

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

**Appeal 02/25**

**AND**

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

**Between**

Party A

**Appellant**

**And**

Mr B

**Respondent**

**Against a decision of**

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

Decision of the Chartered Professional Engineers Council

14 November 2025

## Introduction

1. Party A (“the Appellant”) has appealed a decision made by a chairperson of Investigating Committees (“the CIC” or “Adjudicator”) of the Registration Authority (“the RA”) not to refer a complaint they made against Mr B (“the Respondent”), a Chartered Professional Engineer (“CPEng”), to an Investigating Committee (“a DC”) under Rule 57(a) of the Chartered Professional Engineers Rules (No. 2) 2002 (“the Rules”).
2. The appeal panel of the Chartered Professional Engineers Council (“CPEC”) convened to hear this appeal (“**the Appeal Panel**”) has been provided with a Bundle of Documents held by the Registration Authority (“**the RA**”) in relation to the case. References to specific pages within this bundle are annotated “[**BOD nn**]”. The Panel gave the RA permission to be heard on the Appeal.
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, the Respondent, and the RA, the Appeal Panel conducted the hearing on the papers.
4. To assist readability of this decision we note that we use the term CPEC when we refer to CPEC’s powers and obligations in a general sense, whereas we use the term Appeal Panel (and attendant pronouns) when referring to exercising CPEC’s powers and obligations in relation to this Appeal.

## Legislation & case law

5. Summarised below are legislation and authority on the conduct of the Appeal, and legislation and authority considered by the Panel in deciding the Appeal.
6. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers of New Zealand Act 2002 (“**the Act**”).
7. Appeals to CPEC are by way of rehearing (s 37(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 (or part of decision) under appeal (s 37(5)(a)), refer the matter back to the RA for it to reconsider (either generally or in relation to specific matters) the whole or any part of the decision (s 37(5)(b)), and may make any decision that could have been made by the decision authority (s 37(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 CIC, but the Appellant carries the burden of satisfying the Appeal Panel that it should do so.
11. 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.”
12. The CIC is appointed by the RA under rule 83 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (“**the Rules**”) and has delegated authority to decide under rule 56 of the Rules as to whether or not to refer a complaint to an investigating committee (“IC”).
13. The District Court recently provided a helpful summary of the early stages of RA’s complaints process:<sup>1</sup>

[10] Under s 20(1) of the Act, any person may complain to the Registration Authority about the Conduct of a Chartered Professional Engineer in accordance with the Rules. Once receiving a complaint, the Registration Authority must carry out an initial investigation and either refer the complaint to an investigating committee or dismiss the complaint on a ground in Rule 57. Rule 58 outlines how the initial investigation will be completed. Essentially, a complaints research officer is appointed to carry out an initial investigation of the complaint. The complaints research officer forms a recommendation of whether the decision should be investigated further or dismiss the complaint. The recommendation is passed to a chairperson of investigating committees who is referred to as “the adjudicator” and who will consider whether the complaint can be resolved via mediation.

[11] The chairperson of investigating committees decides to refer the complaint to an investigating committee. A committee of three is then appointed. The investigating

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<sup>1</sup> *Daniel Graeme Williamson v Eoghan O’Neill* [2025] NZDC 16964.

committee will decide again whether to dismiss the complaint or to refer a complaint on to a disciplinary committee.

## **Background**

14. We have not prepared a chronology of the relationship between the Appellant and the Respondent. We address when events occurred in our discussion of the grounds of appeal.
15. We have prepared a chronology of the complaint process up to and including the decision by the CIC. This chronology does not include substantial excerpts or quotes from documents in the Bundle.
16. On 20 April 2022, the Appellant's representative emailed the RA [BOD 2]. Attached to the email were:
  - (a) a 'Raising Concerns About an Engineer' form [BOD 3 – 8]; and
  - (b) a letter detailing the complaint [BOA 9-13], along with four sets of supporting documents, labelled documents A to D [BOD 14-20].
17. On 13 June 2022, after a telephone call with the Appellant, the RA emailed the Respondent with a Summary of Concerns prepared from the Appellant's complaint [BOD 21 – 24]. The concerns are detailed at [BOD 22].
18. On 22 July 2022, the Respondent's solicitors provided a letter in response to the RA's email of 13 June 2003 [BOD 25 – 27]. Provided with this letter were:
  - (a) A letter dated 24 September 2021 from the Respondent's then solicitors to the Appellant's solicitors [BOD28 – 31].
  - (b) A letter dated 27 August 2021 from the Respondent's then solicitors to the Appellant's solicitors [BOD 32 – 34].
  - (c) An email thread called "[Withheld] - solution to close off" dated 3 to 4 August 2021 [BOD 35 – 39].
  - (d) Contract meeting minutes dated 24 June 2021 with the letter directing attention to Item 7, point 6 of the minutes [BOD 40 – 41].

19. On 19 August 2022, the Appellant’s solicitors issued a letter to the RA responding the letter from the Respondent’s solicitors [BOD 42 – 45]. Provided with this letter were:
  - (a) Plans with overland flows paths which were referred to at paragraphs 15 to 19 of the letter [BOD 46-49].
  - (b) An email chain between [Withheld] and the Appellant’s representative between 17 and 20 August 2021 [BOD 50 – 56].
  - (c) A Notice to Contractor 013 – Instruction issued by the Respondent and dated 25 June 2021 [BOD 57].
20. On 16 September 2022, the Respondent’s solicitors issued a further letter to RA, responding the previous letter from the Appellant’s solicitors [BOD 58 – 60]. Provided with this letter were:
  - (a) EPA drawings [BOD 61 – 14].
  - (b) An email chain entitled “Withheld – Watercare Approval Number [Withheld] dated between 12 and 16 September 2022 [BOD 142 – 145].
  - (c) An EPA<sup>2</sup> Approval dated 19 February 2021 [BOD 146 – 154].
21. On 29 November 2022, the Appellant’s solicitors issued a letter to RA responding to the previous letter from the Respondent’s solicitors [BOD 155 – 156].
22. On 3 March 2023, the Respondent’s solicitors issued a letter to the RA responding to the previous letter from the Appellant’s solicitors [BOD 157].
23. An Initial Assessment Report dated 22 January 2025 was issued [BOD158– 164]. The decision of the CIC on three issues in the complaint is at [BOD 163 to 164].
24. The notice of appeal was filed on 20 February 2025 [BOD 165 – 176].

