

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

Appeal 10/24

AND

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

Between

Mr A

Appellant

Against a decision of

The Institution of Professional Engineers
Incorporated T/A Engineering New
Zealand (as the Registration Authority
under the Chartered Professional
Engineers of New Zealand Act 2002)

Respondent

Decision of the Chartered Professional Engineers Council
Dated 26 June 2026

Introduction

1. Mr A (“the Appellant”) has appealed a decision made by the Competency Assessment Board (“CAB”) of the Registration Authority (“RA”) to decline his application for continued registration as a Chartered Professional Engineer (“CPEng”).
2. The Appeal Panel of the Chartered Professional Engineers Council (“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]”.

Conduct of the Appeal

3. This is an unusual appeal in that the RA and Appellant have largely been united in their view of the appropriate outcome to this appeal, which is that the matter should be referred back to the RA under s 37(5)(b) of the Act.
4. The parties originally sought this outcome from CPEC without the conduct of a hearing by way of joint memorandum on the basis of an agreement reached between the parties.
5. However, the Appeal Panel determined that it could not determine an appeal merely by endorsing an outcome agreed between the parties. Doing so, without a proper evidential and legal basis and without providing its own reasons, would breach the statutory framework governing CPEC and amount to an abdication of its decision-making responsibility.
6. CPEC is required to act in accordance with the Act, the Rules, and the Appeals Regulations. Those provisions oblige it to receive the relevant documents, conduct a hearing (with or without the parties), and issue a written, reasoned decision. Any referral of the matter back to the RA must be based on the Appeal Panel’s own assessment of what is appropriate, supported by reasons, and accompanied by directions the Appeal Panel itself considers fit.
7. The parties also requested that, if a determination of the appeal by CPEC ordering the outcome could not occur before the date on which the Appellant’s registration would be removed, CPEC stay that removal pending determination of the appeal. Consequently, the Appeal Panel ordered a stay under s 36 of the Act.
8. After initial timetabling was provided for a hearing, the parties sought an adjournment of the hearing while a re-assessment took place. After a conference between the parties and Appeal Panel, where the Appeal Panel raised concern with the procedural approach sought, it was

determined that the appeal would proceed instead of a re-assessment with submissions to be filed by the parties.

9. However, the Appeal Panel did agree that the Appeal was suitable for hearing and determination on the papers. Therefore, with the agreement of the Appellant and the RA, the Appeal Panel conducted the hearing on the papers.

The Legislation and approach to appeal

10. This appeal is brought under the Chartered Professional Engineers of New Zealand Act 2002 ("the Act"). The right of appeal in respect of decisions of the RA is established by s 35 of the Act.
11. The rules relevant to the appealed decision are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules").¹
12. The CAB is appointed by the RA under rule 77 of the Rules and has delegated authority to make registration decisions.
13. The rules applicable to the process of a decision on continued registration of a chartered professional engineer are 22 to 30 of the Rules, which includes evaluation and reporting on the application by an assessment panel.
14. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 ("the Regulations").
15. Appeals to the Council are by way of rehearing (s 37(2) of the Act). The Appeal Panel is entitled to confirm, vary or reverse a decision (s 37(5)(a)), refer it back to the RA (s 37(5)(b)), and may make any decision that could have been made by the decision authority (s37(5)(c)).
16. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the Appeal Panel is entitled to take a different view from the CAB, but the Appellant carries the burden of satisfying the Appeal Panel that it should do so.
17. The District Court in *Deo v Chartered Professional Engineers Council* [2024] NZDC 22169 stated² that the application of *Austin, Nichols* means that while it is an appellant decision-

¹ While the Chartered Professional Engineers of New Zealand Rules 2025 are now in force, the decision in question was made under the Chartered Professional Engineers of New Zealand Rules (No 2) 2002

² Applying the Court of Appeal's judgment in *Green v Green* [2016] NZCA 486

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."*

18. The ultimate question in an appeal to CPEC is whether "the appealed decision is wrong".³
19. An appeal to CPEC is not a judicial review. However, this does not exclude CPEC from considering procedural matters, errors of law, or issues of natural justice from consideration on appeal. Such errors will not necessarily mean that the decision under appeal is 'wrong', the error must materially affect the result.⁴

Background

20. The parties helpfully provided the Appeal Panel with the background to this appeal by way of a statement of agreed facts. The background below largely repeats that statement.
21. The Appellant is a structural and civil engineer who has practiced as an engineer since 2013. He holds a range of academic qualifications in science and engineering, including undergraduate and postgraduate degrees in civil engineering, together with a postgraduate qualification in fire engineering.
22. As at the date of the statement of agreed facts, the Appellant had not been the subject of complaints or disciplinary action and has an unblemished professional record.
23. The Appellant was first registered as a CPEng on 11 December 2019 for a two-year term.
24. Shortly after becoming chartered, the Appellant co-founded an engineering firm and, a year later, founded his own engineering firm.
25. The assessment report from the Appellant's 2019 registration recorded the assessment panel's view, at that time, that his *"management experience and level of responsibility were considered limited and still under development."* However, by the time of subsequent assessments in 2024, that earlier concern was no longer identified as an issue by the Assessment Panel.

