

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

Appeal 05/23

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

Respondent

Decision of the Chartered Professional Engineers Council
Dated 21 December 2023

Introduction

1. Mr A (“the Appellant”) has appealed a decision made by the Competency Assessment Board (“CAB”) of the Registration Authority (“RA”) declining his application for initial registration as a Chartered Professional Engineer (“CPEng”).
2. The Appeal Panel of the Chartered Professional Engineers Council (“the Appeal Panel”/ “the Council”/ “CPEC”) has been provided with a Bundle of Documents held by the RA in relation to the case. References to specific pages within this bundle are annotated “[BOD nn]”.
3. With the agreement of Mr A and the RA, the Appeal Panel conducted the hearing on the papers. Key correspondence and submissions relating to this appeal are listed in Schedule 3.

The Legislation

4. Legislation considered by the Appeal Panel is presented in Schedules 1 and 2.
5. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers Act 2002 (“the Act”).
6. Appeals to the Council are by way of rehearing (s37(2) of the Act).
7. The Appeal Panel is entitled to confirm, vary or reverse a decision (s37(5) (a)) and may make any decision that could have been made by the decision authority (s37(5) (c)).
8. 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.
9. The basis for the Council overturning an original judgement at a rehearing is outlined by 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 into account some relevant material, or
 - took into account some irrelevant material, or
 - was plainly wrong.
10. The CAB is appointed by the RA under rule 77 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (“the Rules”) and has delegated authority to make registration decisions.

Background

11. Mr A applied to the RA for initial Chartered Professional Engineering registration on 11 February 2021, with Civil Engineering and Transportation Engineering practice fields.
12. Documentation associated with his application, and made available to the Assessment Panel, includes a CV, CPD records, referee reports, and an application portfolio including five work samples consisting of four transportation and one civil.¹
13. Mr A has a Bachelor of Engineering (Civil Engineering – Transport), 2009 and Master of Engineering (Civil Engineering – Transport), 2011, both from the University B, of Country C.
14. In April 2022, the RA accorded Mr A Washington Accord recognition.²
15. On 20 July 2022 the RA appointed an assessment panel comprising Lead Assessor – Mr D FEngNZ CPEng IntPE(NZ) / APEC Engineer (Civil / Environmental Engineering) and Practice Assessor – Mr E CMEngNZ CPEng IntPE(NZ) / APEC Engineer (Engineering Management / Transportation Engineering).³
16. On 20 September 2022, Mr D emailed Mr A requesting further information (RFI) to be provided by 1 October 2022. The request sought an updated project CV, and revised statements of evidence for each work sample, and provided for “... 2-3 *additional work samples to address the issue of complexity ...*”. An explanation and guidance were also provided.⁴
17. On 28 October 2022 Mr D emailed Mr A in response to a request for clarification on the RFI under the headings of, qualifications, experience since qualification, evidence, complexity, world bank work sample, writing standards and sought completion of the RFI by the 28 November 2022.⁵
18. On 25 November 2022, Mr D granted a further time extension to Mr A for submission of the requested information to 16 December 2022.⁶
19. On 20 December 2022, Mr A provided a 57-page response to the RFI⁷. The response included four additional New Zealand civil engineering work samples, an updated description of the

¹ BOD 2 to 642

² BOD 17

³ BOD 652

⁴ BOD 654 to 655

⁵ BOD 656 to 659

⁶ BOD 660 to 661

⁷ BOD 662 to 719

previously provided four transportation and one civil work examples, and two links to online files.

20. The Assessment Panel provided a recommendation report to the CAB, dated 28 March 2023⁸.
21. The Assessment Panel considered the work samples and additional information provided fell “... within the definition of broadly defined engineering activities and agreed... “ and noted that “... an interactive discussion was not required...”⁹
22. At its meeting on 9 March 2023, the CAB accepted the recommendation from the Assessment Panel to decline Mr A’s application and noted the need to confirm the interactive statement in the recommendation report as there was some question as to whether an interactive discussion had taken place.¹⁰
23. On 28 March 2023 the RA’s Registrar advised Mr A of the CAB’s decision to decline his application.¹¹
24. On 25 and 26 April 2023, Mr A responded to the Registrar’s 28 March 2023 email and raised concerns about his competence assessment.¹²
25. Mr A attached a written submission (11 pages) to his email of 25 April 2023, in which he outlined his concerns under 9 statements (‘Written Submission to ENZ’), namely:

“.....

Statement (1): ‘Omitting necessary work samples support evidence.’

Statement (2): ‘Unclear/incomplete request for further information.’

Statement (3): ‘Misinterpreted conversation with referees.’

Statement (4) ‘Failure to take appropriate account of the provided information’.

Statement (5) ‘Failure to recognise the work samples demonstrate that the applicant meets the minimum standard for registration.’

