

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

Appeal 01/07

AND

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

From

**Mr B
Appellant**

Against a decision of

**IPENZ (as the Registration
Authority under the Chartered
Professional Engineers of New
Zealand Act 2002)**

Decision of the Chartered Professional Engineers Council dated 15 August 2007

The Legislation

1. This is the first substantive appeal to the Chartered Professional Engineers Council under the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”) from a decision of a Competence Assessment Board of the Registration Authority refusing the registration of the Appellant, Mr B as a Chartered Professional Engineer (CPEng).
2. As this is the first such appeal we consider it important to set out in this decision the purpose of registration and the process that applicants go through by way of assessment.
3. The Chartered Professional Engineers of New Zealand Act 2002 (“the Act”) has a purpose set out in s3:

“The purpose of this Act is to reform the law relating to the registration of engineers and to establish the title of chartered professional engineer as a mark of quality...”

4. The purpose of establishing the title of Chartered Professional Engineer as a mark of quality is supported by s7 which makes it an offence for any person other than a Chartered Professional Engineer to describe themselves or their business as being that of a Chartered Professional Engineer or even words or abbreviations that may cause confusion with this title, as being an offence.
5. Under s8(a) the Registration Authority must register a person if he or she, amongst other matters, satisfies the Registration Authority that he or she meets the minimum standards for registration contained in the Rules.
6. The Rules referred to are to be found in the Chartered Professional Engineers of New Zealand Rules (No. 2) 2002 (“the Rules”). The Rules were enacted pursuant to s40 of the Act as regulations.
7. Under the Rules minimum standards for registration as a Chartered Professional Engineer are set under Rule 6. Rule 6 is of some importance in this appeal that is set out in full below.

“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.*

8. The overriding consideration is that expressed in Rule 6(1) that is 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.
9. The Rules also set out how a person is to apply to become a Chartered Professional Engineer. An application is made in a standard form accompanied by relevant information. The applicant is to verify that the application is true and correct. The information that must be provided is detailed including academic and other qualifications, work history, professional development activities, and other relevant information (a full list can be found in Rule 9).
10. The Registration Authority appoints assessors to an assessment panel which evaluates the application. The assessors are themselves Chartered Professional Engineers. The assessment panel evaluates the application in accordance with Rule 11:

11 *Way in which assessment panel must evaluate application*

(1) The assessment panel must evaluate the application 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

[(b) do all of the following, unless the panel thinks it unnecessary (in which case, it may carry out one or more, or none, of the following):

(i) carry out an interactive assessment with the applicant by any meeting method; and

(ii) require the applicant to carry out a written assignment; and

(iii) carry out an assessment of the applicant's engineering knowledge by any method the panel considers appropriate; and]

(c) if the panel thinks it necessary, invite the applicant to provide, within a specified period,—

(i) any additional supporting information:

(ii) up to 2 further [independent] referees; and

(d) in evaluating the information provided, assess—

(i) the extent to which the applicant is able to do the things in subclause (2) of the minimum standard for registration; and

(ii) whether or not the applicant meets the overall standard in subclause (1) of the minimum standard for registration, taking its evaluation under subparagraph (i) into account; and

(iii) any other matters the panel considers necessary to carry out the assessment; and

(e) have regard to any advice provided by a member of the Competency Assessment Board for the purposes of moderating between assessments.

(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.

11. The assessment panel therefore has a very wide range of tools at its disposal to ensure that an applicant is of an appropriate standard. In the Council's view this is consistent with promoting the purpose of the Act.

12. The assessment panel makes a recommendation to the Competency Assessment Board (under Rule 11(3)) which ultimately decides whether the applicant should be registered or not.

13. Once the Competency Assessment Board has made its final decision and the applicant has been notified, an applicant who is unsuccessful has a right of appeal to this Council. That right of appeal is contained in s35 of the Act and s37 of the Act sets out the scope of this Council's jurisdiction in hearing that appeal. Of importance are subsections 2, 3 and 5 which read as follows respectively:

(2) An appeal to the Council is a rehearing and must be conducted in accordance with any regulations made under section 65.