³ *Deo v Chartered Professional Engineers Council* at [50].

⁴ *IPENZ v Nowak* [2021] NZDC 11697 at [78] referring to *Klepacki v IPENZ* [2017] NZHC 3300 at [14].

Application for continued registration

26. In about July - August 2021 the Appellant submitted an application to the RA for continued registration as a CPEng. While the application was under consideration, his CPEng registration remained current.
27. On 22 December 2022, the Appellant was first contacted by the assessment panel (which comprised of two assessors) appointed to consider the Appellant's application for continued registration ("Assessment Panel").
28. On 8 May 2023, Mr F, one of the assessors on the Assessment Panel, sent a text message to Mr L, one of the referees named by the Appellant. In the message Mr F asked Mr L to call him.
29. On 29 May 2023 an on-line TEAMS interactive interview of the Appellant with the Assessment Panel was held.
30. On 28 September 2023, Mr F (assessor) sent a second text message to Mr L (referee) asking Mr L to call Mr F.
31. On 25 October 2023, Mr L (referee) sent a text message to Mr F (assessor) stating (in part) *"just back from China. Will ring you this afternoon. Hopefully it is not too late.-"*
32. On 27 February 2024, the RA's Assessment Panel made the first assessment report.
33. By letter dated 27 February 2024, as required by Rules 26 and 27 of the Rules, the Appellant was given an opportunity by the RA's Competence Assessment Board (CAB) to provide written submissions.
34. On 25 March 2024, in accordance with the opportunity given, the Appellant provided to the RA written submissions which included a covering letter dated 25 March 2024, a detailed 18-page written response ("Response"), and other written material.⁵
35. The Response included (amongst other things):
 - a. An update to the Appellant's original portfolio. For example on pages 13 to 18 of the Response, three additional work examples are described and discussed. These additional work examples are also discussed in the first seven pages of the Response. Calculations, drawings and email correspondence were also provided and cross-referenced.

⁵ BOD, pp 532 - 1258

- b. Linking/referencing of the new work samples back to the required competencies for continued registration. For example on the first seven pages of the Response, each of the required competencies referred to in the reasons on the third page of the first assessment report are addressed, and the new work samples are specifically referred to in relation to those competencies.
 - c. The Appellant's response to the reasons for the proposed decline, including specific reference to those reasons and linking of new work samples to address the gaps identified in the letter dated 27 February 2024. For example, the reasons for the proposed decline were set out in bullet points on the third page of the first assessment report, and each of those bullet points was specifically referred to and addressed on the first seven pages of the Response.
 - d. Demonstration of the application of new knowledge learned from the Appellant's then recent CPD training into his work.
 - e. Demonstration that the Appellant's work is complex engineering with complex engineering problems.
 - f. Demonstration that the Appellant has maintained the currency of his engineering knowledge.
36. On 27 March 2024, the RA provided the Assessment Panel with the three additional work samples from the Appellant but mistakenly neglected to provide the Assessment Panel with the Appellant's cover letter or the Response. The Appellant's cover letter and the Response were not provided to the CAB either.
37. On or about 12 July 2024, the Assessment Panel issued its second assessment report without having seen or considered the RA's cover letter and Response.
38. On 11 July 2024 the RA's CAB considered the Appellant's application for continued registration and the second assessment report, and made the decision referred to in the RA's letter dated 3 September 2024 (see below) to decline the application for continued registration. Like the Assessment Panel, the CAB had not seen or considered the RA's cover letter or Response.
39. On 3 September 2024, the RA sent the Appellant the Decision which stated, amongst other things, that: *"I am writing to inform you of the Competence Assessment Board's (**the Board**) final decision under rule 26 of the Chartered Professional Engineers Rules (2002) (sic) (the*

CPEng Rules) to decline your application for continued registration as a Chartered Professional Engineer (CPEng)."

40. Although required to take into account the Response, before making the Decision the RA (by itself and by its delegates the Assessment Panel and the CAB) did not consider the Response the Appellant provided on 25 March 2024 and the contents of the Response.
41. The statement of agreed facts also described consequences for the Appellant if the appeal were to not be granted, including that if the appeal were not granted, this would have serious adverse consequences for the Appellant, his business, his family and clients.

