

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

Appeal 04/24

AND

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

Between

Mr A

Appellant

Against a decision of

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

Respondent

Decision of the Chartered Professional Engineers Council
Dated 2 December 2024

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 the Appellant 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:
 - (a) acted on a wrong principle, or
 - (b) failed to take into account some relevant material, or
 - (c) took into account some irrelevant material, or
 - (d) 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. The Appellant has a Bachelor of Technology in Mechanical Engineering, 1992, from Institution B, a Technical Diploma in Marine Engineering, 1995, from Institution C and a Master of Technology in Industrial Engineering, Institution D 2009.¹
12. His CV states that his professional associations are:
 - Engineering New Zealand - Chartered Member (CMEngNZ)
 - Qualifications E
13. The Appellant applied to the RA for initial Chartered Professional Engineering registration on 1 October 2023², with “*Engineering Management, Industrial, Mechanical*” as his practice fields and “*Maintenance management and consultation of mechanical systems in marine and industrial engineering sectors, and design improvements to enhance the health and safety of personnel and prevent environmental hazards*” as his practice area.³
14. Documentation associated with his application, and made available to the Assessment Panel, included a CV, CPD records, referee reports, and an application portfolio including an initial three work samples.⁴
15. The Appellant applied under the Mutual Recognition Assessment pathway, whereby candidates who are currently registered as a Chartered Engineer with a professional body the Registration Authority recognises can be processed for CPEng under an expedited pathway.⁵
16. The RA concluded that, given his international associations, the Appellant had already demonstrated Engineering Knowledge Competency (Rules 6(2)(a)(i) to (ii) and 6(2)k. However, he needed to demonstrate competency in New Zealand specific knowledge (design principles, codes and regulations and Māori culture considerations) and Ethics, noting the RA

¹ BOD 1

² RA Submission paragraph 4.1

³ BOD 13

⁴ BOD 2 to 159

⁵ RA Submissions paragraph 4.3

acknowledges that the Mutual Assessment Guidance stipulating these requirements was published in June 2024, after the Appellant submitted his application.⁶

17. The RA appointed an Assessment Panel comprising Lead Assessor – Mr F and Practice Assessor – Mr G (Mechanical).⁷
18. On 27 October 2023, the Lead Assessor emailed the Appellant to introduce the Assessment Panel and request further information on the Applicant’s New Zealand work history and a third referee who would be able to confirm the Appellant’s understanding and application of New Zealand legislation, codes and standards relevant to his chosen practice area. The Appellant responded to this request explaining that he had not worked in New Zealand and was not able to provide a New Zealand based referee, although he offered to provide details of a colleague who was CPEng with Engineers Australia⁸
19. On receipt of the response from the Appellant, the Lead Assessor contacted the RA seeking clarification on how someone with no New Zealand experience could be referred to an Assessment Panel. The RA responded on 30 October 2023 with some additional guidance on how an applicant could upskill themselves on New Zealand good practice.⁹
20. On 28 October 2023 to 31 October 2023, the Lead Assessor and the Appellant exchanged emails on how the Appellant could demonstrate local knowledge, namely:
21. “...

Work records- while NZ based work records are preferred, you can submit work records based on overseas projects. However, you will need to clearly state what overseas codes and standards were applied, and how they differ to NZ, and how you would approach the same work if done in NZ and what cultural considerations are applicable....

Referees- overseas based CPEng referees are fine, however, they need to be able to verify your understanding and application of local NZ knowledge. If they are unable to comment on this then I would recommend you provide an additional referee, but this is entirely up to you.

CPD- in addition to demonstrating an understanding of cultural considerations (which you have provided) your CPD also needs to support your understanding of local codes and regulations relevant to your practice area.

⁶ RA Submissions paragraph 4.4

⁷ RA Submissions paragraph 4.5

⁸ BOD 175 to 176

⁹ BOD 177

...”¹⁰

22. The Appellant provided additional information to the Assessment Panel on 14 November 2023.¹¹

23. On 24 November 2023, the Lead Assessor proposed scheduling an interactive and provided the aspects that the Assessment Panel was looking for further clarification, namely:

“...