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<sup>2</sup> Engineering Plan Approval.

## Evidence and submissions received

25. We received submissions in accordance with the timetable we issued on 11 April 2025, as follows:
- (a) Submissions by the Appellant on 30 May 2025 (“**Appellant Submission**”).
  - (b) Submissions in response by the Respondent (“**Respondent Submission**”) and the RA (“**RA Submission**”) on 24 June 2025.
  - (c) Submissions in Reply by the Appellant on 1 July 2025 (“**Appellant Reply**”).
26. On 10 July 2025, we issued a letter requesting a written report from RA in accordance with clause 6(1)(b) of the Regulations. The letter’s request was:
- 7. The Panel requests the Registration Authority provide a report addressing the following.
  - 8. On issue one, the Initial Assessment Report concludes among other things:
    - I do not consider there has been a deviation from the standard of practice reasonably expected of a chartered professional engineer.
  - 9. We wish the Registration Authority’s report to address the considerations about the required “standard of practice” leading to the conclusion quoted above. Put another way, what was taken into consideration to reach the conclusion quoted above. We request the Registration Authority provide the report as soon as practicable.
- Underlining added.
27. In our 10 July 2025 letter, we afforded the parties the opportunity to make supplementary submissions on the content of the written report from the RA. In response, we received:
- (a) A written report from the decision maker on 17 July 2025 (“**Written Report**”).
  - (b) Supplementary submissions from the Appellant on 25 July 2025 (“**Appellant Supplementary**”).
  - (c) Supplementary submissions from the RA on 31 July 2025 (“**RA Supplementary**”).
  - (d) Supplementary submissions from the Respondent on 1 August 2025 (“**Respondent Supplementary**”).

- (e) Supplementary submissions in Reply from the Appellant on 5 August 2025 (“**Appellant Supplementary Reply**”).

28. With the parties’ agreement, the Appeal was heard on the papers.

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

29. The document attached to the Notice of Appeal did not list grounds of appeal [BOD 172 to 176]. It listed four issues, which are:

- (a) Issue 1: The “As-built” drawings for the stub connection, stated in the Notice of Appeal as follows:

The Adjudicator erred in finding that [The Respondent] had not deviated from the standard practice of a Chartered Engineer when he incorrectly certified the drawings for the stub connections as "as built".

- (b) Issue 2: Directing construction of an unapproved sewer network design, stated in the Notice of Appeal as follows

The Adjudicator erred in finding that:

- (c) there was no specific evidence that [The Respondent] had directed unauthorised works on site;
- (d) [The Respondent] had not exhibited any behaviour that deviated from that of a competent engineer; and
- (e) the design change was minor in the scheme of the Development and the requirement to change was not an unusual occurrence.

- (c) Issue 3: Overland flow path modelling, stated in the Notice of Appeal as follows:

The Adjudicator erred in finding that there were no applicable grounds of discipline for [The Respondent’s] involvement with the overflow paths and contour plans for the Development.

- (d) Issue 4: Decision referenced unrelated matters, stated as follows:

In his Decision, the Adjudicator references [the Respondent’s] purportedly outstanding invoices and a separate complaint made by [the Respondent] against [Withheld] (other matters).

30. The Appellant seeks the following three outcomes:

[The Appellant] requests that the decision to dismiss the complaint by the Investigating Committee be reversed and the complaint be referred to the Disciplinary Committee.

There be a finding that [the Respondent] is in contravention of s 21 of the Chartered Professional Engineers of New Zealand Act 2022 by performing engineering services in a negligent or incompetent manner and that he has breached cl 4(a)(iii) and 5(a)(i) of the Rules (Code of Ethics).

[The Respondent] be censured [sic], pay a fine of \$5,000 and pay costs to [the Respondent].

31. To clarify, and as set out previously, the decision was made by a CIC or Adjudicator (not an IC) on whether to refer the complaint to an investigating committee, not a disciplinary committee.
32. In this Appeal, we can only make the first requested order. Under section 37 (5) of the Act, we can only make a decision the CIC could make. The CIC can only dismiss the complaint or refer the complaint to an investigating committee. Therefore, in this Appeal we cannot make a finding the Respondent is in contravention of section 21 of the Act, nor can we censure or fine the Respondent.
33. Both the Respondent and the RA attempted to make adverse points due to the Appellant seeking orders that are not available in this Appeal. In our view, nothing turns on this. It is common for appellants to ask CPEC to make orders it cannot make.
34. The Appellant has sought one order we can make, and we proceed on that basis. For completeness, the order (if granted) would refer the complaint to an Investigating Committee, not the Disciplinary Committee. Referral to an Investigating Committee is the next step in the complaints process.

#### **Discussion of grounds of appeal**

35. Before addressing the grounds of appeal, we make an observation on the documents in the Bundle. Except for the initial complaint documents, the parties' documents in the Bundle are mainly solicitors' letters with selected documents attached. Two examples are:
- (a) The 22 July 2022 letter from the Respondent's solicitors with attachments, two of which are further solicitors' letters [BOD 25 – 41].

- (b) The 19 August 2002 letter from the Appellant’s solicitors with attachments [BOD 42 – 57].
36. For the Appeal, in the Bundle we have the same documents to consider as the CIC had. In common with the CIC, we have no first-hand statements.
37. We consider the documents in the Bundle are evidence in the loosest sense. Other than the Appellant’s initial complaint document to the RA, no party provided any first-hand statements to the CIC. What a party’s solicitor says in a letter has been taken to be evidence by the CIC.
38. For this Appeal, given the Bundle content is mainly competing solicitors’ letters, we do not have a coherent set of facts (even disputed facts) from which to work. This is the case even though several of the matters at issue are factual in nature and depend on knowing “what happened when”.
39. In addition, the Respondent and RA criticise the Appellant for not submitting independent expert evidence. However, the Respondent and the RA did not do so either even though their submissions warranted independent expert evidence. Therefore, neither party nor the RA provided the CIC or the Appeal Panel with independent expert evidence. We return to this point below.
40. The lack of independent expert evidence is important because at times we disagree with the CIC decisions. That we disagree with the CIC is no criticism of the CIC. The information before the CIC, and now before the Appeal Panel, is deeply positional, obviously selective and of limited assistance. This is somewhat understandable, though not entirely excusable, given the parties are plainly in dispute.
41. Finally, there is clearly a contractual dispute between the Appellant and the Respondent’s engineering firm. That is not our concern in this Appeal. What is before us is a professional complaint. These professional complaints commonly arise from contractual engagements whether engineer is engaged personally or is an employee of a firm, but that does not bring contractual matters within our scope.
42. Despite both the Appellant and the Respondent raising contractual matters, we do not and could not comment on, or address these within the scope of this complaint.