Evidence received

42. 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.
43. The evidence considered by the Appeal Panel in arriving at its decisions in this matter included:
 - (a) Notice of Appeal, dated 25 September 2024
 - (b) Second joint memorandum of parties, dated 29 November 2024
 - (c) Bundle of Documents provided by the RA on 31 January 2025
 - (d) Statement of Agreed Facts, dated 4 February 2025
 - (e) Appellant Submissions, dated 12 February 2025
 - (f) RA Submissions, dated 23 February 2025
 - (g) Appellant Submissions in reply, dated 27 February 2025

Grounds of appeal and outcome sought

44. The Appellant's Notice of Appeal cited the following grounds of appeal (in summary):
 - a. The RA's decision was made in breach of:
 - i. section 25(b) of the Act;
 - ii. rules 25(1)(a) and 72(1)(b) of the Rules;

- iii. section 27(1) of the New Zealand Bill of Rights Act (“NZBORA”); and
 - iv. the rules of natural justice including audi alteram partem (hear the other side) and the rule against bias (nemo iudex in causa sua).
 - b. Despite being required to take it into account, the RA’s decision either did not consider the 18 page Response provided by the Appellant or did not consider it properly.
 - c. The RA did not obtain and/or consider the information available from the two referees provided by the Appellant.
 - d. There were insufficient factual foundations for findings made by the Registration Authority due to the matters referred to above.
 - e. Factual findings made by the RA were incorrect or misleading, and the decision was plainly unreasonable, incorrect and made in breach of s 27 of the NZBORA because of the matters referred to above.
 - f. The Appellant was not given a fair opportunity to answer questions from the RA during the online interactive interview.
45. The Appellant originally sought (in summary):
- a. The decision to decline the Appellant’s application for continued registration be reversed; or
 - b. In the alternative, the Appellant’s application to be referred back to the RA for it to re-consider generally the whole of its decision subject to specific directions on the conduct of that fresh assessment, and
 - c. Costs.
46. Due to the circumstances of the appeal, in particular the RA’s apparent agreement on some of the issues, the Appellant’s submissions only advanced two of original grounds of appeal on the basis that the remainder would be argued if required. Namely:
- a. The RA’s failure to provide important material, including the Response, to its assessors and CAB, and, as a result, the RA (as decision-maker) made various errors (e.g. breaching applicable natural justice requirements, failing to take into account mandatory considerations, and making errors of fact and law) and its decision should be quashed.

- b. The RA misdirected itself on the test to be applied in considering the appellant's application for continued registration and/or applied the test incorrect, and as a result made various errors (e.g. made errors of law, took into account irrelevant considerations, and failed to take into account relevant considerations) and its decision should be quashed.
47. The Appellant's submissions in reply outlined that, following the filing of the RA's submissions, counsel for the parties had had further discussions and differences between the parties' positions in terms of the substantive outcome of the appeal had been resolved. It was stated that the parties jointly submitted and requested that:⁶
- a. the appeal should be allowed on each of the two grounds of appeal covered in the submissions filed "i.e. the failure by the RA to consider relevant material ground; and the misdirection ground;" and
 - b. relief should be granted as follows:⁷
 - a) The appeal is allowed, and the respondent's decision to decline the appellant's application for continued registration is reversed pursuant to s.37(5)(a) CPENZA [the Act].
 - b) The appellant's application for continued registration is referred back to the respondent (as Registration Authority) for the respondent to reconsider generally the whole of its decision subject to the following directions pursuant to s.37(5)(b) CPENZA:
 - i. The assessment of the Appellant's application shall be a fresh one, meaning it will not simply be a reassessment of the Appellant's 2021 application, but the Appellant will have the opportunity to submit additional information;
 - ii. The Appellant will have eight months from the date of the determination of the appeal to submit additional information and prepare for the assessment, so the Appellant has time to consider and respond to the new guidance on assessments that has been published since 2021;
 - iii. The Appellant's assessment will be undertaken by a fresh assessment panel, without any personnel overlap with the previous panel;
 - iv. The fresh assessment panel and the decision makers are to disregard the previous treatment of the Appellant's application (i.e. they will not have

⁶ Appellant's Reply Submissions at [2]

⁷ Appellant's Reply Submissions at [4]

access to the previous assessment reports dated 27 February 2024 and 12 July 2024, and the RA's decision in 2024 to decline the Appellant's application), while noting the outcome and directions of the Council in this appeal;

v. The Appellant will continue to hold CPEng status for the duration of the assessment (as is usual for continued registration assessments);

i. The Registration Authority will observe the rules of natural justice; and

vi. The assessment will be at no extra cost to the Appellant.

c) costs are reserved at this time, pending the outcome of the substantive decision.

