told us, speaking on his own behalf, is what he could have given to the assessment panel if he had been asked. However, this was expressed in general terms that described in principle the types of additional information that could be furnished. That was the extent of it. Put another way, despite the Appeal being another opportunity to provide information demonstrating the Appellant could competently practice at his desired practice area description, the Appellant did not take that opportunity.

71. The Appellant's counsel criticised the Previous Appeal Decision. We take the criticism to culminate in a view that the Previous Appeal Decision was (at least in part) made *ultra vires*. That is something we cannot address. The Council has no power to hear appeals from or review its own decisions. If the Appellant considered the Previous Appeal Decision was

⁷ Appellant's Submission [5].

⁸ Under clause 15 of the Regulations, The Council may receive any evidence that the Registration Authority would have been entitled to receive on the decision being appealed.

wrong, then an appeal to the District Court within the defined period should have followed. If the Appellant still considers the Previous Appeal Decision was made *ultra vires*, then a judicial review in the High Court would now be the appropriate course of action.

72. The first ground of appeal is not proven. The Previous Appeal Decision did not start a new assessment. The Appellant did not say what specific information he would have provided if he had more time. We cannot hear an appeal of, or review, the Previous Appeal Decision.

Second ground of appeal

The Appellant's Submission

73. The Appellant's Submission discusses the standards and criteria for assessing continued registration under the Act and the Rules.
74. The Appellant submits the CAB's Mandate is to assess whether a CPEng meets the minimum standards for continued registration, as prescribed by the Act and Rules. The Appellant says continued registration differs from initial registration, with specific standards outlined in Rule 20.
75. The Appellant submits that under Rule 20(a)(i), the applicant must demonstrate they are "still able to practise competently" to the standard of a reasonable professional engineer. The Appellant compares Rule 20(a)(ii) which applies if the applicant's practice area has materially changed. Under Rules 20(a)(ii), the applicant must meet the minimum standard for initial registration in the new practice area.
76. The Appellant submits the CAB erred by requiring work samples to cover the entire practice area description (PAD) applied for, rather than assessing whether the applicant is "still able to practise competently". The Appellant submits the phrase "still able" implies continuity from previous assessments without material deterioration in competency, even if specific types of work (e.g., low-rise buildings) were not undertaken during the assessment period.
77. The Appellant says the CAB's requirement for work samples to cover the maximum extent of the PAD is impractical, as engineers may not always undertake projects at the highest level of their practice area during every assessment period.
78. The correct standard under Rule 20(a)(i) focuses on whether the applicant remains competent to practice within their PAD, not whether they have recent examples of work at the maximum extent of their PAD.

79. In summary, CAB misapplied the standard for continued registration by imposing an unnecessary requirement for work samples to cover the full scope of the PAD, rather than assessing ongoing competency as required by Rule 20(a)(i).

The RA's submission

80. The RA asserts that the correct test (rule 20(a)(i) with reference to rule 6(2)) was applied. Although it contends that it differs in opinion, the RA shares the Appellant's view that a candidate need not provide examples of work to the maximum of the practice area description every time they are assessed. The RA underlines the point that an applicant must demonstrate they can practice competently in their "*current practice area to the standard of a reasonable CPEng*", noting the CAB based their reasoning on a lack of evidence, thus:

There was no evidence that would inform the Panel of the applicant's competency to undertake 3 – 4 story design or ductile design of structures

And

Coupled with this there was a lack of comprehensive documentation, a lack of QA processes and a lack of engineering risk management processes (emphasis added)

Appeal Panel discussion in relation to the second ground of appeal

81. We conclude the CAB applied the correct criteria for assessing whether the Appellant was still able to practice as a CPEng. The reasons for our conclusion are as follows.
82. First, we do not accept the Appellant's view that to not be registered at the desired PAD, a "*material deterioration*" must be evidenced by the information in front of the assessment panel. It is a similar view to a recurring theme in continued registration appeals that there is a presumption of competence. We do not accept this theme.
83. It is for the applicant to demonstrate they are "still able" to practice competently. The Appellant's last successful assessment was in 2013.⁹ It is reasonable to expect he would provide the assessment panel with information to demonstrate competence to his desired Practice Area Description. He did not do so. Looking at the point from a different view, it is not for the assessment panel to disprove the Appellant can practice competently at his desired Practice Area Description.