### **Issue 1: The “As-built” drawings for the stub connection**

43. Issue 1 is the Issue for which we requested the Written Report. Therefore, Issue 1 has more submissions from the parties than the other Issues.

#### *Appellant’s submission*

44. The Appellant’s position on Issue 1 is at paragraph 47 to 59 of the Appellant’s submission. The submission starts:

The primary concern underlying Issue One is that [The Respondent] certified that the as-built plans for the stub connections were an accurate record of the works undertaken. It is common ground that the certification was not correct.

45. We summarise the Appellant’s submission on Issue 1 as follows:

- (a) The Respondent certified the as-built plans as accurate, but it is undisputed that they were incorrect, leading to significant costs and delays for the Appellant. This was a breach of clause 3.2 of the Auckland Council Regulatory Engineering As-Built Requirements dated December 2018. The inaccuracies on the as-built plans included missing stub connections and connections located under footpaths or roads, requiring costly excavation.
- (b) The Respondent failed to verify the accuracy of the data provided by the Appellant’s civil engineering contractor, despite knowing there were performance issues with the Appellant’s civil engineering contractor.
- (c) The Respondent did not conduct adequate quality assurance, such as reviewing CCTV footage or directly inspecting the stub connections. The Respondent’s certification claimed an accuracy margin of  $\pm 50\text{mm}$ , which was not met.
- (d) The Respondent’s actions breached his professional obligations under the Code of Ethics, including the duty to act competently and with integrity.
- (e) The Respondent’s reliance on Appellant’s civil engineering contractor’s data and his limited quality checks were insufficient and do not absolve him of responsibility for the inaccuracies.

46. In summary, the Appellant submits that the Respondent's conduct fell below the standard expected of a competent engineer, resulting in financial and operational consequences for the Appellant.

*Respondent's Submission*

47. The Respondent's submission on Issue 1 is at paragraphs 14 to 25 of the Respondent's Submission.

48. The Respondent starts with a quote from the CIC's decision which is:

The role of the engineer is to monitor and ensure the general intent of the contract is expressed in the works. [The Respondent] cross-referenced a sample of the as-built data provided by the surveyors, [Withheld], which is in line with standard practice for an engineer.

49. We summarise the Respondent's submissions on Issue 1 as:

- (a) The Respondent submits the Appellant's position is the Respondent should have ensured 100% accuracy of the stub connections, either by personally verifying their location or engaging another surveyor to re-survey the data. The Respondent submits the Appellant claims that the Respondent's reliance on periodic site inspections and surveyor data was inadequate.
- (b) The Respondent's submission starts by saying engineers are not expected to physically verify every connection, as this would be impractical and costly. The submission continues that engineers rely on surveyor data and periodic inspections, which is standard practice. The submission noted that the error rate in stub connections was less than 3.5% (or potentially below 1.5%), with only one significant error (a missing connection) being an honest mistake.
- (c) The Respondent then submits that responsibility for the errors lay with the Appellant's civil engineering contractor, which went into liquidation in 2018. The Respondent submits the Appellant had already recovered costs for the errors through retentions and a contractor's bond.

- (d) Finally, the Respondent submits that no complaint was made at the time the errors were discovered in 2018, and the Respondent's engineering firm continued working on the project for three years afterward. The Respondent considers that the complaint was raised later for collateral purposes.
- (e) The Respondent concluded the Adjudicator's decision to dismiss the complaint was correct, as the errors were minor, responsibility lay with the Appellant's civil engineering contractor, and the Respondent's steps were consistent with standard engineering practices.

*RA's submission*

- 50. The RA's position on Issue 1 is at paragraphs 6.1 to 6.8 of the RA's Submission.
- 51. As we discuss the Written Report later in this decision, we quote paragraph 6.2 of the RA's submissions:

As noted by the Appellant, there has been no dispute that the as-built drawings of the sub-connections do not accurately reflect the sub-connections as built. However, the CIC, in reliance on his knowledge as a senior Chartered Professional Engineer, found that the Respondent's methods for certifying the as-built connections were in accordance with standard practice and accordingly, there was no prospect of a ground of discipline being established. Further, the CIC noted that damages were deducted from progress payment certificates, which is in line with normal practice to resolve this type of issue.

Underlining added

- 52. We summarise the RA's submission as:
  - (a) The RA submits the Respondent followed standard practice by cross-referencing contractor-provided data with site inspection notes and CCTV records to produce the as-built drawings. While the as-built drawings were inaccurate, the CIC found no evidence that the Respondent's methods deviated from standard engineering practice.
  - (b) The RA submits the Appellant has not provided evidence to prove that the Respondent's conduct fell below the standard expected of a reasonable professional engineer.
  - (c) The Appellant's reliance on the Auckland Council Regulatory Engineering As-Built Requirements does not establish that the Respondent's actions were incorrect, as the guidelines lack specific details on certifying as-built records.

- (d) The RA concludes that the Appellant has failed to demonstrate that the CIC's decision was wrong.