48. Both parties reserved submissions on the remaining grounds of appeal for a later date, if required.

Discussion – Consideration of grounds of appeal

49. The Appeal Panel thanks the parties both for their helpful submissions and the pragmatic and objective way in which they have approached this appeal.

50. In terms of the legislative framework for the decision under appeal, s 11(1) of Act requires the RA to assess, at the prescribed frequency, *“whether or not a registered person meets the minimum standards for continued registration contained in the rules”*.

51. The minimum standards for continued registration are provided in rule 20:

20 Minimum standard for continued registration as chartered professional engineer

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

(a) he or she—

(i) is still able to practise competently in his or her current practice area to the standard of a reasonable professional engineer; or

(ii) if the person's practice area has changed materially since the last assessment, meets the minimum standard for registration within his or her current practice area; and

(b) he or she has taken reasonable steps to maintain the currency of his or her professional engineering knowledge and skills within his or her current practice area since the last assessment.

52. Where the RA determines that the minimum standards are not met, it must take one of the steps specified in s 11(2), being removal or suspension of the person's registration.

53. The process of reaching a decision under s 11 is generally as follows:

- a. An assessment panel evaluates whether the candidate has demonstrated that they meet the minimum standards for continued registration (set out in rule 20), taking the steps in rule 25.⁸
 - b. The assessment panel recommends to the CAB whether the applicant's registration should be continued (or suspended or removed) and for how long.⁹
 - c. The CAB must, after considering the assessment panel's recommendation and s 11 of the Act, make a decision.¹⁰
 - d. However, if the CAB proposes to remove or suspend the applicant's registration, the CAB must first:¹¹
 - i. notify the applicant of the reasons for the proposed decision; and
 - ii. give the applicant a reasonable opportunity to make written submissions on the matter.
 - e. If the CAB's decision involves rejecting or varying the recommendation of the assessment panel, the CAB must first require the assessment panel to reconsider its recommendation, and that reconsidered recommendation further considered by the CAB.¹²
 - f. The RA then notifies the candidate of the decision and reasons and implements the decision.¹³
54. For the purposes of this decision, it is helpful to note that the above standard and process is set out separately in the Act and Rules to the one which applies to applicants seeking to be registered as a chartered professional engineer for the first time.
55. Briefly, such decisions are made under s 8 of the Act, following the process set out in Subpart 1 of the Rules and against the minimum standard set out in rule 6. Rule 6 provides:

6 Minimum standard for registration as chartered professional engineer

- (1) To meet the minimum standard for registration, a person must demonstrate that he or she is able to practise competently in his or her practice area to the standard of a

⁸ Rules 24(1) and 25

⁹ Rule 25(3) and 24(1)

¹⁰ Rule 26(1)

¹¹ Rules 26(2) and 27

¹² Rule 28

¹³ Rule 29

reasonable professional engineer.

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

56. The terms ‘complex engineering activities’ and ‘complex engineering problems’ in the above are defined in rule 7.

Ground 1 – Failure to consider relevant material

57. As emphasised by the Appellant, decisions under s 11 are subject to:

- a. The general procedural requirements in s 25 of the Act, including the obligations to observe the rules of natural justice (s 25(b)) and to comply with applicable procedures under the Rules (s 25(c)).
- b. The obligation in rule 72(1)(b) of the Rules on every person or body that carries out decision-making functions under these rules must observe the rules of natural justice.

58. The procedural obligations at issue here are the obligations in rules 26 and 27 of the Rules, which apply where the CAB proposes to remove or suspend a candidate’s registration. Rule 27 provides:

27 Competency Assessment Board must give candidate opportunity to respond

If the Competency Assessment Board proposes to remove or suspend the candidate's registration, the Board must—

- (a) notify the candidate of the reasons for the proposed decision; and
- (b) give the candidate a reasonable opportunity to make written submissions on the matter.