Statement (6) ‘Failure to recognise Civil Engineering as practice area’.

Statement (7) ‘Four additional work samples were omitted.’

⁸ BOD 720 to 734

⁹ BOD 722

¹⁰ BOD 741

¹¹ BOD 753 to 754

¹² BOD 751 to 752

Statement (8): 'Onerous request for work samples evidence'

Statement (9): 'Assessment of previous similar applications/cases should be taken as a precedence/baseline'.

.....".¹³

26. The Registrar acknowledged Mr A's concerns on 26 April 2023 and agreed to forward his concerns to the Assessment Panel for review.¹⁴
27. On 28 April 2023, in response to a query from Mr A on the same date¹⁵, the Registrar provided explanation of the CPEng Rules (13 and 14) process for natural justice¹⁶, and further explained why his request was sent back to the assessment panel for their response as to whether their recommendation should be amended before consideration by the CAB, which Mr A acknowledged.¹⁷
28. On 24 May 2023, Mr A wrote to the Registrar noting that he had been notified that a new assessor had been assigned to his application and seeking clarification on the process.¹⁸ His interest was in whether the process provided for his information to be combined in a new application format as it was currently scattered between the original application and the RFI response, which could be confusing to the new assessor, and influence that assessor by the history.
29. On 25 May 2023, the Registrar reminded Mr A of the content of her earlier 28 April 2023 email, and advised she had assigned two new assessors to his application in response to concerns raised by Mr A in relation to the original Assessment Panel.¹⁹
30. On 5 June 2023 Mr A queried an automatically generated notification he had received advising of one not two new assessors, had been appointed and highlighted his earlier emailed concerns regarding potential conflict of interest with the two assessors from the original Assessment Panel.²⁰

¹³ BOD 755 to 769

¹⁴ BOD 750 to 751

¹⁵ BOD 749 to 750

¹⁶ BOD 747 to 748

¹⁷ BOD 747

¹⁸ BOD 746 to 747

¹⁹ BOD 744 to 745

²⁰ BOD 743 to 744

31. An interactive discussion was held on 6 June 2023, after which Mr A followed up on concerns in relation to his email of 5 June 2023 following his interview with the 3-person Assessment Panel that day.²¹
32. On 9 June 2023, the Registrar responded to My A reiterating her comments of 28 April 2023 with regards to rules 13 and 14, and the process, noting Mr F, an experienced Lead Assessor, had been asked to review the application. No response was provided for the change from two to one new assessor.²²
33. On 24 July 2023, the 3-person Assessment Panel, Lead Assessor Mr D, Practice Assessor Mr E and additional Lead Assessor Mr F CMEngNZ CPEng IntPE(NZ) / APEC Engineer (Civil / Environmental Engineering), confirmed the recommendation that Mr A's application should be declined, having "*...undertaken a detailed consideration and careful review of the applicant's submission, including the original application, the evidence provided during the requests for information, and the request for reconsideration.*"²³ concluding "*... there is no additional evidence contained within the applicant's submission which would support a change to decline recommendation.*"²⁴
34. The CAB met on 20 July 2023, reviewed the Assessment Panel's July 2023 recommendation and agreed to decline Mr A's application, as per the Assessment Panel's recommendation.²⁵
35. On 24 July 2023 the Registrar informed Mr A that the CAB had declined his application, citing the reason for the decision as:²⁶

".....

- "*Insufficient evidence to demonstrate competency in **Engineering Knowledge** as required under the Chartered Professional Engineer Rule 6(2)(a)(i)(ii) and 6(2)(k), specifically:*
 - *6(2)(a)(ii): Failed to demonstrate knowledge of good practice for professional engineering that is **specific to New Zealand***

²¹ BOD 743

²² BOD 742

²³ BOD 776

²⁴ BOD 777

²⁵ BOD 790

²⁶ BOD 791 to 792

- 6(2)(k): Failed to demonstrate maintained currency of professional engineering knowledge and skills.
- **Insufficient evidence to demonstrate competency in *Managing Engineering Work* as required under the Chartered Professional Engineer Rule 6(2)(d)-(g), specifically:**
 - 6(2)(d): Failed to demonstrate sound professional engineering judgement.
 - 6(2)(g): Failed to demonstrate how you identify, assess, and manage engineering risk.
- **Insufficient evidence to demonstrate competency in *Professional Acumen* as required under the Chartered Professional Engineer Rule 6(2)(h)-(j), specifically:**
 - 6(2)(j): Failed to demonstrate you communicate clearly to other engineers and others that you are likely to deal with in the course of your professional engineering activities.
- **Insufficient evidence to demonstrate competency in *Developing Technical Solutions* as required under the Chartered Professional Engineer Rule 6(2)(b)-(c):**
 - 6(2) (c): Failed to demonstrate you design or develop solutions to complex engineering problems in accordance with good practice for professional engineering
- **Insufficient evidence to demonstrate capability to define, investigate and analyse *complex* engineering problems or to design or develop solutions to complex engineering problems in accordance with good practice for professional engineering as required under the Chartered Professional Engineer Rule 7.**

.....”

