

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

Appeal 03/22

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 Institute of Professional Engineers T/A
Engineering NZ (as the Registration Authority under
the Chartered Professional Engineers of New
Zealand Act 2002)

Respondent

Decision of the Chartered Professional Engineers Council

Dated 22 March 2024

Introduction

1. Mr A has appealed a decision of the Competency Assessment Board (“the CAB”) of the Registration Authority (“the RA”), declining his application for continued registration as a Chartered Professional Engineer (CPEng).
2. Mr A has remained registered pending this decision¹.
3. The RA has provided a bundle of documents, all of the information the RA holds. Specific references to pages within the bundle of documents are annotated by [BOD nnn].

The Legislation

4. Legislation considered by the appeal panel (“the Panel”) is presented in Schedules 1 & 2.
5. Appeals to the Council are by way of rehearing (S37(2) of the Act). The 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)).
6. 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 the appellant carries the burden of satisfying the panel that it should do so.

Background

7. Mr A has been a CPEng with a structural practice area since 2003. He has been re-registered twice since then in 2008 and 2013.
8. The timeline of Mr A’s assessment is provided in Schedule 3.
9. Mr A registration expired on 31 December 2020.
10. The RA notified Mr A of this on 11 January 2019, and he submitted his application in June 2019.
11. The RA processed his portfolio between June 2019 and August 2022.
12. In August 2019, the RA notified Mr A of delays with processing assessments and noted his registration would not be affected if his reassessment was successfully submitted by 31 December 2019.

¹ 03/22 - Decision of the Chartered Professional Engineers Council on the Appellant’s Applications for a Stay of Removal from the Register 8 December 2022.

13. In March 2020, the RA's two-person assessment panel consisting of a lead and a structural practice field assessor, held an online interactive interview with Mr A.
14. Following the interview, the assessment panel requested the RA appoint a second practice area assessor with structural experience.
15. On 30 November 2020, the lead assessor asked Mr A to provide his written response to a number of questions relating to his submitted work samples, clarifying, or adding detail to his submitted evidence enabling the assessment panel to complete his CRA. Seventeen questions were asked, fifteen with respect to work sample BH-36; and 1 each for work samples F2-82 and MM-11.
16. The work samples represented a number of design and construction techniques.
 - (a) Work sample BH-36 is a new Terraced House Development at Location B.
 - (b) Work sample F2-82 is two warehouses complete with office at Location C
 - (c) Work sample MM-11 is a proposed residence at Location D.
17. The lead assessor noted they would like to see his responses supplemented with references to the project calculations and if possible, include references to the relevant sections of the project structural drawings. He encouraged Mr A to include whatever supplementary information he felt was necessary to provide a response to each question.
18. Following a request for an extension of time, Mr A provided his response on 20 January 2021. He explained in a letter, the work samples were current work in progress. He referenced the Location B building (BH-36) as 'being at a fairly preliminary stage when submitted' and provided updated calculations for the current building.
19. The assessment panel submitted its report to the CAB on 11 November 2021.
20. This report consolidated Mr A's practice area to *"Structural design and construction observation of low-rise buildings"*, and concluded

"based on the evidence provided, the work Mr A is involved in meets the complexity requirements for a Chartered Professional Engineer", but concluded based on the evidence and the written response to the assignment set by the Assessment panel, that Mr A has not demonstrated he is still competent to practice as he was *"not applying best practice"*, and was *"not recognising the need for appropriate analysis and assessment."* [BOD 260]
21. The assessment panel concluded *"Mr A has not demonstrated continued competency in his practice area and recommends continued registration as a Chartered Professional Engineer be declined."* [BOD 261].

22. Under the heading “*Assessment Panel Recommendation following assessment of additional material*” [BOD 287], the assessment panel noted a number of potential concerns and concluded there was insufficient evidence to demonstrate the minimum standard required of a CPEng had been met.
23. The assessment panel further noted flaws in Mr A’s submission including:
- (a) an incorrect assessment the seismic demands of one submitted work sample;
 - (b) using simplified methods of structural analysis for a complex building structure resulting in an inaccurate evaluation of element design forces
 - (c) non compliant detailing of wall reinforcement resulting in inadequate development of flexural wall reinforcement
 - (d) a lack of QA processes
 - (e) a lack of suitable design calculations
 - (f) incorrect capacity of shear studs
 - (g) flaws associated with modelling;
 - (h) changes to the calculations and design of one work sample.
24. The assessment panel recommended the application be declined on the basis of:
- (a) He has not demonstrated he is still able to practise competently due to the fundamental errors found in evidence submitted;
 - (b) There was insufficient evidence to confirm his ability to demonstrate competency of good professional engineering practice, and
 - (c) There was insufficient evidence to demonstrate the minimum standard required of a Chartered Professional Engineer.
25. The CAB met on 11 November 2021.
26. The RA advised Mr A of the CAB’s proposed decision to decline his application for continued CPEng, on the basis that there was:
- “- insufficient evidence to confirm the candidate’s ability to demonstrate competency of good professional engineering practice, and*
- insufficient evidence to demonstrate the minimum standard required of a Chartered Professional Engineer.”* [BOD 296]