59. As set out above, in response to the notification of the CAB's proposed decision to decline his application for continued registration, the Appellant provided an 18-page response and three additional work samples. Exercising his right under 27(b) to make written submissions as invited by the RA.
60. The RA acknowledges that, while the additional work samples were forwarded, the Appellant's cover letter and Response were "mistakenly" not provided to the Assessment Panel or the CAB.
61. The Appellant submits that the Response was mandatory, relevant material that the Assessment Panel and the CAB were required to have before them, and to take into account, when making the final decision on his application.
62. The Appellant submits that this omission constitutes:¹⁴
- a. a breach of the mandatory procedural requirements in s 25(c) of the Act and rr 26 and 27 of the Rules, which require proper consideration of the Response before making the decision to remove the Appellant's registration;
 - b. a breach of the express natural justice requirements in s 25(b) of the Act, r 72(1)(b) of the Rules, s 27(1) of the NZBORA, as natural justice requires compliance with the *audi alteram partem* principle ('hear the other side');
 - c. a failure to take into account mandatory relevant considerations, i.e. the Response, as proper consideration of this was mandatory (given a. and b. above) (per *Air Newlson Ltd v Minister of Transport* [2008] NZAR 139); and
 - d. an error of fact and an error of law, as the resulting decision is so clearly untenable (per *Bryson v Three Foot Six* [2005] 3 NZLR 721).
63. The RA accepts that, "*the Panel and ultimately the CAB were required to have regard to this information before coming to a decision.*"¹⁵

¹⁴ Appellant's submissions at [35]

¹⁵ RA's submissions at [6.4]

64. The Appeal Panel agrees that this circumstances of the Assessment Panel and CAB not receiving and therefore not considering the Response, was an error. However, for the decision to be 'wrong', the error must be a material one.
65. The Appellant submits that the omission of the Response led directly to factual errors in the second assessment report of 11 July 2024 on which the CAB made its decision. He points to examples of findings in that report that were addressed by the Appellant in his Response. These include findings that the Appellant had not:¹⁶
- a. updated his original portfolio;
 - b. linked his new work samples to the required competencies for continued registration;
 - c. addressed the reasons for the proposed decline by making specific reference to the new work samples to address gaps identified in the proposed outcome letter;
 - d. demonstrated reasonable steps to maintain currency or professional knowledge and skills nor how he applies new knowledge learnt from this recent training to his work.
66. The Appellant submits that these findings are demonstrably incorrect when read against the contents of the 18-page Response as this specifically referred to and addressed each of the reasons for the proposed decline and linked/referenced the new work samples back to the required competencies for continued registration. The errors arose because the Response was not before the decision-makers.¹⁷
67. The Registration Authority submits that the failure of the Assessment Panel and ultimately the CAB were to have regard to this information in coming to a decision, *"is good grounds to establish that there was a material error in the decision, per Deo, and the decision was therefore wrong, per Lodestar"*.¹⁸
68. The Appeal Panel agrees that the circumstances amount to a material error that renders the CAB's decision 'wrong'.

Ground 2 - Misdirection as to the applicable test for continued registration

69. The Appellant submits, and the RA acknowledges, that the Assessment Panel and the CAB misdirected themselves by applying the incorrect legal test to the Appellant's application for continued registration.

¹⁶ Appellant's submissions at [34]

¹⁷ Appellant's submissions at [34]

¹⁸ RA's submissions at [6.5]

70. They are said to have done so by interpreting the applicable standard, rule 20(a)(i), as identical to the minimum standard for (initial) registration set out in rule 6, which in practice requires the production of complex work samples in order to establish an engineer meets the minimum standard.
71. While the parties disagree on the extent of that misdirection, i.e. the precise nature of the standard that the Assessment Panel should have instead applied, they say that disagreement does not affect their agreement as to the appropriate outcome of the appeal.
72. The parties agree to the extent that the minimum standards for initial registration and continued registration are different and that this treatment by the Assessment Panel and CAB is grounds for overturning the decision on appeal.
73. This difference arises from the standards being set out in different rules and expressed in different terms:
- a. The minimum standard for initial registration in rule 6 requires registrants to, *“demonstrate that he or she is able to practise competently in his or her practice area to the standard of a reasonable professional engineer”* (emphasis added).
 - b. For continued registration, unless the applicant’s practice area has ‘changed materially’ since the previous assessment, r 20(a)(i) requires the person to demonstrate that they are *“still able to practise competently in his or her current practice area to the standard of a reasonable professional engineer”* (emphasis added) and per r 20(b) that, since their last assessment, they have taken ‘reasonable steps’ to maintain the currency of their professional engineering knowledge and skills within their current practice area.
74. As acknowledged by the RA, there are different tests within rule 20 for continued registration depending on whether the applicant’s practice area has changed materially since their last assessment. If the practice area has changed materially, they are assessed per rule 20(a)(ii) which references the standard for initial registration in rule 6. This further indicates an intentional difference between the standards of rule 20(a)(i) and rule 6.
75. Both parties emphasis the difference in the wording of ‘able’ (rule 6) as opposed to ‘still able’ (rule 20).
76. The RA submits that the words ‘still able’ used in rule 20(a)(i) mean that the ‘starting point’ for the standard is that *“the applicant has already established their ability to meet that minimum standard, and must not demonstrate that they continue to meet it.”*

77. In addition to different wording of standards, there are different decision-making sections under the Act (s 8 (initial) and s 11 (continued)) as well as separate sets of rules that set out the processes by which evaluation and decision on an application for continued registration are made as opposed to initial registration.¹⁹ These include parallel provisions for the provision of information by the candidate (r 9 (initial) and r 23 (continued)) and way in which the assessment panel must evaluate the application (r 11 (initial) and r 25 (continued)).