(3) Unless the Council otherwise directs, on the rehearing, the record of the evidence adduced at the hearing before the Registration Authority must be placed before the Council, and it is not permissible to recall witnesses who gave evidence before the Registration Authority or to call other witnesses.

(5) The Council or District Court, as the case may be, may—

(a) confirm, vary, or reverse the decision, or part of decision, to which the appeal relates:

(b) refer the matter back to the decision authority for it to reconsider, either generally or in relation to specific matters, the whole or any part of the decision (together with any direction on that whole or part that the Council or District Court, as the case may be, thinks fit):

(c) make any decision that could have been made by the decision authority:

(d) make any order as to the payment of the costs of the appeal that it thinks fit.

14. This matter therefore was dealt with as a re-hearing and the Registration Authority provided to the Council, with a copy to Mr B, of its complete file relating to his application which was comprised in three ring binders and sequentially numbered for ease of reference from pages 1 through to page 402.

15. Despite having disclosed this record relatively soon after Mr B's appeal, the Council was notified as the hearing was drawing to a close that Mr B had actually supplied the assessors with further material which had not been put before the Council. Since this matter had been discussed in the original assessment the Council considered it only fair to Mr B to allow time for this material to be placed before the Council and requested that he and the assessors who had originally discussed it with

Mr B provide a short note on their recollections about the material. This is referred to further below.

16. The purpose of raising the matter at this point is to record that the Council is satisfied that it had had before it and all parties, that is Mr B and the Registration Authority, all information that was originally considered by the assessment panel and that the parties have had an opportunity to comment upon it.
17. Having traversed the procedure for making an application for Chartered Professional Engineer status and the statutory framework under which the appeal operates we now turn to the background of this matter.

Background

18. The Appellant applied to the Registration Authority seeking registration as a Chartered Professional Engineer in the practice fields of structural, geotechnical and civil in June 2005. By email dated 15 September 2005 the Appellant amended his application to apply only in the areas of civil and structural practice (page 110).
19. An interactive assessment was conducted in November 2005 and a written assessment completed in December 2005. The assessment panel recommended declining the application.
20. The Competency Assessment Board followed the recommendation and the Appellant's application was declined on 2 August 2006.
21. As was the Appellant's right he applied for a procedural review of the decision which was undertaken by an independent party, Mr Andrew McIntyre, barrister. Mr McIntyre found that there had been procedural errors amounting to a breach of natural justice in that certain matters were not put to the Appellant who hence did not have the opportunity to comment on them and that some irrelevant matters were considered.

22. Upon receipt of the review the assessment panel reconsidered the application and again recommended that it be declined. Once again the Competency Assessment Board adopted that recommendation and a final copy of the decision was communicated to the Appellant on 16 February 2007 by letter dated 13 February 2007 declining the application for Chartered Professional Engineer status. The letter stated:

“CAB therefore accepted the assessment panel’s recommendation and declined the application for CPENG. The reasons for declining the application were that the applicant had not demonstrated his ability to undertake his professional engineering activities to an ethical standard equivalent to the code of ethical conduct, he had not maintained currency of his professional engineering knowledge and skills, and he had not demonstrated sound professional engineering judgment expected of a reasonable professional engineer.”

23. It is against this decision that the Appellant appeals.
24. It is apparent that a considerable passage of time has passed between Mr B’s original application for Chartered Professional Engineer status and the final decision of the Competency Assessment Board. In fact that period is something like some 20 months. Some of this delay was due to the normal process of the matter following its course. It is correct to say that the procedural review found that there were irregularities which meant that the matter had to be referred back.
25. During the hearing before the Council Mr J complained about procedural irregularities, in particular alleging that Mr W, the Registrar for the Registration Authority, had influenced the outcome of the Competency Assessment Board’s decision. Whilst there were emails between Mr W and the Competency Assessment Board we are not convinced that these were the cause of the application being declined, but in any event, such procedural matters are irrelevant to this hearing. That was made clear and accepted by Mr J in an exchange of questioning with the Principal of the Appeals Panel when it was put to Mr J that any procedural irregularities could be cured by the Council dealing with this matter as a re-hearing, as it was required to do, such that the Appellant now had an opportunity to present its case with all

matters being heard and properly considered. Mr J accepted that proposition.