27. Mr A applied for reconsideration of this decision on 20 February 2022 [BOD 309-312]. He provided some clarity in his design approach and offered a revised description for his practice area.
28. On 28 April 2022, the RA advised Mr A a third structural assessor was considering his documentation independent of the other assessors.
29. The assessment panel updated their Assessment Report on 31/08/22², to include the comments from the third structural assessor and the agreed conclusions with all 4 assessors.
30. The report noted the third structural assessor had specifically excluded [BOD 319] the following from his scope:
- (a) interviewing the candidate;
 - (b) undertaking any detailed numerical review of the submitted calculations;
 - (c) discussing the application with the original assessment team, the applicants referees or any third party.
31. The report also noted the third structural assessor had reviewed [BOD 319] the following:
- i. the applicants' credentials,
 - ii. the submitted evidence;
 - iii. the applicant's self assessment;
 - iv. the assignment assigned to the applicant;
 - v. the applicant's response to the assessor's assignment and
 - vi. the assessors report to the CAB.
32. The report also summarised the third structural assessors' findings [BOD 320] as, the candidate:
- “..
- *understands structural engineering risk and takes reasonable steps to manage risk;*
 - *has a good and wide understanding of his obligations as a structural engineer;*
 - *some of the techniques and methods used are from older guidelines;*

² BOD 316-329

- there are some fundamental errors in the submitted evidence, seemingly corrected in response to the CRA Assessors queries;

- the documentation was substandard”

33. The RA's email included reference to having the decision's procedural process reviewed, “*should you wish, you now have the option of applying for a review of assessment procedures in accordance with Rule 31. To apply for a review of assessment procedures, you must lodge your application in writing to Engineering New Zealand within 14 days of this notification, according to Rule 32(2) of the CPEng Rules.*”
34. The CAB supported this decision.
35. On the 31 August 2022³, Mr A was notified of the CAB's decision, by email. This email included the August 2022 updated assessment report. Mr A's application for continued registration was declined based on:
 - Insufficient evidence to demonstrate the candidate is able to practise competently – due to fundamental errors found in the evidence submitted.
 - Insufficient evidence to confirm the candidate's ability to demonstrate competency of good professional engineering practice.
 - Insufficient evidence to demonstrate the minimum standard required of a Chartered Professional Engineer.
36. The email also advised Mr A, his name and registration on the CPEng register would be removed on 28 September 2022.
37. Counsel for Mr A issued a notice of appeal on 27 September 2022⁴ to both CPEC and the RA, with a request for a stay from his removal from the register.
38. The request for a stay was considered by a CPEC Panel, consisting of Ms Hardie, Ms Neill and Mr Winwood and further to 2, above, the stay order was granted, and Mr A remains registered until the decision on this appeal is issued.
39. On 27 October 2022, Mr A's Counsel, submitted an amended notice of appeal.
40. Ms Neill was replaced on the Panel by Mr Devgun.
41. Counsel for Mr A provided his submission on 7 November 2022.

³ BOD 341-342

⁴ BOD 357 - 361

42. The RA provided their submission on 21 November 2022.
43. Mr A replied in response to the RA's submission on 28 November 2022.
44. The appeal hearing took place in Wellington on 2 May 2023.

Grounds for Appeal

45. The grounds⁵ of appeal are summarised by the Appeal Panel ("the Panel") as:
 - (1) The Assessment Panel and CAB misdirected themselves and failed to apply the required test under rule 20(a)(i) of the Chartered Professional Engineers of New Zealand Rules (No 2) (Rules) in determining not to reregister Mr A's as a CPEng.
 - (2) The Registration Authority's procedure was flawed and Mr A's application was subject to unreasonable and unnecessary delays.
 - (i) The length of time between the submission and the interview meant that the material in Mr A's submission was older, and it was unreasonable to expect Mr A to have specific recall of minor technical aspects of his submission, without prior notice that he would be required to do so.
 - (ii) Mr A was not fairly advised as to the format and content of the interactive assessment interview, including that the practice assessor would focus questions on specific calculations in the work examples provided. The interactive assessment interview was unreasonably short, no more than ten minutes, The Registration Authority should have requested a further interactive assessment as permitted under rule 25(1)(b)(i).
 - (iii) In the circumstances, if the assessment panel had concerns about Mr A's competence, to meet the purpose and intent of the reassessment process under the Rules and to observe the principles of natural justice, the Registration Authority should have sought the further information or taken the further steps as provided under rule 25(b) – (e) and repeat such steps if necessary under rule 25(2).
 - (3) The third assessor's review of Mr A's submission was not carried out independently.
 - (i) The third assessor's findings are not consistent with the Assessment Panel's findings. The third assessor recognised that the issues identified with Mr A's submission were corrected after the Assessment Panel posed further questions to Mr A.

