

CHARTERED PROFESSIONAL ENGINEERS COUNCIL

Appeal Practice Notes

(These notes are a guide to the practice of the Council as it relates to appeals generally. They are to be read in addition to the Chartered Professional Engineers of New Zealand Act 2002 ("the Act") and the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 ("the Regulations") which take precedence in the event of conflict. These are not to be seen as inflexible rules, but should be followed unless there is good reason not to.)

1. Service of Appeals

- 1.1 All appeals shall be filed with the Council at Level 4, 32 The Terrace, Wellington, or by mail at PO Box 3058 Wellington, or by facsimile to 04 473 7991 or by email to appeals@cpec.org.nz . Appeals are deemed to be filed on the date calculated in accordance with Regulation 18 of the Regulations.
- 1.2 The original and three copies of an appeal shall be filed.
- 1.3 All appeals shall be provided with a unique number by the Council and correspondence and documents relating to the appeal should refer to this number.
- 1.4 Parties are reminded that appeals must also be served on the Registration Authority and any other party to the decision appealed against.

2. Content of an Appeal

- 2.1 The Notice of Appeal should be set out in the following format:
 - (a) **Appellant's Full Name:**
 - (b) **Full name of any other party to the decision appealed:**
 - (c) **The decision or part of the decision appealed against (*a copy of the decision should be annexed to this notice of appeal*):**
 - (d) **The date the Appellant received the decision:**
 - (e) **The grounds of appeal. (*The grounds of appeal must be set out to fully inform the Council and any other party to the original decision of the explanation for the appeal*):**
 - (f) **The outcome or relief sought (*IMPORTANT: The Council has no jurisdiction to grant an outcome or relief that does not relate to the decision appealed against*):**

- (g) ***The address for service for the Appellant . (The Appellant must give a physical and postal address as well as contact telephone number):***

3. Appeals filed out of time

- 3.1 On receiving a notice of appeal, it shall be referred to the Chairman, or Deputy Chairman or, in the event of their unavailability, another member of the Council, who will consider whether the appeal has been received out of time.
- 3.2 If the appeal appears to be out of time, the Chairman or Deputy Chairman will record it as having been received as such and shall inform the parties accordingly.
- 3.3 If the Appellant wishes to proceed with an appeal filed out of time he or she must apply for a waiver¹, and an application should be made accordingly, and served on all other parties to the original decision. The application should set out with particularity the appeal to which it relates and the grounds upon which the application is made. All parties to the original decision shall have the opportunity to file written submissions in relation to the application which will be dealt with on the papers unless the Council decides otherwise.
- 3.4 A waiver will normally be granted if the other parties to an appeal consent in writing.
- 3.5 In the absence of consent by all parties, a waiver will not normally be granted unless the party applying for the waiver can show good cause as to why it should be granted.

4. Pre-hearing Matters

- 4.1 The Act requires all appeals to be heard *as soon as practicable*².
- 4.2 On receipt of a valid appeal, or confirmation of a waiver being granted to an appeal filed out of time, the Registration Authority shall, as soon as practicable and within 10 working days, provide to the Council, the record of the evidence presented in reaching the decision appealed against and any other documents relevant to the decision, including a copy of the whole decision to which the appeal relates and the reasons for that decision.
- 4.3 On receipt of the record of evidence the Chairperson, or in his/her absence the Deputy-Chairperson, shall convene an Appeals Panel comprising of at least 3 members of the Council to hear the appeal and shall appoint one of those members as Principal of that panel.

¹ The Council's authority to grant a waiver is conferred by R12(1)(b) of the Regulations.

² S37(1) of the Act.

The parties shall be notified of the identity of the panel appointed and the contact details for the Principal.

- 4.4 The Appeals Panel shall determine whether or not it requires the Registration Authority to provide a written report setting out any considerations that the Registration Authority had regard to in coming to its decisions that are not set out in the reason for its decision.
- 4.5 The Principal shall fix a time and place for the hearing of the appeal no sooner than 21 days and no later than 42 days after being appointed and shall notify the parties in writing of the hearing date³.
- 4.6 Any matters that a party considers should be brought to the Appeals Panel's attention prior to the hearing should be made known to the Principal in writing as soon as possible before the hearing. If it considers it necessary the Appeals Panel will convene the parties to any appeal (by telephone if appropriate) to determine any preliminary matters.
- 4.7 It is anticipated that in disciplinary matters the Registration Authority will not normally be heard, but that on registration matters the Registration Authority will normally be heard. It is for the Registration Authority to decide if it wishes to be heard and to make an appropriate application at least 7 days before the date set for the hearing.
- 4.8 Parties to the appeal may file a summary of their arguments with the Appeals Panel. If so, these should be filed no later than 3 days before the hearing. Any such summary of arguments should also be served on all other parties.

5. **Hearing**

- 5.1 Strict rules of evidence do not apply to appeal hearings by the Appeals Panel. The Appeals Panel is required to observe the rules of natural justice.
- 5.2 It is anticipated that prior to any hearing the Appeals Panel will have read the record of evidence and any summary of arguments. The appeal will proceed by way of a rehearing⁴. That is why the Registration Authority is to provide the record of evidence of the matter appealed against.
- 5.3 Hearings are to be conducted in private⁵. Prior to the commencement of any hearing those present will be required to state their names, addresses and interest in the hearing.

³ R10(1)(b) requires that a party has at least 14 days written notice of a hearing.

⁴ S37(2) of the Act.

⁵ R13(3) of the Regulations.

- 5.4 Parties are entitled to represent themselves or be represented by any other person including legal counsel if they so wish. However, a person who has given evidence in a matter should not act as an advocate for a particular party.
- 5.5 In general, in matters where the Registration Authority is not a party the Appellant will be heard first. The Appellant will speak to any summary of argument and the record of evidence. The other party(s) shall then respond by speaking to any summary of argument and the record of evidence. The Appellant shall then have the opportunity of making any comments strictly in reply to the other party's submissions.
- 5.6 In general, in matters where the Registration Authority is a party it will be the last party to be heard before the Appellant has the opportunity to make a reply.
- 5.7 Any member of the Appeals Panel may ask questions of any person appearing at the appeal hearing. If any new matter arises as a consequence of such questioning other parties shall be provided with the opportunity to comment on the new matter.
- 5.8 The Appeals Panel will not normally permit the cross-examination of a witness, but will ensure that every party has fair opportunity to comment on all matters, this may include the calling of rebuttal evidence if appropriate.
- 5.9 At the conclusion of the hearing the Council will declare the appeal hearing closed save for the issue of dealing with costs if appropriate.
- 5.10 The Appeals Panel will endeavour to provide its written decision to the parties within 14 days of the hearing closing.

6. **Adjournments**

- 6.1 Hearings will not be adjourned without good reason. As a general comment the unavailability of particular legal counsel is not likely to be considered good reason unless such unavailability occurs at unavoidable short notice such that another legal counsel would not have sufficient time to familiarise himself or herself with the papers and fairly represent the party concerned.

7. **Costs**

- 7.1 The Appeals Panel has the power to award *costs of the appeal*⁶. This includes the costs of any other party to the appeal.
- 7.2 Where in giving its decision on an appeal, the Appeals Panel considers that costs should be awarded it will either fix a specific sum in its

⁶ S37(5)(d) of the Act.

decision, or will indicate its willingness to make an order concerning costs, and reserve its decision on the amount of the award.

- 7.3 If the decision so indicates, the parties will make submissions on costs and then an award may be made in due course.

Dated this 2nd day of December 2003