

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

**Appeal 02/24**

**AND**

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

**Between**

Mr A

**Appellant**

And

Mr B

**Respondent**

**Against a decision of**

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

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Decision of the Chartered Professional Engineers Council  
Dated 8 December 2025

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## Introduction

1. Mr A (“**the Appellant**”) appeals a decision made by the Chairperson of Investigating Committees (“**CIC**”) to dismiss a complaint against Mr B, a Chartered Professional Engineer, (“**the Respondent**”).
2. The Appellant’s complaint related to Company C (“**the Body**”) Project D (“**the Project**”). Within the Body, the Respondent was the Project Sponsor.
3. The appeal panel of the Chartered Professional Engineers Council (“**CPEC**”) convened to hear this appeal (“**Appeal Panel**”) has been provided with a Bundle of Documents held by the Registration Authority (“**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.
4. 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.

## The legislation and caselaw

5. Summarised below is legislation and caselaw on the conduct of the Appeal, and legislation and caselaw considered by the Appeal Panel in deciding the Appeal.
6. The right of appeal in respect of decisions of the RA is established by s 35 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 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*<sup>1</sup>, 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.<sup>2</sup>

### **Background**

13. On 6 March 2023, the Appellant completed a Raising Concerns form [BOD 3] to [BOD 8]. The Appellant provided the following supporting documents:
  - a) A complaint document from the Appellant [BOD 9] to [BOD 31].
  - b) An Official Information Request by the Appellant [BOD 32] to [BOD 108].
  - c) A photo of fence supplied by the Appellant [BOD 109].
14. Between 11 June 2022 and 26 January 2023, the Appellant exchanged emails with the RA to discuss opening a complaint and supplying supporting information [BOD 110] to [BOD 124].
15. Between 5 and 6 March 2023, the Appellant exchanged emails with the RA, attaching the signed Raising Concerns form to an email on 6 March 2023 [BOD 125] to [BOD 126].
16. Between 8 and 31 March 2023, the RA and the Appellant exchanged emails which included questions from the Appellant regarding the complaint process. [BOD 127] to [BOD 130].
17. On 14 April 2023, the RA emailed the Appellant with a summary of concerns for the Appellant to approve [BOD 131] to [BOD 132].
18. On 18 April 2023, the Appellant emailed the RA with updates to the summary of concerns [BOD 133] to [BOD 136].

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<sup>1</sup> *Deo v Chartered Professional Engineers Council* [2024] NZDC 22169 at [46], citing *Green v Green* [2016] NZCA 486 at [30]

<sup>2</sup> The Chartered Professional Engineers of New Zealand Rules 2025 came into force on 1 August 2025. However, the 2002 version of the Rules is applicable to this Appeal as it was in force at the time of the RA’s decision.

19. On 25 May 2023, the Appellant emailed the RA with an update on the complaint [BOD 137] to [BOD 139].
20. Between 20 July 2023 and 17 August 2023, the RA and the Respondent exchanged emails regarding the Appellant's summary of concerns [BOD 140] to [BOD 144].
21. Between 17 and 24 August 2023, the RA and the Appellant exchanged emails on the Respondent's response to the Appellant's summary of concerns [BOD 145] to [BOD 146].
22. The Appellant provided the RA with a response document dated 23 August 2023 [BOD 141] to [BOD 171]. This response document commented on the Respondent's responses to the summary of complaints.
23. On 30 August 2023, the RA emailed the Respondent to advise the Appellant's concerns were not resolved and explaining next steps in the complaints process [BOD 172].
24. On 22 September 2023, the RA emailed the Appellant and the Respondent to advise a different staff member at the RA would look after case [BOD 173] to [BOD 174].
25. On 26 March 2024, the RA emailed the Appellant providing a copy of the decision from the Chairperson of Investigating Committees working as independent adjudicator. [BOD 175].
  - a) Attached to this email was the Initial Assessment Report dated 25 March 2024 176 – 179 [BOD 176] to [BOD 179].
  - b) Also attached to this email was a decision cover letter dated 26 March 2024 [BOD 180].
26. On 2 May 2024, the Chair of CPEC exchanged emails with the parties confirming receipt of the Notice of Appeal 2 May 2024 [BOD 181] to [BOD 182].
27. The Appellant lodged a Notice of Appeal of the CIC decision on 23 April 2024. A revised Notice of Appeal was filed on 1 May 2024.

