WATER NEW ZEALAND RESOURCE CONSENT CONSISTENCY WORKSHOP ADDITIONAL NOTES FROM PARTICIPANTS

Note: Each case study was provided as a separate personal commentary

Case Study 1

Consent Conditions:
Consent conditions can be overly complex, hard to achieve the right monitoring conditions and can be interpreted to have different meanings.

Monitoring can be completed by operations staff, who should be able to understand the condition to ensure that the appropriate monitoring or action is taken.

Monitoring clauses with various parameters take up significant resource to manage. Constantly monitoring river levels, rainfall, timeframe since last rain, temperature etc can take up a lot of resources to ensure when the multiple conditions are met that sampling can be achieved for a single consent clause.

Conditions that have a proven track record of being met or exceptionally met should be able to be altered without significant cost to the consent holder.

A recent example of this is a simple amendment to the consent for a wastewater discharge to change consent discharge limits that has cost $40k so far and has been dragged out by Regional Council staff changes. The original approach to the Regional Council was met with enthusiasm or a simple change that has now created a significant expenditure. The extended period of consideration is costing on-going funding towards the consultant involved in the consent change, as the project has not been completed.

We have two close by wastewater discharge consents for two communities which have very different social dispositions. The consents are very aligned in terms of monitoring requirements etc. yet the volumes one produces compared to the other are significant. The smaller discharge consent should reflect the minimal impact it is having, not the 'type' of discharge it is.

Data Entry of Laboratory Results:
Sample results can be entered into a system or spreadsheet of some type up to 3 times. Once by the lab, then by the TLA and then by the Regional Authority. A single database accessed by all for the region may be more streamline. All TLAs use local labs and once the sample is taken it must be submitted to the Regional Authority in the end so why triplicate it in data entry?

Consideration of overall impact of all point source discharges to a River:
We are aware of a local industry that is allowed to discharge significantly higher quantities of DRP into the river compared to our consents. Their discharge volume is less and located between our two outfalls. It seems there is no consideration of all point discharges along a river as a whole when setting conditions. They are able to discharge significantly higher amounts when we are kept to a stringent consent condition which has required installation of mechanical and chemical treatment to meet the expectation.

We are concerned in regards to expectations when consent renewals occur with the continued progression to land disposal to meet stakeholders concerns. The land required to discharge too would be substantial and expensive to purchase. Disposal to land may also make this land

unproductive to any other activity. The financial implication of some consent decisions on communities does not seem to be considered.

Case Study 2

It is noted that there are significant differences between consent conditions in our region and even requirements for associated consents. For instance:

- In only one instance has a compliance requirement been specified for phosphorous
- Various consents specify different means of assessing oxygen demand
- Various consents specify different methods of assessing nitrogen
- Some consents specify median and others 95 percentile compliance
- We were required to have land disposal for one site for summer months which is proving a problem
- For some sites we were required to have multiple consents and for others some of these were included with the main consent
- Consents are costly and it is considered that even a 15 year term is too short
- For our latest consent the RC is proposing requiring monitoring of a number of items for which no compliance is specified
- It is noted that one industrial applicant's proposed conditions for the private application are much less onerous than proposed by the RC for the council site only a short distance downstream. This consent was treated as non-modifiable with a decision to be made within 3 ½ months whereas the council application was made 3 ½ years ago and was required to be notified which drew 4 objections.

Case Study 3

When the concept of stormwater treatment was first introduced in New Zealand the ARC publication, TP 10 was used around the country. This was relatively straight forward and based on achieving a reasonable amount of treatment at a reasonable cost. Over recent years the consent conditions have become more and more onerous and is not resulting in a good outcome for the whole community. Council is spending a lot on individual consents to comply with onerous conditions. This money could be better spent in other areas to achieve a greater overall benefit.

Recent consents for stormwater discharges have been issued with 60 conditions, whereas several years ago a typical consent contained 10 conditions. One of the reasons for the increase is an increase in monitoring requirements. The annual on-going cost of monitoring one pond alone is $25k. This is despite council successfully preventing a number of more onerous conditions that the reporting officer requested, although this did require a very expensive hearing with council engaging consultants and lawyers.

