

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

Appeal 04/21

AND

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

From

Mr A

Appellant

Against a decision of

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

Respondent

Decision of the Chartered Professional Engineers Council

Dated 18 February 2022

Introduction

1. Mr A has appealed a decision of the Competency Assessment Board (CAB) of the Registration Authority (RA) declining his application for initial registration as a Chartered Professional Engineer (CPEng), under the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”).

The Legislation

2. Legislation considered by the appeal panel is presented in Schedule 1, including the right to appeal and the scope of the Chartered Engineers Council’s (the Council’s) jurisdiction.
3. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the panel is entitled to take a different view from the CAB, but Mr A carries the burden of satisfying the panel that it should do so.
4. The appeal is a rehearing.
5. The basis for the Council overturning the original judgement at a rehearing is outlined in *McMullen J in May v May* (1982) NZFLR 165,170. The appellant must show that in the original decision, the decision maker:
 - acted on a wrong principle, or
 - failed to take in to account some relevant material, or
 - took in to account some irrelevant material, or
 - was plainly wrong.
6. The CAB is not the RA. The fact the RA board member on the CAB has no vote reinforces this separation.
7. Based on r 12 & r 26 of the Rules and s 45 of the Act, it could be argued that the Council cannot hear an appeal on registration as it is not a decision of the RA.

8. The Councils' view is the Act sits over the Rules, s 24 of the Act is clear, the RA makes decisions relating to registration. On this basis it is appropriate for the Council to hear appeals relating to registration.

Chronology, Submissions and Correspondence

9. The RA have provided a paginated Bundle of Documents file¹ held by the RA, including the registration chronology².
10. This timeline commenced with the date of Mr A's initial submission for assessment (14 August 2019) and concluded on the date of advice of the CAB's final decision to decline Mr A's application for CPEng (16 October 2020).
11. Further to the BOD, the RA provided a copy of Mr A's initial application, including work samples.
12. Correspondence and submissions relating to the appeal process are listed in Schedule 2.

Grounds of Appeal and Outcome Sought

13. The grounds of appeal and outcome sought are detailed in the Notice of Appeal dated 13 March 2021, they are:
14. Ground of Appeal 1 - the evidence Mr A provided to the assessment panel does not support the CAB's decision to decline his application. The CAB made the wrong decision, specifically (a) the contents of assignment 2 has not been considered.

¹ BOD pages 1 to 987

² BOD 1 & 21

15. Ground of Appeal 2 - the Registration Authority's procedure was flawed because:
 - (a) Mr A was not provided the opportunity to present his power point presentation at the interactive, he should have been allowed to present his power point presentation at the interactive;
 - (b) the reviewers (assessment panel) have not understood the reviewing procedure.
16. Ground of Appeal 3 – a new assessment panel member should have been appointed in the assessment panel member's place after the member passed away.
17. The outcome sought by Mr A is that his CPEng application be properly reviewed by suitably (qualified) reviewers in a short period.

Decision being appealed and evidence considered

18. The "decision" under appeal is the 16 October 2020 decision of the CAB, declining Mr A's application for registration as a Chartered Professional Engineer, on the basis:
 - (a) *There was insufficient evidence of Mr A's knowledge and application of complex engineering activities and complex engineering problems, and*
 - (b) *There was insufficient evidence of Mr A's knowledge and application of complex engineering and complex engineering problems within the New Zealand jurisdiction.*
19. Under S15 of the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the Regulations), the Council may receive any evidence that the Registration Authority would have been entitled to receive on the decision being appealed.
20. The evidence considered by the panel in making this decision includes:

- (a) Bundle of Documents (BOD);
- (b) Mr A's initial application and work samples;
- (c) Submissions as noted in 12 above;
- (d) The 16 September 2021 hearing, conducted via Zoom.

Hearing

- 21. A virtual (Zoom) hearing was carried out on 16 September 2021.
- 22. Present at the hearing were the panel, appeal panel principal Ms Hardie, panel members, Mr Fairclough and Ms Sinclair; the appellant Mr A; legal counsel for the RA, Ms Campbell and Ms Ding; and the Registrar for the RA, Mr Lourie.
- 23. The hearing was recorded. It was noted by the panel that a transcript would only be prepared if this decision is appealed to the District Court.
- 24. All submissions were taken as read.
- 25. The notes below highlight where additional emphasis or detail was provided at the hearing.