⁵ Amended Notice of Appeal dated 27 October 2022

(ii) The third assessor was of the view that Mr A “appeared to have taken the process...rather lightly.” This has no bearing on Mr A’s competency.

(iii) Following the third assessor’s review, further examples and information should have been sought from Mr A to address any outstanding concerns, again as provided under rule 25.

(4) Neither the Assessment Panel nor CAB considered alternatives to declining Mr A’s reregistration. For example, the Assessment Panel’s concerns may have been alleviated by requesting Mr A carry out further training, be allocated a senior engineer as a mentor, or reduce his practice area.

(5) The lead assessor did not contact one of Mr A’s two referees (Mr E). Neither of Mr A’s referees were contacted by any of the three structural practice area assessors. The assessment panel therefore did not take opportunities to impartially gather information which could have supported Mr A’s application.

(6) Mr A was not told in advance who the second and third structural assessors would be and was not given the opportunity to comment on their appointment.

(7) The lead assessor did not communicate properly with Mr A and, in an email dated 15 November 2021, unreasonably refused to take his phone calls.

46. Mr A seeks a ruling from CPEC:

- a. Ordering the Registration Authority to conduct a fresh reassessment; and
- b. Ordering that Mr A remains registered during the appeal and reassessment process.
- c. Costs.

Decision being appealed and evidence considered.

47. The “decision” under appeal is the 31 August 2022 decision of the CAB declining Mr A’s application for continuation of registration as a Chartered Professional Engineer.

48. Under clause 15 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.

49. The evidence considered by the Panel in arriving at this decision includes:

- (a) The amended notice of appeal dated 27 October 2022
- (b) The paginated Bundle of Documents 27 October 2022 (version 3) [BOD 1-370]
- (c) Submissions of Counsel for Mr A dated 7 November 2022
- (d) Submissions from the RA dated 21 November 2022

(e) Reply Submission of Counsel for Mr A dated 28 November 2022.

(f) The hearing was conducted on 2 May 2023.

Hearing

50. Present at the hearing were Mr A, his Counsel Mr F, Ms G (via zoom), Counsel for the RA, and the Panel.
51. The hearing was recorded. It was noted by the Panel chair that a transcript would only be made available if this decision was appealed.
52. The notes below highlight where additional emphasis or detail was provided at the hearing.
53. Mr A made an oral submission to the Panel. He spoke about his experience of the interactive; how he was not prepared for the nature of the specific questions relating to projects submitted; its short duration (10 minutes or less), and how he considered the assessment panel had inappropriately judged him on not documenting all of his knowledge, and had not taken into account his work samples were subject to change, as these projects were at the time in progress.
54. Mr A's Counsel spoke to his submission.
55. The RA spoke to their RA's submission and provided a written copy of their oral presentation.
56. The RA confirmed all correspondence available at the time the decision under appeal was made was included in version 3 of the BOD. [BOD 1-370 version 3].

Discussion – Considerations of the Panel

57. Central to the Panel's decision is whether Mr A has demonstrated by his submitted evidence that he meets the minimum standard for continued registration, as described under rule 20.
58. Rule 20 states:

20 Minimum standard for continued registration as chartered professional engineer

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

that—

(a) he or she—

- (i) is still able to practise competently in his or her current practice area to the standard of a reasonable professional engineer; or
- (ii) if the person's practice area has changed materially since the last assessment, meets the minimum standard for registration within his or her current practice area; and

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

59. With no change in Mr As' practice since his last assessment, consideration is given to Rule 20(a)(i).
60. The Panel notes all the grounds relate to failings by the RA in their decision-making process, and procedural matters.
61. The RA considers⁶ *"procedural matters are beyond the scope of this appeal" ... "... the appropriate course of action is for him to apply to the High Court for these matters to be judicially reviewed".... "If any procedural errors did occur 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's rehearing of the application."..."The nature of this appeal to CPEC is by way of rehearing; Mr A has legal representation and full opportunity to make any necessary submissions to this Council."*
62. Counsel for Mr A disagrees, he refers the Panel to CPEC's Appeal 13/15 Decision. This is an appeal of another CPEng declined registration, where CPEC considered the applicant had been disadvantaged during the process and ordered the RA to form a new assessment panel with different members and conduct a new assessment with no additional cost to the applicant on a CAB decision.
63. This Panel's view is that procedural shortcomings, where they contribute to establishing context, can be considered by the Panel in finalising its decision.
64. Consideration of each ground follows:

Ground (1) The assessment panel and CAB misdirected themselves and failed to apply the required test under rule 20(a)(i) of the Chartered Professional Engineers of New Zealand Rules (No 2) (Rules).

