

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

Appeal 15/24

AND

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

Between

Mr and Mrs 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
Dated 21 November 2025

Introduction

1. Mr and Mrs A (“**the Appellant**”) have appealed a decision made by the Chair of the Investigating Committee (“**the CIC**”) of the Registration Authority (“**the RA**”) not to refer a complaint made by them against Mr B (“**the Respondent**”), a Chartered Professional Engineer, to an Investigating Committee (“**an IC**”) under Rule 60(a) of the Chartered Professional Engineers Rules (No. 2) 2002 (“**the Rules**”).
2. The panel of the Chartered Professional Engineers Council (“**CPEC**”) appointed to hear the appeal (“**the Appeal Panel**”) 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 RA was granted leave by the Appeal Panel to be heard and provided submissions in this matter.
4. The parties were notified of a change to the composition of the Appeal Panel on 22 August 2025.
5. 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 Panel conducted the hearing on the papers.

Legislation and case law

6. Summarised below are legislation and authority on the conduct of the Appeal, and legislation and authority considered by the Panel in deciding the Appeal.
7. 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**”).
8. Appeals to CPEC are by way of rehearing (s 37(2) of the Act).
9. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“**the Regulations**”).
10. The 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)).

11. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the Appeal Panel is entitled to take a different view from the decision authority, but the Appellant carries the burden of satisfying the Appeal Panel that it should do so.
12. 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.*”
13. 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.
14. The District Court recently provided a helpful summary of the early stages of RA’s complaints process:¹

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

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

Background

15. The Complainant (and Appellant in this appeal) contends that:²

As owners of a childcare property at [Appellant's Property], a developer built a retaining wall carrying a significant surcharge, without a building consent, engineering design, engineering supervision or signoff... [the Respondent's] involvement which is the basis of our complaint is that without any knowledge of the walls construction and any involvement, he retrospectively, in our opinion has effectively certified it with Council and we have provided documents from Auckland Council to say they are solely relying on [the Respondent's] engineering input and are allowed to do so as he is on their Producer statement author list.

16. The Respondent is a chartered professional engineer and Chartered Member of Engineering New Zealand and Director of a structural engineering consultancy. They were engaged by the developer of a new warehouse and office building on the site adjacent ("Developer's site") to the Appellant's Property ("Developer's Site"). The Respondent's involvement at the Developer's Site was as follows:³

My firm [Respondent's firm] was originally engaged by [Developer name] (the Developer) in early 2022 to provide structural engineering design for a proposed warehouse and office building at the site.

My engagement at that time was limited to the building design and did not include any retaining structures on the more or less flat site. In mid-2023, approximately 13 months after the retaining wall in question was constructed, I was subsequently asked to assess the retaining structure and provide engineering input in response to Council queries.

I was not involved in the original design, construction, or supervision of the wall.

My involvement was initiated after Auckland Council had raised queries regarding the wall. My role was strictly limited to a retrospective assessment based on the best available information and site observations undertaken after the fact.

17. The issues raised in the complaint date back to physical works in June 2022, namely:⁴

As a brief background, in June 2022 a developer [Developer name] built an unpermitted retaining wall over the boundary of our property, a childcare centre at [the Appellant's Property]. We had our property extensively damaged. Along the 30-metre boundary of our property an [Developer name] excavator excavated on our section for the complete 30 metre boundary a half metre wide, to approximately 1.5 to 2 metres down cut without permission. This cut destabilised our existing fence which then required us to remove it. During construction our property which had never experienced flooding previously, even in the devastating Kumeu floods of August 2021, flooded from the works on the developer's property leading to us making a \$50,000 insurance claim. We were left with an incomplete stormwater system that was clearly showing on the developments building consent and instead we were left with a drain coil protruding

² Appellant Submissions p 1

³ Respondent Submissions attachment DXS-308672-1-113-V1 p 1

⁴ Appellant Submissions p 1

onto our property which is now causing weakening of the retaining wall piles as outlined in our engineer's report.

We have spent many hours and extensive costs trying to rectify these retaining wall and stormwater issues to ensure the safety of occupants at our childcare centre, including children under 5 years age. All this time and cost incurred by us is due to the developer building an unpermitted retaining wall without any engineering design, engineering supervision and no sign off by an engineer as required by the Building Code.