Assessment Panel's conflation

78. The Appellant submits that the Assessment Panel assessed his application by reference to criteria drawn from rule 6 of the CPEng Rules, including detailed consideration of the factors in r 6(2) and an emphasis on recent complex engineering work samples. This was then carried through to the CAB's decision and reasons for decline.
79. In particular, the reasons given for declining continued registration are framed in language that closely mirrors rule 6(2), including findings that the Appellant failed to demonstrate competency in defining, analysing, and designing solutions to complex engineering problems. He submits that this demonstrates that the Assessment Panel and the CAB treated his application as if it were an application for initial registration, rather than continued registration.
80. In assessing the Appellant's compliance with 'CPEng competency requirements', the Assessment Panel's report:
- a. misquotes rule 20(a)(i), stating that the Appellant has provided "insufficient evidence to demonstrate they are able to practice competently in their current practice area...", omitting the 'still'.²⁰
 - b. assesses the Appellant's application directly against the criteria in rule 6(2), noting that the work samples have been insufficient to meet specific elements of rule 6(2), in particular, 6(2)(k), 6(2)(b), 6(2)(c), 6(2)(e) and 6(2)(f). The majority of these relate to competency in defining, analysing, and designing solutions to complex engineering problems.
81. As the RA identified, the primary theme behind the CAB's decline of the Applicant's continued registration was the Assessment Panel's view that the Appellant had not provided

¹⁹ Subpart 1 of the Rules (rr 6 – 15) apply to 'Assessment for initial registration' whereas subpart 3 applies to 'Assessment for continued registration (rr 20 - 30)

²⁰ Page 3 of Assessment Panel's report, dated 12 July 2024

work samples that met the definition of ‘complex engineering activities’ or ‘complex engineering problems’ in r 7 of the Rules.

82. The CAB based their decision on that assessment report, repeating the Assessment Panel’s misquotation and reasons.
83. The Appellant submits that an applicant for continued registration therefore starts from the position that they have already demonstrated competence in the past and need only demonstrate that they have maintained or continued to have that ability. Therefore, by requiring him to produce evidence equivalent to that required for initial registration, the Assessment Panel and the CAB asked themselves the wrong question and thereby fell into error of law.
84. The Registration Authority agrees that the Assessment Panel and the CAB misapplied the standard for continued registration. It accepts that the standards for initial registration and continued registration are ‘different’, are expressed in different terms, and are intended to operate differently.
85. The RA also notes that the Assessment Panel has the ability to satisfy itself of the standard in a number of ways, including written assignments and self-review exercises (per r 25(1)(b) and (c)). Therefore, this allows the Assessment Panel to take into account the particular context in which the applicant CPEng is currently working, including the ability to provide recent examples of complex engineering work.
86. The Registration Authority accepts that the Assessment Panel and CAB applied a test equivalent to rule 6, rather than rule 20(a)(i), and submits that this constituted a misdirection in law. On this basis, the RA agrees that the decision was wrong and that the appeal should be allowed on this ground also.
87. However, the RA does not agree that the removal of registration requires a positive determination by the RA that the engineer does not meet the minimum standard. The RA submits (and the Appeal Panel agrees) that notwithstanding the distinction between rules 6 and 20, rule 20 still places an onus on the applicant to demonstrate that they meet the minimum standard for continued registration, and that failure to do so entitles the Authority to conclude that the standard has not been met.

88. The RA also notes that rule 6(2) is not irrelevant to the Assessment Panel and CAB's exercise under s 11 and r 20:²¹

While the continued registration standard does not explicitly mention these factors, and while we maintain the standards are different to an extent, they are both of a kind. Logically the core elements of the standard and the matters to be considered should be consistent between the two tests. The difference lies in the level of rigour applied in the assessment, rather than the content of the standard.

89. On balance, the Appeal Panel considers that in reaching the decision to decline the Appellant's application for continued registration as a CPEng, the Assessment Panel and the CAB applied a test equivalent to rule 6 rather than rule 20(a)(i). This was an error which was material to the decision.
90. The Appeal Panel does not consider it necessary to resolve the precise nature of the application of rule 20 of the Rules in this appeal. The Appeal Panel records, however, that it did not find the Appellant's submissions as to the operation of rule 20 to be particularly persuasive, and it was more inclined towards the approach advanced by the Registration Authority. In any event, given the material procedural error and misdirection identified, it is unnecessary for the Appeal Panel to reach a concluded view on this issue.

