

Practice Notes Webinar Series

**Webinar 6 – Part 2: Legal Responsibility
Guideline for independent
review of the designer's work**

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GUIDELINE FOR INDEPENDENT REVIEW OF THE DESIGNER'S WORK

PRACTICE NOTE - PN56 (LRD/resp/2)

STATUS - Current

Category: Legal Responsibility and Disputes
Sub-Category: Responsibility and Liability Aspects
Revised: October 2020

- (i) **PURPOSE:**
To provide a guide to the Client for commissioning a review of his Consulting Engineer's design, and to provide a guide to the Independent Engineer for conducting the review.

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◆ Introduction

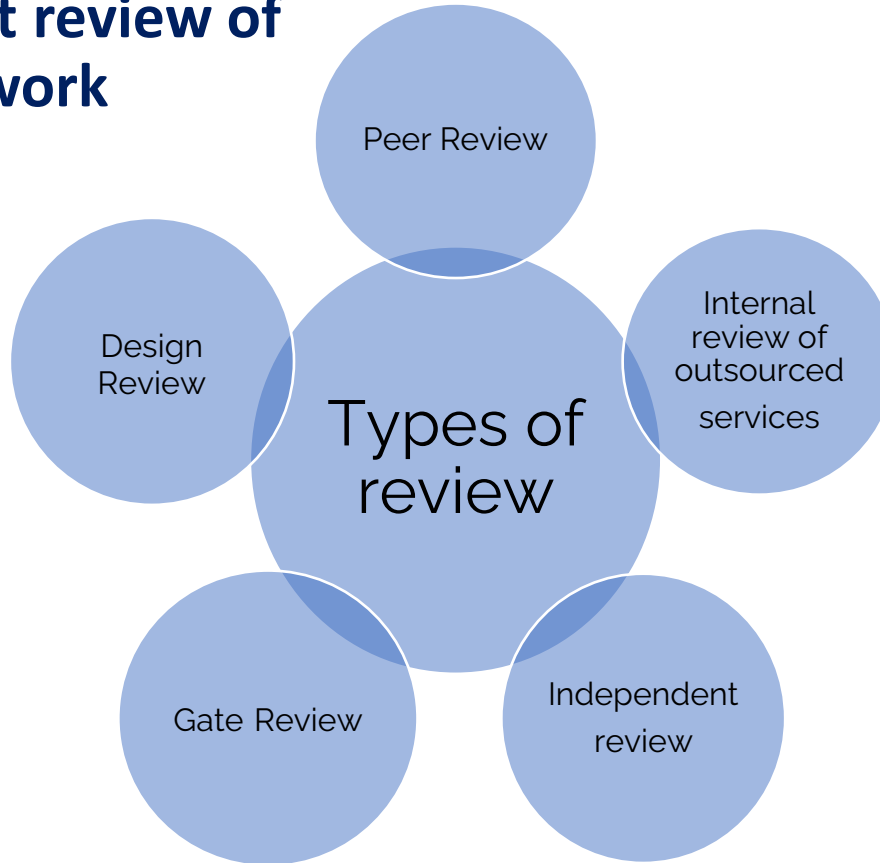
- Type of audit – review is comprehensive
- Reviews often required by clients as hold points before implementation to give confidence of project readiness
- Reviews may arise from a dispute between the consultant and client
- Review of one consultant's work by another is a serious matter

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◆ Purpose of practice note

Practice Note 56: To provide a guide to the Client for commissioning a review of his Consulting Engineer's design, and to provide a guide to the Independent Engineer for conducting the review.

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◆ ISO9001:2015

- **Measurement criteria for acceptance:** Deliverables could be subject to internal review to confirm the deliverables meet the quality requirements
- **Control of processes:** Internal review as a hold point before they are issued to external parties
- **Documented evidence of review:** The review report could form the evidence required for the management system
- Confidence levels are increased by carrying out independent review



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◆ Codes of conduct

- ECSA Code of Conduct for Registered Persons:
- “may not review the work carried out for a particular Client by another Registered Person, **except** –
 - (i) where the review is carried out for a different Client; or
 - (ii) with the prior knowledge of the other Registered Person; or
 - (iii) after receipt of a notification in writing from the Client that the engagement of the other Registered Person has been terminated; or
 - (iv) where the review **is intended for purposes of dispute resolution or legal proceedings**, including proceedings arising from these Rules; or
 - (v) for routine or statutory checks.”



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◆ Codes of conduct

- ECSA Code of Conduct for Registered Persons:
 - “must avoid situations that give rise to a **conflict of interest** or the potential for such conflict of interest”
 - “must give **engineering decisions**, recommendations or opinions that are **honest, objective and based on facts**”
 - “must ensure that any work approved or certified by them, has been **reviewed** or inspected **to the extent necessary to confirm the correctness of the approval** or certification”
 - “**may not**, unless required by law or by these Rules, **divulge any information of a confidential nature** which they obtained in the exercise of their duties”
 - “**may not maliciously** or falsely, whether in practice of their profession or otherwise, **knowingly injure the professional reputation** or business of any Registered Person or the reputation of the Council”
 - “**may not improperly supplant** or attempt to supplant a **Registered Person** in a particular engagement after such Registered Person has been employed”.



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◆ Codes of conduct

- CESA Code of Conduct:
- “Neither carelessly nor intentionally do anything to **injure the reputation** or business of others”
- “Neither directly nor indirectly **attempt to take the place of another Member** already appointed for specific work or after definite steps have been taken towards appointment of such Member.”
- “**Not review for a particular Client the work of another Member, except** -
 - (i) with the prior knowledge of such Member and affording such member reasonable opportunity to submit comments on the findings of the review; or
 - (ii) after receipt of notification from the Client that the engagement of such Member has been terminated; or
 - (iii) where the review is intended for purposes of a court of law or other legal proceedings.”

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◆ Codes of conduct

- CESA Code of Conduct:
- “Not **take over the work** of another Member on a specific project before notifying the Member in question, and **without being advised in writing by the Client of the termination** of the prior appointment for that work.”
- “Not **accept sub-contracted work** without the knowledge of the Client.”
- “Implement and **maintain a system of quality management** in their practices.”



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◆ South African Government Protocol

- The National Treasury Framework for Infrastructure Delivery and Procurement Management (FIDPM):
- The practice of review has been institutionalized (including the authority's internal review panel, or by an Independent Engineer) in the FIDPM
- The FIDPM provides a control framework for the planning, design and execution of projects. The Delivery Management Guidelines pertinently introduce the following gateway control points most relevant to the subject:
 - Gate 5: Approve Project Execution Plan (PEP) v2 (Concept Report) before embarking on Detail Design and Documentation
 - Gate 6a: Approve PEPv3 (Detailed Scope Statement, Tender Document, Pre-tender Estimate, Project Execution Plan, quality plan, timeline) before embarking on calling of tenders

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◆ South African Government Protocol

- The National Treasury Framework for Infrastructure Delivery and Procurement Management (FIDPM):
 - The focus of the Gateway Review for a major capital project is “value of money”, emphasis on the four “E”s:
 - Economy
 - Efficiency
 - Effectiveness
 - Equity



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◆ Conclusion

- Reviews are often required by Clients to confirm project readiness to Proceed to the next level
- Reviews are an essential part of ISO9001 and independent reviews enhance confidence levels
- Reviewing another consultant's work is a serious process and there are guidelines in the ECSA and CESA codes of conduct on how this should be performed



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