⁹ Appellant's Submissions at [4].

84. Next, the Appellant's evidence for his application was not limited to Work Samples. Rule 23(2)(c) says a candidate can provide "*any other information that the candidate wishes to be considered*". If the Appellant's Work Samples did not demonstrate his competence for his desired PAD, the Appellant could have provided the evidence as "*any other information*".
85. We use the example of a 'hydroelectric engineer' cited by the Appellant during the hearing. If that 'hydroelectric engineer' had not recently worked on a large dam, to demonstrate continued competence for the period being assessed, they could provide worked examples or other information to support their (re)application. Nothing in the Rules says only real or actual Work Samples must be considered in the assessment.
86. Reinforcing our conclusion, at the hearing, the Appellant told the Appeal Panel he could have provided the assessment panel with other information on previous projects updated for current requirements. The thrust of the Appellant's reason for not providing other information was he was not asked to do so.
87. The Appellant's position is another recurring theme in registration appeals; that the candidate could or would have provided information relevant to the continued registration application if the candidate had been asked. We do not accept this position as valid.
88. Under the Rules, *the candidate* is responsible for demonstrating current competence. It is the candidate's responsibility to ensure the information they provide under rule 23 is adequate for the desired PAD.
89. We also observe the Appellant did not put such other information before the Appeal Panel. When speaking on his own behalf, the Appellant told the Appeal Panel that he could have provided information demonstrating his competence for his desired PAD. That is as far as it went.
90. The extent of the work in the Works Samples was not the sole reason for the assessment panel's decision. The assessment panel was also concerned about the Appellant's capabilities with, what we broadly describe as documentation¹⁰. The assessment panel said [BOD 699]:

In arriving at its recommendation of a 2-year term till next assessment the Panel very carefully considered the evidence provided within the current assessment application including discussion during the interactive, the CPEC Decision which

¹⁰ QA process, risk identification, analysis and management processes.

directed the undertaking of this assessment and the previous Panel's assessment which recommended that [The Appellant's] application be declined.

The common themes throughout this process are [The Appellant'] reliance on engineering judgement within the design process, a lack of documentation, a lack of documented QA processes and a lack of documented engineering risk identification, analysis and management processes.

The Panel's position is that due to the concerns arising from the lack of good engineering practice, this application is either a decline or a reduced term till the next assessment of 2 years. The rationale for a 2- year term till the next assessment was that this would allow [The Appellant] to put in place good practice documentation, QA and engineering risk management processes and demonstrate the application of these processes through relevant work samples.

91. Having heard the Appellant speaking on his own behalf at the hearing, we share the assessment panel's concerns. Our impression is the Appellant does not consider "documentation' important or relevant to his work as an engineer.
92. The second ground of appeal is not proven. The Appellant was not limited to providing Work Samples to demonstrate his continued competence. The Appellant was responsible for providing other information to demonstrate his continued competence for his PAD but did not do so because he says he was not asked to do so. Therefore, the CAB and the Assessment Panel applied correct criteria to the information the Appellant provided.

Third ground of appeal

The Appellant's Submission

93. At paragraph 55, the Appellant's Submission starts with a quote from the CAB's assessment report:

The Panel is concerned that the lack of documentation, the lack of documented QA processes and a lack of documented engineering risk identification, analysis and management processes creates an unacceptable professional practice risk whereby Mr. A is relying on regulatory processes and approvals. This is not the regulator's role.

94. The Appellant then submits here was nothing however within the assessment report to that effect in the CAB's review or comments in respect of the work samples and response to RFI's submitted by the Appellant. The submission goes on to say these comments are also inconsistent with the findings that the Appellant was keeping up to date with the changes in his practice area including good practice.

95. The Appellant says the inference that arises is that these comments were transposed by reference to the August 2022 CAB report contrary to CPEC's direction that the assessment be new.
96. The thrust of the submission on this point at the hearing was the assessment panel's decision was "tainted".