Mr A

- 26. Mr A said, *“the assessment panel’s findings were flawed, and that his application was thorough”*.
- 27. Mr A said, *“his application included 12 work projects which along with the design components clearly illustrated his abilities with regards to project management for complex engineering”*.
- 28. Mr A also said, *“his application documentation was prepared based on Eurocodes, and that this was appropriate as the variance between NZ and other*

national codes was 5%, 3%, 2% in National variance, with 95%, 90% applicable, very general to all countries.”

29. Mr A said, *“he held CPEng status with Australia and the UK, and that both of these institutes had used the application process to question his technical competence”.*

Registration Authority

30. Ms Ding spoke to the RA’s submission.
31. Ms Ding described the process as being neither iterative or collaborative, where stepwise guidance is required to be provided by the RA.

Mr A Response

32. Mr A further spoke to the information he had submitted.

Panel Questions

Questions - Mr A

33. When asked to show the panel (via his screen) an example of where the evidence provided supports his description of his role, Mr As referred the panel to Assignment 2, noting the Assignment contained a short paragraph description of his role, documentation covering when a report had been prepared or reviewed by him, and the tank design which referenced the codes of practise for the structure and explained the design components.
34. He said, “his engineering management is presented in other documents, which discussed his work on site, which included taking measurements and summarising whether engineering solutions have been achieved”.

35. The panel asked Mr A how the evidence supports his claim as report reviewer on work sample report “Company B Engineering & Construction – Slope stability Analysis for Sand Bund at Channel Extrusion Area³”.
36. Mr A referred the panel to the cover sheet of the document, specifically the review date, which was amended by hand from 07 July to 07 November 2016, noting that this handwriting was his. He advised the document was prepared by the Contractor, and that he worked for the Authorised Person on the site.
37. In response to a question on registration timing with other engineering bodies, Mr A advised his application for Chartered Engineer Australia and UK followed his application for CPEng registration.

Questions - Registration Authority

38. The panel queried Mr Lourie on whether the RA considered the minimum standard for registration required the applicant to meet both r6 (2)(a)(i) and r 6 (2)(a)(ii).
39. Mr Lourie advised it did, that r6 (2)(a)(i) covered general engineering fundamentals internationally recognised and r6 (2)(a)(ii) referred to the specificity associated with NZ jurisdiction.
40. Further to 38 & 39 above, the panel asked Mr Lourie whether the work samples needed to be undertaken in NZ, or for a project located in NZ.
41. Mr Lourie advised *“You don’t have to provide work samples that you have undertaken in NZ, you can supply them from the jurisdiction you are in but you will need to demonstrate how you would apply local knowledge and application with the jurisdiction you are applying for”*.

³ Work Sample c7d4991c-7ddb-4e1a-8722-aac60134b.pdf page 23

Discussion – Considerations of the Panel

42. Central to the panel’s decision must be whether Mr A has demonstrated that he meets the requirements for registration as outlined in rule 6, and if so the panel should come to a decision which differs from that made by the CAB.
43. The onus is on Mr A to demonstrate he meets the requirement for registration as a Chartered Professional Engineer. The panel accepts the view of the RA, the process is not an interactive or collaborative process where stepwise guidance is provided by the RA, it is up to the candidate to submit adequate material.
44. No means other than by Mr A demonstrating competence can be regarded as a pathway to registration.
45. The grounds of appeal all involve alleged procedural failings which are addressed below. Procedural shortcomings even if proven do not and cannot demonstrate competence. They do however contribute to establishing context and are able to be considered by the panel in finalising its decision.