- *How your evidence supports the ‘maintenance management of mechanical systems in the marine and industrial sectors’ as described in your PAD.*
- *What the relevant NZ standards and codes are in relation to the maintenance management of mechanical systems and what the equivalent standards are that you have been working to.*
- *Your understanding of the social, cultural and environmental considerations when working in NZ.*

...”¹²

24. An interactive was held online on 28 November 2023.

25. Following the interactive, the Assessment Panel discussed requesting additional information from the Appellant whilst noting that “... *agree with your proposed request for further information from Mr A. However, I have doubts that he will be able to demonstrate the relevance of it to NZ legislation/standards/codes etc without having worked in NZ. I suspect that he is putting the cart before the horse in an effort to gain employment/entry into NZ. Should we not be requiring him to work here for a period before we can continue with this application?*”¹³

26. In response the Lead Assessor noted “... *unfortunately the guidelines for MRA applications allow them to apply without having worked in NZ so we are obliged to assess him and give him every opportunity to respond to our request for further information which I will do shortly.*”¹⁴

¹⁰ BOD 180 to 181

¹¹ BOD 187

¹² BOD 186

¹³ BOD 192

¹⁴ Ibid

27. The Appellant provided additional work sample information on 10 January 2024.¹⁵
28. The Appellant provided an additional document on 11 January 2024 titled "*Social, cultural and environmental consideration related to working in New Zealand.*"¹⁶ The RA describes this document as "*...a short essay that covers various topics related to working in New Zealand, broadly covering off New Zealand social, cultural and environmental considerations, and New Zealand's "regulatory framework".*"¹⁷
29. The Lead Assessor wrote to the Applicant on 11 January 2024 acknowledging receipt of the additional information and noting that they were now in a position to complete their assessment.¹⁸
30. Between 15 and 22 January 2024 the Assessment Panel discussed the document provided by the Appellant on 11 January 2024 ("the common statement") and concluded that the information provided to date was too generic and did not demonstrate "*...how his work samples translate to the NZ context...*"¹⁹ On or about 22 January, the Lead Assessor undertook to contact the Appellant to request further information.²⁰ There is no document provided to confirm if the Lead Assessor requested further information.
31. On 23 January 2023 the Lead Assessor contacted the Appellant's three Referee's asking them "*...to comment on his knowledge, understanding and application of NZ codes and practices...*"²¹
32. On 28 January 2024, one Referee responded with "*... a professional who performs mostly in international contexts, and he needs to be updated [sic] with relevant codes and standards wherever he perform. ...attended several CPDs and accessed several websites to update his knowledge on New Zealand standards, and codes prior to submit [sic] his application....He briefly discussed with me about AS/NZS 3004.2:2014...Maritime Rules Part 40A...and Part 40D...and the relevant sections of Health and Safety Act 2015 of New Zealand.*"²²
33. The Appellant's CPD record includes three activities directly related to New Zealand, namely: Engineering Climate Action Module (Engineering New Zealand, 2024, 5.5 hours), Te Tiriti o

¹⁵ BOD 203, 244 to 313

¹⁶ BOD 203, 241 to 243

¹⁷ RA Submissions paragraph 4.19

¹⁸ BOD 202

¹⁹ Ibid

²⁰ Ibid

²¹ BOD 207, 208 and 211

²² BOD 206

Waitangi: An introduction for engineers (Engineering New Zealand, 2023, 2 hours), Resource Management Reform (New Zealand Initiative and LEANZ, 2023, 1 hour).²³

34. The other two Referees provided an identical list of standards and regulatory documents that they said the Appellant had told them he had been referring to.²⁴ None of the Referees indicated that that had any personal experience in working in New Zealand. One referee referred to dealing with Company H as a supplier to the Country I Navy.²⁵
35. The Assessment considered the information provided by the Referees and the Lead Assessor noted:

“...

Regards the various referee responses they have confirmed that Mr A works to international standards and practices etc that they believe are equivalent to some in NZ which is true. I have updated the report to reflect.