The RA's submission

97. It is clear that the RA is firmly of the view that the abovementioned assessment panel and CAB reference to the lack of documentation has not been "incorrectly transposed". They argue it is a "statement of the shortcomings found by the Assessment Panel and the CAB in its 2024 Decision." and that since the "decision makes other such statements, the excerpt ...is not anomalous". The RA contends rule 20 is an objective standard and that the onus upon the Appellant to demonstrate a level of capability to meet the requirements of rule 20(a)(i).

Appeal Panel discussion in relation to the third ground of appeal

98. We conclude the CAB did carry out its own assessment and did not wrongly refer to the previous assessment. The reasons for our conclusion are as follows.
99. First, rule 25 says among other things (**emphasis added**):

(1) The assessment panel **must evaluate** the candidate's continued registration in the following way:

...

(d) evaluate the information provided and **any relevant information that the Registration Authority has about the candidate**; and

100. In our view the assessment panel was not wrong to refer to the previous assessment. The previous assessment was relevant information about the candidate, and able to be considered under rule 25.
101. We accept the RA's submission that reaching a different decision to the previous assessment panel supports the view that this assessment panel did carry out its own assessment. We do not accept the Appellant's view that because the assessment panel did not grant the Appellant the full duration and desired PAD, that we must infer it was influenced or tainted by the previous assessment panel.

102. We read the assessment report as showing the assessment panel formed its own view on the evidence provided by the Appellant and its own view based on the interactive with the Appellant.
103. We do not accept the Appellant's submission that because some parts of the assessment report favour the Appellant, the unfavourable parts evidence the assessment panel not forming its own views. The assessment panel formed a favourable view of the Appellant's work samples and an unfavourable view of the Appellant's attitudes to 'documentation'.
104. As we observed above, having heard the Appellant speak on his own behalf, we share the assessment panel's view on the Appellant's attitude to 'documentation'.
105. This ground of appeal is not proven. We conclude the assessment panel did carry out its own assessment. We do not accept that mere referral to the previous assessment evidence the contrary.

Fourth ground of appeal

The Appellant's Submission

106. Rule 26(1)(a) does not provide that CAB can vary a candidate's PAD. The candidate's registration can only be confirmed, removed or suspended. In the event of either of the latter two options being exercised, CAB then have to follow rules 27 and 28.
107. With the assessment panel's finding as cited at [34] above – that: *“the evidence demonstrates that he is still able to practice competently in his practice area...”* it was plainly not open to it to go further and determine that his PAD could then be reduced. Once the *“still able to practice competently”* finding is made, the standard in r 20(a)(i) is met. This was also in error.
108. In submission at the hearing, the Appellant suggested the RA's submission on this ground was glib. As we explain below, we disagree with the Appellant.

The RA's submission

109. The RA's submission on this point was brief, but in our view apposite. The RA notes the Appellant has advanced *“an overly literal reading of rule 26”* and omitted matters of context and purpose from the framing of the cited case law. They are of the view that the CAB decision was pragmatic and contextual and did not prejudice the Appellant, particularly as the alternative was to decline reregistration.

Appeal Panel discussion in relation to the fourth ground of appeal

110. We begin by recording what we cannot consider regarding the fourth ground of appeal. The Appellant says the CAB does not have the power to amend the Practice Area Description, that it acted ultra vires. While *IPENZ v Nowak* confirmed appeals to CPEC can consider, among other things, matters of procedure,¹¹ whether a decision or action is ultra vires is undoubtedly a matter for judicial review, not a CPEC appeal. Therefore, we consider the fourth ground of appeal based on whether the CAB's decision was wrong, not whether the CAB had the power to make the decision.
111. We conclude the CAB was not wrong to approve continued registration at an amended Practice Area Description. The reasons for our conclusion are as follows.
112. Regarding evidence provided to the assessment panel, when the Appellant spoke on his own behalf at the hearing, he told us he could have provided the assessment panel with information to demonstrate competence for his desired Practice Area Description. He told us he did not do so, as he was not asked.
113. In an appeal, CPEC can receive any evidence the RA is entitled to receive in making its decision. Despite this, we received no information from the Appellant demonstrating his competence for his desired Practice Area Description. In this decision we already observed the information to be considered in a continued registration assessment is not limited to Work Samples. The Appeal was an opportunity for the Appellant to provide information not in the Works Samples (or for that matter additional Work Samples had these arisen over the course of this process). The Appellant did not take the opportunity.
114. Concluding this point, we repeat our observation the Appellant made no attempt during the Appeal to demonstrate he should be registered for his desired Practice Area Description.
115. We do not consider the RA's submission to be glib to note that the options for the assessment panel were to recommend the Practice Area Description it recommended or decline the application. That was the choice the assessment panel faced with the evidence the Appellant provided.
116. The fourth ground is not proven.