36. Mr A lodged a Notice of Appeal of the CAB decision on 6 August 2023.²⁷

²⁷ BOD 794 to 800

Evidence received.

37. 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.
38. The evidence considered by the Panel in arriving at its decision included:
- (a) Notice of Appeal dated, and received on, 6 August 2023
 - (b) The paginated Bundle of Documents [BOD 1 to 800], provided by the RA
 - (c) Submissions of Mr A dated 24 September 2023, including two examples of other successful applications and online content accessed by a link ²⁸
 - (d) Submissions of the RA dated 6 October 2023
 - (e) Reply submissions of Mr A dated 7 and 9 October 2023.

Grounds of appeal and outcome sought

39. Mr A's Notice of Appeal provided 9 statements in the grounds of appeal section²⁹, as follows:

“.....

Statement (1): 'Omitting necessary work samples support evidence.'

Statement (2): 'Unclear/incomplete request for further information.'

Statement (3): 'Misinterpreted conversation with referees.'

Statement (4) 'Failure to take appropriate account of the provided information.'

Statement (5) 'Failure to recognise the work samples demonstrate that the applicant meets the minimum standard for registration.'

Statement (6) 'Failure to recognise Civil Engineering as practice area'.

Statement (7) 'Four additional work samples were omitted.'

Statement (8): 'Onerous request for work samples evidence'

Statement (9): 'Assessment of previous similar applications/cases should be taken as a precedence/baseline'.

²⁸ https://drive.google.com/file/d/1SDWbUq2z_HHOomML2ZHrCYe0iqYm45qk/view?usp=sharing

²⁹ BOD 798

.....”.

40. The outcome sought by Mr A is to have the decision to decline his application reversed.³⁰

Discussion – Consideration of grounds of appeal

41. For Mr A’s application for initial CPEng registration to have been successful, he needed to demonstrate to the Assessment Panel, and ultimately to the CAB, that he met the minimum standard of competence to be registered as a CPEng³¹, as set out in Rules 6.³²
42. Rule 6(1) provides that, to meet the minimum standard for registration, Mr A must demonstrate he is able to practise competently in his practice area to the standard of a reasonable professional engineer.
43. Rule 6(2) sets out a list of abilities to be taken into account when assessing whether an applicant meets the standard. It includes the extent to which the applicant can:
- (a) comprehend and apply their knowledge of accepted principles underpinning widely applied good practice for professional engineering (rule 6(2)(a)(i));
 - (b) comprehend and apply their knowledge of accepted principles underpinning good practice for professional engineering that is specific to New Zealand (rule 6(2)(a)(ii));
 - (c) define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering (rule 6(2)(b));
 - (d) design or develop solutions to complex engineering problems in accordance with good practice for professional engineering (rule 6(2)(c));
 - (e) be responsible for making decisions on part or all of one or more complex engineering activities (rule 6(2)(e));
 - (f) manage part or all of one or more complex engineering activities in accordance with good engineering management practice (rule 6(2)(f));
 - (g) communicate clearly to other engineers and others that they are likely to deal with in the course of professional engineering activities generally (rule 6(2)(j)); and
 - (h) maintain the currency of their professional engineering knowledge and skills (rule 6(2)(k)).

³⁰ BOD 799

³¹ Section 8(b) of the Act

³² The Chartered Professional Engineers of New Zealand Rules (No 2) 2002

44. The terms “complex engineer activities” and “complex engineering problems” are defined by rule 7.
45. Mr A ‘s application, the assessment reports and the CAB’s final decision have grouped for rule 6(2) requirements under four headings, namely Engineering Knowledge³³, Managing Engineering Work³⁴, Professional Acumen³⁵ and Developing Technical Solutions³⁶.
46. Mr A provides 9 grounds (statements 1 to 9) as to why the CAB decision was wrong.
47. The RA in its submission has rephrased Mr A’s statements under four main grounds.
48. The Appeal Panel considers it appropriate to combine and consider Mr A’s statements under these 4 main grounds, namely:
- **Alleged failure to consider all relevant information**, which covers Mr A’s Statements 1, 4 and 7 and the RA’s numbering (a), (d), and (g);
 - **Process errors**, which covers Mr A’s Statements 2, 6, 8 and 9 and the RA’s numbering (b), (f), (h), and (i);
 - **Misinterpretation of information**, which covers Mr A’s Statement 3 and the RA’s numbering (c); and
 - **Applying the required test**, which covers Mr A’s Statement 5 and the RA’s numbering (e).
49. Noting the reasons cited by the CAB for declining Mr A’s application, the task before the Appeal Panel, is to place itself in the role of the CAB and to establish:
- (i) whether or not the evidence demonstrates Mr A’s ability to meet the assessment criteria³⁷; and
 - (j) that he is able to practise competently in his practice area to the standard of a reasonable professional engineer.³⁸

Alleged failure to consider all relevant information – Statements 1, 4 & 7

50. Statements 1, 4 and 7 relate to the concern raised by Mr A that the Assessment Panel did not consider all the information he submitted as part of his assessment process.