26. In the circumstances, whilst the procedural history of this matter might be considered drawn out, it is not a relevant factor that the Council is required to have regard to when coming to the ultimate decision as to whether or not this appeal should be allowed or not.
27. What this Council must decide is whether, on the basis of the matters that were put to the Registration Authority, Mr B's application for Chartered Professional Engineer status should be allowed or not.

Substance

28. The Appellant completed a competence self-review form (PR160) (page 32 - 33) in his original application. That form sets out a number of elements against which the Appellant's experience was assessed. The elements are numbered 1 - 12 and repeat the criteria for the minimum standard for registration as set out in Rule 6 (though in a different order).
29. It is common ground in this appeal that the only elements in issue were element 7 (Rule 6(2)(g) - identify, assess and manage engineering risk); element 8 (Rule 6(2)(h)) - conduct engineering activities to an ethical standard at least equivalent to the relevant code of ethical conduct); element 11 (Rule 6(2)(k) - maintain the currency of his or her professional engineering knowledge and skills); and element 12 (Rule 6(2)(d) - exercise sound professional engineering judgment).
30. These elements are reflected in the Appellant's Notice of Appeal which set out detailed grounds of appeal in points 3(a) through to (g). It is these specific points that the Council now addresses.

Point of Appeal 3(g)

31. This Point of Appeal refers to the fairness of the Competency Assessment Board's decision in light of the procedural issues that have

already been mentioned. For reasons already discussed the Council does not consider this Point of Appeal to have any merit as procedural irregularities can be cured by this appeal. This point of appeal is therefore not successful.

Point of Appeal 3(b).

32. This Point of Appeal concerns Element 8 - Conduct engineering activities to an ethical standard at least equivalent to the relevant code of ethical conduct.

33. The assessment panel reported on their consideration of Mr B's application in a competence assessment report form (page 338). Against element 8 a number of comments were inserted indicating why the assessment panel felt that Mr B should fail this part of the assessment. In summary the reasons were:

34. A copyright issue had been raised by a former employer which came to the notice of the Registration Authority. The matter resulted in court proceedings which were settled but nevertheless the assessment panel considered that this raised questions of ethical professional conduct. There was also a comment that:

"The panel has also learned that there are possible separate other issues with comments on Bill's alleged 'seat of the pants' engineering and practising outside his one's [sic] area of competence/limitations."

35. On this matter the Council considers that the assessment panel placed too much weight on the copyright issue. While Rule 45 does require that a Chartered Professional Engineer must act honestly and with objectivity and integrity in the course of his or her engineering activities, the copyright issue raised does not demonstrate to this Council's satisfaction that Mr B was dishonest or acted inappropriately. There was a civil dispute. That civil dispute was settled. The Council is not satisfied that there was enough evidence before the assessment panel to make a very serious finding that effectively Mr B was dishonest or acted without objectivity or integrity. Such a finding would require

a more detailed hearing and would probably, though not necessarily, be in the nature of disciplinary proceedings. The Council expects that breaches of Rule 45, dependent upon the allegations that might be made, require something of a higher threshold of proof, than was evident from the documentation in this case.

Point of Appeal 3(c)

36. Also against the professional engineering competence report form at element 8 (at page 341) is the comment that the appellant sought Chartered Professional Engineer status based on business opportunities rather than his competence. That comment was because originally Mr B had applied for a geotechnical specialisation which was later withdrawn (see page 110).
37. The Council considers that this is not an appropriate reason to withhold Chartered Professional Engineer status. It is true that Mr B originally applied for geotechnical as a field of expertise. It would seem that over his years of practice Mr B has encountered geotechnical matters. Prior to assessment Mr B reconsidered his position, in discussion with colleagues, and withdrew his application for a geotechnical specialisation. Having done this we do not consider it fair or appropriate for Mr B to then be questioned as to why he had applied for that specialisation and then to draw adverse inferences from that. In any event, the Council suspects that a number of applications are driven by business decisions, and it does not necessarily make it unethical to apply for a decision in which one's competence is perhaps marginal. In those circumstances we would expect an applicant to be failed for Chartered Professional Engineer status on the basis of their competency and not on the basis that it was unethical to apply for an area of expertise in which they were found lacking.