Discussion – Consideration of directions sought

91. The Appeal Panel finds both grounds of appeal advanced in the parties' submissions made out and agrees with the parties that the most appropriate outcome is to reverse the CAB's decision and refer the whole of the matter back to the RA to reconsider.
92. With respect to the directions sought by the parties in paragraph 4 of the Appellant's Reply Submissions, the Appeal Panel notes the following:
- a. *"The assessment of the Appellant's application shall be a fresh one, meaning it will not simply be a reassessment of the Appellant's 2021 application, but the Appellant will have the opportunity to submit additional information"*: The Appeal Panel agrees that ordering a new application and assessment is appropriate in the circumstances, including in consideration of the time elapsed since the Appellant's application for continued registration and the new guidelines since released by the RA. However, the Appeal Panel considers that, for clarity, the wording of this order should be amended to be clear that the Appellant is to make an entirely new application which is to be considered under the

²¹ RA's submissions at [6.21]

Chartered Professional Engineers of New Zealand Rules 2025. This is to remove any risk of confusion that the Appellant can only provide information additional to that provided with the original application. The new application and assessment should follow the RA's usual process which will include an opportunity to provide information to support the application.

- b. *"The Appellant will have eight months from the date of the determination of the appeal to submit additional information and prepare for the assessment, so the Appellant has time to consider and respond to the new guidance on assessments that has been published since 2021."*: As this is to be a fresh assessment, it is to be conducted in accordance with the process in the Chartered Professional Engineers Rules 2025. In the ordinary course the RA would issue a notice under rule 23(1) to notify the CPEng of the assessment, the information to be provided and the date for it to be provided by, being not less than three months after the notice. The RA can determine whether additional time should be given in that notice. The Appeal Panel does not consider it appropriate in the circumstances to impose an order of timing on the RA.
- c. *"The Appellant's assessment will be undertaken by a fresh assessment panel, without any personnel overlap with the previous panel"*: Given the RA's agreement to this, the Appeal Panel is willing to make this order. However, the Appeal Panel records that there been no suggestion of actual or perceived bias by the assessors of the Appellant's application.
- d. *"The Appellant will continue to hold CPEng status for the duration of the assessment (as is usual for continued registration assessments)"*: The Appeal Panel is willing to make this order as requested for clarity. The Appeal Panel notes that the Appellant remaining registered is what it considers follows from the circumstances and result of this decision, which reverses the CAB's decision to remove the Appellant's registration.
- e. *"The fresh assessment panel and the decision makers are to disregard the previous treatment of the Appellant's application (i.e. they will not have access to the previous assessment reports dated 27 February 2024 and 12 July 2024, and the RA's decision in 2024 to decline the Appellant's application), while noting the outcome and directions of the Council in this appeal;"*: As the Appeal Panel's decision is to reverse the CAB's decision, the deliberations and records of that earlier process should not be considered relevant information to be taken into regard under 26(1)(e) of the Chartered Professional

Engineers Rules 2025. The Appeal Panel is willing to direct that the information held by the RA in relation to the decision under appeal is not relevant to the new application.

- f. *“The Registration Authority will observe the rules of natural justice”*: The Appeal Panel sees this order as entirely unnecessary. This is an explicit requirement of the Act and Rules and acknowledged by the RA in this appeal.
- g. *“The assessment will be at no extra cost to the Appellant”*: The Appeal Panel agrees that this is appropriate in the circumstances.

Findings

93. 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.

94. The Appeal Panel finds that:

- a. the RA’s failure to consider the Appellant’s Response was a failure to consider relevant mandatory information; and
- b. the RA misdirected itself on the test to be applied in considering the appellant’s application for continued registration,

therefore, the decision of the RA in declining the Appellant’s application for continued registration was materially wrong.

95. The Appeal Panel orders:

- a. The appeal is allowed, and the RA’s decision to decline the appellant's application for continued registration is reversed pursuant to s 37(5)(a) of the Act.
- b. The Appellant's application for continued registration is referred back to the RA for the RA to reconsider generally the whole of its decision subject to the following directions pursuant to s 37(5)(b) of the Act:
 - (a) The assessment of the Appellant's application shall be a fresh, standalone one, meaning it will not simply be a reassessment of the Appellant's 2021 application;
 - (b) The RA is to follow the usual process regarding timeframes and procedures in accordance with the applicable legislation (Chartered Professional Engineers Rules 2025);

- (c) The Appellant's assessment will be undertaken by a fresh assessment panel, without any personnel overlap with the previous panel and noting that the previous assessment reports dated 27 February 2024 and 12 July 2024 and the RA's decision in 2024 to decline the Appellant's application are not relevant to that fresh assessment;
- (d) The Appellant will continue to hold CPEng status for the duration of the assessment (as is usual for continued registration assessments);
- (e) The fresh assessment will be at no extra cost to the Appellant.