Notwithstanding I am still of the view that he does not have a good understanding of local standards or any application and should apply once in NZ having worked for a year.

...”²⁶

36. On or about 1 February 2024 the Assessment Report was submitted to the CAB.²⁷
37. On 20 February 2024 the Appellant contacted the Lead Assessor enquiring about the status of his application. The Lead Assessor responded on the same day noting that *“Engineering NZ has requested the panel to clarify some aspects of its recommendation...”*²⁸ No indication at this time was given when a decision could be expected.
38. On 25 February 2024 the Lead Assessor advised the Practice Assessor that the CAB had asked the Assessment Panel to provide examples to support the decision. He also the names of *“...some common codes and standards etc that a marine/industrial engineer would be expected to be familiar that he has not raised if you are able list some.”*²⁹ On 28 February 2024, the Practice Assessor noted that he had signed off the revised report and noted that a

²³ BOD 3 to 9

²⁴ BOD 208 to 211

²⁵ BOD 210

²⁶ BOD 214

²⁷ BOD 213

²⁸ BOD 212

²⁹ Ibid

list would be difficult as it would depend on the type of work the Appellant planned to undertake in New Zealand.³⁰

39. On 8 March 2024 the RA's Registrar advised the Appellant of the CAB's decision to decline his application due to:

40. "...

- *Insufficient evidence to demonstrate competency in engineering Knowledge as required under the Chartered Professional Engineers Rule 6(2)(a)(i),(ii) and 6(2)(k), specifically:*
 - *6(2)(a)9ii): Failed to demonstrate knowledge of good practice for professional engineering that is specific to New Zealand.*

...³¹

41. On 9 March 2024 the Appellant acknowledged the Registrar's 8 March 2024 email and raised concerns about his assessment.³²

42. On 21 March 2024 the Appellant wrote to the RA requesting a reconsideration of CAB decision.³³

43. The RA acknowledged receipt of the Appellants submission on 21 March 2024 and noted it would be presented at the next CAB meeting and requesting confirmation if AI tools had been used and if so in what capacity in accordance with Engineering New Zealand's AI Policy.³⁴

44. The Appellant confirmed that he had used AI in preparation of the appeal submission letter and that he had "...used same [sic] AI tool in addition to web browsing for collecting additional information for the statement on social, cultural, and environmental consideration related to working in New Zealand."³⁵

45. On 16 April 2024, the Appellant contacted the RA providing to a link to a recent article on the Company J website pertaining to one of the Appellant's work samples. The Appellant requested the information to be passed onto the CAB.³⁶

³⁰ Ibid

³¹ BOD 218 to 226

³² BOD 227

³³ BOD 227 to 316

³⁴ BOD 319

³⁵ BOD 317

³⁶ BOD 322 to 327

46. On 30 April 2024, the Registrar informed the Appellant that the CAB had made its final decision to decline his application at its April meeting, attaching the outcome letter and the final Assessment Report.³⁷
47. The Appellant lodged a Notice of Appeal of the CAB decision on 16 May 2024.

Evidence received.

48. 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.
49. The evidence considered by the Appeal Panel in arriving at its decision included:
- (a) Notice of Appeal dated, and received on, 30 April 2024
 - (b) The paginated Bundle of Documents [BOD 1 to 363], provided by the RA
 - (c) Appellant Submissions dated 16 August and 10 September 2023³⁸
 - (d) Submissions of the RA dated 30 September 2023
 - (e) Appellant Submissions in strict reply to the RA Submissions dated 15 October 2024.

Grounds of appeal and outcome sought

50. The Appellant's Notice of Appeal cited the following grounds of appeal:

".....