*Appellant's Reply submission*

53. The Appellant's reply submission on Issue 1 is at paragraphs 4 to 8 of the Appellant's Reply, which we summarise as:

- (a) The Appellant submits the Respondent mischaracterises Appellant's position as one which required the Respondent to be "100% satisfied" about stub locations, which the Appellant refutes.
- (b) The Appellant submits the Respondent admitted or failed to engage with the substance of the complaint regarding false and misleading certifications made in his capacity as a Chartered Professional Engineer.
- (c) The submission continues that the Respondent is solely responsible for the accuracy of his certifications, which lacked qualifications or caveats, and he failed to verify the information provided by third parties like the Appellant's civil engineering contractors. Further, the Appellant submits the Respondent claimed to have cross-referenced data but provided no evidence of such checks, leaving the Appellant's concerns unanswered.
- (d) Finally, the Appellant submits the Respondent did not ensure the accuracy of stub locations in the as-built drawings, which third parties relied on at significant cost, and the Respondent's conduct fell below the expected standards of a competent engineer, warranting disciplinary action.

*Appellant Supplementary submission on the Written Report*

54. We summarise the Appellant's supplementary submission on the Written Report as:

- (a) The Appellant submits the Written Report misinterprets the standard of practice expected of a chartered professional engineer.
- (b) The Appellant continues that the Written Response's reliance clauses 5.8 and 5.20 of NZS3910:2013 is incorrect as these clauses are irrelevant because NZS3910 governs

contractor agreements, not the relationship between a principal and a chartered professional engineer.

- (c) The Appellant submits the CIC's decision failed to consider key factors raised by the Appellant, including statutory obligations, lack of factual support for the Respondent's sampling, his responsibility for incorrect certifications, industry standards, and ethical obligations under the Engineering New Zealand Code of Conduct. Therefore, the Appellant asserts that the CIC's decision relied on irrelevant considerations and ignored relevant ones, leading to an incorrect conclusion that the Respondent acted carefully and competently.

*RA Supplementary submission on the Written Report*

55. We summarise the RA's supplementary submission on the Written Report as:

- (a) The RA submits NZS 3910 outlines general conditions where the contractor is responsible for the layout of works and providing built drawings or sufficient information to prepare them. The RA says the Appellant has not provided evidence of a specific contract that alters these general conditions, so the Respondent conduct was assessed against the standard expected of a reasonable professional engineer.
- (b) The RA submits the Appellant claims that the term "Engineer" in NZS 3910 refers to an "Engineer to the Contract"<sup>3</sup> role. The RA does not concede this point but emphasizes that contractors are generally responsible for setting out works and preparing as-built drawings.
- (c) The RA finally submits the Auckland Council Regulatory Engineering As-Built Requirements do not support the Appellant's claim that the Respondent needed to take additional steps to certify as-built records.

*Respondent Supplementary submission on the Written Report*

56. We summarise the Respondent's supplementary submission on the Written Report as:

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<sup>3</sup> Engineer to the Contract, and its abbreviation EtC, are common colloquialisms for the Engineer as defined in NZS 3910:2013, though the term Engineer to the Contract never appears in NZS 3910.

- (a) The Respondent starts by saying the Appellant argued that the general conditions of the NZS 3910:2013 construction contract were irrelevant to the standard expected of a chartered professional engineer because this form of contract was not used for the project.
- (b) The Respondent submits this is incorrect, as the construction contract between the Appellant and its civil engineering contractor was subject to NZS 3910:2013, and the Respondent was named as the engineer to the contract under its terms.
- (c) The Respondent says the Appellant's submissions were based on the incorrect assumption that NZS 3910:2013 was inapplicable, making its argument flawed.
- (d) While the consultancy relationship between the Appellant and the Respondent's engineering firm was governed by separate terms, the CIC properly considered the broader contractual framework, including NZS 3910:2013, which placed the responsibility for setting out works and preparing as-built drawings primarily on the Appellant's civil engineering contractor.
- (e) The submission says the Respondent reviewed the as-built drawings carefully and competently, meeting the required standard of practice despite minor inaccuracies.
- (f) The Respondent submitted the Adjudicator did not solely rely on NZS 3910:2013 but also used his own industry knowledge as a senior chartered professional engineer to determine whether competent practice standards were met.
- (g) In the absence of clear error, the Appeal Panel should be cautious about overturning the Adjudicator's finding that the respondent met competent practice standards.

*Appellant Supplementary Reply submission on the Written Report*

57. We summarise the Appellant's supplementary reply submission on the Written Report as:

- (a) The Appellant submits the common ground is the Respondent was required to act with care and competence when reviewing as-built drawings.

- (b) The Appellant submits the Respondent claims that factors beyond NZS3910:2013 were considered in exercising professional judgment but no specific factors or evidence of how this judgment was exercised have been provided by the adjudicator or the RA.
- (c) The Appellant submits the Respondent highlights an agreement between the Appellant and its civil engineering contractor on NZS3910 terms but acknowledges that the consultancy relationship was governed by separate terms of engagement.
- (d) Finally, the Appellant submits the RA measured the Respondent's conduct against general expectations for a reasonable professional engineer, referencing NZS3910:2013. However, concerns are raised about the RA's interpretation of the term "Engineer" and the lack of evidence showing that the Respondent performed any checks while reviewing as-built drawings.

*Appeal Panel discussion*

58. We consider the complaint defined in Issue 1 is upheld. We summarise our reasons as follows:
- (a) It appears common ground there are inaccuracies in the as-built drawings.
  - (b) The Engineer's obligations under NZS 3910 are not relevant to determining a CPEng's obligations for certifying the correctness of as-built drawings.
  - (c) That another party is responsible for setting out works, and preparing as-built drawings does not affect a CPEng's obligations for certifying as-built drawings. They are parallel obligations, not mutually exclusive obligations.
59. We start with the inaccuracies in the as-built drawings, without which there is no complaint against the Respondent. It is common ground between the Appellant and the Respondent there are inaccuracies in the certified as-built drawings. What is in dispute is the extent of inaccuracies, one party alleging they are serious and the other that they are minor.
60. We conclude there is sufficient basis from the common ground that inaccuracies exist. Therefore, we move to the question as to whether the Respondent acted as a reasonable CPEng in certifying the as-built drawings.