18. The Appellant raised their concerns about the suitability of the retaining wall with Auckland Council⁵ who in turn raised the issue with the Developer who in turn engaged the Respondent on 5 July 2023 to provide an engineering assessment of the wall.⁶
19. The Respondent ran their first set of calculations based on information provided by their client's agent, including site photos, on 6 July 2023.⁷ These calculations were provided to Auckland Council on 7 July 2023.⁸ Auckland Council engineers visited the site, reviewed the calculations and queried the height of the retaining wall (750 mm vs 500 mm assumed in the Respondents calculations) on 10 July 2023.⁹
20. The Respondent updated the calculations on 11 July 2023 and confirmed it was adequate to support the driveway loads.¹⁰
21. The Appellant claims that a notice to fix was issued by Council on 17 July 2023¹¹. However a copy of this notice to fix has not been provided in the BOD or submissions from the Appellant, Respondent or the RA.
22. There is however reference to a Notice to Fix (NTF21696078) dated 9 October 2023 for the encroachment of the retaining wall into the Appellant's property. The reference is in a letter from Auckland Council dated 11 December 2023¹². This letter states:

In receipt of Determination 2023/033 by MBIE, the Notice to Fix (NTF21696078) has now been withdrawn and the matter is now classed as a civil dispute between the two parties..."

23. The Appeal Panel notes that the determination referred to in this letter is not the property in dispute but draws no conclusion from this other than the Council letter has an incorrect reference which may also explain the discrepancy in the NTF dates.¹³

⁵ Appellant Submissions p 4

⁶ BOD 14

⁷ BOD 15, 47 to 49

⁸ BOD 134

⁹ BOD 19, 134

¹⁰ Ibid, BOD 50 to 52, 133

¹¹ BOD 10

¹² BOD 250

¹³ <https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2023/2023-033.pdf>

24. In July, the Appellant engaged Company 1 (“the Appellant’s Consultant”) to visit the site and undertake an independent review. The BoD includes the first page of a draft letter report dated 13 August 2023¹⁴ from the Appellant’s Consultant and subsequent pages dated 22 August 2023¹⁵. The Appellant’s Consultant's report raised the following concerns:¹⁶

1. We have a number of concerns regarding the construction of the retaining wall. It appears that it has not been observed by a Chartered Professional Engineer during construction, the water from the drain pipe is discharging on to your land, a pile was discovered simply by chance (first pile excavated) to have concrete of exceedingly low strength and likely less than 10 MPa;

2. We measured the heights of the 125x125 Senton posts above the concrete embedment. As the concrete embedment was below the finished ground level we arrived at heights close to 700 mm at the western end of your property;

3. The calculations undertaken by [Respondents Firm] are, in our opinion, incorrect. They have based their calculations on a retaining wall that extends 500 mm from the top of the concrete embedment point to the loaded surface of the adjoining pavement. Using a height of 700 mm the posts fail and do not comply with the New Zealand Building Code B1/VM4;

4. We estimate that the timber posts (125x125 Sentons), where these exceed 500 mm from the top of concrete embedding the posts, to the top of the concrete pavement on the adjoining property, are likely to fail with a brittle failure (i.e. prior to the soil yielding but only if the concrete was drilled to the correct design depths);

5. The piles, if to remain in place, particularly from your back deck to the western end of your site, likely do not meet the requirements of the New Zealand Building Code;

6. The position of the fence posts is independent to the construction of the retaining wall;

7. In terms of safety the retaining wall is reasonably well isolated from the working / play area for the children as this is a service area. Therefore, providing this back area remains isolated, we see no immediate danger to children in this area;

8. However, a retaining wall has been built on your land and is non-compliant and there are issues down the track regarding maintenance of the retaining wall (ownership issues);

9. We strongly recommend that the retaining wall is removed from your land and reconstructed by your neighbour on their land after obtaining the correct approvals and under the guidance of a Chartered Professional Engineer; and

