



Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 18th day of November 2002

Present:

Her Excellency the Governor-General in Council

Pursuant to section 65 of the Chartered Professional Engineers of New Zealand Act 2002, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce given after consultation with the Chartered Professional Engineers Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002.

2 Commencement

These regulations come into force on 1 January 2003.

3 Interpretation

In these regulations, unless the context otherwise requires,—
Act means the Chartered Professional Engineers of New Zealand Act 2002

party to an appeal means any of the following:

- (a) the appellant;
- (b) a party to the original decision who has given notice of an intention to be heard on the appeal;
- (c) the Registration Authority

party to the original decision means any of the following:

- (a) the person to whom the decision being appealed relates (for example, the person who has been refused registration or the chartered professional engineer who has been disciplined);
- (b) if it is a disciplinary matter, the complainant;
- (c) the Registration Authority.

Appeals under section 35 of Act

4 How to commence appeal

- (1) A person may commence an appeal to the Council under section 35 of the Act by—
 - (a) lodging a notice of appeal with the Council within the time limit under that section; and
 - (b) sending a copy of that notice to the Registration Authority.
- (2) The appellant must also send a copy of the notice of appeal to any other party to the original decision before, or immediately after, lodging it with the Council.

5 Contents of notice of appeal

The notice of appeal must be in writing and must state—

- (a) the appellant's name and the name of any other party to the original decision; and
- (b) the decision or part of the decision appealed (and may include a copy of that decision or part); and
- (c) the grounds for the appeal in enough detail to give a full explanation of the issues involved to the Council, the Registration Authority, and any other party to the original decision; and
- (d) the outcome sought; and
- (e) the address to which the appellant wishes correspondence on the appeal to be sent.

6 Registration Authority must provide information on its original decision

- (1) The Registration Authority must send to the Council, as soon as practicable after receiving the notice of appeal,—
 - (a) a copy of the whole decision to which the appeal relates and the reasons for the decision that the Registration Authority gave the parties; and
 - (b) if the Council requests it, a written report setting out any considerations that the Registration Authority had regard to in coming to its decision that are not set out in its reasons for the decision; and
 - (c) a copy of the other documents and information held by the Registration Authority that are relevant to the decision and any appeal on it (including, unless the Council otherwise directs, a record of the evidence given at any hearing on the decision).
- (2) The Registration Authority must also send a copy of any written report that it sends to the Council to the other parties to the appeal.

7 How Registration Authority may be heard on appeal

- (1) The Registration Authority may be heard on the appeal only with the permission of the Council.
- (2) If the Council gives that permission, the Registration Authority must send written notice of its intention to be heard to the other parties to the original decision.

8 How other parties to original decision may be heard on appeal

- (1) Any other party to the original decision who wishes to be heard on the appeal must lodge with the Council a written notice stating—
 - (a) his or her intention to be heard; and
 - (b) the address to which that person wishes correspondence on the appeal to be sent.
- (2) That person must also send a copy of that notice to the other parties to the original decision before, or immediately after, lodging it with the Council.

9 How to commence cross-appeal

A person (other than the appellant) may argue at the hearing of the appeal that the decision, or part of the decision, to which the appeal relates should be varied or reversed if—

- (a) that person lodges a notice of cross-appeal and sends copies of it in the same way as is required for a notice of appeal (with any necessary modifications); and
- (b) that notice of cross-appeal is lodged with the Council at least 7 days before the date fixed for the hearing of the appeal; and
- (c) the notice of cross-appeal is in writing and has the same contents as are required for a notice of appeal (with any necessary modifications).

10 Council must give notice of hearing

- (1) The Council must—
 - (a) fix a time and place for the hearing of the appeal; and
 - (b) give at least 14 days' written notice to the parties to the appeal of the time and place of the hearing.
- (2) The notice of the hearing must include information about how the hearing will be conducted and who may be heard at the hearing.

11 Parties to appeal must provide any additional evidence and notify wish to call witnesses

A party to the appeal must send to the Council and every other party to the appeal, before the hearing,—

- (a) any evidence that has not already been provided to the Council under these regulations that that party wishes to be considered at the hearing; and
- (b) written notice of any witnesses that the party wishes to call (if permitted by the Council) and the reasons for doing so.

12 Council may adjourn hearing, shorten or waive notice periods, waive sending requirements, and address irregularities

- (1) The Council may, either on its own initiative or on written request by a party to the original decision, do 1 or more of the following:
 - (a) adjourn a hearing to any time or place:
 - (b) shorten or waive any notice period:
 - (c) waive any requirement to send anything to a party to the original decision or a party to the appeal:
 - (d) if there has been a failure to comply with a requirement of these regulations, waive that requirement or impose a modified requirement.
- (2) However, the Council must be satisfied that doing so is not contrary to the rules of natural justice.