65. Counsel for Mr A argues *the assessment panel's 31 August 2022 report does not refer to the prescribed standard of a "reasonable professional engineer" at all. Instead, the report refers to various other, incorrect, standards for declining continued registration, including:*
- a. Mr A has not demonstrated he is still competent to practice for the below reasons: not applying best practice [and] not recognising the need for appropriate analysis and assessment⁷*
- b. Mr A has not demonstrated continued competency in his practice area⁸*

⁶ RA submissions paragraphs 5.2, 6.6 & 6.7

⁷ BOD 317

⁸ BOD 318

*c The assessment panel recommended Mr A's application for continued registration be declined because he has not demonstrated he is still able to practise competently due to the fundamental errors found in his evidence submitted and demonstrate competency of good professional engineering practice*⁹

66. Mr As' Counsel's further argues both the assessment panel and the CAB failed to apply the correct legal test, and on this basis the CAB's decision must be seen as invalid and be set aside.
67. The RA disagrees. The RA considers the Assessment Panel, and the CAB, did not fail to apply the correct test. It also notes it does not require assessors to restate the rules in their reports and argues Mr A's competence was evaluated by four experienced engineers, who represent reasonable professional engineers and Mr A has failed to convince them that he meets the competence standards expected of a Chartered Professional Engineer BOD 268].
68. Counsel for Mr A argues "*even if the Registration Authority does not require the Assessment Panel to include the test in its assessor report, the Assessment Panel had to evaluate Mr A's application against the minimum standard for continued registration.*"¹⁰
69. Rule 20(a)(i) sets the minimum standard for continued registration as a chartered professional engineer, where no material change has occurred in the applicant's practise field and requires the applicant to demonstrate that he is still able to practise competently in his current practice area to the standard of a reasonable professional engineer.
70. Rule 23 sets the minimum information that must be provided, and in this case, with competency in question, r 23(2) (bb) further sets a minimum of two work sample information to be provided for consideration.
71. The Panel acknowledges neither the assessment panel report, nor the CAB decision letter, refers to this minimum standard of "a reasonable professional engineer."
72. The evidence supports that the assessment panel considered the minimum standard referred to in the Act when it concluded "*there is insufficient evidence provided by Mr A to demonstrate the minimum standard required of a Chartered Professional Engineer*¹¹ has been met" [BOD 320], and this reference¹¹ was further acknowledged by the CAB's final decision letter, when it stated "*the minimum standard required of a Chartered Professional Engineer*"¹² .
73. With only one standard provided by the Act for CPEng continued registration, all four assessors having met this standard, and having been selected and trained by the RA for this role, and referencing both by the assessors and the CAB in their findings to the minimum standard of a Chartered Professional Engineer, the

⁹ BOD 318

¹⁰ Rule 24(1)(a) of the Rule

¹¹ Underlining added by Panel.

¹² 3rd bullet point in BOD 333

Panel considers it would be inappropriate for the assessment panel or the CAB to assess candidates for continued registration to any other level.

74. This Panel considers this ground has not been proved.
75. This Panel does however encourage the RA to include full wording as provided under the rule 20 in their future assessment panel reporting and CAB decisions acknowledging the standard of assessment undertaken and to avoid any future doubt.

Ground (2) The Registration Authority's procedure was flawed and Mr A's application was subject to unreasonable and unnecessary delays.

76. Mr A's Counsel says¹³ it was *"unreasonable to expect Mr A to have specific recall of minor technical aspects of his submission without prior notice that he would be required to do so"* and further says¹⁴ *"Mr A was not fairly advised as to the format and content of the interactive assessment interview, including that the practice assessor would focus questions on specific calculations in the work examples provided"*
77. The RA disagreed. They submitted¹⁵, *"Mr A was given sufficient notice of and information about what was required in the interactive assessment. He was emailed on two occasions [BoD, pp 148 and 357]", and "He had sufficient opportunity to refresh his memory ahead of the interactive assessment about his work samples, regardless of how long ago that work may have taken place."* And further submits *"It was clear that the Assessment Panel intended to discuss his work samples with him."*
78. Mr A's tele interview was conducted the on 4 March 2020, 8 months after his application acceptance¹⁶ from the RA for continued registration submission.
79. The bundle of documents [BOD 357] contains an email dated the 3rd of March 2020 confirming interview arrangements and includes an earlier email dated 10 February 2020, which matches the contents of the undated BOD 148.
80. The 10 February 2020 email provides a format for the tele interview format. Item 2 of that email required Mr A to choose and describe his involvement and the engineering complexities encountered for two work samples previously provided and allowed a time slot of no greater than 10 minutes for this. Item 3 of that same email provided time for questioning from the assessment panel and discussion. The duration for the interactive interview was provided for up to 60 minutes.