³³ Rules 6(2)(a)(i), 6(2)(a)(ii) and 6(2)(k)

³⁴ Rules 6(2)(d) to (g)

³⁵ Rules 6(2)(h) to (j)

³⁶ Rules 6(2) (b) & (c)

³⁷ BOD 776

³⁸ Rule 6(1)

51. Mr A provides further information in relation to Statement 1 in his submission³⁹ and refers to his earlier 'Written Submission to ENZ' for information relating to Statements 4 and 7.⁴⁰

Statement (1): 'Omitting necessary work samples support evidence.'

Work samples

52. Mr A submits that the "request for reconsideration" section of the July 2023 Assessment Report, coupled with the acknowledgement by the assessors in the March 2023 assessment report that the RFI response was read without the necessary evidence documents provided, demonstrates a lack of detail and consideration by the Assessment Panel to consider all of the evidence provided.
53. He seeks that "...the 'Panel' provide a statement that the 'Application to ENZ' and 'RFI Response to ENZ' including supporting evidence files and the 'Written Submission to ENZ' were read in full before the 'Assessment Report 2 by ENZ' by the lead assessor ... and the practice assessor ... and the additional lead assessor ..." ⁴¹
54. He says, the evidence supporting a change to the decision is contained within the 'RFI Response to ENZ' and its supporting evidence files whereas the 'Written Submission to ENZ' points out that the supporting evidence files actually need to be downloaded and read.
55. He also says that the July 2023 Assessment Report fails to comment on the additional evidence and additional work samples 6, 7, 8 and 9, provided in the 'RFI Response to ENZ' and that these were possibly never read and considered.
56. The Assessment Report notes the nature of the work samples provided including the additional information provided was assessed by the Assessment Panel as "...falling within the definition of broadly defined engineering activities..."⁴² It goes on to note that "The work samples and records align with the applicant's assessed practice field and practice area. The Practice field and practice area description are as assessed by the panel. The Panel notes that if the applicant were granted registration that his Practice Field is Transportation only... The evidence did not support the inclusion of Civil as a practice field."⁴³
57. In relation to the request for reconsideration the Assessment Report notes that

³⁹ A Submissions Page 2 and 3

⁴⁰ A Submissions Page 3

⁴¹ A Submissions Page 2 and 3

⁴² BOD 772

⁴³ BOD 775

“The Panel has undertaken a detailed consideration and careful review of the applicant’s submission, including the original application, the evidence provided during the requests for information, and the request for reconsideration. The Panel and Mr. F have concluded that there is no additional evidence contained within the applicant’s submission which would support a change to the decline recommendation.”⁴⁴

58. The RA submits that *“...the Assessment Panel considered all relevant information properly submitted to it as part of Mr A’s application before making its recommendation. The Assessment Panel did not write extensively about its evaluation of each of Mr A’s nine work samples in detail in its recommendation, but this should not be taken to imply that the samples were not all read and carefully considered...”⁴⁵*
59. The RA further submits *“...In any event, the information is all available now to this Council to review...”⁴⁶* and *“...all nine work samples which were available to the Assessment Panel and CAB are now also available to CPEC for its consideration...”*, and *“...The evidence in this matter supports the decision by the CAB to decline Mr A’s application on the basis that he did not demonstrate he was able to practise competently in his practice area to the standard of a reasonable professional engineer.”⁴⁷*
60. The Appeal Panel has considered all 9 samples.
61. The Appeal Panel also notes that the four additional work samples are in the field of Civil Engineering and do not provide further demonstration of Mr A’s Transportation Engineering competency.
62. Mr A suggests the Assessment Panel failed to consider the practise field as both Transportation and Civil in its reassessment, as considered under Statement 6.
63. The Appeal Panel is satisfied the nature of all work samples falls within the definition of broadly defined engineering activities and are not complex in nature.
64. Further the Appeal Panel is satisfied that there is sufficient evidence that the Assessment Panel considered all relevant information.

⁴⁴ BOD 776 to 777

⁴⁵ RA Submissions 6.4

⁴⁶ RA Submissions 6.5

⁴⁷ RA Submissions 6.7

65. The Appeal Panel finds that in relation to the consideration of work samples as described in Mr A's submissions in relation to Statement 1, the statement is not proven and therefore does not provide a basis to overturn the decision of the CAB.

