

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

Appeal 06/23

AND

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

Between

Mr A

Appellant

Against a decision of

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

Respondent

Decision of the Chartered Professional Engineers Council on Costs
Dated 29 April 2025

Introduction

1. Mr A (“the Appellant”) appealed a decision made by the Competency Assessment Board (“CAB”) of the Registration Authority (“RA”) to decline his application for continued registration as a Chartered Professional Engineer (“CPEng”).
2. In a decision dated 17 February 2025, the Appeal Panel of the Chartered Professional Engineers Council (“CPEC”) dismissed the Appeal.
3. The Appeal Panel reserved the issue of costs inviting submission from the RA and the Appellant in turn.
 - (a) The RA provided submissions; and
 - (b) The Appellant provided submissions.
4. Having considered the submissions, we determine costs as follows.

The framework for determining Costs.

5. The parties agree CPEC can award costs under s37(5)(d) of the Chartered Professional Engineers Act 2002 (“the Act”).
6. Without fettering future CPEC costs decisions, it’s useful to provide the framework we used to determine Costs in this appeal. Our framework draws heavily on *IPENZ v Nowak*¹. We also considered Appeal 03/17² which is the appeal to which the RA refers in submission.
 - (a) The Act confers a broad discretion on CPEC with respect to costs³.
 - (b) In exercising its discretion, CPEC can look to the District Court Rules for guidance, but the District Court Rules are not a strait-jacket.⁴
 - (c) In *IPENZ v Nowak*, the District Court held CPEC’s “adoption of a two thirds approach was, in all those circumstances, rational, appropriate and justified”.⁵
7. We also make further clarifying observations on Appeal 03/17. That costs decision was particular to the facts of the Appeal. CPEC awarded the Appellant two thirds of his actual

¹ *IPENZ v Nowak* District Court.

² Numbered Appeal 53 on the CPEC website.

³ *IPENZ v Nowak* at [96].

⁴ *IPENZ v Nowak* at [97].

⁵ *IPENZ v Nowak* at [97].

legal costs. In that Appeal, the District Court's costs regime was used as guidance rather than a calculator. We do not see the costs decision in Appeal 03/17 as setting a formula which always be followed when deciding on the quantum of costs.

8. To illustrate the point that Appeal 03/17 does not set a formula, in this appeal the RA adopts the District Court's scale costs regime.

Exercising discretion to award costs

9. Neither submission addressed whether we should award costs on this Appeal. Nonetheless, we must make that decision first with the following observations.
10. We note we do not consider the RA was the successful party, only that the Appeal was unsuccessful. In registration appeals, the binary civil law concept of a successful party and an unsuccessful party is not greatly applicable.
11. Being careful not to fetter future costs decisions, it may well not always follow the RA is entitled to costs where a registration appeal is not successful.
12. For this Appeal we are exercising our discretion to award costs to the RA. Principally, we considered the RA's submissions were of assistance in deciding the Appeal.

Quantum of Costs

13. The parties disagree on the quantum of Costs. However, both parties approach the quantum of Costs using the District Court's scale costs regime. While *IPENZ v Nowak* does not mandate, nor does it rule out, the use of the District Court's scale costs regime, we consider using scale costs is appropriate and proportionate for this Appeal
14. The starting point in using the District Court's scale costs regime is to determine the category of proceedings.⁶ In submission, the parties agree Category 2 is the appropriate category for the Appeal and we agree with the parties. For completeness we note Category 2 proceedings are:

Proceedings of average complexity requiring counsel of skill and experience considered average

⁶ The categories are set out in District Court Rule 14.3.