¹³ Counsel for Mr A submission pgh 13a

¹⁴ Counsel for Mr A submission pgh 13b

¹⁵ RA submission pg 7.10

¹⁶ Application Acceptance - 28 June 2019

81. The Panel considers the instructions given in the 10 February 2020 email are clear and provided well in advance of the interactive. The first ten minutes of the interactive interview was allocated for Mr A to speak about two of his work samples and the complexities encountered. The remainder of the interactive time was allocated to the assessment panel asking and Mr A answering their questions about his submitted information.
82. Counsel for Mr A says *“as a result of focusing on minor technical details rather than his submission overall, the Assessment Panel deviated from what was specified in the interview invite: the engineering complexities in Mr A’s submission”* and further says the unreasonable shortness of the interactive, *“no more than 10 minutes was a failure by the Assessment Panel to ensure it had obtained an accurate overview of Mr A’s experience.”*
83. The RA submits¹⁷, *“Mr A has been assessed and reassessed in the past and was not new to the process. It would be reasonable to expect he had some understanding of what was going to be involved with the interactive assessment.”*
84. During the hearing Mr A spoke of his tele-interview experience. He described the duration of the interactive as brief, no longer than 10 minutes, at variance from his previous registration interview experiences. He considered the mode of questioning to be confrontational and concluded he was ill-prepared for commenting on specific technical questions having based his attention on the two work samples identified in the interview format item 2.
85. The Panel considers Mr A’s account of the tele-interview to be disappointing, with regards to a perceived confrontational approach.
86. The Panel expects both the candidates applying for continued registration and those assessing them to interact at all times in accordance with their code of ethical conduct r 42F which requires CPEng’s to treat people with respect and courtesy.
87. The Panel considers the matter of the awkward interview was partially addressed by the assessment panel, with three persons, requesting Mr A respond to their written questions, allowing Mr A a reasonable time to collect his thoughts and address the assessment panel’s concerns.
88. Counsel for Mr A considered the RA should have requested a further interactive assessment as permitted under rule 25(1)(b)(i) and considered¹⁸ procedural shortcomings led to a situation in which Mr A could not demonstrate his competence.
89. Rule 25(b) requires:

¹⁷ RA Submission paragraph 7.11

¹⁸ Mr A’s Reply Submission – pg 10.

“25 Way in which assessment panel must evaluate continued registration

...

(b) if the panel thinks it necessary, do both of the following or only a further interactive assessment:

(i) require the candidate to pay the further interactive assessment charge set out in Schedule 2 and carry out a further interactive assessment with the candidate by any meeting method:

(ii) require the candidate to carry out a written assignment”;

90. The Panel notes only one of the three practise area assessors had any interaction with Mr A, and there is no evidence suggesting Mr A was offered a further interactive under rule 25(1)(b)(i).
91. The Panel considers this lack of a step to be disappointing, effectively removing the ability for Mr A to speak to his written assignment response and providing the second or third assessors the opportunity to interact with Mr A. Having been set a written assignment, the candidate was entitled to a 2nd interactive under r25.
92. The Panel considers Mr A may have been disadvantaged by the lack of an offering of a 2nd interactive.
93. Counsel for Mr A submits¹⁹ *“the assessment panel, including the 2nd and 3rd assessors apparently had certain concerns and queries relating to Mr A’s submission throughout the process and that they should have sought the further information or taken the further steps as provided under rule 25(1) and repeated these steps, if necessary, under rule 25(2).”*
94. The RA disagrees²⁰ they say *“the Registration Authority did seek further information from Mr A (rule 25(1)(c)). The Lead Assessor emailed him with a long list of questions that had arisen as a result of the interactive assessment and asked for his response. [BoD, pp151-153]. Mr A was given full opportunity to provide that information.”*
95. The Panel considers the written assignment was requested under r25(b)(ii), not 25(c)(1).
96. Mr A’s Counsel further submits²¹ that *“a majority of the Assessment Panel’s queries and concerns would have been answered or mitigated if it had carried out further inquiries with Mr A.”*
97. The RA submits²² this is simply incorrect. *“The Assessment Panel did make those inquiries of Mr A and he was afforded a reasonable opportunity to respond comprehensively to the Panel’s concerns.”*

¹⁹ NOA 39-43

²⁰ RA submission paragraph 7.13

²¹ NOA 43.

²² RA submission paragraph 7.14

98. The Panel considers that, had a second interactive been offered, the assessment panel could have completed the assessment as it saw fit, either requesting further information or not.
99. The Panel notes, the process for continued registration is very much reliant on the candidate submitting information he considers best demonstrates he has met the minimum standard for continued registration under rule 20 and is followed by the assessment panel evaluating this information in accordance with rule 25.
100. Steps (b) to (e) are solely at the assessment panel's discretion, based on whether the assessment panel thinks it is necessary to do so. In this instance the assessment panel considered it was necessary to carry out the steps inclusive of part (b)(ii) before completing their report and onforwarding that report to the CAB. The Panel consider having done so; the assessment panel were required to carry out r25(b)(i).
101. As noted in 92,above, the Panel considers that, by not asking Mr A whether he wanted a 2nd interactive as required by r25, having set a written assignment, Mr A may have been disadvantaged.
102. The Panel considers Ground 2 has some merit.

Ground 3: The third assessor's review of Mr A's submission was not carried out independently.