Interactive

66. With regards to the interactive, Mr A states that:

"It is unclear what was the real purpose of the undertaken interactive and what were its possible outcomes.

Before the interactive, the applicant received a courtesy call from Mr. F, Mr F expressed that he does not understand what the problem with my application is and that it would likely be pass if he is the assessor, however here he is only to witness the process.

From the reactions of assessors during the interactive I consider the interactive went very well. Mr. F and Mr. D had many questions, and they did not express any concern or disagreement with the applicant's response. Mr. E did not engage, and I do not recall him asking any questions. I asked the panel whether they had any further questions, they were satisfied and did not have any. The logical assumption is the interactive was satisfactory.

After the interactive, I received a courtesy call from Mr. F stating that the interactive went well, however, the decision still is to decline and that he does not have much say, he is here more or less to witness and cannot override the decision of the other assessor. The question of whether 'it would pass' if it was with him was tactically answered 'I was a borderline'.

It appears to me the interactive was only a 'box ticking' exercise without a possible positive outcome, realistically it was decided before."⁴⁸

67. His submission is consistent with the email he sent to the RA on 5 June 2023 where he stated, *"we had the interview with all three assessors this morning, it looked all good, everyone looked satisfied with everything, no one had further questions however to my understanding they will let me fail anyway."⁴⁹*

⁴⁸ A Submissions Page 3

⁴⁹ BOD 743

68. The Assessment Report states *“Having carefully considered Mr. A’s submission and the discussion during the interactive, the Panel has confirmed the recommendation that this application be declined. Mr. F has confirmed that he concurs with this recommendation.”*⁵⁰
69. The RA did not respond directly to Mr A’s concerns about the interactive in June 2023 and has made no submission on this point as part of the Appeal process.
70. The Appeal Panel is concerned that Mr A’s account of the interactive, differs from the Assessment Report which specifically states that Mr F agreed with the recommendation of the Assessment Panel.⁵¹
71. The Appeal Panel expects that all applicants should be treated fairly and with respect during the assessment process and that Assessors should refrain from personal opinion outside the agreed process.
72. However, the Appeal Panel is satisfied that if the interaction with the Assessment Panel, as described in Mr A’s submissions in relation to Statement 1, had occurred it does not provide a basis for the decision of the CAB to be overturned as it relates to the actions of the RA, and does not demonstrate Mr A’s competence.

Statement (4) ‘Failure to take appropriate account of the provided information’

73. Mr A, in his ‘Written submission to ENZ’ suggests the format rather than the content of his application has resulted in inadequate recognition of the complexity of the work he undertakes. He further notes that if the RA did not have sufficient information they could have requested more.⁵²
74. As outlined in paragraphs 16 to 18 above , the Assessment Panel requested further information from Mr A as part of the assessment process, including providing clarification on the nature of the requested information and provided a time extension for submission of the additional information.
75. The RA considers that *“The Panel’s request for further information was neither unclear nor incomplete ...”*⁵³

⁵⁰ BOD 777

⁵¹ BOD 777

⁵² BOD 761

⁵³ RA submission 6.1 b)

76. The Appeal Panel has reviewed the RFI and the subsequent correspondence between the Assessment Panel and Mr A and considers that Mr A was given clear direction on the information required and an extended period to provide the information.
77. The Appeal Panel finds that Statement 4 is not proven.

Statement (7) 'Four additional work samples were omitted.'

78. Mr A, in his 'Written submission to ENZ' asserts that the four additional civil work samples submitted as part of RFI process were not specifically referred to in the Assessment Report.
79. For the reasons outlined in paragraph 56 to 64 the Appeal Panel is satisfied that that Statement 7 is not proven, and therefore does not provide a basis to overturn the decision of the CAB.
80. In summary, the Appeal Panel is satisfied that none of Statements 1, 4 or 7 are proven and therefore do not provide a basis to overturn the decision of the CAB.

Process errors – Statements 2, 6, 8 and 9

81. Statements 2, 6, 8 and 9 relate to perceived process errors on the part of the Assessment Panel.
82. The Appeal Panel notes that even if proven, process errors do not provide a basis for the decision of the CAB to be overturned.
83. Mr A provides further information in relation to Statement 9 in his submission and refers to his earlier 'Written Submission to ENZ for information on Statements 2, 6 and 8.

Statement (2): ‘Unclear/incomplete request for further information.’