61. Before turning to competing submissions on this important point we note that we (and the CIC prior to us) have no independent expert assistance to decide Issue 1. In their appeal submissions, both the Respondent and the RA criticise the Appellant for not calling evidence as to what was expected of a CPEng certifying as-built drawings. However, neither did the Respondent or the RA call such evidence. The Respondent did not provide the CIC with independent expert evidence, only statements in solicitor's letters.
62. In the circumstances, the Respondent and RA's criticisms on the lack of independent expert evidence are hollow. As no party provided independent expert evidence all parties have equal footing on this point. By equal footing we mean all parties only provided us with legal submissions on this point and not evidence.
63. This inquiry as to whether the Respondent acted reasonably begins with the wording for the certification of as-built drawings, the relevant words of which are:

*I certify that the As-built Plans are an accurate record of the works under taken and that:*

- *The **Coordinates** (X, Y) are in terms of NZTM on NZGD (2000), and are within  $\pm 50\text{mm}$ .*
- *The **Levels** (Z) are in terms of NZVD 2016 / Auckland 1946 (MSL) LINZ datum (DOSLI datum), and are within the following tolerances:*
  - *For all pipe inverts & roadside channels to be within  $\pm 10\text{mm}$  (local circuit i.e. internal/relative consistency required only)*
  - *For all other assets  $\pm 20\text{mm}$  (e.g. Manhole covers, Earthworks)*

64. Next, using our power under regulation 6, we asked the RA for a "written report setting out any considerations that the Registration Authority had regard to in coming to its decision that are not set out in its reasons for the decision". In response the RA provided the Written Report which we consider conclusive on the considerations as it is from the decision maker.
65. We conclude the CIC informed their opinion solely on the provisions on setting out and as-built drawings in NZS 3910. If the CIC relied on their own engineering experience, the RA Report would have said otherwise. The Report said:<sup>4</sup>

The Chair of Investigating Committees' (CIC) understanding of the standard of practice reasonably expected of a chartered professional engineer was informed by NZS 3910 (the 2013 version which was in force at the time), which states this:

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<sup>4</sup> Omitting the quoted clauses 5.8 and 5.20 of NZS 3910:2013.

## 5.8 Setting out

...

## 5.20 As-built drawings and operation and maintenance manuals

....

These clauses establish the following (which guided the CIC decision on the matter):

- Setting out the works is the responsibility of the contractor
- As-built drawings are normally the responsibility of the contractor.
- The engineer may check the setting out of the work, but the responsibility still lies with the contractor.

Emphasis added.

66. We consider the situation that we are wrong in our conclusion the CIC informed their opinion solely on the provisions on setting out and as-built drawings in NZS 3910. As will be clear from what follows in our decision, we consider the terms of NZS 3910 are irrelevant to the obligations of a CPEng when certifying as-built drawings. Therefore, if the CIC did draw on their own experience (as the Respondent and RA contend), then we consider the CIC is still wrong irrespective of their own experience.
67. Briefly returning to the lack of independent expert evidence. We would have rejected independent expert evidence that the obligations of a CPEng certifying the correctness of as-built drawings are based on the terms of NZS 3910. We go as far as to say, if it is a broadly held view among CPEngs, then it is a wrong broadly held view.
68. We now set out why we consider the CIC was wrong to inform their view on the obligations of a CPEng certifying as-built drawings based on the terms of NZS 3910. The Engineer in NZS 3910, despite the RA not conceding the point, is obviously a contractual creation. It is not a reference to a professional engineer of any kind. The definition at clause 6.2.1 of NZS 3910 illustrates this.
69. The Respondent's position on the requirements regarding as-built drawings was set out at paragraphs 3 and 4 of his solicitors' letter of 22 July 2022 **[BOD 25]**. The Respondent's position has not changed since, nor has it been supported any more than what the Respondent's solicitors' letters say.
70. Comparing the relevant parts of NZS 3910 with the wording required for certifying the as-built drawings shows why the Engineer's obligations in NZS 3910 are irrelevant to a CPEng's obligations when certifying as-built drawings.

71. Under clause 5.20.3 of NZS 3910 the Engineer is required to consent to as-built drawings, and that consent is not to be unreasonably withheld. Under NZS 3910, there are two main certificates issued by the Engineer, the Practical Completion Certificate (with a template at Schedule 14), and a Final Completion Certificate (with a template at Schedule 15).
72. Neither template resembles the certification wording we identify above<sup>5</sup>, and both wordings consider whether the contractor qualifies for Practical Completion or Final Completion as the case may be. The templates in NZS 3910 are concerned with whether contractual obligations have been fulfilled, not whether the Engineer certifies any correctness in the Contract Works or accuracy in any document prepared by the contractor.
73. For Practical Completion the contractor must provide as-built drawing in draft form, and for Final Completion the contractor must provide as-built drawings in final form.<sup>6</sup> NZS 3910 provides the Engineer's consent to the as-built drawings shall not be unreasonably withheld.
74. When the Engineers obligations regarding as-builts drawings in NZS 3910 are considered alongside the Schedule 14 and Schedule 15 template wordings, it is clear when the Engineer consents to the as-built drawings, the Engineer is not certifying any accuracy. The certificates at Schedule 14 and Schedule 15 are in relation to Engineer's view on the contractor's fulfilment of NZS 3910 obligations.
75. The certification at issue in this Appeal involves a separate and specific enquiry on accuracy evidenced by the wording's use of X,Y and Z coordinates with different vertical and horizontal tolerances.
76. We conclude the obligation on the Engineer under NZS 3910 regarding consenting to drawings is not comparable or the basis for steps to be taken by a CPEng to certify as-builts to accuracy required in the wording above.
77. We agree with the Respondent and the RA that preparing the as-built drawings was the obligation of the Appellant's civil engineering contractor. The same applies to the setting out and construction of the works. However, the Respondent had a separate obligation to certify

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<sup>5</sup> We are referring to the wording for certifying the correctness of the as-built drawings.

<sup>6</sup> See clause 5.20.3 of NZS 3910.

the correctness of the as-built drawings. That does not make the Respondent responsible for the preparation of the as-built drawings.