103. Counsel for Mr A submits the third assessors review of Mr A's submission was not carried out independently; he was provided a copy of the assessment panel's initial report to the CAB; he did not interview Mr A ,²³ and he did not carry out a numerical check of the work samples.²⁴
104. Counsel for Mr A also claims neither the assessment panel nor the CAB adequately considered the differences in the third assessors review and the assessment panel's view in the Assessment Recommendation Reconsideration.²⁵ Section 7²⁶ of the Assessment Panels Report differs from the CAB finding. He says these inconsistencies included:
- the third assessor recognised that the issues identified with Mr A's submission were corrected after the assessment panel posed its further questions to Mr A
 - the third assessor was of the view that Mr A appeared to have taken the process... rather lightly.
105. The RA describes the third Practice Area Assessor's involvement as being to provide the assessment panel an independent review of the written information before the Assessment Panel, which they said he did.

²³ Mr A's Submission paragraph 14.

²⁴ Section 6 of Assessment Report - BOD 319

²⁵ Mr A's Submission paragraph 15.

²⁶ BOD 339

106. The RA further submits the Assessment Panel properly considered the third Practice Area Assessors report before coming to its unanimous decision to recommend to the CAB that the application be declined.
107. Although it did not reflect on Mr A's competence, it did reflect on the quality of information presented to demonstrate his competence."
108. Comments from the third assessors have been included in Sections 6 & 7 of the August Assessment Report.
109. The third assessor raised concern about the timing of the correction of errors and acknowledged the documentation was substandard.
110. The RA submitted "The third Assessor's comment that Mr A appeared to have taken the process lightly was given the proper weight by the Assessment Panel in its decision.
111. The Panel acknowledges the Assessment Report [BOD 260] notes "*Mr A has support from his referees.*" And makes no further comment.
112. The Panel accept the third-party review was provided the appropriate consideration by both the Assessment Panel and the CAB, and that at every stage Mr A was afforded the opportunity to comment on the Assessment Panels report and recommendations.
113. This Panel considers this ground has not been proven.

Ground 4. Neither the assessment panel nor CAB considered alternatives to declining Mr A's reregistration.

114. Mr A's Counsel claims neither the assessment panel, nor the CAB, considered alternatives to declining Mr A's reregistration, i.e. by carrying out further training, being allocated a senior engineer as a mentor, or reducing his practise area.
115. The RA has provided no comment on this.
116. Of the three items offered, the panel notes Mr A's practice area has been reviewed and reduced. It also notes the process for continued registration does not provide for the level of support from others, offered by Counsel's other suggestions.
117. The Panel considers this ground has no merit.

Ground 5. Mr A was not told in advance who the second and third structural assessors would be and was not given the opportunity to comment on their appointment.

118. Counsel for Mr A claims he was not given advance notice of the names of the second and third practise area assessors and did not have the opportunity to comment on their appointment.

119. The RA acknowledged at the time of the appointment of the 2nd assessor it was not the RA's standard practise to offer the names of assessors to candidates. This practise changed before the appointment of his third assessor, and he would have been advised at this time.
120. The RA also submitted Mr A had not raised any concern at any stage of the process about any of the assessors.
121. The Panel accepts the RA's submission and considers this matter has no merit.

Ground 6. The assessment panel should have contacted Mr A's referees

122. Counsel for Mr A also submits "Contacting the referees is a minimum requirement under rule 25. The lead assessor did not contact one of Mr A's two referees (Mr E). Neither of Mr A's referees were contacted by any of the three structural practice area assessors... the Assessment Panel therefore did not fulfil its obligations under rule 25, to impartially gather information which could have supported Mr A's application."
123. The RA submits²⁷ *"There is no requirement for the Assessment Panel to contact and interview an applicant's referees. The statements provided by the two referees [BoD, p146] were taken into consideration by the Assessment Panel in making its decision [BoD 260] The onus is on the applicant to provide sufficient evidence to demonstrate they meet the required standard of competence. It is not the job of the Assessment Panel to actively investigate and gather this information."*
124. Both Assessment Reports [BOD 260 and 330] confirm Mr A has support from his referees.
125. The Panel accepts the Assessment Panel took this support into account in making their decision and accepts there was no requirement for the Assessment Panel to seek further referee contacts.
126. The Panel consider this ground has not been proved.

Ground 7. The lead assessor did not communicate properly with Mr A and, in an email dated 15 November 2021, unreasonably refused to take his phone calls.

127. The RA submits "the lead assessor rightly responded by email advising Mr A that he was not in a position to discuss the matter with him and the Registrar would instead contact him to outline his options. [BoD, p291]. This was not unreasonable and was in fact the appropriate response".
128. The Panel accepts Mr A's emails followed the CAB's decision, and that at this time the lead assessor role with regards to Mr A's application was complete. The Panel consider this ground has no merit.