- i. **Diversity in the Assessment Panel:** the panel members, including the designated practice member, are from varying practicing areas. This eclectic mix of expertise may have influenced the evaluation process.*
- ii **Inaccuracies in Assessment Reports:** The initial assessment report contained false statements, later rectified in the second report without valid justification. This inconsistency raises questions about the integrity of the evaluation process.*

³⁷ BOD 328 to 337

³⁸ The Appellant provided two copies of his submissions. The second version (dated 10 September) is the same as the first (dated 16 August) apart from an update to the 2024 CPD record.

iii. CPD Requirement Discrepancy: *The insistence on CPDs covering local engineering codes and standards, which are not stipulated as mandatory in the CPEng rules 2002, appears to introduce unnecessary obstacles.*

iv. Challenges for International Candidates: *The panel's recommendation and insistence that I work in New Zealand before applying for CPEng registration presents a significant challenge for international candidates and seems to contradict the ability for international candidates to apply for CPEng without New Zealand work experience. The acceptance of this decision by CAB raises concerns about potential double standards being followed by Engineering New Zealand officials, despite the considerable high cost associated with application. If such a standard is to be applied to my application, Engineering New Zealand should provide assistance in securing an opportunity for me to gain the necessary experience.*

v. Biased Evaluation Criteria by the CAB and Panel: *The decision to decline my application based on the purported lack of evidence for Para. 6(2)(a)(II) appears unfair considering the acceptance of my compliance with clauses 6(1), 6(2)(a)(1), and 6(2)(b to k). Such discrepancy gives rise to concerns of bias and narrow evaluation criteria, particularly when applied to international candidates.*

.....³⁹

51. The outcome sought by the Appellant is to have the decision to decline his application reversed.⁴⁰

Discussion – Consideration of grounds of appeal

52. For the Appellant'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 CPEng⁴¹, as set out in Rules 6.⁴²
53. Given his application was via Mutual Agreement the demonstration was limited to Rule 6(2):
- (a) Comprehend and apply their knowledge of accepted principles underpinning widely applied good practice for professional engineering (rule 6(2)(a)(i));

³⁹ Notice of Appeal section e.

⁴⁰ Notice of Appeal Section f.

⁴¹ Section 8(b) of the Act

⁴² The Chartered Professional Engineers of New Zealand Rules (No 2) 2002

- (b) Rule 6 (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)); and
- 54. maintain the currency of their professional engineering knowledge and skills (rule 6(2)(k)).

Ground i. Diversity in the Assessment Panel

- 55. The Appellant argues that the diversity of the Assessment Panel, with members from different practice fields to his own, likely influenced the evaluation process. He further reiterates this point in his Submissions in response to the RA submissions.⁴³
- 56. The RA states that *“The main purpose of the Mutual Recognition Assessment is to evaluate New Zealand specific knowledge and current competence.”*⁴⁴
- 57. The Appellant has clearly demonstrated through his work samples and work history that he is an accomplished international engineer. This is acknowledged by the RA in their Submissions⁴⁵ and given the sole reason for declining the Appellant’s application relates to the Applicant did *“...not demonstrated comprehension, and application of accepted New Zealand principles, legislation, regulations, codes and standards underpinning engineering good practice for professional engineering that is specific to New Zealand as required by rule 6(2)...”*⁴⁶
- 58. The correspondence record provided in the BOD shows that the Assessment Panel went to great lengths to give the Appellant the opportunity to link his extensive international experience to work he may undertake in New Zealand. The Appeal Panel has not been able to find this evidence that the Appellant provided the required clear linkage.
- 59. The RA argues that the Practice Assessor as an engineer in the mechanical field had voiced that he could relate to the work of the Appellant in Somalia due to his own experience in the Pacific.⁴⁷
- 60. The Appellant has not provided evidence as to how the practice fields of the Assessment Panel has influenced the outcome especially considering it is not the Appellant’s technical ability that has led to the decline of his application.

⁴³ Submissions from the Appellant in response to the RA submissions paragraph 5

⁴⁴ RA Submissions paragraph 4.4

⁴⁵ RA Submissions paragraph 6.2

⁴⁶ BOD 329

⁴⁷ RA Submissions paragraph 6.18

61. The Appeal Panel has no reason to doubt the credentials of the Assessment Panel and is satisfied that the Ground i is not proven and even if it was proven, it does not provide a basis for the decision of the CAB to be overturned, as relates to the assessment of the Appellants current competence which is not raised as an issue in the decision.