84. In his ‘Written Submission to ENZ’ in relation to Statement 2, Mr A asserts that the RA was too narrow in its request for information by limiting it to demonstration of competence in relation to Rule 6(2) (c and e), yet being silent on information to demonstrate competence in relation to Rule 6(2)(a)(ii) and (b, c, d, g, j and k).⁵⁴ Noting “c” is repeated in both statements.
85. The RA has not provided any additional information in its submission, simply stating it is up to “...*If any procedural errors occurred during the Registration Authority’s decision making in this matter (which is denied), those errors would in any event be cured by way of this Council rehearing the application.*”⁵⁵
86. The Appeal Panel has reviewed the 3 messages (‘The RFI correspondence’) sent by the Assessment Panel to Mr A titled Further Information Request, dated 20 September 2022⁵⁶, Clarification of RFI, dated 28 October 2023⁵⁷, and Further Time Extension, dated 25 November 2022.⁵⁸
87. The Appeal Panel notes that the RFI correspondence requests information that relates to all rules assessed including specific reference to New Zealand specific knowledge requirements (Rule(6(2)(a)(ii)), engineering judgement (Rule 6(2)(d), recent experience (Rule 6(2)(k)). The Appeal Panel further notes that although the Assessment Panel did not use the specific words used in the remainder of the rule, it is satisfied that Mr A was given every opportunity to provide the required information.
88. The Appeal Panel finds that Statement 2 is not proven., and therefore does not provide a basis to overturn the decision of the CAB.

Statement (6) ‘Failure to recognise Civil Engineering as practice area’.

89. As outlined at 56, the Assessment Report states that “*The evidence did not support the inclusion of Civil as a practice field.*”⁵⁹
90. Mr A, in his ‘Written submission to ENZ’ asserts that his qualification, although referred to as transport is more closely aligned to Civil Engineering – Transport Infrastructure and that

⁵⁴ BOD 758

⁵⁵ RA Submissions 6.9

⁵⁶ BOD 654 to 655

⁵⁷ BOD 656 to 659

⁵⁸ BOD 660 to 661

⁵⁹ BOD 725 and 775

6 out of the 9 work samples provided, including 4 provided with the RFI response, were examples of Civil projects.⁶⁰

91. The RA noted in its submission that the *“...Lead Assessor’s practice fields are civil engineering and environmental engineering. The first Practice Area Assessor’s practice fields are engineering management and transportation engineering”*⁶¹ and the *“...second Lead Assessor... His practice fields are civil engineering and environmental engineering.”*⁶²
92. It further notes that it submits that *“The Panel was correct in finding that Mr A had failed to demonstrate he meets the minimum standard for registration in the practice area of Civil Engineering;”*⁶³
93. The RA submits that the Assessment Report provides detail on the specific civil work samples 1 and 5 as to why they do not demonstrate sufficient complexity, specifically the *“...Panel considered work sample 1 lacked complexity and the engineering activities fell within the definition of broadly based engineering activities.”*⁶⁴ and the *“...Panel found work samples 4 and 5 were also broadly defined engineering activities, lacking in sufficient complexity, and relied on codes of practice and standard details to obtain design approval from the building consent authority.”*⁶⁵
94. Work samples 1, 4 and 5 fall within practise area description of civil engineering.
95. As outlined in paragraph 57, the Assessment Panel did not consider the additional work samples 6 to 9 provided any additional evidence to support a change to the decline recommendation.
96. The Lead Assessors both have Civil Engineering as their Practice Fields.
97. The Appeal Panel has no reason to doubt the credentials of the Assessment Panel and has seen no evidence from Mr A that challenges those credentials.
98. Further, the Appeal Panel has seen no evidence that the Assessment Panel has been derelict in the performance of its duties in considering Mr A’s demonstration of competence.

⁶⁰ BOD 766

⁶¹ RA Submissions 3.87

⁶² RA Submissions 3.41

⁶³ RA Submissions 6.1f)

⁶⁴ RA Submissions 3.25

⁶⁵ RA Submission 3.29

99. The Appeal Panel finds that Statement 6 is not proven and therefore does not provide a basis to overturn the decision of the CAB.

Statement (8): 'Onerous request for work samples evidence'

100. Mr A asserts that the RFI from the RA was too onerous.⁶⁶ This appears to contradict his earlier statement that if the RA required more information, they could have requested it in relation to Statement 1.⁶⁷
101. The RA has not provided a specific submission on this matter.
102. The Appeal Panel has reviewed the RFI correspondence as referred to in paragraph 86. The Appeal Panel considers the Assessment Panel were measured in their requests and provided clear guidance on the nature of the information requested including *"the panel envisages that each evidence statement would comprise 1-2 pages of text with annotations and reference to evidence in your existing work samples ... alternatively, you may wish to provide 2-3 additional work samples to address the issue of complexity."*⁶⁸
103. The Appeal Panel does not consider these requests to be onerous especially given the two time extensions Mr A was provided with to submit.
104. The Appeal Panel finds that Statement 2 is not proven and therefore does not provide a basis to overturn the decision of the CAB.