Ground of Appeal 1

46. Mr A alleges the evidence the CAB’s based its decision on was wrong, specifically it did not include consideration to Mr A’s response to Assignment 2, as the assessor report considered did not reference this assignment.
47. Mr A submits⁴ *“he submitted 12 design reports and 7- years detailed CPD with Assignment 2. All these reports were covered the complexity mentioned in the “Assessment Guidance of Engineering New Zealand”. The report “Assignment 2” was superseded by my all-initial reports and the gaps shown by reviewers had been addressed fully.”*

⁴ Response Submission pgh 15

48. He also submits⁵ *“As a Civil Engineer, I considered all the required elements in Civil engineering specific to New Zealand. But those jobs had not been done in New Zealand. This issue was arisen at the beginning stage of application by Engineering New Zealand and my application had been accepted for taking into consideration after settling all issues.”*
49. The RA submits⁶ *“Before deciding whether the applicant should be registered or application declined, the CAB must consider the assessment panel’s recommendation and whether the requirements for initial registration including if it is satisfied the applicant meets the minimum standards for registration contained in the rules”.*
50. The RA further submits⁷ *“The assessment recommendation was robust, as was the CAB’s decision.... the assessment panel made its recommendation, and the CAB made its decision based on the evidence before it. The RA is satisfied that this was the right decision, and one it was entitled to make under the Rules.”*
51. The minimum standard for Initial Registration for CPEng is described in Rule 6 of the Rules.
52. The RA’s application form for registration grouped these requirements under four headings, namely:
- (a) Knowledge.
 - (b) Developing technical solutions (general assessment).
 - (c) Managing engineering work.
 - (d) Professional acumen.
53. Under Knowledge, Mr A refers to his academic achievements and current learnings, which include a Masters of Engineering (Geotechnics), Master of Science (civil and structural engineering) and Master of Engineering (structures) respectively.

⁵ Response Submission pgh 19

⁶ Pgh 4.8 RA submission

⁷ RA submission pg 12.2 & 12.9

54. He describes his design work experiences to include the use of manual and computer aided calculations against established design codes, interaction with members of construction teams, and references his work with Company C to show his technical knowledge in geotechnics.
55. He referred to work experiences overseas, noting he has “widely applied good practise and local knowledge for professional engineering in the country where I work⁸”.
56. Under Technical Solutions (general assessment), Mr A further refers to his qualifications and publications, and to his analysis and design of structures, considering gravity and lateral loading using 2D and 3D software and the use of manual calculations for simple calculations or as a global check for software analysis.
57. Under Managing Engineering Work, Mr A describes his knowledge of the design process, his interaction with others (senior managers, design and drafting team members, liaison with clients, architects, government authorities and authorised engineers) with respect to delivering projects to standards on time and within budget, and in consideration to quality, risk, environmental and health and safety matters, and describes his involvement of works carried out under the Country D Building Control Act and Regulations as preparing calculations and drawings which are further checked by a Professional Engineer.
58. He said he takes responsibility for making decisions on various complex engineering problems including managing complex engineering activities in line with good engineering management practise and describes his scope of his work during the construction stage as focusing on facilitating smooth running of the project with the use of standards and best practices.

⁸ 1158738 Applicant Portfolio - page 3 of 20

59. He says he is familiar with codes of practise and standards issued by ICE as they are used overseas and is familiar with a number of contract documentation formats.
60. He describes his work as Site Engineer, Civil Engineer and Design Engineer, specialising in the management of million-dollar complex competitive challenging projects, as having sound professional judgment, which allows him to identify, assess and manage engineering risks by considering safety, sustainability, and quality in the management of engineering work.
61. Under Professional Acumen, Mr A says he has joined a number of engineering organisations as a member, associate member and graduate member, including ASCE, IET, ISSMGE, Eng NZ, IESL, IStruct and ICE. And keeps current by attending short courses, reading journals and conference papers, and writing and presenting conference papers.
62. Mr A provided evidence statements and work records for 6 projects as listed below:
- (i) Construction and Management of Staging Ground and Infilling Works (Phase 3), for Company C, where his role was Senior Engineer, in 2016.
 - (ii) Construction and Management of Staging Ground and Infilling Works (Phase 2) for Company C where his role was Senior Engineer, in 2015.
 - (iii) Research work in structural engineering (structural performance of steel – concrete composite beams subjected to combined actions) for Organisation E, where his role was graduate research assistant in 2013.
 - (iv) Company F, where his role was senior site engineer/manager in 2014-2015.
 - (v) Company G, where his role was senior site engineer/manager in 2014-2015, and,
 - (vi) Company H, where is role was Civil Engineer in 2010-2011.