Hearing and deciding appeals

13 How hearings are to be conducted

- (1) The Council must conduct hearings with as little formality as it considers is consistent with a fair and efficient process and a just and quick determination of the appeal.
- (2) At least 3 members of the Council must hear an appeal.
- (3) Hearings must be conducted in private.

14 Who may be heard at hearing

The following persons are entitled to be heard at a hearing:

- (a) the appellant:
- (b) any other party to the original decision who has given notice of an intention to be heard on the appeal:
- (c) representatives of the appellant and other parties:
- (d) witnesses (if permitted by the Council):
- (e) the Registration Authority (if permitted by the Council):

(f) any other person with the permission of the Council.

15 What evidence may be received on appeal

The Council may receive any evidence that the Registration Authority would have been entitled to receive on the decision being appealed.

16 Council may decide appeal even if parties not present

The Council may hold a hearing and decide an appeal whether or not the appellant or any other party to the appeal appears at the hearing.

17 Council must notify its decision

The Council must send to the parties to the appeal a copy of its decision on the appeal, and its written reasons for that decision, as soon as practicable after making the decision.

Miscellaneous

18 Lodging and sending things

- (1) Anything may be lodged or sent under these regulations by delivering it personally or by sending it by post, fax, or email to the last known address of the person concerned.
- (2) Anything that is sent by post is presumed to have been received on the day on which it would have been delivered in the ordinary course of post.
- (3) Anything that is sent by fax or email is presumed to have been received,—
 - (a) if it is sent before 5 pm on a working day, on that day; or
 - (b) if it is sent at any other time, at 9 am on the next working day.
- (4) These presumptions may be displaced by evidence that they do not apply in a particular case.

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 January 2003, set out the rules for the conduct of appeals by the Chartered Professional Engineers Council (the **Council**) under the Chartered Professional Engineers of New Zealand Act 2002 (the **Act**).

Under section 35 of the Act, decisions of the Registration Authority (which is the Institution of Professional Engineers New Zealand Incorporated) may be appealed to the Council in the first instance, and then to the District Court. Under section 38 of the Act, decisions may then be appealed, on questions of law, to the High Court. Examples of the kinds of decisions that may be appealed are decisions to decline to register a person as a chartered professional engineer, decisions to remove a chartered professional engineers' registration, and decisions on complaints about chartered professional engineers.

The key requirements for commencing an appeal of a decision to the Council under these regulations are as follows:

- the appellant must lodge a notice of appeal with the Council and send a copy to the Registration Authority within the time limit under section 35 of the Act (this time limit is 28 days after the person receives notice of the decision, but the time limit may be extended by the Council):
- the Registration Authority must provide to the Council its decision, the reasons it gave for its decision, a written report on other considerations to which it had regard (if requested by the Council), and the other relevant documents and information:
- the Registration Authority may be heard on the appeal if the Council permits it and any other party to the original decision may be heard on the appeal if the party gives notice:
- the Council must fix a time and place for the hearing of the appeal and give 14 days' notice of it to the parties to the appeal:
- the parties to the appeal must provide to the Council and any other parties any additional evidence and notify any wish to call witnesses (if permitted by the Council) before the hearing:

- the Council may adjourn hearings, shorten or waive notice periods, waive requirements to send things to other parties, and address any failure to comply with the regulations' requirements by waiving that requirement or imposing a modified requirement.

The key features of hearings on appeals by the Council under the Act and these regulations are as follows:

- under the Act, appeals must be heard as soon as practicable after the appeal is lodged:
- hearings must be conducted with as little formality as the Council considers consistent with a fair and efficient process and a just and quick determination of the appeal:
- appeals must be heard by at least 3 members of the Council:
- hearings must be in private:
- under the Act, an appeal is a rehearing (which means that judgment may be given as if the case were before the Registration Authority at that time, rather than at the time of the original hearing). However, it is not a complete rehearing. The record of the evidence heard by the Registration Authority must be placed before the Council and it is not permissible to call witnesses unless the Council otherwise directs:
- the Act also requires the Council to observe the rules of natural justice in performing its appeal function:
- the Council must notify its decision on the appeal and the reasons for its decision to the parties to the appeal.

In addition, under the Act, the Council may regulate its own procedure for making decisions where the procedure is not set out in the Act or these regulations.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered in the Ministry of Economic Development.