Statement (9): 'Assessment of previous similar applications/cases should be taken as a precedence/baseline'.

105. Mr A notes in his submission that the BOD does not include previous accepted applications that he previously submitted to the RA⁶⁹ and has therefore provided them with his submission.
106. The RA submits⁷⁰ *"...For privacy reasons, it would not be appropriate for the Registration Authority to comment further on the specifics of the two other applicants."* And further submits⁷¹ that *"each application must be assessed on its own merits. No two applications*

⁶⁶ BOD 7676

⁶⁷ BOD 758

⁶⁸ BOD 655

⁶⁹ A Submissions Page 4

⁷⁰ RA Submissions 6.11

⁷¹ RA Submissions 6.12

and no two applicants are the same. It is for each individual applicant to demonstrate that they meet the minimum standard for registration...”

107. The Appeal Panel accepts whilst it can be helpful in comparing submissions, no two submissions are typically identical and considers Statement 9 has no merit.

Misinterpretation of information – Statement 3

Statement (3): ‘Misinterpreted conversation with referees.’

108. Mr A submits *“Both referees were from my workplace at City Council – Transport. They are eventually in the position to confirm only my 3 years experience and competence at the council, not my whole New Zealand professional experience and competence, which has been 9 years. Referees are not in the position of assessing applicants complex engineering activities. As mentioned above, they can confirm specific experience and competence.”*⁷²
109. The 28 March 2023⁷³ and 24 July 2023⁷⁴ Assessment Reports have identical references to referee interactions, stating *“Supportive referee reports were received, both of whom were contacted to confirm the applicants New Zealand experience and competence ... they were unable to confirm that the applicant had undertaken complex engineering activities.....and advised his collaborative and communication skills were not of a level expected of a reasonable professional engineer....”*
110. The RA states it is up to *“... CPEC to determine which evidence it prefers.”*⁷⁵ However, it goes on to note that *“In any event, the feedback from Mr A’s referees was not the sole, or even the primary, reason his application was declined.”*⁷⁶
111. In contrast to Assessment Reports, neither referee was supportive of Mr A obtaining Chartered Professional Engineer status. Both answered *“No”*⁷⁷ to the referee questionnaire, Q3, do you support their registration as a Chartered Professional Engineer? No reasoning has been offered for this.
112. In response Mr A’s questioning to him, referee #1 confirmed, he was not in a position to comment on whether Mr A’s work met the complexity defined in the rules and both

⁷² BOD 759

⁷³ BOD 759 to 760

⁷⁴ BOD 770 to 786

⁷⁵ RA Submissions 6.16

⁷⁶ RA Submissions 6.16

⁷⁷ BOD 641 and 642

provided a variance from that reported in the assessment report on Mr A's collaborative and communication skills. Neither referee supported Mr A's application for CPEng.

113. The Appeal Panel considers, whilst Statement 3 has some merit, it is not supported by the referee's evidence as originally submitted, and no reasoning for the variance between the assessment report and this has been offered.

114. Coupled with this, it does not address the primary reasons for Mr A's decline.

Applying the required test – Statement 5

Statement (5) 'Failure to recognise the work samples demonstrate that the applicant meets the minimum standard for registration.'

115. Mr A provides no information in relation to Statement 5 in his submission and refers to his earlier 'Written Submission to ENZ'.

116. With regards to work sample 3, Mr A submits that the Assessment Panel "*...may have an elementary misunderstanding of the scope of the project and other circumstances, limitations and project requirements.*"⁷⁸

117. The RA submits that the Panel had "*...concerns that work sample 3 did not demonstrate the application of current knowledge and good practice. [BoD, p732]*". It believed "*Mr A failed to identify the limitations of the NZTA treatment selection algorithm, failure mechanisms, data management, asset management, and lifetime costing principles. No evidence was provided of any verification or validation processed used to test the treatment selection algorithm.*"⁷⁹

118. The Appeal Panel notes that this is the same quote Mr A takes exception to in his 'Written Submission to ENZ'. Neither the Assessment Panel nor the RA have responded to the concerns Mr A has raised.

119. It is unclear what the Assessment Panel did with the detailed additional information provided by Mr A in his 'Written Submission to ENZ'⁸⁰

⁷⁸ BOD 761

⁷⁹ RA Submissions 3.28

⁸⁰ BOD 761 to 766

Other matters

RA Recommendation

120. In relation to 35(a) above Mr A, in his response to the RA Submissions⁸¹, notes that he did engage with industry groups while working in New Zealand, having basic membership to Industry Group G, engagement with Industry Group H & I and Industry Group K through the utilisation of their publications and resources.
121. The Appeal Panel considers the additional information has little merit.