10. The drainage needs to be properly attended to in a legal manner.

25. In October 2023, The Appellant applied to the Ministry of Business, Innovation and Employment (MBIE) for a determination in relation to the wall. The determination was

¹⁴ BOD 38

¹⁵ BOD 39 to 46

¹⁶ BOD 44

formally accepted by MBIE on 6 December 2023.¹⁷ Correspondence between the Respondent, Auckland Council and MBIE ensued between late October and early July 2024.¹⁸

26. In July 2024 the Appellant withdrew the determination and noted:¹⁹

In July 2024 during the MBIE determination we suggested we would at our own cost excavate the piles in conjunction with our engineer to see how the wall was actually constructed and the length of the piles and how the footings were constructed, but this would take time as we would need to ensure the retaining wall was structurally sound while excavations took place so wasn't a simple exercise. MBIE suggested to us that if we wish to pursue that then we should withdraw the determination and resubmit once we had that information, which we did. Not sure how [the Respondent] can interpret this to indicate a lack of genuine interest in an independent assessment of the wall. [the Respondent] is clearly wrong in this.

We want to make it very clear that the MBIE determination was against Auckland Council. The developer was listed as a party to the determination, [the Respondent] was not. It has been suggested in these submissions that we have instigated multiple complaints against [the Respondent], almost suggesting harassment. Our issue is solely with Council allowing the retaining wall to stay. Coincidentally after very lengthy review, the Ombudsmen have accepted to take our case up against the Council.

27. On 3 July 2024, the Appellant contacted the Respondent directly to express concerns regarding the Respondent's activities at the site adjacent to their property and indicated their intention to file a complaint with Engineering New Zealand (ENZ).²⁰
28. On 14 July 2024 the Appellant raised concerns to the RA stating:²¹

We believe that [the Respondent] has not met the standards to be reasonably expected of a Chartered Professional Engineer and a member of NZ Engineering and at times we believe he has been misleading in ethical conduct in relation to engineering reports he has prepared.

29. Information pertaining to the Complainant's concerns was gathered by the RA's Complaints Officer and a summary of concerns (the "SOC") developed.²²
30. In summary, the SOC notes that the Complainant raised concerns regarding the construction and certification of a retaining wall built by the developer on the boundary with their property. The Complainant asserts that the wall was constructed in June 2022 without the required building consent, engineering design, calculations, or supervision by a chartered professional engineer. Subsequent investigations by Auckland Council and MBIE confirmed

¹⁷ BOD 291

¹⁸ BOD 291 to 297

¹⁹ Appellant's reply to Respondent submissions p 9

²⁰ BOD 249

²¹ BOD 9

²² BOD 67 to 70

the lack of compliance, and the wall was also found to encroach on the Complainant's property, resulting in a Notice to Fix being issued.

31. Following completion of the SOC, the Complaint's Officer contacted the Respondent and shared the SOC on 30 July 2024.²³ The Respondent provided his response to the SOC on 12 August 2024.²⁴ The response included a response to the specifics of the complaint as well as supporting information.
32. Specifically, the Respondent stated that they were engaged by the developer for the structural design of the warehouse and office building, not the retaining wall and their involvement with the retaining wall began in July 2023, after Auckland Council requested an engineering assessment.
33. The Respondent went on to outline the methodology used for assessing the retaining wall, including site visits, discussions with the building owner, and review of construction parameters. They provided details of the calculations performed, noting that the wall was assessed for a retained height of 500 mm and later revised to 425 mm based on site measurements. The Respondent addressed the discrepancies in the retained height and the use of active versus at-rest earth pressures.
34. The Respondent provided comment on the report from the second engineering consultancy, highlighting errors in load factors, retained height assumptions, and the use of at-rest pressures. They asserted that the second engineering consultancy's calculations overestimated the demand on the retaining wall, leading to incorrect conclusions about its structural integrity.
35. The Respondent discussed the drainage issues raised by the Complainant, noting that the wall drainage was observed to be working during a site visit. They suggested load testing the wall to provide further reassurance about its structural integrity.
36. The Respondent refuted any suggestions of unethical or unprofessional behaviour, emphasising their commitment to professional standards and integrity. They expressed disappointment at the misrepresentations made by the Complainant and reiterated their willingness to resolve the matter through further investigation and testing.