Another project is an example of a recent stormwater discharge consent that has not resulted in meaningful improvements to the water quality. Council promoted a stormwater wetland pond solution which, combined with private onsite measures, was considered to be the best practical option. Water quality trigger levels were proposed based on the predicted contaminant concentrations and treatment efficiencies for the proposed system, however the consented trigger levels were set by Regional Council based on 2 times the 90% ANZECC water quality guidelines level. The consented trigger levels are actually lower than the existing pre-development levels from the upstream catchment for some determinants, meaning that it will not be possible to comply with the condition when monitoring is required. I consider it is necessary to have a new policy that requires

discharges to be managed in accordance with the best practical option, rather than water quality standards that are not achievable in some areas.

I consider a lot of these problems described above could be overcome through the catchment wide consenting process. However, this will require Regional Council coming on side with territorial authorities and understanding the asset management approach we take to managing public services whereby the best overall outcome can be achieved and a reasonable cost to the community. In order to achieve a good outcome we would support a 5 year deadline for obtaining these consents. The three year timeframe currently proposed runs the risk of forcing sub optimal outcomes.

Case Study 4

Consistency in specifying BOD sampling:
The 2001 MfE/NZWERF Guidelines for Monitoring of Wastewater, mention BOD but do not mention carbonaceous BOD (CBOD). The CBOD test uses nitrification inhibitors to prevent notification which otherwise would result in a higher oxygen demand. Nitrifiers are more likely to be present in secondary and tertiary effluent and as such the CBOD test would be more appropriate.

We are of the view that the CBOD test should be used for all effluent quality testing including raw primary, secondary and tertiary effluents unless there is a good reason not to. We recommend that these guidelines be updated in parallel with the consent conditions guide to best practice.

Consent Conditions Linked to Relevant parts of the RMA:
Resource consent conditions should be linked back to sections 9 (land use), 13 (river and lake beds), 14 (water) and 15 (discharges) of the RMA to ensure they are appropriate (i.e. avoid the imposition of conditions which are not required to fulfil RMA requirements/obligations).

Conditions seem to be imposed because they always have been imposed, rather than assessing the implications of those conditions.

We question whether there needs to be more focus on the drafting and 'offering-up' of resource consent conditions as part of a resource consent application (front-foot the conditions with appropriate justifications).

2002 NZ Municipal Wastewater Monitoring Guidelines:
We have tried to apply these risk based guidelines with varying degrees of success. We have been able to use them for some consents but not for others. There seems to be a lack of recognition (or knowledge of them) from some people involved in processing of consents resulting in inconsistent use.

We would like to query the collective as to how many people use these guidelines, are they considered onerous, should they be revised? What is their on-going relevance and use?

We are of the view that it would be beneficial in having recognised and widely accepted guidelines regarding consent conditions.

Some examples of other areas where we have noted there can be inconsistencies in consent monitoring requirements:

- Use of percentiles v. upper limits. Use of upper limits (for example in pond systems) can put the consent holder into technical non-compliance when the use of percentiles would be more environmentally valid
- Recognised guidance regarding the use of different indicator organisms for different discharge environments (i.e. enterococci not suitable for ponds)
- Guidance as to when mass loads or concentration limits should be used (e.g. mass loads not particularly helpful in land-based discharges or when the effluent does not contain toxic contaminants that may accumulate in sediments)
- Relevance of using the 5 day BOD test in receiving waters where discharges are into exposed or well flushed environments. It would be better to use DO as an instantaneous measure of environmental relevance.

Nationally Consistent Guidance around Consent Conditions for different types of Discharges:
To generate national consistency, a National Environmental Standard could be produced to manage wastewater discharge activity. The example of the National Environmental Standard for Electricity Transmissions activities (which was driven by Transpower as opposed to MfE) is a good example of a very prescription consenting regime (i.e. specific consents required and activity status).

There would be value in having a "smorgasbord" of consent conditions and monitoring requirements which would be applied to various discharges (i.e. freshwater, marine, estuarine) and guidance provided as to the applicability and frequency of monitoring for different scale discharges i.e. large urban centre v. small town/village should not necessarily be the same.

In the context of water quality, the above is somewhat at odds with MfE's 'receiving environment' focus at present.