Costs

- 96. CPEC is empowered to award costs on determining an appeal.²² The parties requested that the question of costs be reserved pending the outcome of the appeal.²³
- 97. If the parties wish to make submissions to the Appeal Panel on costs, the Appellant must do so within 10 working days of this decision. The RA may make submission in reply within a further five working days of receipt of those submissions.
- 98. Submissions are to be no longer than five pages including any schedules or appended information.
- 99. If the parties reach agreement on costs and submissions are not required, the Appeal Panel asks the parties inform the Appeal Panel accordingly.
- 100. If required, the Appeal Panel will decide costs on the papers.

²² Section 37(5)(d) of the Act.

²³ Appellant Reply Submissions at [4].

Right of appeal

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

Dated 26 June 2026

Signed by the Appeal Panel



Megan Neill
Principal



Mark Holland



Simonne Eldridge*

**Following the hearing of this matter Sandra Hardie retired from CPEC and was replaced on the appeal panel by Ms Eldridge.*

Schedule 1 – Legislation

1. The right of appeal is contained in s35 of the Chartered Professional Engineers Act 2002 (“the Act”). S37 of the Act sets out the scope of the Chartered Professional Engineers Council’s (the Council) jurisdiction which is to deal with the matter by way of rehearing.
2. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002.
3. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (“the Rules”) and were enacted pursuant to s 40 of the Act.
4. Part 2 of the Rules (Rules 6 to 42) outlines the process for registration of chartered professional engineers. Subpart 1 (Rules 6 to 15), Subpart 2 (Rules 20 to 30) relate to the assessment of initial registration and continued registration respectively.
5. Rule 6 defines the minimum standards for registration as a Chartered Professional Engineer.
6. The overriding consideration is that expressed in Rule 6(1), that a Chartered Professional Engineer should be able to practise competently in his or her practice area to the standard of a reasonable professional engineer.
7. The matters listed in Rule 6(2) must be taken into account in making an overall assessment required by Rule 6(1). However, the Rules do not provide for a mandatory “pass mark” for these matters, and nor could they. Ultimately, taking the matters in Rule 6 (2) into account, an objective decision still needs to be made as to whether an applicant meets the overall standard prescribed in Rule 6(1).
8. The onus in rule 6 (1) is on the applicant demonstrating competence. The Rules do not provide for a mandatory “pass mark” for these matters. Ultimately, taking the matters in rule 6(2) into account, an objective decision still needs to be made as to whether an applicant meets the overall standard prescribed in rule 6(1).
9. Rule 7 sets out the definitions of ‘complex engineering activities’ and ‘complex engineering problems’.
10. Rules 8, 9 and 9A outline the requirements for an initial application for registration.
11. Rules 10 to 15 outline the way in which an application for registration must be evaluated and

decisions made and implemented.

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

Schedule 2 – Extracts of the Rules

Part 2 Registration of chartered professional engineers

Subpart 1—Assessment for initial registration

Minimum standard for registration

6 Minimum standard for registration as chartered professional engineer

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

7 Definitions for purpose of minimum standard for registration

For the purposes of [rule 6](#),—

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

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

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

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

20 Minimum standard for continued registration as chartered professional engineer

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

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

23 Information that must be provided to demonstrate current competence

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

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

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

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

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

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

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

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

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

24 Assessment panel must evaluate continued registration

- (1) An assessment panel must evaluate each candidate for continued registration to assess—
 - (a) whether or not the candidate has demonstrated that he or she meets the minimum standard for continued registration; and
 - (b) if so, whether the candidate's continued registration should next be assessed by the end of the sixth year from 31 December of the year of this assessment, or in an earlier year; and
 - (c) if not, whether the candidate's registration should be suspended or removed.
 - (2) However, if the candidate does not provide the information required under [rule 23](#) by the specified date,—
 - (a) only 1 assessor must evaluate the candidate's continued registration; and
 - (b) this subpart applies as if the assessor were the assessment panel (with any necessary modifications).
- Rule 24(1)(b): amended, on 1 January 2012, by [rule 12](#) of the Chartered Professional Engineers of New Zealand Amendment Rules 2011 (SR 2011/408).

25 Way in which assessment panel must evaluate continued registration

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

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

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

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

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

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

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

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

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

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