Point of Appeal 3(d).

38. The final factor against element 8 at page 341 is that Mr B was reluctant to undertake the written assessment which is provided for by the Rules. Again, the Council can make similar comments to those above. We can well understand why there may be reluctance by an applicant to undertake a written assessment, particularly when that applicant has practised as an engineer for many years. The Chartered Professional Engineers of New Zealand Act did introduce a new regime and it is a simple fact that some practitioners who had previously been “registered engineers” under the old legislation may resent the fact that they are now being required to prove competency. That is not to say that this was reason for the appellant being annoyed, if that is what he was. The simple fact is he did have to travel from the West Coast to Auckland and was put to some expense and trouble to do this. We can understand that frustration, but it is not now a reason to judge Mr B as having been “unethical”.
39. It follows from what we have said above that Mr B did satisfy the requirements of Element 8 and that the standard was met in that regard.

Point of Appeal 3(a)

40. Against Element 7 (identify assess and manage engineering risk) the assessment panel wrote (at page 340):

“In the design of a dairy shed the proposed location of the shed required the assessment of risk from flooding and landslip. Mr B reduced the risk by siting the shed away from the floods and landslips. Mr B has indicated during the interactive interview that, as a sole practising engineer with no other colleagues, he has to ‘take on the risk himself’. Because he is working alone, there is no opportunity for his work to be checked by a colleague in the same office, or for him to consult with another colleague on technical issues. There is a risk that errors and mistakes may not be picked up because there is no in-house checking or QA control by working alone and performing single-handedly the initial concept design, developed design, engineering calculations and then performing drafting duties etc ..., Even though Mr B has mentioned that in future he is going to obtain a peer review for ‘larger jobs’, we believe that there is little evidence provided to show that Mr B has been able to manage this risk.”

41. In his submissions Mr J indicated that whilst there was a risk for a sole practitioner there was no evidence to show that the appellant had been unable to manage the risk with evidence pointing to sufficient management. The appellant had an unblemished record. In addition, there was an arrangement with a Christchurch firm who would peer review material for the appellant. There is a letter of support from the firm which supports Mr B in a general way but which does not refer to a peer review arrangement. Mr B confirmed that such an arrangement was in place at the hearing.
42. The Council considers that an assessment of engineering risk is an essential factor in the consideration of whether or not an applicant should be granted Chartered Professional Engineer status. In the fields of structural and civil engineering for which the appellant applies for registration, structures can have a design life of many years, indeed one would expect the design life of structures to exceed the number of years for which the appellant has been practising. The Council does not consider that an unblemished record is necessarily determinative of a current competency of an engineer. It is obviously a factor to be taken into account and this Council does so. What is important is a demonstration of current competence.
43. The Council is also concerned that it is directed to proceed by way of a re-hearing. That means that it must consider the evidence that was put before the assessment panel and make a decision on whether that assessment panel came to the correct conclusion on the evidence before it. In order to make that judgment the Council was concerned to ensure that Mr B had every opportunity to bring to the attention of the Council within the paperwork submitted to the Registration Authority, all documentation or evidence that he placed in support of an assessment under Element 7. The Principal of the Appeal Panel spent some time identifying the relevant documents and provided Mr J the opportunity to do likewise.

44. Mr J referred to his letter that was provided on 14 August 2006 (pages 245-246), but that is just a summary of material. The only worked example that Mr B pointed the Council to as supporting his application for an assessment under Element 7 was a bridge study which was included in the documents at page 44. This was the only specific document that the Council and Mr B could readily identify which was lodged with the original application supporting an assessment under Element 7.
45. Mr B was asked a number of questions by the Council as to this document including how it assessed a number of issues of risk including flooding and environmental risk. The Council came to the conclusion that the documentation submitted and the further verbal explanations by Mr B did not satisfy it that Element 7 was satisfied. The exchange between the Council and Mr B concluded in the following terms:

Mr Hazelton - Did you do a design study for that bridge? Presumably a written design study?