²³ BOD 79 to 263

²⁴ BOD 79 to

37. The recommendation from the Complaints Officer was:²⁵

Recommendation is for this to be dismissed under rule 57(a) of the Chartered Professional Engineers of New Zealand Act – there is no applicable ground of discipline and under clause 28.1 – there is no applicable ground of discipline under rule 11 of the Engineering New Zealand rules. [The Respondent] was not engaged to design or be involved with the construction of the retaining wall and his involvement was only to provide a review post construction. Any concerns regarding the construction of the wall aren't able to be attributed to [the Respondent] as he was not involved with that.

The explanation of the different calculations being provided for different purposes or contexts is reasonable and we are reasonably satisfied that there are no concerns over the competency or conduct of [the Respondent] with this project.

38. An initial investigation of the complaint was undertaken, and on 4 December 2024 a Chair of Investigating Committees (“the CIC”) dismissed the complaint, stating that:²⁶

I dismiss this complaint under rule 57a of the Chartered Professional Engineers of New Zealand Rules, there being no applicable ground of discipline and under clause 28.1 of the Engineering New Zealand Complaints Resolution and Disciplinary Regulations, there being no applicable ground of discipline under rule 11 of the Engineering New Zealand Rules.

39. The Complainant filed a notice of appeal against the decision of the IC on 4 December 2024.

Evidence received

40. Under clause 15 of the Regulations, the Council may receive any evidence that the RA would have been entitled to receive on the decision being appealed.

41. The evidence considered by this Appeal Panel in arriving at its decision included:

(a) Notice of appeal dated, and received on, 17 December 2024 (“Notice of Appeal”)

(b) The paginated Bundle of Documents [BOD 1 to 374], provided by the RA on 30 January 2025.

(c) Letter from the RA to the Respondent dated 12 August 2024, provided by the Respondent on 26 March 2025

(d) Email from the RA confirming requested dates dated 29 May 2025

(e) Appellant Submissions dated 6 June 2025

²⁵ BOD 372 to 373

²⁶ BOD 373

- (f) Respondents Submissions dated 30 June 2025 (these supersede the version provided on 30 June 2025) and provided on 1 July 2025
 - (g) RA Submissions dated 23 June 2025
 - (h) Appellant Reply Submissions attached to four separate emails all dated 8 July 2025.
 - (i) Additional information provided by the Appellant on 11 September 2025
 - (j) RA submissions (in the form of an email) on the additional information provided by the Appellant dated 20 September 2025
 - (k) Respondent submissions (in the form of an email) on the additional information provided by the Appellant dated 27 September 2025
42. The Respondents submissions were originally submitted 30 June 2025 and then replaced on 1 July 2025. The Appellant objected but the Appeal Panel accepted the revised submissions.

Grounds of appeal and outcome sought

43. The Appellant has noted the grounds of appeal as:²⁷
1. *Failure to investigate the key aspects of the complaint.*
 2. *Certification without involvement.*
 3. *Errors in adjudication and insufficient investigation by adjudicator.*
 4. *Procedural errors by the Complaints Officer.*
 5. *Two-tier complaint structure misrepresentation.*
 6. *Inconsistent engineering calculations.*
 7. *Unethical collaboration and misrepresentation.*
44. The Appellant is seeking a reversal of the decision not to refer the complaint to an IC.

Discussion – Consideration of grounds of appeal

45. The Appeal Panel acknowledges the concerns raised by the Appellant with respect to the suitability of the retaining wall. However, the jurisdiction of the Appeal Panel is in relation to the actions of the Respondent and whether they adequately fulfilled their duties as a Chartered Professional Engineer. The Appeal Panel makes no comment on the suitability of the retaining

²⁷ Notice of Appeal Section 5

wall or the actions of the Developer or Auckland Council and considers that these aspects are better dealt with in another forum, as appropriate for a dispute between two property owners.

46. This Appeal relates to the decision by the CIC not to refer the complaint to an IC. The investigation of a complaint by the CIC is governed by rules 56 to 59, with the decision of the CIC under rule 60 being to either:

(a) refer the matter to an investigating committee in accordance with rule 59(b); or

(b) dismiss the matter on a ground in rule 57.