Ground ii. Inaccuracies in Assessment Reports

62. The Applicant argues that the initial assessment report contained false statements, which were corrected in the second report without proper justification, casting doubt on the integrity of the evaluation process.

63. The Appellant argues that the inaccuracies include⁴⁸:

- The 8 March 2024 Assessment Report referred to two interactives whilst the 30 April 2024 Assessment Report only refers to one.
- The Assessment Panel mistakenly combined the first and second work samples, failing to recognise they referred to two distinct projects in country K.
- The Assessment Panel overlooked the Applicant's engineering involvement in work sample three.

64. The BOD includes multiple versions of the Assessment Report including two version dated 8 March 2024. Although the Appellant has not been specific in his Submissions of which version he is referring to it is reasonable to assume that the version of the 8 March 2024 he is referring to is that attached to email from the Registrar to the Appellant on 8 March 2024⁴⁹ which states that there were two interactives⁵⁰ whilst the version attached to the email from the Register on 30 April 2024⁵¹ has been corrected to refer to one interactive.⁵² The RA notes that this was corrected in the 30 April 2024 report once the error was pointed out by the Appellant.⁵³

65. The RA acknowledges that the Assessment Panel has combined the two patrol boat examples and failed to reflect any engineering involvement in the third work sample and that these errors were not corrected in the final Assessment Report.⁵⁴

⁴⁸ Appellant Submissions page 2 to 3 of PDF titled "1. Appeal to CPEC"

⁴⁹ BOD 220 to 266

⁵⁰ BOD 225

⁵¹ BOD 331 to 337

⁵² BOD 336

⁵³ RA Submissions paragraph 6.21 and BOD 231

⁵⁴ RA Submissions paragraph 6.23

66. The Appellant has indicated apparent discrepancies in his Submissions in response to the RA Submissions in the RA's understanding of the work samples submitted as described in paragraphs 4.6, 4.7 and 4.18 of the RA Submissions.⁵⁵
67. Whilst administrative errors in assessment processes are not ideal, it is considered by the Appeal Panel unlikely that the particular errors identified by the Appellant would have had any bearing on the outcome of the assessment of the Appellants ability to demonstrate an adequate understanding of the New Zealand context.
68. The Appeal Panel is satisfied that the Ground ii is not proven and even if it was proven, it does not provide a basis for the decision of the CAB to be overturned, as it relates to actions by the RA, not to the Appellants competence.

Ground iii. CPD Requirement Discrepancy

69. The Appellant has stated in their submission that the CAB has effectively addressed this discrepancy in their letter dated 30 April 2024.⁵⁶
70. As a result, the Appeal Panel has not considered this point further.

Ground iv. Challenges for International Candidates

71. The Appellant argues that the application process has created significant hurdles as an international applicant, noting *"...It is unfair to subject an international candidate without local work experience to such stringent scrutiny primarily centered on codes and standards, neglecting the broader scope of capabilities and experience they bring to the table..."*⁵⁷
72. The Appellant has expressed frustration with the Assessment Panel's recommendation to gain New Zealand work experience before reapplying for CPEng registration, as securing employment requires a valid work permit, which in turn requires a job offer. He raises concerns that this creates a Catch-22 and may be a deliberate attempt to block his registration.
73. The RA acknowledges that the Appellant has *"...faced significant hurdles, but submit that the Panel went to lengths to ensure that he has the best opportunity to succeed in any case. It has never been about discounting the value of his strong international background. ...the primary concern was lack of application of New Zealand standards plus cultural, social and*

⁵⁵ Submissions from the Appellant in response to the RA submissions paragraph 6, 7 and 11

⁵⁶ Appellant Submissions page 3 of PDF titled "1. Appeal to CPEC"

⁵⁷ Appellant Submissions page 4 to 5 of PDF titled "1. Appeal to CPEC",

environmental considerations to his work samples as an exercise to demonstrate his knowledge of the New Zealand regulatory environment.”⁵⁸