²⁷ RA submission 7.17

Outcome

129. The Panels task is to consider whether Mr A's submissions demonstrate he meets the minimum requirement for registration in accordance with Rule 20.
130. The Panel has considered the evidence, the appeal submissions, Mr A's registration application, work samples, response to the assignment, and all further information provided.
131. The test of competency is an objective one made by the people making the assessment. The onus is on an applicant to prove that he meets the appropriate standard for registration as a Chartered Professional Engineer.
132. In this case, the Panel conclude Mr A has not proven to the assessment panel or the CAB that he has met the requisite standard.
133. However, the Panel are concerned that Mr A was not given the opportunity for a second interactive. This would have provided him with the opportunity to talk to his written assignment. This the Panel considers that the assessment may not have yielded a fair and robust result.
134. The Panel, therefore, directs the RA, subject to Mr A's agreement, to convene a new Assessment Panel of different members from the previous panel and conduct a new assessment, at no additional cost to Mr A.
135. Given the timing since his last approved certification, Mr A is encouraged to provide updated or more recent work samples, and any other information he considers necessary to demonstrate he meets the requirements of r20.
136. The new assessment is to include a face-to-face (not virtual) interactive, held in Auckland unless otherwise agreed by Mr A, in the event any issues raise the possibility of the non-renewal of CPEng.
137. This new assessment is to be concluded as quickly as possible and no later than 12 weeks after this decision.
138. The RA is to suspend the removal of Mr A's CPEng registration until such time as the new assessment is concluded or 31 June 2024, whichever is the earlier.
139. In the event Mr A declines a new assessment, or the timing allocated for it, the CAB's decision is upheld.

Costs

140. Mr A requested costs in his appeal submission, see paragraph 46 above.
141. Whilst the Panel have the power to award costs, the Panel we do not consider it appropriate in this case, and conclude any costs incurred by the parties to this appeal shall lie where they fall.
142. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated this 22 day of March 2024

Signed by Appeal Panel

A handwritten signature in black ink, appearing to read 'S. Hardie', written in a cursive style.

Sandra Hardie – Principal

A handwritten signature in blue ink, appearing to read 'Alan Winwood', written in a cursive style.

Alan A Winwood

A handwritten signature in black ink, appearing to read 'Manjit Devgun', written in a cursive style.

Manjit Devgun

Schedule 1 – Legislation

1. Legislation for Registration and Appeals on continued 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. The right of appeal is contained in S35 of the Act.
3. 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.
4. S11 of the Act (see Schedule 2) sets out the minimum standards for continued registration.
5. The Rules are enacted pursuant to S40 of the Act.
6. Rules 6,7,20 and 23 are presented in Schedule 2
7. Relevant to the interpretation of Rule 6, is Rule 7 which addresses complex engineering activities and complex engineering problems.
8. 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.
9. 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).
10. Rule 20 prescribes the Minimum standard for continued registration as a Chartered Professional Engineer.
11. Rule 23 prescribes the information that must be provided to demonstrate continued competence.
12. Rule 24 - R 24(1) the assessment panel must assess whether or not the candidate has demonstrated the candidate meets the minimum standard for continued registration, and if so, assess the candidate’s term for re-registration, and if not, assess whether the candidate’s registration should be suspended or removed from the register.
13. Rule 25 - the process by which the Assessment Panel evaluates the application for initial or continued registration.
14. Rule 26 - the CAB makes the decision to register (or not) an applicant for initial or continued registration. requires the CAB to consider the assessment panels recommendations along with S11 of the Act and

decide whether to confirm the candidates continued registration along with the term of the registration or to remove or suspend the candidate's registration.

15. Rule 27 requires the CAB to give the candidate an opportunity to respond should its decision be to remove or suspend the candidate' registration and provides a process for this.
16. Rule 28 requires the CAB to meet additional requirements if rejecting or varying the assessment panels recommendation.
17. Rule 29 requires the RA to notify the candidate with reasons for its decision and implement the decision.
18. Rule 75 - the RA may appoint a sole assessor or an assessment panel.
19. Rule 77 - the RA must appoint the Competence Assessment Board (CAB). There is one member on CAB from the RA Board, but they have no vote.
20. Rule 80 - the RA may appoint a competency assessment reviewer.
21. S11 of the Act - the RA must assess at the frequency set out in Rule 21 if chartered professional engineer meets the minimum standards for continued registration contained in Rule 20.
22. S24 of the Act - the RA makes decisions relating to the registration of chartered professional engineers.
23. S45 of the Act - one function of the Council is to hear appeals on decisions of the RA.
24. S37 of the Act - the Council can confirm, vary, or reverse the decision or parts of the decision. The rules do not provide for a mandatory "pass mark" for these matters. In objective decision is needed to be made as to whether an applicant meets the overall standard prescribed in Rule 6(1), taking r 6(2) (a) to (k) into account.
25. S36 of the Act requires the RA's decision to remain in effect whilst the appeal is being decided unless the Council order otherwise.

36 Decisions to have effect until appeal

Subject to the order of the Council or District Court (as the case may be), every decision of the decision authority against which an appeal is lodged continues in effect according to its terms until the determination of the appeal.

26. The Act sits over the rules. S24 of the Act is clear that the RA makes decisions relating to registration. On this basis the CAB is not the RA.

Schedule 2 – Extracts of the Act and the Rules

S11 of the Act:

“11 Chartered professional engineer to meet minimum standards for continued registration.