### **Grounds of appeal**

28. The Appellant's Notice of Appeal cited the following grounds of appeal (which are anonymised below):

The decision was made for the Case to be dismissed under rule 57(a) of the Chartered Professional Engineers of New Zealand Rules 2002, and regulation 28.1 of the Engineering New Zealand Complaints. The Chair of the Investigating Committee stated:

I find there is no evidence that [the Respondent] has personal responsibility for any alleged shortcomings in the design of [the Project].

I challenge this finding and the decision to dismiss the complaint.

[The Respondent] was the Project Sponsor for the [Project]. The evidence shows that [the Respondent] meets the Grounds for discipline of a chartered professional engineer specified in the Chartered Professional Engineers of New Zealand Act 2002 at Section 21 in that [the Respondent]:

(b) has breached the code of ethics contained in the rules; or[and]

(c) has performed engineering services in a negligent or incompetent manner;

[The Respondent] has breached the following requirements of the Eng.NZ Code of Ethical Conduct 2016 to:

1. Take reasonable steps to safeguard health and safety
3. Report adverse consequences
4. Act competently
5. Behave appropriately
8. Report breach of Code

### **Outcome sought**

29. The Appellant is seeking:

- the decision to dismiss the complaint is reversed and that the complaint is fully investigated; and,
- The [sic] any decision makers or advisors in key roles in this project, who are CPEng (including those with names redacted by [the Body]) are included in the investigation.

### **Evidence considered and submissions received**

30. Under clause 15 of the Regulations, CPEC may receive any evidence that the RA would have been entitled to receive on the decision being appealed. At several junctures in submission, the RA noted the Appellant introduced new information and/or documents which was not before the CIC. The RA did not object to this new information and/or documents, and we took it into consideration.

31. The Appeal Panel received the following submissions:

- a) Appellant's Submission dated 27 November 2024 ("**Appellant's Submission**").
- b) RA's Submission dated 12 December 2024 ("**RA's Submission**").
- c) Appellant's Reply Submission dated 27 November 2024 ("**Appellant's Reply Submission**").

32. During the conduct of the Appeal, the Respondent engaged with the Appeal Panel. The Respondent did not provide submissions for the Panel's consideration. For the record, we

note we drew no conclusions, positive or adverse, from the Respondent not providing submissions.

### **The hearing**

33. With the parties' agreement, the Appeal was heard on the papers.

### **Discussion – consideration of grounds of appeal**

#### **Preliminary point**

34. Departing from the usual format of our decisions, we deal first with the Appellant's request for the following order:

The [sic] any decision makers or advisors in key roles in this project, who are CPEng (including those with names redacted by [the Body]) are included in the investigation.

35. For the following reasons that is an order we cannot make. On appeal, CPEC has the powers specifically given to it under the Act (for example, an order under s 36) and can make any decision the CIC could have made.<sup>3</sup> Other than exploring whether alternative dispute resolution is possible, the CIC has only two possible courses of action; referring the complaint to the investigating committee or not referring the complaint to the investigating committee.

36. There is no specific power given to CPEC under the Act that would allow it to make the order sought. Further, the CIC has no power to require persons be identified nor has the CIC a power to require investigations for persons to be identified. As the CIC does not have the power to make the order sought by the Appellant, neither does CPEC.

#### **The grounds of appeal**

##### Introduction

37. We considered the submissions and information provided by the Appellant and the RA. The Appellant provided significant amounts of information in support of his view that the Project is not safe. We record that neither the Appeal Panel nor CPEC generally make any comment or finding in relation to the safety or otherwise of the Project.

38. Our decision does not address every document put before us, nor do we traverse the submissions line by line. As will be apparent from what follows, we approach this decision from a holistic perspective as to whether the Appellant has established the CIC's decision was wrong.

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<sup>3</sup> Section 37(5) of the Act.