15. Category 2 proceedings attract a daily recovery rate of \$1,910.⁷ Counsel for the Appellant correctly and responsibly notes the RA incorrectly calculates a daily rate of two thirds of the daily recovery rate of \$1,910. The principle in the District Court Rules which says:

...an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application.⁸

only reflects the general principle that scale costs are taken to represent two thirds of actual costs.
16. The next step in using the District Court's scale costs regime is to identify the steps taken and appropriate time allocations.⁹
17. The parties agree the RA is entitled to a time allocation for the step called "9.13 - Preparation of bundle for hearing". We agree with the parties but for different reasons which we think important to record for future guidance.
18. We do not see complying with regulation 6¹⁰ as meriting a time allocation for the step called "9.13 - Preparation of bundle for hearing". First, for all appeals to CPEC, the RA **must** send CPEC the information mandated in regulation 6. Second, the term bundle developed as a colloquialism in CPEC appeals describing the information provided by the RA under regulation 6. This is not the same as the bundle prepared for District Court or High Court proceedings.
19. However, a practice has developed whereby appellants use the RA to add to the bundle provided under regulation 6. There is no requirement under the Act, rules or regulations for the RA to do so. It is open to an appellant to control the bundle ultimately used for an appeal.
20. In this Appeal, the Appellant requested the RA update the Bundle to include the Appellant's annexures to their affidavit submitted for the section 36 application. Adding those annexures to the Bundle sat outside the RA's obligations. However, it was a relatively discrete task and accordingly we consider a time allocation of 0.4 days under Band B is appropriate.
21. We agree with the Appellant that Item "22-Commencement of response to appeal" does not sit well in this assessment.

⁷ District Court Rules, Schedule 5.

⁸ District Court Rules 14.2(10(d)).

⁹ These are contained in District Court Rules, Schedule 4.

¹⁰ Regulation 6 of Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002.

22. The final time allocation to be decided is for item “24A - Preparation of written submissions”, which the parties agree is a valid step. The Appellant says at paragraph 4:

Standard 2B costs should apply in the vast majority of cases because, necessarily, the vast majority of cases will be of average complexity and require a normal amount of time.

Underlining added.

23. The RA says (putting aside the point regarding the bundle) at paragraph 14:

In relation to the bundle the CPEC stated the “*continued registration application subject to this Appeal produced a substantial volume of correspondence and a relatively large volume of substantive documents*”. The bundle was 931 pages. The RA do not dispute the Appellant’s right to submit material and correspond with the RA and/or their assessment panel. However, it meant the RA spent a “*comparatively large amount of time*” preparing the bundle, reviewing and comprehending the material and incorporating this into written submissions. Applying the CPEC’s view that the “*appropriateness of applying costs needs to be considered on a case-by-case basis*” the RA view Band C as appropriate here.

24. We consider Band C is appropriate for written submissions in this Appeal. This is not due to complexity but rather to time likely taken by the RA to prepare submissions. We, the Appeal Panel, spent a substantial amount of time considering the Appellant’s submissions and the documents referred therein. It’s reasonable to conclude the RA did also.

25. Therefore, we consider the time allocation of 3 days under Band C is appropriate.

26. Therefore, the starting point is costs of \$6,494 calculated as follows:

Step	Time Allocation	Daily rate	Amount
	0.4 days	\$1,910	\$764
	3 days	\$1,910	\$5,730
Total			\$6,494

27. The RA seeks an uplift of 25%. The Appellant objects to the uplift. We are not awarding an uplift.

28. The RA relies on the Council’s finding in the section 36 application that the appeal had little prospect of success. A section 36 application is decided at a very preliminary stage in the appeal process. We do not consider section 36 findings could be relevant to deciding costs after the Appeal is heard.

29. In the Appeal, the Appellant sought to develop the argument on equivalency between CPEng

and Heavy Vehicle Certification. That we did not agree with that submission does not mean the argument was hopeless or without merit.

Conclusion

30. For the foregoing reasons, we exercise our discretion to award costs.

31. Costs of \$6,494 are awarded to the RA.

Dated 29 April 2025

Signed by the Appeal Panel



Mark Holland

Principal



Simonne Eldridge



Sandra Hardie