78. A CPEng will commonly undertake a parallel obligation to other persons. A CPEng who issues a construction monitoring producer statement, such as a PS4, is not responsible for the performance of the persons who constructed the monitored works. That CPEng is only responsible for the steps they take to enable them to issue the producer statement. It is a parallel obligation.
79. It follows we reject the submission that the Respondent's obligations in relation certifying as-built drawings are determined by the fact that another party prepared the as-built drawings. The contractor's obligations in relation to preparing the as-built drawings are as well as, not instead of, the Respondent's obligations for certifying the correctness of the as-built drawings.
80. Finally, we observe we do not have to decide what steps the Respondent should have taken to fulfil their obligations for certifying as-built drawings. That will be for the investigating committee to decide, which is as it should be. The investigating committee will "act in a representative capacity and endeavour to formulate the standards which are themselves representative"<sup>7</sup>.
81. The only restriction this decision places on the investigating committee is the Engineer's obligations under NZS 3910 are not relevant to the CPEng's obligations for certifying as-built drawings.
82. Our decision is that the first Issue is upheld.
  - (a) It is common ground there are inaccuracies in the as-built drawings.
  - (b) The CIC was wrong to consider the Engineer's obligations under NZS 3910 informed a CPEng's obligations for certifying as-built drawings.
  - (c) That another party is responsible for setting out works, and preparing as-built drawings does not affect a CPEng's obligations for certifying as-built drawings. They are parallel obligations, not mutually exclusive obligations.

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<sup>7</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [22].

## Issue 2: Directing construction of an unapproved sewer network design

### *Appellant's submission*

83. The submission starts:

The primary concern underlying Issue Two is that [The Respondent] certified drawings that were demonstrably erroneous and directed unauthorised works to be conducted on site.

84. The Appellant says the Respondent's certified sewer design drawings that were inaccurate and deviated significantly from the original plans approved by Company 1 ("**the Organisation**").

85. The Respondent misrepresented to the Appellant that the Organisation had approved design changes, leading the Appellant to authorise works based on these assurances. However, no formal approval for the changes was obtained.

86. The unauthorised changes caused significant delays, requiring the Appellant to resubmit an Engineering Approval Application (EPA) and redo parts of the sewer network, resulting in substantial costs.

87. The Respondent failed to ensure the accuracy of the as-built drawings, which were inconsistent with both the approved plans and the actual construction.

88. These actions breached the Respondent's professional obligations under the Code of Ethics, including the duty to act competently and with integrity.

89. In summary, the Respondent's actions caused unnecessary delays, financial losses, and demonstrated a failure to uphold professional and ethical standards.

### *Respondent's Submission*

90. The Respondent's submission on Issue 2 is at paragraphs 26 to 43 of the Respondent's Submission.

91. The Respondent submits the Adjudicator dismissed the complaint, finding no evidence that the Respondent directed unauthorised works or deviated from the behaviour of a competent engineer.

92. The Respondent submitted that the change to the sewer pipe location was due to practical challenges with the original design, not because of an air block as the Appellant alleged. The relocation was a cost-saving measure and treated as a minor on-site variation, which did not require formal amendment to the Engineering Plan Approval (EPA).
93. The Respondent submits the change was discussed and verbally agreed upon by representatives from Council ("**the Local Authority**") and the Organisation who had ostensible authority to approve minor variations. The Appellant was aware of the change and instructed the Respondent's engineering firm to proceed with the amendment.
94. The Respondent says the need for a formal EPA amendment later arose due to capacity issues in the sewer network, exacerbated by the addition of lots from subsequent stages (stages 4A2, 4B, and 4C). These capacity issues were unrelated to the pipe relocation and were addressed after the Respondent's involvement in the project ended.
95. The Respondent says the Appellant alleged that the as-built drawing certified by the Respondent in July 2021 was inaccurate. The Respondent defended the accuracy of his drawing, stating it reflected the state of works at the time. He noted that subsequent changes made after his departure were reflected in later drawings by a separate civil engineering contractor which he did not design or support.
96. The Respondent submitted that the adjudicator's decision to dismiss the complaint was correct, as the design change was minor, approved by relevant parties, and unrelated to later capacity issues. He maintained that his certified as-built drawing was accurate at the time and that subsequent changes were outside his control.

*RA's submission*

97. The RA's submission on Issue 2 is at paragraphs 5.7 to 4.13 of the RA's Submission and are summarised as:
  - (a) The Appellant claimed the CIC erred in determining that changes to the Ø90mm PE discharge line were minor and did not lead to the need for a new EPA. The CIC found that the need for a new EPA likely arose from broader subdivision changes, not the pipe relocation. The Appellant provided no evidence to refute this finding or to show the change was significant.

- (b) Additionally, the Appellant alleged the Respondent certified erroneous drawings and misled them about the Organisation's approval of the change, but the CIC found no evidence of unauthorised works.
- (c) The RA argued that costs incurred from resubmitting the EPA are common in large developments and do not indicate misconduct. The Appellant failed to prove the CIC's decision was incorrect.

*Appellant's Reply submission*

- 98. The Appellant's reply on Issue 2 is at paragraph 9 of the Appellant's Reply.
- 99. The Appellant submits the Respondent's submission contain inaccuracies, including claims that the as-built drawings matched the certified works, which the Appellant disputes. The Appellant's submission on the alleged inaccuracies is summarised as follows:
  - (a) The Respondent denied knowledge of air block issues despite issuing a notice referencing this concern.
  - (b) The Organisation identified significant deviations from the approved design, contradicting the Respondent's characterisation of changes as 'minor'.
  - (c) The Respondent failed to obtain proper approval for design changes, contrary to the Organisation's advice notes.
  - (d) The Appellant maintains that the entire system was designed with confirmed capacity before construction began, disputing the Respondent's assertion that capacity was increased.

*Appeal Panel discussion*

- 100. We have already addressed the issue of certification of the as-built drawings. What remains in Issue 2 is whether the Respondent directed unauthorised works to be conducted on site.
- 101. We consider the remaining aspect of the complaint in Issue 2 is not proven so cannot be upheld. Our reasons follow.