Mr B - Yes ...

Mr Hazelton - ... and would that design study have contained a section - not necessarily headed up "Risk" - but it would have contained those elements talking about how to manage contingencies - for want of a better word?

Mr B - Yes ...

Mr Hazelton - ... on that project?

Mr B - I did a summary of the whole ... The brief I was given by the contractor and in that whole summary risk was part of it - and it set out various parts that I had to ...

Mr Hazelton - ... and you could have produced that to the assessment panel?

Mr B - Well ... yes ... I could have ...

Mr Hazelton - I know you discussed it but you could have produced that ...

Mr Smith - Is there any reason why you didn't?

Mr B - Once again I'm not sure whether I gave them drawings of the bridge or whether it came up in discussions so therefore it wasn't asked of me ... I think they asked me for an example like you asked - of how I would calculate the risks.

Mr Smith - You do understand it is over to the applicant to demonstrate their competence?

Mr B - Yes. This was in the interactive interview - I didn't have it on me OK. Perhaps I should have sent it in afterwards - but when it was over it was over. That's the way it seemed.

46. The Council was mindful that this matter has to proceed by way of a re-hearing, but at the same time considers that it was appropriate to give Mr B every opportunity to expand or say what he had told the assessment panel about Element 7. We do not consider that we were hearing new evidence in that regard. However, clearly there was a report which apparently addressed the issue of risk concerning the bridge assessment which has not been produced at any stage of Mr B's assessment. We cannot now consider it. We find that the bridge assessment at page 44 of the bundle to be deficient on any detailed risk analysis.
47. The only other document that was identified as being relevant was Mr B's written assessment (page 149). That written assessment discusses the New Zealand Standard on Risk Management NZS 4360, and provides 3 brief examples of risk being addressed in the Appellant's practice. The Council considers that the assessment identifies examples of work rather than any particular risk assessment methodology.
48. It was as a consequence of the discussion that took place with Mr B about what documents were presented to the assessment panel that Mr B indicated that he had thought more documentation had been put forward at the interactive interview. That led the Council's attention being drawn to page 367 which is a note identifying five work samples. The indication from that note was that these had been discussed at the interactive assessment. The Council is at a loss to understand why those items were not drawn to its attention earlier by Mr B given that the original documentation submitted for this matter by the Registration Authority, and copied to Mr B, did not contain those examples, as they had not apparently been left with the Registration Authority at the conclusion of the interactive assessment.

49. It was obviously appropriate that the Council consider this material and it provided Mr B with the opportunity to submit it to the Council after the hearing had closed. It also provided the Registration Authority with the opportunity to comment on that material to confirm that it was indeed discussed at the interactive assessment. The further material was received under a letter dated 1 June 2007 by Mr B. There is some additional written commentary with that material and again, we give Mr B some leeway in presenting that further commentary.
50. The material presented appears to match that listed at page 367 of the bundle. The Registration Authority was given an opportunity to respond and did so by email of 18 June 2007 and in summary, it would appear as though no particular issue is taken that the work samples now presented were not discussed, though the assessors involved cannot now recall the level of detail to which matters were discussed.
51. On balance, the Council is prepared to accept that the work samples were presented and that they should be considered as part of the re-hearing process.
52. Even allowing for the subsequent commentary provided by Mr B the Council is not convinced that Mr B's application, including the further material that was introduced at the interactive assessment, demonstrates that he met an appropriate standard for consideration of Element 7.
53. Council would have expected Mr B to demonstrate that he is actively identifying, assessing and managing engineering risk in his engineering practice. While Mr B seems to have some implicit understanding of obvious project risks, the examples given show Mr B's response to changing design conditions rather than the project risk management process. We consider that there was a lack of material presented to the assessment panel demonstrating how Mr B appropriately deals with risk in a proactive way.