63. The Assessment Panels October 2020⁹ report stated it was satisfied the evidence Mr A submitted did not demonstrate he met the minimum standard for registration as a Chartered Professional Engineer¹⁰, under all four headings¹¹.
64. Under knowledge, the assessment panel stated, in relation to Mr A's role as site engineering supervisor, *"the documents submitted describe aspects of the project and include a series of documents and calculations undertaken by others, with no evidence of the application of engineering knowledge in any temporary work design and or design review undertaken by Mr A", and "Mr A has not claimed to have any New Zealand professional engineering experience and no evidence was provided related to work or employment in New Zealand since his graduation.... He clearly has no professional links to New Zealand (e.g. employment, work experience, mentor, etc) apart from some contact with Eng NZ associated with his registration application. In the interview he did not demonstrate knowledge and understanding of the New Zealand regulatory and professional practise environment.....the panel is of a view that Mr A would benefit from professional engineering mentoring to ensure his work experience and evidence satisfies the chartered engineer requirements"*.
65. Under managing engineering work, the assessment panel stated *"There is no evidence of critical engineering review by Mr A of any of the documents submitted (prepared by others) that he has submitted as work samples. Mr A demonstrates an ability to follow construction process. But there is no evidence of complex decision making (e.g. managing change, variations, dealing with inadequate quality, review of works"*.
66. Under professional acumen, the assessment panel stated *"Evidence of his work is not clear in the documents provided"*.

⁹ BOD 474

¹⁰ BOD 508

¹¹ The four headings address rule 6 (2); i.e. knowledge covers r 6(2)(a)(i) & (ii) & 6(2)(k); developing technical solutions covers r 6(2)(b), (d) - (f)); managing engineering work covers r 6(2)(g)), and Professional acumen covers r 6 (2)(c)

67. Under Developing Technical Solutions, the assessment panel stated *“no evidence of the work itself, signed off by Mr A himself, was provided”*.
68. Further to the initial application, and a request from the assessment panel Mr A provided additional response and documentation. This information is referred to as Assignment One.
69. In response to the assessment panels questioning on maintaining technical skills, Mr A described his academic research, the completion of a master’s degree, provided some extension to the descriptions provided in the initial documentation and added further projects dating back to 2004, in his role was design engineer for Company I.
70. In response to the assessment panels questioning on identifying regulatory, technical and good practise in his field over the last six years specific to his engineering practise in NZ, with an explanation of how he addresses and applies changes, Mr A referred to the papers he has written, his role as reviewer of an ICE publication, and said *“the theories and conceptual and detail designs in civil engineering are identical to all over the world including New Zealand”*.
71. In response to the assessment panels questioning on why the work described is complex, what were the challenging issues faced and how did you deal with these, Mr A described his role and the duration of his role on projects described in 62 above, and referred to challenges faced in each project, describing:
- (i) the use of and interpretation of various software packages including US Army corps software, SLOPE/W and Code of Practise publications on surface water as issued by a public utility board, and design using Eurocode standards, with supporting calculations¹²;
 - (ii) consideration to the management of technical and contractual issues associated with the new formation of the channel extension bund

¹² Appendix 8 and 9

involving works previously undertaken by multiple contractors, which required reworking; and,

- (iii) designing temporary structural works, and supervision of works, including precast column, beam and stair installation for 3 levels.

72. Further to Assignment One, the CAB's draft decision and following a request for review submission by Mr A, the assessment panel sought further clarification of Mr A's role and activities by issuing a further Assignment Two.

73. In response to Assignment Two Mr A provided the following:

(a) Assessment Report Section A Elements 'Work Items' – Paragraph 4

- reference to Appendix 8 and 11 of assignment #1
- a copy of the previously submitted excel spreadsheets - Appendix 8 & 8b¹³ (design of a prestressed beam & pile),
- a copy of the previously submitted Appendix 11 (design and drawings associated with an elevated circular water tank)
- an additional document 1¹⁴, which described a 31 storey building, noting the design was assessed with the use of ETABS with loading consideration to soil data and Eurocode 8.
- Document 1 included a design report, lateral loading assessment for wind and seismic loading, reference to British and European design codes, site exposure and material assumptions, identified Mr A as the design engineer for a 35¹⁵ storey tall building.