74. The RA further acknowledges the complex inter relationship between the Immigration New Zealand and Engineering New Zealand requirements, a matter they have previously raised with Immigration New Zealand.⁵⁹
75. The Appellant has identified the following key issues which he suggests point to potential bias and procedural issues in the evaluation and appeal process include:
- **Inappropriate Panel Selection:** The panel lacks expertise in the applicant’s field, questioning the fairness of the evaluation.
 - **Limited Evaluation Criteria:** The panel focused too narrowly on one criterion, overlooking the broader context of the applicant’s qualifications.
 - **Lack of cooperation from Engineering New Zealand:** Significant delays in Appeal process including provision of the BOD, suggest inefficiency and possibly intentional obstruction.
76. The inappropriate panel selection has already been addressed in relation to Ground i.
77. In relation to limited evaluation criteria the Appellant has questioned reference to the Mutual Recognition Assessment guidance in paragraph 4.4 of the RA Submissions given the document was published after the CAB decision.⁶⁰
78. The Appeal Panel agrees that reference to a new guidance document predated by the assessment process is not helpful. However, given the information has been provided by the RA as part of the Appeal processes it cannot have any bearing on the Assessment Process and is therefore not considered further.
79. However, the key competencies listed are consistent with the information relayed to the Appellant throughout the assessment process. The first request for additional information from the Appellant by the Lead Assessor specifically requests information in relation to New Zealand work history⁶¹ and when the Lead Assessor understood there was no local experience he sought clarification from the RA in how to proceed.⁶² The Lead Assessor then shared the approach to the Practice Assessor⁶³ and the Appellant. Specifically, the Lead assessor highlighted what was required for work samples namely “...while NZ based work records are preferred you can submit work records based on overseas projects. However, you

⁵⁸ RA Submissions paragraph 6.28

⁵⁹ RA Submissions paragraph 6.31

⁶⁰ Submissions from the Appellant in response to the RA submissions paragraph 4

⁶¹ BOD 178

⁶² BOD 177

⁶³ BOD 174

*will need to clearly state what overseas standards and codes were applied and how they differ to NZ and how you would approach the same work if done in NZ and what cultural considerations are applicable. You will need to provide two current work examples, noting that the one example provided is over 5 years and would not be considered as current...”*⁶⁴

80. The Appeal Panel has no evidence before it as to how the Appellant could be disadvantaged by the Assessment Process assuming compliance with the requirements of Rule 6 apart from local knowledge. The Appeal Panel, in taking a common-sense approach, considers having less criteria to meet is by its very nature a simpler process. The Appeal Panel is of the opinion that the Assessment Panel was very transparent in explaining to the Appellant that the specific New Zealand knowledge was all that they were looking for.
81. In relation to the lack of cooperation from Engineering New Zealand, given this point relates to the Appeal process rather than the Assessment Process it is not considered by the Appeal Panel further noting that the RA has apologised for the delay in providing the BOD.⁶⁵
82. In Summary, the Appeal Panel is satisfied that the Ground iv is not proven, and even it was proven it does not form a basis for the decision of the CAB to be overturned as it does not relate to the Appellant’s competence.

Ground v. Biased Evaluation Criteria by the CAB and Panel

83. The Appellant argues that the decision to decline his application based on a perceived lack of evidence for Rule 6(2)(a)(ii), despite his compliance with other relevant clauses, raises concerns of bias and overly narrow evaluation criteria, especially for international candidates.
84. This ground is the same as previously argued by the Appellant under Ground iv.
85. As outlined above, the Appeal Panel has no evidence before it as to how the Appellant could be disadvantaged by the Assessment Process assuming compliance with the requirements of Rule 6 apart from local knowledge. The Appeal Panel, in taking a common-sense approach would argue that having less criteria to meet is by its very nature a simpler process.
86. The Appeal Panel is therefore satisfied that the Ground v. is not proven, and even it was proven it does not form a basis for the decision of the CAB to be overturned as it does not relate to the Appellant’s competence.

⁶⁴ BOD 187

⁶⁵ RA Submissions paragraph 6.32

Other matters

87. The Appeal Panel now addresses matters identified by the Appellant in his response to the RA Submissions, which were neither central to, nor addressed under, the grounds of appeal.