Findings

122. The Appeal Panel has considered the nine statements as grounds of appeal cited by Mr A, has considered Mr A's submissions, along with the related submissions of the RA and Mr A's submissions in response, and the contents of the BOD.
123. The Appeal Panel finds that none of the nine statements were proven, to the extent, the Appeal Panel considered overturning the decision or returning the matter back to the RA, for reconsideration.
124. The appeal is dismissed and the CAB's decision to decline Mr A's initial CPEng registration is upheld.
125. The Appeal Panel acknowledges the CAB decision and urges Mr A to reflect on the matters for consideration should he consider reapplying in the future.

Costs

The Panel rules that costs incurred by Mr A and the RA respectively shall lie where they fall.

Right of appeal

126. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated 21 December 2023

Signed by the Panel



Simonne Eldridge
Principal



Sandra Hardie



Manjit Devgun

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 s40 of the Act.
4. Rules 6 and 7 are presented in Schedule 2.
5. Rule 6 defines the minimum standards for registration as a Chartered Professional Engineer.
6. Relevant to the interpretation of Rule 6 is Rule 7 which addresses complex engineering activities and complex engineering problems.
7. 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.
8. 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).
9. 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).
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. 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.

13. 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).
14. The Council may make any decision that could have been made by the Registration Authority.
15. The Council does not have the power to review any part of the decision other than the part to which the appeal relates.
16. The evaluation and decisions made and implemented for an initial registration application are covered by the Rules, and the Act as follows:
17. Under 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.
18. Rule 11 - the process by which the assessment panel must evaluate the application.
19. Rule 12 - the CAB makes the decision to register (or not) an applicant.
20. 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.
21. 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 its recommendations, carries 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.
22. Rule 15 - the RA must notify and implement the decision.
23. Rule 21 - the minimum frequency of assessment of continued registration.

24. Rule 75 - the RA may appoint an assessor or an assessment panel of 2 or more assessors.
25. Rule 76 – an assessment panel of 2 must act unanimously in making decisions; if an assessment panel of 3 or more is not unanimous, the decision of the majority of the appeal panel is the decision of the assessment panel.
26. Rule 77 - the RA must appoint the Competency Assessment Board consisting of 4 or more voting members and one member from the RA Board (who has no right to vote).
27. Rule 80 - the RA may appoint a competency assessment reviewer for a particular case or for a class of cases.

Schedule 2 – Extracts of the Act and the Rules

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 standards 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 3 - Key correspondence and submissions

- (a) Notice of Appeal by email (6 August 2023)
- (b) Email from CPEC Chair to Mr A, requesting copy of RA email and Assessment report (7 August 2023)
- (c) Copy of email from RA dated 24 July 2023, advising CAB final decision, along with attached copy of assessment report also dated 24 July 2023. (7 August 2023)
- (d) Email from RA containing link to Bundle of Documents (16 August 2023)
- (e) Letter from CPEC Chair naming Panel members, identifying RA contact, confirming BOD to be provided, outlining the appeal process, grounds of appeal and outcome sought and addressing hearing arrangements and communications. (4 September 2023)
- (f) Letter from Panel principal establishing submissions schedule (7 September 2023)
- (g) Email from Mr A to Panel Chair requesting clarification on Appeals Process (12 September 2023)
- (h) Email from Mr A to RA, copied to CPEC Chair requesting clarification on submission process (14 September 2023)
- (i) Email from Panel Principal to Mr A responding to email from Mr A to RA, copied to CPEC Chair requesting clarification on submission process (18 September 2023)
- (j) Email from Mr A requesting shift of deadlines for submissions from Fridays to Sundays (21 September 2023)
- (k) Email from RA confirming they had no objection to date shift (21 September 2023)
- (l) Email from Panel Principal confirming new submission dates (21 September)
- (m) Submissions from Mr A (25 September 2023)
- (n) Submissions from RA (6 October 2023)
- (o) Acknowledgement of receipt for RA Submissions from Mr A and confirmation of no further response to be provided (7 October 2023)
- (p) Email from Mr A providing one further submission (9 October 2023)

- (q) Email from Panel Principal reminding Mr A that the response submission period was one until 15 October 2023 (9 October 2023)
- (r) Email from Panel Principal to Mr A acknowledge his emails of 7 and 9 October as his response submission (29 October 2023)
- (s) Letter from Panel Principal proposing that the appeal be heard on the papers (31 October 2023)
- (t) Email from the RA confirming no objection to the hearing being on the papers (2 November 2023)
- (u) Email from Mr A confirming no objection to the hearing being on the papers (4 November 2023)
- (v) Email from Mr A requesting estimate for the hearing (the Panel took this as a request for the decision given the parties had agreed to a decision on papers) (29 November 2023)
- (w) Email from Panel Principal confirming that the Panel is looking to provide a decision prior to the Christmas break (29 November 2023)