(b) Assessment Report Section A Elements 'Work Items' – Paragraph 5

- reference to Appendix 13 of Assignment #1,
- a further copy of this information under Document 2¹⁶ with a cover sheet identifying Mr A as the designer.

¹³ RC beams and Appendix – 9 Pile Foundation

¹⁴ Page 66 Assignment 2 Submission by Mr A

¹⁵ A variance on the building description.

¹⁶ Page 165 (Ref 147) Assignment 2 Submission by Mr A

- (c) Assessment Report Section A Elements ‘Work Items’ – Paragraph 6
- reference to Appendix 5 & 6 of Assignment #1,
 - a copy of Appendix 5 & 6 under Document 3¹⁷
 - a description of Mr A’s task as evaluating the use of a geosynthetic and light weight fill prior to the final design by others.
- (d) Assessment Report Section A Elements ‘Work Items’ – Paragraph 7 & 8
- reference to work samples 1-6,
 - additional information with his response under Document 4¹⁸, which included a cover sheet identifying Mr A as the preparer of the documents, with checking and reviewing by others.
- (e) Assessment Report Section A Elements ‘Engineering Knowledge’ - Paragraph 2 Sample 4
- reference to Document 5¹⁹, highlighting the designs as detailed have been compiled in accordance with British standards, Eurocodes and Singapore code of practice applicable to the various components, which included a cover sheet identifying Mr A as the preparer of the documentation, with checking and approval by others.
- (f) Assessment Report Section A Elements ‘Engineering Knowledge’ - Paragraph 5 CPD
- reference to Doc 6²⁰.
- (g) Assessment Report Section A Elements ‘Managing Engineering Work’ - Paragraph 5
- reference to Doc 7²¹.

¹⁷ Page 219 (Ref 201) Assignment 2 Submission by Mr A

¹⁸ Page 574 Assignment 2 Submission by Mr A

¹⁹ Page 848 Assignment 2 Submission by Mr A

²⁰ Page 927 Assignment 2 Submission by Mr A

²¹ Page 1064 Assignment 2 Submission by Mr A

- (h) Assessment Report Section A Elements 'Professional Acumen' - Paragraph 2
 - reference to Doc 8²², covering two relevant work reports.
- (i) Assessment Report Section A Elements 'Developing Technical Solutions' - Paragraph 2 & 3
 - reference to Doc 9²³, which he described as providing structural design and geotechnical design and developing alternatives when required.
- (j) Assessment Report Section A Elements 'Developing Technical Solutions' - Paragraph 6
 - reference to Appendix 8, 9 & 10 of assignment #1
 - comment and further response under Doc 10²⁴.

74. Following Mr A's response to Assignment Two²⁵, the assessment panel stated *"The evidence documents do provide improved clarity of the applicant's role in the preparation of the respective documents.... However the documents submitted do not address his professional activities and attributes with respect to the Assignment questions... Mr A has provided evidence which primarily demonstrates his analytical skills and reconfirms his CPD commitment. There is little to explain project relationships and the regulatory environment in which Mr A is working (overseas) and the NZ evidence.... responses to Assignment 2 do not competently address the professional practise aspects as expected. The panel finds the Assignment #2 does not demonstrate professional engineering practise competency appropriate to modify the chartership assessment report recommendation previously submitted to CAB"*.

²² Page 1065 Assignment 2 Submission by Mr A

²³ Page 1121 Assignment 2 Submission by Mr A

²⁴ Page 1305 Assignment 2 Submission by Mr A

²⁵ Via email to the RA's registrar - 18 September 2020 [BoD 500-501]

75. This panel notes that while Mr A may take a different view, the Assessors were entitled and obliged to make their recommendation on their own assessment of the evidence available at the time.
76. This panel considers the assessment panel was kind in its description²⁶ *“the response provides improved clarity of Mr As role with regards to the documentation previously submitted”*. The evidence shows little more than reference to names and roles of those involved in preparing and reviewing the documentation on cover sheets, and further to the hearing, a handwritten date change on a document, referred to by Mr A’ as his handwriting.
77. The panel accepts the assessment panels descriptions of *“little to explain project relationships and the regulatory environment in which Mr A is working (overseas) and the NZ evidence.... responses to Assignment 2 do not competently address the professional practise aspects”* as being a fair description of the contents of Mr A’s response to Assignment 2 questions, and further extends this description to Mr A’s submissions and response to questioning during the hearing.
78. This panel considers the documentation provided for consideration to registration lacks clear evidence to support Mr As’ narrative of his involvement in the work samples he has selected, and his role in consideration to complex engineering issues.
79. In his role as Graduate Research Assistant with the National University of Organisation E²⁷, he says *“The standards from key countries Euro code, British standard,..... and New Zealand’s standards were taken to a comparative study”*, and during the hearing Mr A referred to there being *“a minor variance, see 28 above, between NZ standards and those of other countries”*.
80. The RA’ professional standards coordinator informed Mr A²⁸ *“I remember advising you that if you have not worked in NZ it is not really*