47. Grounds 1, 3, 4, 5 and 7 relate specifically to procedural matters relating to the Appellant's initial interactions with the RA and the assessment of the complaint by the CIC. Given Appeals to CPEC are a rehearing, any procedural matters relating to the RA's complaints process and the activity of the CIC are remedied by this Appeal and as a result these Grounds are not considered further.

48. That leaves Grounds 2 and 6 which relate specifically to the behaviour of the Respondent.

Ground 2: Certification without involvement

49. The Appeal Panel notes that the Appellant has not provided submissions directly to the grounds of appeal but rather provided a narrative in their submissions and counter perspectives to the Respondent's and RA's submissions.

50. From their submissions, the crux of their concern is:²⁸

Our complaint centres around [The Respondent] on behalf of his fee-paying client to give Auckland Council effective certification for them to allow it to stay.

As the Auckland Council say they are relying on [The Respondent]'s effective certification, and based on this we initiated our initial complaint with the RA to establish he was not in a position to issue the effective certification that the retaining wall was built to code.

51. The Respondent has responded directly to the allegation as follows:²⁹

My involvement was initiated after Auckland Council had raised queries regarding the wall. My role was strictly limited to a retrospective assessment based on the best available information and site observations undertaken after the fact.

I made it clear in correspondence and calculations that this was a desktop-based engineering assessment, undertaken to assist the developer and Council in reviewing the structural performance of the completed wall. It was not a certification of the construction process nor an endorsement of work done by others before my involvement.

²⁸ Appellant submissions page 1, 3

²⁹ Respondent's submissions, Section 2 and 3

The appellants assert that I "certified" the wall as safe and compliant. This claim is both inaccurate and misleading. I did not issue any formal Producer Statement, in the form of PS1 or PS4, or any form of construction review. While Council may have considered my calculations and comments as part of their broader assessment, that does not constitute formal certification, nor did I present it as such.

52. In reviewing the evidence before it the clearest articulation of the Respondent's role in confirming the adequacy of the retaining wall is contained in the email from Auckland Council dated 13 November 2023 which states:³⁰

Thanks for taking my call, just to confirm our discussion. [The Respondent's firm] is satisfied on the structure of the retaining wall after your review on the assumption it has been completed as per your understanding. Your 3 concerns raised with [the Appellant's Consultant] are as follows:

- 1. The retaining wall has been built over the legal boundary.*
- 2. The retaining wall was not originally designed by a Structural engineer [sic] but you [the Respondent's firm] has [sic] reviewed the current design to be satisfactory.*
- 3. The retaining wall was not monitored throughout construction.*

You have also noted that you may be willing to complete a loading test to ensure it meets the 12kpa surcharge .

53. To which the Respondent replied:³¹

Yes agree with the below and note our attached comments on the technical aspects of the [the Appellant's Consultant] report prepared by [the Appellant's Consultant] for your records.

54. In simple terms it is clear that the Respondent has applied their professional expertise to the assessment of the wall and, although they have not provided a formal certification, they have provided an opinion to Auckland Council and MBIE that the wall is adequate provided their understanding of the as-built details are correct.
55. The Appellant has questioned the assumptions and approach taken by the Respondent, as did their consultant. However, the Respondent has engaged extensively with MBIE, Auckland Council and has directly responded to the concerns raised by the Appellant's Consultant. The Appellant has not provided further evidence to suggest that the Respondent has not adequately responded to the Appellant Consultant's concerns.
56. Therefore Ground 2 is not proven, and the Appeal Panel is not persuaded that the CIC erred in not deciding that the complaint should be referred to an IC.