54. Whilst Mr B confirmed he has instituted an arrangement for peer reviewing of items of his work with another consulting engineering firm, Council feels the arrangement in this particular case is insufficiently robust in a risk management sense. In addition we see no evidence of a formalised risk management approach in Mr B's engineering project examples and, whilst he has some knowledge of the relevant New Zealand Standard, Council is of the opinion that his appreciation of current risk analysis methodologies is inadequate.
55. For these reasons we do not consider that Mr B adequately demonstrated that he was able to quantify and deal with risk in an appropriate manner.

Point of Appeal 3(e)

56. The assessors' form at page 342 states the following against Element 11 (maintain the currency of his or her professional engineering knowledge and skills):

“Mr B's CPD records are generally inadequate. He has a few seminars and IPENZ branch meetings over the last three years but his record at external courses is poor. It is appreciated that there are fewer opportunities to attend external courses on the West Coast, but the panel is of the opinion that more effort should be made in maintaining CPD especially in the case of engineers practising as sole practitioners. Mr B has claimed three months campervan holiday tour of Europe, site supervisions of projects by others and time spent on AUTOCAD Lt as CPD. The panel is of the opinion that this is unacceptable.”

57. Mr B's CPD form submitted with his original application is at pages 52-57 and covers the years 2002 through to 2005, being the year of original application. It is notable that a footnote at the bottom of this form states as follows:

“List, in chronological order, professional activities you have undertaken over the last THREE years to enhance or maintain your current knowledge and skills. These activities could include conferences, short courses, technical meetings, on the job training and private reading. Assessors will be searching for qualitative evidence rather than relying on quantitative assessment, however IPENZ recommends 50 CPD hours per year as a minimum guideline.”

58. For 2002 Mr B's CPD hours recorded by him in his form was 63. Of those hours he had allocated 25 to private reading, 6 to IPENZ branch

meetings, 20 to AUTOCAD Lt self learning, 2 to advise to the X Golf Club Committee on a revetment wall and 10 to site supervision of projects designed by other engineers outside West Coast.

59. This Council is in agreement with the assessors that the CPD training for 2002 is inadequate. There is an exceptionally high reliance on private reading and self learning. The work undertaken for the X Golf Club Committee is simply an example of work. It is not necessarily an example of continuing professional development. Importantly there are no recognised courses attended and no particular detail given on how current competence has been maintained. Noticeably absent was the membership of technical societies and the reading of the technical journals of those societies. The Council is not satisfied that training on AUTOCAD, whilst undoubtedly a useful skill, advances a Chartered Professional Engineer's professional development in the areas that are specific to his application, that is engineering matters relevant to structural and civil. It is the Council's view that site supervision of other consultant's work in itself cannot be considered as appropriate CPD.
60. For the 2003 return Mr B has filed a return for 70 hours comprising as follows: private reading 30 hours, IPENZ branch meetings including the AGM 9 hours, 2 workshops, 1 on the Construction Contracts Act and 1 on CPEng registration - a total of 11 hours, and finally site supervision of projects designed by other engineers outside the West Coast 20 hours.
61. Once again the Council is of the view that this return is inadequate. Again there is a high reliance on private readings and on attendance at meetings, which frankly would add little to Mr B's professional development. That would include the IPENZ AGM for which 6 hours is claimed and the workshop on CPEng registration which is about process of becoming a Chartered Professional Engineer rather than the detail of engineering.