²⁶ Refer to pgh 74 for extract

²⁷ 1158738 Applicant Portfolio - page 14 – Work record UKM-1 and UKM-21.

²⁸ BOD 51(& copies of this information in 59,63,67,70,74,78)

possible for your engineering projects to be assessed against NZ standards and codes. You cannot expect our assessors to feel comfortable assessing your work against the standards for Singapore. However, I have advised our Registrar that you are adamant that you wish to be assessed. Therefore I have assigned a Lead Assessor to your application and he said he will undertake this but....it may be that he cannot grant.....CPEng registration because of this fact”.

81. This panel finds the evidence does not support Mr A’s claim that he provided adequate evidence in support of r 6(2)(ii), or that the RA in accepting his application, deemed he met these NZ specific requirements.
82. The panel does not accept this ground has been proven, and in any event the ground has been remedied by this appeal process.

Ground of Appeal 2

83. Mr A alleges the procedure was flawed; he should have been provided the opportunity to present his power point presentation at the interactive.
84. Mr A also alleges the assessment panel have not understood the reviewing procedure.
85. The RA submits²⁹ CPEC does not have jurisdiction to hear this aspect of Mr A’s appeal, and the appropriate forum for procedural matters to be addressed is by way of judicial review.
86. The panel considers this matter to be procedural. This ground is dismissed on the basis that there is no jurisdiction for it to be heard, and in any event this matter is remedied by the appeal process.

Ground of Appeal 3

87. Mr A alleges a new assessment panel should have been appointed in the assessment panel member’s place after they passed away.

²⁹ RA Submission pgh 12

88. The RA submits³⁰ the assessment panel member passed away after the assessment panels initial recommendation had been finalised and issued to the CAB and before the reconsideration occurred. At this point the assessment panel member had contributed his specific area of expertise towards making the recommendation to CAB.
89. The panel considers this matter to be procedural. This ground is dismissed on the basis there is no jurisdiction for it to be heard, and in any event this matter is remedied by the appeal process.

Outcome

90. Whilst the panel acknowledges Mr A's commitment to continued education and professional development, and membership with a number of engineering institutes, some of which have been applied for after Mr A's application to the RA, this panel is tasked with considering whether the evidence demonstrates Mr A meets the minimum requirement of registration in accordance with r 6(1), and r 6(2)(a) to (k).
91. The panel have considered all of the evidence, the application, work samples, slide presentation contents, response to assignments 1 & 2, along with Mr A's submissions and concludes the evidence supports the assessment panels view that Mr A has demonstrated he has sound engineering knowledge as required in his role as a site engineering supervisor, responsible for assisting the Professional Engineer for construction monitoring in his current location; but has failed to adequately demonstrate his own knowledge and his own involvement in application of complex engineering activities and complex engineering problems, including those within the NZ jurisdiction to the level required by r 6.
92. The decision of the panel is to decline Mr A's initial registration.

³⁰ RA submission pgh 13

93. In accordance with S35 of the Act either party may appeal this decision to the District Court within 28 days.
94. Should Mr A reapply for CPEng registration in the future, the panel strongly suggests that Mr A carefully reviews the requirements of r 6 and r 7 and seek CPEng mentoring in order to ensure clarity and understanding of how to demonstrate his own personal competence and involvement in projects, as well as the difference between complex engineering and non-complex engineering.

Costs

95. Neither party have sought costs. The panel rules that any costs incurred by the parties to this appeal shall lie where they fall.