³⁰ BOD 194

³¹ BOD 163

Ground 6: Inconsistent engineering calculations

57. The Respondent has provided a clear articulation of the reasons for the engineering calculations evolving over time³². This includes a summary of the changes as:

Any changes in modelling inputs such as pile depth or wall height reflect adjustments to reflect updated or clarified assumptions—not physical changes to the wall. At no point did the pile embedded length used in my calculations exceed 1500mm, which was the depth advised to us by the developer. We were also provided with an invoice from the developer (Appendix A) confirming the pile lengths ordered, including 2700mm long H5 timber piles, which supports the assumed construction details used in our assessments. Reductions in the pile embedment were made solely to demonstrate that even with shorter assumed embedment lengths, the wall still met structural stability requirements under code-defined loading conditions. Longer embedment lengths would only serve to increase this stability.

58. The Appellant argues that:³³

Our issue is the developer have [sic] a wall constructed that no one, including [the Respondent], knows how this wall is built and yet 4 sets of calculations can be provided. We might be wrong but it is just not common sense that a pile buried under the ground can't change in length 4 times no matter what the reasons are for providing 4 different sets of calculations. We believe [the Respondent], in his sets of calculations, has made the existing as built wall 'work' by showing desktop calculations for a wall that does work. None of the desktop calculations [the Respondent] has done for whatever reasons use the developer/builders' measurements of the as built wall or any site visit.

59. The Appeal Panel finds the Respondent's explanation is plausible and consistent with engineering practice, specifically noting that once the wall height was adjusted all subsequent calculations erred on the side of conservatism.
60. Therefore Ground 6 is not proven, and the Appeal Panel is not persuaded that the CIC erred in not deciding that the complaint should be referred to an IC.

Findings

61. The Appeal Panel has considered the grounds of appeal cited by the Appellant, the Appellant's Submissions, the RA Submissions and the Appellant's Submissions in response, and the contents of the BOD.
62. The Appeal Panel finds that none of the grounds for appeal were proven.
63. The appeal is dismissed and the CIC's decision not to refer the complaint against the Respondent to an IC is upheld.

³² BOD 83 to 84, Respondent submissions DXS-308672-1-113-1 p 3 to 5

³³ Appellant's response to Respondent submissions p 11

Costs

64. CPEC is empowered to award costs on determining an appeal.³⁴ Both the Respondent and the RA have indicated they intend to seek costs if the Appeal is dismissed³⁵. The Appellant argues that the public should be able to raise safety concerns without penalty.³⁶
65. For the avoidance of doubt, costs are not a form of penalty but rather intended to be an acknowledgement of the cost burden associated with defending an Appeal.
66. If the Respondent/RA considers they are entitled to and wish to seek an order for costs, submissions must be made to the Appeal Panel within 5 Working Days of this decision. The Appellant may make submissions in reply within a further 5 Working Days.
67. The Appeal Panel notes that for all appeals to CPEC, the RA **must** send CPEC the information mandated in regulation 6, known colloquially as the bundle. Secondly, as the RA is not a party to the Appeal, they chose to prepare submissions and although the Appeal Panel acknowledge that they were helpful it does not follow that they should be awarded costs for a voluntary activity.
68. Therefore, the Appeal Panel is unlikely to award the RA costs unless they can provide submissions that demonstrate, to the satisfaction of the Appeal Panel, there is something specific to this Appeal that their costs should not simply rest where they lie.
69. The Appeal Panel also notes that we did not draw anything significant from the legal submissions filed by the Respondent that was not previously provided by the Respondent as part of the investigation process. Therefore, the Appeal Panel is unlikely to award the Respondent costs unless they can provide submissions that demonstrate why any of their costs should not also simply rest where they lie.
70. Submissions are to be no longer than 5 pages including any schedules or appended information. Any solicitor's invoices appended to costs submissions must have narratives or notes showing the work undertaken regarding the Appeal. Heavily redacted solicitor's invoices will not be considered evidence of work undertaken regarding the Appeal and are likely to be disregarded by the Appeal Panel.
71. If sought, the Appeal Panel will decide costs on the papers.

³⁴ Section 37(5)(d) of the Act.

³⁵ RA submission 7.1 and Respondent submission 61

³⁶ Appellant reply to RA submission p 38 to 39, Appellant reply to Respondent submission p 21 to 22

Right of appeal

72. In accordance with s 35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated 21 November 2025

Signed by the Appeal Panel



Simonne Eldridge
Principal



Mark Holland



Manjit Devgun