- (1) *The Registration Authority must assess at the frequency required by the rules, and may assess at any other time, whether or not a registered person meets the minimum standards for continued registration contained in the rules.*
- (2) *If the Registration Authority determines that the person does not meet those minimum standards, it must—*
 - (a) *remove the person’s registration; or*
 - (b) *suspend the person’s registration until the person satisfies the Authority that he or she meets those minimum standards and, if he or she does not do so within 12 months, remove his or her registration.”*

Rule 6:

“6 Minimum standard for registration as chartered professional engineer

- (3) *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.*
- (4) *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.”

Rule 20:

“20 Minimum standard for continued registration as chartered professional engineer

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

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

Rule 23:

23 Information that must be provided to demonstrate current competence

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

Schedule 3 – Chronology for events leading to the appeal

Date	Event	Bundle of Documents
1983	Mr A graduated from the Faculty of Civil Engineering at the University of Sarajevo.	BoD, p 2
2003	Mr A first became registered in New Zealand as a Chartered Professional Engineer and became a member of the Institution of Professional Engineers New Zealand.	
2008 and 2013	Mr A's applications to the Registration Authority for continued registrations were successful.	
28 June 2019	Mr A submitted an application for continued registration.	BoD, pp 4-145
28 June 2019	Mr A's application was accepted and validated.	
16 August 2019	The Registrar emailed Mr A to notify him of delays in processing reassessments.	BoD, p 147
August 2019	The Registration Authority appointed an Assessment Panel.	
31 August 2019	Mr A was notified of the Assessment Panel's appointment.	
10 February 2020	The Lead Assessor emailed Mr A to provide information on the interactive assessment and its format.	BoD, pp 148-150
3 March 2020	The interactive assessment arrangements were confirmed by email from the Lead Assessor to Mr A.	BoD, p 357
4 March 2020	The interactive assessment was held online and attended by Mr A, the Lead Assessor and the first Practice Area Assessor.	
14 August 2020	A second practice area assessor was appointed.	
30 November 2020	The Lead Assessor emailed Mr A advising of the appointment of the second Practice Area Assessor and providing a list of questions seeking clarification or detail about the work samples submitted by Mr A.	BoD, pp 151-153
4 December 2020	Mr A acknowledged receipt of the questions and said he would provide his response by the middle of January.	BoD, p 154
20 January 2021	Mr A provided his response to the Lead Assessor's request for further information.	BoD, pp 155-258
21 January 2021	The Lead Assessor confirmed receipt of the information.	BoD, p 358
11 November 2021	The Assessment Panel concluded Mr A " <i>did not demonstrate the competency expected of a Chartered Professional Engineer</i> ". The Assessment Panel recommended the CAB should decline Mr A's application for continued registration.	BoD, pp 259-270
11 November 2021	The CAB met and considered Mr A's application and the Assessment Panel's recommendation. The CAB agreed with the	BoD, pp 271-275

Date	Event	Bundle of Documents
	Assessment Panel's recommendation and decided to propose declining Mr A's application.	
11 November 2021	The Registrar notified Mr A the CAB had reviewed the Assessment Panel's recommendation and had proposed not to re-register him as a Chartered Professional Engineer. The Registrar invited Mr A to address the Assessment Panel's concerns about his work samples and outlined the option to request the CAB reconsider its proposed decision.	BoD, pp 276-277
15 November 2021	The Lead Assessor emailed Mr A to acknowledge having missed a number of phone calls from him, advised he would not be returning the calls and the Registrar would contact him to discuss the next steps in the process.	BoD, p 291
26 November 2021	Mr A's lawyer wrote to the Registrar requesting an extension of time for an application to review the decision.	BoD, p 293
2 December 2021	The Registrar granted the request for a time extension.	BoD, p 294
20 February 2022	Mr A applied for a reconsideration of the CAB's proposed decision. The application for reconsideration included a letter from Mr A addressing the concerns raised by the Assessment Panel in its report.	BoD, pp 309-312
21 February 2022	The Registrar emailed Mr A and confirmed his letter would be reviewed by the Assessment Panel and its recommendation would be presented to the CAB.	BoD, p 313
March 2022	The Assessment Panel asked the Registrar to appoint a third Practice Area Assessor to provide an independent review of the information.	
April 2022	A third practice area assessor was appointed to the Assessment Panel	
April 2022	The third Practice Area Assessor reported back to the Assessment Panel.	BoD, p 320
28 April 2022	The Registrar advised Mr A the Assessment Panel would aim to have its reconsideration ready for presentation at the CAB meeting in May 2022.	BoD, p 314
5 August 2022	The Assessment Panel said it still had concerns about Mr A's ability to practice competently, due to the fundamental errors in his information. There was insufficient evidence to demonstrate the minimum standard required of a Chartered Professional Engineer.	BoD, pp 316-329
14 August 2022	The CAB met to review and discuss the Assessment Panel's reconsideration and recommendation. It made a final decision to decline Mr A's application.	BoD, pp 330-332
31 August 2022	The Registrar notified Mr A of the CAB's decision.	BoD, pp 333-334
27 September 2022	Mr A appealed that decision to CPEC.	BoD 349-354