Dated this 18th day of February 2022

Signed by the Appeals Panel



Sandra Hardie – Principal



Sarah Sinclair



Anthony Fairclough

Schedule 1 – Legislation

1. Legislation for Registration and Appeals on Registration for Chartered Professional Engineers is covered by the following:
 - Chartered Professional Engineers of New Zealand Act 2002 (“the Act”)
 - Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (“the Rules”).
 - Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“the Regulations”).
2. Section 24 of the Act describes how the Registration Authority (the RA) makes decisions relating to the registration of Chartered Professional Engineers; and how the Chartered Professional Engineers Council (the Council) hears appeals on these decisions.
3. Section 40 of the Act enacts the Rules.
4. Rule 6 defines the minimum standard for registration as a Chartered Professional Engineer.
5. The overriding consideration is that expressed in R 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.
6. The matters listed in Rule 6(2) must be taken into account in making an overall assessment required by Rule 6(1).
7. The onus in Rule 6 (1) is on the applicant demonstrating competence.
8. 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. Relevant to the interpretation of Rule 6 is Rule 7 which addresses complex engineering activities and complex engineering problems.
10. Further to Rule 6 and 7, should registration be granted, Rule 21 requires the frequency of reassessment to be determined.
11. Section 45 of the Act states one of the functions of the Council is to hear appeals from decisions of the RA.
12. Section 35 of the Act, provides the right to appeal a decision of the RA to the Council.
13. 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.
14. 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).
15. The Council may make any decision that could have been made by the Registration Authority.
16. The Council does not have the power to review any part of the decision other than the part to which the appeal relates.
17. The evaluation and decisions made and implemented for an initial registration application is covered by the Rules, and the Act as follows:
 - (a) Rule 10 - the assessment panel must evaluate each applicant for registration to assess:
 - whether or not the applicant has demonstrated that he or she meets the minimum standard for registration; and
 - if so, whether the applicants continued registration should be assessed

by the end of the sixth year from 31 December of the year of this assessment, or in an earlier year.

- (b) Rule 11 - the process the assessment panel must evaluate the application.
- (c) Rule 12 - the CAB makes the decision to register (or not) an applicant.
- (d) Rule 13 - If CAB proposes to decline an application, the CAB must notify the applicant of the reasons for the proposed decision; and give the applicant a reasonable opportunity to make written submissions on the matter.
- (e) Rule 14 – the CAB may reject or vary a recommendation by the assessment panel if first the CAB requires the assessment panel to reconsider its recommendation for the reasons given by the CAB and the assessment panel reconsiders it recommendations, carried out any further steps it considers necessary under Rule 11, and reports back on whether or not its recommendations should be amended; and the CAB considers the reconsidered recommendation.
- (f) Rule 15 - the RA must notify and implement the decision.
- (g) Rule 21 – the minimum frequency of assessment of continued registration.
- (h) Rule 75 - the RA may appoint a sole assessor or an assessment panel of 2 or more assessors.
- (i) Rule 76 – an assessment panel of 2 must act unanimously in making decisions; an assessment panel of 3 or more if not unanimous, the decision of the majority of the panel is the decision of the panel.
- (j) Rule 77 - the RA must appoint the CAB consisting of 4 or more voting members and one member from the RA Board (who has no right to vote).
- (k) Rule 80 - the RA may appoint a competency assessment reviewer.

Extracts covering Rule 6 and 7 are provided below.

Rule 6:

“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.”*

Rule 7:

"7 Definitions for the 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."*

Schedule 2 - Key interactions, correspondence, submissions and communications in this appeal

- (a) 14 May 2021 – email from the panel principal to the parties acknowledging receipt of the Notice of Appeal, advising panel members and the process proposed, including submission timelines, and further instructing the RA to prepare a paginated bundle of documents.
- (b) 03 May 2021 – email from the RA with a OneDrive link to the paginated bundle of documents.
- (c) 13 September 2021 – email from the RA with contents of Mr A's Initial Application with Work Samples.
- (d) 31 May 2021 - appeal submission received from Mr A.
- (e) 21 June 2021 - submission from the RA.
- (f) 9 July 2021 - submission in response from Mr A.
- (g) 1 August 2021 – email from panel principal to the parties regarding hearing arrangements and outlining hearing agenda.
- (h) August-September 2021 - emails arranging the hearing date and confirmation of arrangements.