102. First, we do not consider as-built drawings being inaccurate is evidence of directing unauthorised works. The allegation of directing unauthorised works involves relatively significant works whereas the allegation regarding as-built drawing being inaccurate is more discrete.
103. Second, we consider the crux of Issue 2 is whether there was agreement for the works at issue to be carried out. We conclude the Appellant did agree for the works to be carried. It is common ground the meeting minutes of 24 June 2021 recorded the change [BOD 40 - 41]<sup>8</sup>. On 25 June 2021, the change was instructed to the then civil engineering contractor [BOD 57].
104. The Appellant says it consented to the design changes based on assurances provided by the Respondent that the Organisation had approved these amendments.<sup>9</sup>
105. The Appellant provided no evidence to the CIC or the Appeal Panel of the Respondent's alleged assurances. We agree with the Respondent that the Appellant's position on the alleged assurances changed.
106. In its complaint document the Appellant says it only became aware of the changes in July 2021 when the Organisation "started questioning why there were changes from the approved design" [BOD 12].
107. On 19 August 2022, the Appellant's solicitors wrote to the RA. This letter replied to the Respondent's response to the complaint. It addressed the direction of unauthorised works at [10] to [14], [BOD 43]. The letter says at [13] the Respondent advised the Appellant that the works had been approved by the Organisation.
108. There is no detail or evidence supporting the Appellant's assertion.
109. The lack of evidence on the Respondent's alleged assurances that no new EPA would be needed has been an issue since the allegation was first raised by the Appellant on 19 August 2022. It is for the Appellant to proffer evidence for this assertion. It is not for the Respondent to prove it did not happen.

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<sup>8</sup> Item 7, point 6.

<sup>9</sup> Appellant's Submissions [63(a)].

110. The Appellant could have put evidence before the Appeal Panel. It did not.
111. For completeness we address the email chain on which the Appellant places great emphasis.
112. The 19 August 2022 letter from the Appellant’s solicitors enclosed an email chain between the Appellant and the Organisation [BOD 50 – 56]. At paragraph 11, the letter says this email chain shows the Organisation said there was a large deviation from the approved design [BOD 50]. There may have been a large deviation from the approved design, but the email chain does not show the Organisation was referring solely to change agreed at the site meeting and instructed in NTC 13.
113. The email chain shows the Organisation identified changes in both wastewater and water systems. The Organisation sent its queries on the as-built drawings on 19 August 2021 at 10.50am and the Appellant’s representative responded at 1.50pm the same day. This suggests to us the Appellant was across and aware of all the changes on which the Organisation raised queries.
114. We conclude the Respondent agreed to the change ordered in NTC 13 and the Respondent has not provided evidence that agreement was based on any alleged assurance from the Respondent.
115. For these reasons, Issue 2 is not proven and the complaint on this point cannot be upheld.

### **Issue 3: Overland flow path modelling**

#### *Appellant’s submission*

116. The Appellant’s submission on Issue 3 is at paragraphs 66 to 72 of the Appellant’s Submission and is summarised as follows:
- (a) The Appellant submits the overland flow paths are critical for managing flood risks and ensuring compliance with resource consent requirements. Therefore, accurate designs are essential.
  - (b) The submission continues to say the Respondent’s design was fundamentally flawed, showing water flowing uphill instead of downhill, which should have been identified through proper quality assurance (“QA”) processes.

- (c) The errors in the design caused significant financial and operational consequences for the Appellant, including costly rectifications totalling \$44,717.28 plus GST.
- (d) The Respondent attempted to justify the errors by blaming subsequent minor changes to the roading layout, but the Appellant says these changes were immaterial and did not absolve the Respondent of responsibility.
- (e) The Respondent's failure to ensure the accuracy of the overland flow path design breached his professional obligations under the Code of Ethics, including the duty to act carefully and competently.
- (f) In summary, the Respondent's flawed design and lack of adequate QA measures resulted in significant costs and demonstrated a failure to meet professional engineering standards.

*Respondent's Submission*

117. The Respondent's submission on Issue 3 is at paragraphs 44 to 45 of the Respondent's Submission, and summarised as follows:
- (a) The Respondent says the Adjudicator dismissed the complaint, stating that the Respondent was no longer involved in the project when the overland flow path plan was submitted to Council alongside a new roading design prepared by another engineer. The Respondent says the Adjudicator found that the Respondent was not consulted about the suitability of the plan for the new layout.
  - (b) The submission is overland flow path designs are dynamic and must be reviewed whenever changes to the landform or roading design occur. The March 2021 plan prepared by the Respondent's engineering firm was appropriate for the design at that time.
  - (c) After the Respondent's engineering firm's engagement was terminated in August 2021, a different engineering firm issued new roading design drawings in October 2021. The Respondent says the new design materially altered the road layout and affected the overland flow path. The Respondent says the Appellant did not commission a revised overland flow path plan or consult the Respondent to update the March 2021 plan.

- (d) The Respondent says the Appellant improperly submitted the outdated March 2021 plan alongside the new roading design. This led to errors discovered during floor level modelling in mid-2022.
- (e) The Respondent argues the errors were due to the Appellant's decision to reuse outdated drawings without consulting him or commissioning updates. The Respondent emphasises that the March 2021 plan was not inherently flawed and that the Appellant's assertion of obvious errors (e.g., water flowing uphill) lacked supporting evidence.
- (f) The Respondent maintains the Adjudicator's decision to dismiss the complaint was correct, as the errors stemmed from the Appellant's actions after termination of his engineering firm's engagement. The Respondent argues the outdated plan should not have been submitted with the new design and that this issue cannot be grounds for professional discipline against him.

*RA's submission*

118. The RA's position on Issue 3 is at paragraphs 44 to 45 of the RA's Submission, and summarised as follows:

- (a) The Appellant alleged that the Respondent's overland flow path designs were incorrect, causing issues with resource consent applications.
- (b) However, the CIC found that changes to the roading layout after the Respondent's engagement impacted the flow path modelling, and the Appellant submitted the original designs without updating them.
- (c) The Appellant later claimed the designs were flawed from the start, but this information was not raised during the initial complaint. The RA argued that the Appellant's new claims cannot be considered in the rehearing and that the Appellant failed to prove the CIC's decision was wrong.

*Appellant's Reply submission*

119. The Appellant's reply submission on Issue 3 is at paragraphs 10 to 12 of the Appellant's Reply.

120. The Appellant submits the Respondent's design failed to ensure accuracy, reliability, safety, and compliance, requiring costly rectification.
121. The Appellant further submits the Respondent attempted to shift blame to others for errors, but the Appellant argues he failed to meet his professional obligations from the outset.