¹¹ As discussed above, this is so long as the error materially affects the result.

Findings

117. The Appeal Panel has considered the grounds of appeal cited by the Appellant, the Appellant's Submissions, the RA Submissions and submissions and statements at the hearing, and the contents of the BOD.
118. The Appeal Panel finds that none of the grounds for appeal were proven. The Appeal Panel therefore dismisses the appeal and the CAB's decision on the Appellant's CPEng continued registration is upheld.
119. Having decided the Appeal, CPEC's previous order under section 36 of the Act ends.
120. Having reached our conclusion, we briefly comment on the two relevant orders the Appellant sought.
121. The first order sought continued registration at the Appellant's desired Practice Area Description. On the information submitted to us and presented to us at the hearing, we could never have approved "*the Appellant's reregistration on its original terms for a period to be decided by CPEC*". We observed at several points in this decision the Appellant never put information before us demonstrating his competence for his desired Practice Area Description.
122. Speaking on his own behalf, the Appellant told us what he could do and what information he could provide but did not. He engaged in trenchant criticism of the assessment panel and demonstrated to us an attitude to 'documentation' which supported the assessment panel's views in their report.
123. The alternative order sought "*a reassessment is directed with the CAB directed to apply the appropriate legal test to its assessment in rule 21*". We concluded the assessment panel applied the correct test to the information provided to it, and the Appellant could have provided other information to demonstrate competence for his desired Practice Area Description. He did not do so.
124. Having decided we cannot make the first order the Appellant sought, in the circumstances, the alternative order has no utility. The Appellant is registered as CPEng. He is registered until 2026. The Practice Area Description does not limit the work he can do within his competence.

125. The Appellant did not demonstrate to us, and made no attempt to demonstrate to us, he can competently practice to his desired Practice Area Description. Therefore, we could not direct the Appellant retain his desired Practice Area Description while that further reassessment took place.
126. This means there would be no utility in ordering a further reassessment as that would leave the Appellant in the same position he is now, a registered CPEng. We could not order the register maintain a Practice Area Description for which the Appellant was last successfully assessed in 2013.¹²
127. We conclude by urging the Appellant to carefully consider his preparation for his next application for continued registration. The attitude he displayed during the Appeal towards the assessment process may be understandable in the circumstances, but that does not make it correct. From the assessment report's content and this Appeal decision's findings he is aware of what he can do and should do for his next continued registration assessment.

Costs

128. CPEC is empowered to make an order as to the payment of costs on determining an appeal. If the RA wishes to seek costs, it must make submissions to the Appeal Panel within 5 working days of this decision including a schedular breakdown of the costs sought. The Appellant may make submissions in reply within a further 5 working days.
129. We note our view in previous appeal decisions that statutory steps the RA is required to take should not be included in costs sought by the RA. One such statutory step is the RA's obligation to provide the Bundle.
130. We consider the cost of a section 36 application is not part of the cost of the Appeal and outside our power to award costs. Therefore, while the Appellant made a successful section 36 application, we will not award costs to the Appellant for that application. If we are wrong on whether the cost of a section 36 application is part of the cost of the Appeal, we will exercise our discretion not to award the Appellant costs for the section 36 application. As the decision noted at the time, that the section 36 application succeeded was a fine run thing.

¹² Appellant's Submission at [4].

131. Any submissions on costs are to be no longer than five pages including any schedules or appended information.
132. If an application is made, the Appeal Panel will decide whether to make an order as to costs on the papers.

Right of appeal

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

Dated 14 November 2025

Signed by the Appeal Panel



Mark Holland

Panel Principal



Simonne Eldridge



Dr Carron Blom