### Consideration

39. As set out earlier in this decision, the Appeal alleges that the decision was incorrect and there are grounds to discipline the Respondent under s 21 of the Act because the Respondent:
- a) breached the code of ethics contained in the rules (s 21(1)(b));
  - b) performed engineering services in a negligent or incompetent manner (s 21(1)(c)).
40. The Appellant also alleged that the Respondent breached the following requirements of the Engineering New Zealand Code of Ethical Conduct 2016. The Engineering New Zealand Code of Ethical Conduct 2016 is administered by Engineering New Zealand and applies to all members of Engineering New Zealand. It is not specific to CPEng and CPEC does not have jurisdiction in relation to allegations under that Code of Ethical Conduct. The only applicable code of ethics for s 21(1)(b) is that which is “contained in the rules”, being the Rules that were made under s 40 of the Act.
41. However, the code of ethics contained in Part 3 of the Rules contains very similar provisions to those stated in the Notice of Appeal. Specifically:
- a) Take reasonable steps to safeguard health and safety – Rule 42B
  - b) Report adverse consequences – Rule 42D
  - c) Act competently – Rule 42E
  - d) Behave appropriately – Rule 42F
  - e) Report breach of Code – Rule 42I
42. The Appeal Panel largely considers that the Appellant has not sufficiently expanded on the obligations above and how the Respondent is alleged to have breached them to demonstrate to the Appeal Panel that the CIC’s decision to dismiss the complaint (on the basis of their being no applicable ground of discipline) was wrong. We agree with the RA that the grounds of appeal can be distilled to an allegation **that the [CIC’s] decision is factually wrong.**<sup>4</sup>
43. We consider the crux of the Appeal is the role of the Project Sponsor for the Project. We say this as we consider the Appellant’s position is as summarised below:
- a) The Respondent is the Project Sponsor and is also a CPEng.

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<sup>4</sup> RA’s Submissions [3.1].

- b) Being the Project Sponsor means the Respondent is automatically responsible for any failings in the Project.
  - c) The Appellant considers the Project has engineering failings in that the Appellant considers the Project is unsafe.
  - d) It follows that the conduct of the Respondent with respect to the Project should be investigated and potentially disciplined as a CPEng.
44. Before addressing the role of the Project Sponsor, we repeat that we record that neither the Appeal Panel nor CPEC generally make any comment or finding in relation to the safety or otherwise of the Project.
45. Turning to the role of the Project Sponsor for the Project. To begin, Project Sponsor is not a generic term, it is a term within the Body's own lexicon taken from its project management manual. The Appellant says this project management manual lists the following Project Sponsor responsibilities:<sup>5</sup>

The Project Sponsors primary responsibility is to successfully deliver the project to the chief executive.

[AND ALSO]

- a. appointing an appropriate project manager
  - b. preparing the sponsor's brief
  - c. approving the project plan and any necessary material changes
  - d. providing the project's strategic direction and overview
  - e. monitoring progress against the project's objectives
  - f. ensuring risk is effectively identified and managed
  - g. approving any recommendations arising from a project conception
  - h. signing off the project plan when the project is completed.
46. We see nothing in the Project Sponsor responsibilities making the Project Sponsor responsible for engineering or design activities. That is not to say the Project Sponsor may not **also** have an engineering or design role on a project, but that is not being alleged here.

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<sup>5</sup> Appellant's Submissions, page 2.

47. We observe the Appellant made no effort to demonstrate what were the Respondent's acts or omissions meriting discipline. Instead, the Appellant looks to affix the acts or omissions of the project manager and engineers on the Respondent saying:<sup>6</sup>

In short the Project Sponsor is personally responsible and accountable for the establishment, execution and approval (signing off) of the project. This must include accountability for the performance of the project manager and the other engineers in key roles approved by the Project Sponsor.

Underlining added.