*Appeal Panel discussion*

122. The complaint relating to the Third Issue is not proven so cannot be upheld. Our reasons follow.
123. First, we agree with the CIC's conclusion that the design of the subdivision developed over time. It overtook the Respondent's original contour plans and overland flow paths. It is inescapably relevant that the Appellant purported<sup>10</sup> to cancel the contract with the Respondent's company on or around 5 August 2021 [BOD 10]. We accept the submissions that changes to the design took place after the parties parted ways. The Appellant accepts this though dismisses the changes as minor.<sup>11</sup>
124. Second, we have the unsatisfactory situation where the Appellant relies on its' solicitors' letters as evidence of delay and costs. Paragraph 40 of the Appellant's submissions says:

This required significant engineering redesign at considerable delay and expense to [The Appellant].
125. However, the Bundle reference on which submission relies for evidence [BOD 155], is only a similar bare statement made by the Appellant's solicitors in a letter dated 29 November 2022. This is not satisfactory. The document at the relied-on Bundle reference demonstrates nothing.
126. However, we observe the practice of circular references to solicitors' letters for evidence is not confined to the Appellant.
127. Finally, we tend to agree with the RA that the Appellant sought to re-frame or refocus the Third Issue as the designs being flawed from the start. We address this for completeness to avoid jurisdictional arguments as to whether this was in the original complaint or not. It was certainly

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<sup>10</sup> We say "purported" as we make no comment on the validity of the cancellation, nor could we do so, but it is relevant the parties parted ways at that time.

<sup>11</sup> Appellant's Submissions at [37].

in paragraph 4 of the Appellant's solicitors' letter to the RA dated 29 November 2022 [BOD 155].

128. The Appellant has not proven its case the original designs were flawed. Its evidence does not support its case. On the face of it, the Appellant's analysis does not compare apples with apples. The modelling on which the Appellant relies was prepared in June 2022 and compared as-built surfaces to the Respondent's original design [BOD 44].<sup>12</sup> There is no explanation how the as-built surfaces related to the original design, or how any changes in design are accounted for in the QA analysis.
129. The Appellant could have provided some commentary explaining the analysis from the person who prepared the analysis. That may have been beneficial, but that was not provided.
130. As a ground of appeal, the Third Issue is not proven so this aspect of the complaint cannot be upheld.

#### **Issue 4: Decision referenced unrelated matters**

##### *Appellant's submission*

131. On Issue 4, the submission is:

For completeness, it is noted that [The Respondent] has sought to raise several irrelevant matters throughout this process, some of which were referenced in the adjudicator's Decision. These include [The Respondent's] alleged outstanding invoices and a separate complaint made by [The Respondent] against [Withheld] (the subsequent engineer). These issues are irrelevant to the complaints against [The Respondent] and accordingly are not addressed further. They ought not to have formed any part of the Decision or this process.

##### *Respondent's Submission*

132. There was no submission from the Respondent on the Fourth Issue.

##### *RA's submission*

133. The RA's submission is the Appellant argued that the CIC improperly included unrelated matters, such as outstanding invoices and a complaint against [Withheld], in its decision.

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<sup>12</sup> See paragraph 18 of the letter.

However, the RA submits this information was provided as part of the natural justice process and was not relied upon in the CIC's reasoning for dismissing the complaint. The RA emphasised that the inclusion of this information did not affect the outcome, and the Appellant failed to demonstrate how the information made the decision wrong or would have led to a different result.

#### *Appellant's Reply submission*

134. There was no reply submission from the Appellant on the Fourth Issue.
135. For completeness, we summarise the Other Matters the Appellant raised in its Reply submission.
136. The Appellant says the Respondent's claims that the complaint is collateral to a commercial dispute are rejected as irrelevant. The Appellant asserts the complaint addresses genuine competency concerns about the Respondent's actions.
137. The Appellant defends the time taken for the investigation, emphasising the seriousness of the issues involved.

#### *Appeal Panel discussion*

138. The allegation in the Fourth Issue is not proven. Our reasons follow.
139. The Fourth Issue was not meaningfully pursued by the Appellant. Anyway, we conclude that while the CIC referred to this information [BOD 163], it did not influence the CIC's decisions. Therefore, the CIC did not take into account irrelevant information.
140. Insofar as the Fourth Issue is a ground of appeal, it is not proven so this aspect of the complaint cannot be upheld.

#### **Findings**

141. The Appeal Panel has considered the Issues cited by the Appellant as the grounds of appeal, the Appellant's Submissions, the Respondent's Submissions, the RA Submissions and the Appellant's Submissions in response, and the contents of the BOD. We also considered the Written Report and all the submissions on the written report.

142. The Appeal Panel finds that Issue 1 is proven.
143. The Appeal Panel finds that Issue 2 and Issue 3 are not proven.
144. Issue 4 was not meaningfully pursued and irrespective is not proven.

#### **Order**

145. We refer Issue 1 to the investigating committee.
146. The investigating committee will need to determine:
- (a) The obligations of a CPEng in certifying as-builts drawings.
  - (b) Whether the Respondent met those obligations.

#### **Costs**

147. CPEC is empowered to award costs on determining an appeal.<sup>13</sup>
148. For the following reasons, in this Appeal we have decided we will not award costs.
149. Both the Appellant and the Respondent have had a measure of success. We have referred Issue 1 to an investigating committee. On the other hand, we found the Appellant had not proven Issue 2 and Issue 3. Therefore, we decide costs lie where they fall.
150. The RA elected to participate in this Appeal and would not be entitled to costs in any event.
151. For completeness we refer to the application for security for costs. We do not consider a party's costs in the security for costs application is part of the costs of the appeal. Therefore, these costs are outside the scope of our power to award costs.
152. If we are wrong that these costs are outside of our power to award costs, our power to award costs is discretionary and we prefer to discourage interlocutory applications when appeals to CPEC are becoming increasingly complex anyway.

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<sup>13</sup> Section 37(5)(d) of the Act.

**Right of appeal**

153. 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



Dr Carron Blom



Simonne Eldridge