Conduct of the Assessment Panel

88. The Appellant has raised a number of concerns in relation to the behaviour of the Assessment Panel in his Submissions in response to the RA submissions. The Appellant argues that he felt disrespected and because he did not observe any positive interaction from the Assessment Panel the narrative provided is either an attempt to justify the process or irrelevant.⁶⁶
89. The Appeal Panel has reviewed the relevant paragraphs from the RA Submissions and notes that in all cases the RA has referenced their statements to specific correspondence in the BOD. The Appeal Panel therefore concludes that they accurately reflect what is recorded in the correspondence. The Appeal Panel does not see any written evidence in the BOD to verify that the process caused the Appellant severe embarrassment or that the Lead Assessor intentionally looked to harass the Appellant during the assessment process. Nor has the Appellant provided any additional evidence.
90. The Appeal Panel however notes that it has no way to verify or dispute the claims made by the Appellant in relation to the interactive discussion given there is no record of the discussions.
91. The Appeal Panel sees no material impact on the CAB decision based on the issues raised.

Skilled Migrant Category Resident Visa

92. The Appellant states in his Submissions in response to the RA Submissions that he does not intend to move to New Zealand and suggests that the misunderstanding of his intentions has contributed to him not being granted CPEng registration.⁶⁷ He questions reference in the RA Submission to the Skilled Migrant Category permanent resident visa and suggest paragraph 4.2 of the RA Submissions is “...entirely irrelevant to my application.”⁶⁸
93. The Appeal Panel notes the Appellant’s concern but has no evidence before it to test the veracity of the claim. This matter is not considered further.

⁶⁶ Submissions from the Appellant in response to the RA submissions paragraph 8 to 9

⁶⁷ Submissions from the Appellant in response to the RA submissions paragraph 3

⁶⁸ Submissions from the Appellant in response to the RA submissions paragraph 3.1

Statement on New Zealand’s social, cultural, and environmental considerations and regulatory framework.

94. The Appellant states in his Submissions in response to the RA Submissions that he “...*provided a separate comprehensive document on New Zealand’s social, cultural, and environmental considerations and regulatory framework covering all four work samples, rather than repeating the same content in each individual record. I believe it is unjust to penalize me for using a different presentation method that the panel members found unacceptable. ...*” the Practice Assessor “...*acknowledged in paragraph 4.21 of the Registration Authority's submission that I have been exposed to various workplaces where sensitivity to social, cultural, and environmental differences was necessary. This serves as clear evidence that I meet the required competencies, even when applied to the New Zealand context.*”⁶⁹
95. In an email to the RA the Appellant confirms that he used ChatGPT in the preparation of this document.⁷⁰
96. The Panel has reviewed the document the Appellant refers to and draws a similar conclusion to the Assessment Panel, namely it is generic in nature and not comprehensive nor does it provide connection between the New Zealand context and the Appellant’s experience, such as that listed in the statement reproduced above.
97. Given that was the request from the Assessment Panel and the onus is on the Appellant to demonstrate his competence the Appeal Panel sees no merit in the concern raised by the Appellant.

Findings

98. The Appeal Panel has considered the five statements as Grounds of Appeal cited by the Appellant (noting that Ground iii has already been addressed to the satisfaction of the Appellant), has considered the Appellant’s submissions, along with the related submissions of the RA and the Appellant’s submissions in response, and the contents of the BOD.
99. The Appeal Panel finds that none of the statements were proven, to the extent, the Appeal Panel considered overturning the decision or returning the matter back to the RA, for reconsideration.
100. The appeal is dismissed and the CAB’s decision to decline the Appellant’s initial CPEng registration is upheld.

⁶⁹ Appellants response to RA Submissions paragraph 11

⁷⁰ BOD 317

101. The Appeal Panel acknowledges the CAB decision and urges the Appellant to reflect on gaining a greater appreciation of good practice for professional engineering that is specific to New Zealand should he consider reapplying in the future.

Costs

102. The Appeal Panel rules that costs incurred by the Appellant and the RA respectively shall lie where they fall

Right of appeal

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

Dated 2 December 2024

Signed by the Appeal Panel



Simonne Eldridge
Principal



Mark Holland



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.