48. We agree with the RA's observation that the Appellant's evidence supports the CIC's decision<sup>7</sup> rather than undermining it.
49. We observe that the Appellant's evidence suggests the Project Sponsor role need not be fulfilled solely by an engineer let alone solely fulfilled by a CPEng. It is unclear to us, and the Appellant did not attempt to show us, whether the Respondent was acting as a CPEng when fulfilling the role of Project Sponsor. To us to a reasonable description of the situation is the Respondent is the Project Sponsor and also happens to be a CPEng.
50. Before concluding this point, it is important to note that a CPEng **may possibly** be liable for discipline for the acts or omissions of another person, such as where a supervising CPEng falls short of what is required in supervising subordinates. That is a different fact scenario.
51. Individuals who are CPEng have obligations under the code of ethical conduct set out in Part 3 of the Rules. Largely (but not exclusively), these obligations are owed when that CPEng is undertaking 'engineering activities'.
52. The Appeal makes allegations with respect to the Respondent's approach to health and safety. The ethical obligation in the Rules in respect to health and safety is one of those which has effect when the CPEng is undertaking 'engineering activities'. Rule 42B says in full:
- A chartered professional engineer must, in the course of the engineer's engineering activities, take reasonable steps to safeguard the health and safety of people.
53. Therefore, to begin with we consider whether the Respondent was undertaking 'engineering activities' as part of his role as Project Sponsor.
54. Rule 42A defines engineering activities "as activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills".

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<sup>6</sup> Appellant's Submissions, page 3.

<sup>7</sup> RA's submission [6.9].

55. Based on the breadth of the definition of 'engineering activities', the fact that the Respondent was registered in the practice field of 'Engineering management', and the above description of responsibilities for the Project Sponsor, on balance we consider it more likely than not that the Respondent was using his engineering knowledge and skills in the Project Sponsor role. Therefore, the Respondent was undertaking engineering activities for at least aspects of that role.
56. We therefore consider whether the Appellant has made a case for the Respondent having breached their obligation under rule 42B that, in the course of the engineer's engineering activities, the Respondent failed to take reasonable steps to safeguard the health and safety of people.
57. The Bundle has two safety audits regarding the Project. First, a preliminary design stage safety audit report dated June 2017 prepared by [Withheld] [BOD 34 – 77]. Second, a detailed design road safety audit, revision B of which is dated 29 September 2021 [BOD 78 – 106]. The safety audit procedure is described as [BOD 82]:
- A road safety audit is a term used internationally to describe an independent review of a future road project to identify any safety concerns that may affect the safety performance. The audit team considers the safety of all road users and qualitatively reports on road safety issues or opportunities for safety improvement.
58. The two safety audits were conducted by persons at a reputable organisation and external to the Body. The safety audits are comprehensive and include responses from designers to matters raised in the safety audits.
59. Having considered the content of the safety audits, we conclude that, to the extent that the Respondent was undertaking engineering activities in the Project Sponsor role, the Respondent did discharge his obligation under rule 42B.
60. With respect to the other elements of the code of ethics contained in Part 3 of the Rules, the Appeal Panel does not consider that the Appellant has provided sufficient evidence or argument of the application of these such that they are applicable grounds of discipline in this matter.
61. In conclusion, the Appellant has not proven to us the decision under appeal is wrong.

### **Findings**

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

63. The Appeal Panel finds that none of the grounds for appeal were proven to the extent the Panel considered overturning the decision or returning the matter back to the RA, for reconsideration.
64. The appeal is dismissed and the CIC's decision to dismiss the complaint against the Respondent is upheld.

### Costs

65. CPEC is empowered to award costs on determining an appeal.<sup>8</sup> For two reasons, our preliminary view on costs is they should lie where they fall. First, while the Respondent may have been entitled to costs, he did not participate substantively in the Appeal and incurred no costs. Second, the RA elected to participate in an Appeal of a disciplinary decision when it did not have to elect to do so. As the RA elected to participate in the Appeal, our preliminary view is it should not be entitled to costs.
66. However, if a party considers they wish to make submissions on costs, they may do so within 3 Working Days of this decision being released. Any reply submissions may be filed within a further 3 Working Days. Costs submissions must be no longer than 3 pages excluding any schedules or supporting information.
67. The Appeal Panel will decide costs on the papers.

### Right of appeal

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

**Dated 8 December 2025**

Signed by the Appeal Panel



Mark Holland

Panel Principal



Simonne Eldridge



Megan Neill

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<sup>8</sup> Section 37(5)(d) of the Act.