Inconsistent Conditions – Example 1:
This example involved a combined district and regional consent application for a development. The regional consent stated sediment control shall be done in accordance with the relevant regional sediment control guidelines document. The district consent stated that there will be no discharge of sediment from the site. The two conditions were in conflict with the former being based on a 'best practicable option' approach and the latter being both unachievable and unenforceable. Furthermore, it seemed inappropriate to assign a discharge condition (s15 RMA) to a district plan land use consent (s9 RMA). The applicant, presumably for expediency, accepted the conditions despite the contradiction and the fact that they would not be able to comply with the district consent.

Impossible Conditions – Example 2:
There is a tendency to set limits on concentration and on peak discharge flow rate, but often these do not relate to a specified event return period. Any stipulation of acceptable discharge TSS concentrations from stormwater should be for runoff up to a nominated event return period, and must be realistic in terms of what the natural/existing TSS in the receiving environment might be in that event. We have had conditions of consent setting a maximum contaminant concentration in the receiving environment downstream of the discharge than would occur without the discharge in place, i.e. impossible for the discharge to achieve.

Related to this in terms of discharge quantity/peak flow, in extreme events discharge from the site will be outside the control (and design standards) of the works, and therefore it is not realistic to expect a defined maximum discharge to apply to all storm events. It must be related to a defined event return period.

Large projects:
Consenting authorities are generally not well set up to process consents relating to design build projects. Consent needs to set out clearly what the environmental performance criteria are, and the process for demonstrating compliance, and not rely on the design detail submitted with the application.

Unitary Authorities:
Based on our experience we sometimes get more complex consent conditions from some Unitary Authorities. This may be a function of the individual personalities. Is this common across all unitary authorities – is there a higher bar to jump?

Data gathering for the sake of data gathering:
In recent years with some coastal discharges we have been able to rationalise and reduce the receiving environment monitoring on the basis of effluent quality (i.e. move back up the pipe). In other cases it appears that the monitoring requirements are being set without the consenting authority necessarily considering how the data is to be used and what actions may arise from a given result.

Consenting Fatigue:
In response to submitter involvement in the consenting process, applicants have accepted onerous and sometimes unnecessary conditions to 'get across the consenting line' following lengthy discussions/interaction with councils/hearings processes etc.

KCDC Water Case Study:
The KCDC Water supply project has shown that proving each case on its merits under an effects based approach is uncertain for an applicant. Although the effects of the proposal (specifically relating to the groundwater recharge to the Waikanae River) have been shown to be very, very low, the Regional Council has taken an extremely cautious approach to consenting and has implemented very detailed and onerous baseline monitoring including deferring implementation of the proposal allow 3 years of baseline data to be gathered. This baseline monitoring requirements is onerous and unwarranted from an effects basis. Following implementation of the proposal further extensive on-going monitoring is also required.

There are over 30 monitoring conditions within the consent. The trigger and alert values which would normally be set out in the monitoring plan have been brought forward into the consent in order to give the consenting authority and stakeholders more certainty.

Case Study 5

Resource Consent Issues under the RMA:
There has, on several occasions, been a conflict between Commissioners in terms of grant of consent term for a term that is in conflict with the Councils Annual Plan, Three Year Plan and long Term Plan. Under the LGA the Council must consult with its community over the content of the plans which when finalised and adopted sets the years in which capital works are budgeted for construction. Consent decisions have ignored this LGA requirement believing Councils can simply change the Capital program to suit the term of consent granted. This is not always the case so appeals as to term of consent follow. Which legislation (RMA or LGA) has sway in this situation?

Being pressured into agreeing in mediation to consent conditions that are not serving any RMA function but doing so to make the issue "go away".

Many TLA's will have KPI's around consent compliance measures, e.g. no abatement notices or prosecutions, less than Z or no non-compliances. Many consent conditions put time frames on when this must be done by, e.g. Management Plan submitted by 1 December or within 1 month of commissioning and if the report or requirement is not in on time a "non-compliance" ensues. The issue is that this non-compliance can in some situations stay as a non-compliance for the duration of the consent even though the situation has been rectified. Regional Councils literally interpret the condition for the life of the consent. Farmers are hot about this one as it can distort the overall picture of compliance

Other Issues

Issue 1:
Inconsistent management of stormwater consents across region; some are policed more than others.

Issue 2:
Lack of certainty that water taken quantity will be maintained over time causing commercial uncertainty. No clarity over how limited resources will be allocated.

Issue 3:
Different standards for discharges from 2 adjacent sites with similar wastewater and circumstances.