62. The 2004/5 CPD return is for a total of 107 hours. It is comprised as follows: 40 hours of private reading, 3 hours for an IPENZ branch meeting, 24 hours on courses including 8 hours on a CCANZ seminar in Christchurch, 12 hours on a USAR level 1 engineer course and 4 hours on a New Zealand Standard seminar on AS/NZS1170 Standard. In addition Mr B claimed 20 hours for a three month campervan tour of Europe visiting many engineering icons of past and present, and a further 20 hours for site supervision of projects designed by other engineers outside the West Coast.
63. In the Council's opinion it is notable that the first time courses of qualitative value appear on Mr B's CPD return is one month prior to his application for assessment being lodged. The balance of this CPD form is as "thin" as the prior one. It is easy to draw attention to the 20 hours claimed for the campervan tour around Europe visiting engineering icons. However, the Council considers that other elements are equally weak including claiming a further 40 hours for private reading. Private reading is a tool that is useful but it must be in conjunction with other recognised standards and courses.
64. We consider that on a qualitative basis Mr B's continuing professional development record is poor and does not on any basis merit satisfaction of Element 11.
65. We note that Mr B has difficulty in attending courses given his location on the West Coast. Whilst we have some sympathy with that position, we also note that it is imperative that engineering standards are maintained throughout the country and not just within main centres where engineering education may be more readily accessible. It is simply a fact of practising in a remote location that an engineer must have account of in his or her business planning.

Point of Appeal 3(f).

66. This point of appeal concerns Element 12 (exercise sound professional engineering judgment) about which the assessment panel stated as follows:

The panel is of the opinion that Mr B is capable of exercising sound professional engineering in some areas. However in other areas, there are concerns that Mr B has practised outside the limits of his technical competence which would indicate poor professional judgment.”

67. As a preliminary comment the Council notes that element 12, which is a repetition of Rule 6(2)(d), “*Exercise sound professional engineering judgment*”, is really an integral part of the overall criteria set out in Rule 6(1) which is that 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. It follows that sound professional engineering judgment is critical to that overall assessment. It is for this reason no doubt that the assessment panel has altered the order of the criteria set out under Rule 6 such that Rule (d) forms Element 12 since consideration of the other rules will inform to some degree the assessor(s) of whether or not Element 12 can be met.
68. In support of the Appellant Mr J set out in his submissions that reliance on other rules was inappropriate without specific examples. Whilst we agree that Element 8 was satisfied, the Council does consider that in an overall assessment, particularly taking into account what we have said about risk and CPD, that there are issues about whether this particular application should be considered as being capable of satisfying the exercise of sound professional engineering judgment to a standard to be expected by a chartered professional engineer.
69. There is no particular one issue that the Council needs to point to support this finding. It is a conclusion drawn from the examination of elements 7 and 11 together with an assessment of Mr B made during the hearing, including questions put to Mr B about issues of engineering risk in particular by the Appeal’s Panel Members. Those matters left

us in no doubt that Mr B should not be admitted on his current application to the Register of Chartered Professional Engineers.

70. Mr B made some comment at the hearing that he felt he had been treated unfairly and that other applicants he knew of had “sailed through” without any problem. We cannot comment on other applications. It should be noted that this Council believes strongly in upholding the purpose of the Act which is to ensure the integrity of the mark of Chartered Professional Engineer and that admission to the Register of Chartered Professional Engineers should not simply be seen as a rubber stamping exercise. We believe that this hearing demonstrates that. It is unfortunate that Mr B has had to wait some two years to ascertain the final outcome of his application. However we do observe that if he had entered into a dialogue with the assessors at an early stage, withdrawn his application and up-skilled by further attendance at CPD courses, which in turn may well have focussed his attention on risk assessments, he could have now been able to submit a further application which would see him admitted to the Register.
71. Mr B is of course free to re-apply at any stage.
72. In conclusion this Council upholds the decision of the Registration Authority and the Appellant’s appeal is dismissed.
73. This Council has the discretion to award costs.
74. This is the first appeal against a decision not to register an applicant. It is also clear that Mr B was correct in requesting a review of the original decision and incurred costs and delay as a consequence of that. Whilst it should be noted that it is this Council’s intention to take a robust view on costs awards in the future, we do not consider that in the circumstances of this case that costs should be awarded and therefore they are ordered to lie where they fall.

Dated this 15 day of August 2007

Signed By the Appeals Panel

Andrew Hazelton (Solicitor)
Principal

Stephen Reindler

Peter Smith

Sharyn Westlake FIPENZ CPEng

Steve Gentry BA ME MS Dist FIPENZ