Part 2

Registration of chartered professional engineers

Subpart 1—Assessment for initial registration

Minimum standard for registration

6 Minimum standard for registration as chartered professional engineer

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

7 Definitions for purpose of minimum standard for registration

For the purposes of [rule 6](#),—

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

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

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

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

Schedule 3 - Key correspondence and submissions

- (a) Notice of Appeal by email (16 May 2024)
- (b) Email from the then CPEC Chair to the Appellant, acknowledging receipt of Notice of Appeal and outlining the appeal process, requesting RA to provide a copy of the Assessment Report (16 May 2024)
- (c) Email from Appellant to CPEC Chair seeking clarification on timeline for the appeal process (4 June 2024)
- (d) Email from Appellant to CPEC Chair seeking update on appeal process (12 June 2024)
- (e) Email from CPEC Deputy Chair noting the CPEC Chairs Term has expired, naming Appeal Panel members, requesting the RA to provide primary contact. (13 June 2023)
- (f) Email from Appellant confirming receipt of email from CPEC Deputy Chair.
- (g) Email from CPEC Deputy Chair seeking confirmation of RA's wish to be heard.
- (h) Email from Appellant to CPEC Deputy Chair seeking an update on the process (8 July 2024)
- (i) Email from CPEC Deputy Chair noting that the Appeal Panel Principal will respond to the Appellant's email (8 July 2024)
- (j) Email from Appeal Panel Principal restating the appeal process timelines (9 July 2024)
- (k) Email from Appellant confirming receipt of email from Appeal Panel Principal (10 July 2024)
- (l) Email from Appeal Panel Principal requesting confirmation from RA of timing for provision of the Bundle of Documents (BOD) (19 July 2024)
- (m) Email from RA confirming provision of BOD by 2 August 2024 (23 July 2024)
- (n) Email from Appeal Panel Principal requesting RA to confirm timing for provision of BOD (14 August 2023)
- (o) Email from RA containing link to Bundle of Documents (23 August 2024)
- (p) Email from Appeal Panel Principal acknowledging receipt of the BOD (23 August 2024)
- (q) Email from Appellant with supporting documentation attached (Appeal 4_24 Mr A.zip) (16 August 2024)

- (r) Email from the Appellant requesting confirmation of receipt of the supporting documentation (23 August 2024)
- (s) Email from Appeal Panel Principal acknowledging receipt of supporting documentation and noting that as the BOD had only just been provided the Appellant would have the opportunity to revise his submission (23 August 2024)
- (t) Letter from Appeal Panel Principal establishing submissions schedule (30 August 2024)
- (u) Email from Appellant acknowledging letter from Appeal Panel Principal (30 August 2024)
- (v) Submissions from Appellant (Appeal 4_24.zip) (10 September 2024)
- (w) Email from Panel Principal acknowledging receipt of Appellant submissions (11 September 2024)
- (x) Email from RA seeking an extension of time for provision of submissions from 27 September 2024 to 30 September 2024 (one working day) (27 September 2024)
- (y) Submissions from RA (30 September 2024)
- (z) Email from Appeal Panel Principal acknowledging receipt of RA Submissions (30 September 2023)
- (aa) Email request from Appellant for an extension of time for Submissions strictly in response to RA Submissions (11 October 2023)
- (bb) Email from Appeal Panel Principal acknowledging request and seeking clarification on whether RA has any objection to the extension of time (11 October 2024)
- (cc) Email confirmation that RA had no objection (11 October 2024)
- (dd) Email from Appeal Panel Principal confirming time extension (11 October 2024)
- (ee) Email from Appellant acknowledging time extension (11 October 2024)
- (ff) Submissions from the Appellant in response to the RA submissions (16 October 2024)
- (gg) Letter from Appeal Panel Principal proposing that the appeal be heard on the papers (30 October 2024)

- (hh) Email from Appellant confirming no objection to the hearing being on the papers (31 October 2024)

- (ii) Email from the RA confirming no objection to the hearing being on the papers (1 November 2024)