

## Consent Managers Group

### Achieving Consistency with Discharge Consents – Water NZ

- **Best Practice Workshop 7 November 2013**

The Consents Managers Group (CMG) comprises representatives of Regional/Unitary Councils. This workshop had 31 attendees with at least one representative from each Council, except Chatham Is.

#### **Achieving Consistency with Discharge Consents Session 1: – 90 minutes**

*(Phil Doole, CMG Convenor; and Nick Walmsley, Water NZ)*

Water NZ is seeking better consistency in the processing of applications for wastewater and stormwater discharge permits, and the resulting consent conditions. They have initiated a project to determine the extent and range of issues, the problems and inefficiencies those issues cause, and hopefully to find and enable solutions that will benefit all parties connected with resource consent processes. They want to engage with Regional/Unitary Councils to understand their issues and perceptions, the ultimate result to be more effective consent conditions involving practical environmental protection with less effort/cost spent at hearings and less effort/cost to monitor and demonstrate compliance; to achieve a win-win situation. Water NZ held a workshop on this topic for their members in August, and we will consider the matters raised. There are many variables that can result in, or create perceptions of inconsistencies in conditions on discharge permits (such as changes of approach over time).

**Note:** The brief of the CMG covers processing of resource consent applications and the resulting consents. Hence the workshop focussed on those aspects of the Water NZ concerns. There is a separate Compliance & Enforcement Group, and some of the matters raised by Water NZ are of more relevance to that Group although the interface between the consenting process and subsequent monitoring and compliance is acknowledged.

**Format:** Nick Walmsley presented a summary of the matters raised at the Water NZ workshop, with some questions and clarifications (45 mins); followed by an open “brain-storming” type session (45 mins). Nick’s summary can be found on the Water NZ website. Notes from the open session follow.

#### **Reasons why there can be “inconsistent” decisions including conditions for discharges**

- Different environmental contexts or factors (eg, mixing zones, downstream users)
- Different social and/or cultural contexts (community interests)
- Different community expectations regarding monitoring programmes
- Different policy frameworks
- Little national guidance or direction over past 20 years
- Differing approaches used by applicants for AEEs, risk assessments and Cost Benefit Analyses
- Differing rates or frequency of discharges
- Changing or evolving science base over time
- New versus existing or old assessment and monitoring systems
- Legacy issues with older consents
- Different conditions being volunteered by applicants
- Whether submissions are made, the strength of those submissions and the extent to which they are pursued through the hearing process
- Differing knowledge/experience of Council staff, applicants and consultants
- Composition/experience of hearings panels
- Consent applicants having differing track records
- Precedents in a region for similar activities

- Differing expert evidence, and whether there is conflicting evidence
- Whether mitigation is proposed and what the nature of the mitigation is
- For renewals, the degree to which the proposal is an improvement (in terms of environmental outcomes) compared to previous consents
- Differing terms sought/imposed
- Precautionary approach being exercised

### **Brief Discussion on some of the Issues with Consent Processing and Conditions of Consent**

- Flexibility
  - Water NZ seeking consent conditions that allow flexibility, as a substitute for formal review process (eg, stepped down sampling frequency)?
  - Both have their place, depending on degree of risk or uncertainty
- Standardisation
  - ANZECC guidelines being used inappropriately (eg, for groundwater)?
  - Standardise measurements for each contaminant?
- Wastewater monitoring guidelines
  - Avoid monitoring for monitoring's sake, interface with SOE monitoring?
  - No compliance limits? Degrees of non-compliance?
- Processing improvements
  - Dialogue between parties is needed up front and very early in the project plan to gain a clear and full mutual understanding of treatment method or options, receiving environment and community expectations.
  - Get applicant's feedback to draft conditions - If applicants are agreeing to what they regard as being 'poor' conditions just to move on, what are the causes of contention? Are they technical matters (eg, monitoring programme design), or more fundamental differences over discharge standards etc?
  - How do you gauge levels of competence? (applicants/consultants, consents staff, decision-makers)

### **National Guidance**

*Proposed amendments to the National Policy Statement for Freshwater Management 2011 were released for public comment on the day of the workshop.*

The Central Government proposals to reform the freshwater management system include a systematic approach to managing water quality. These proposed changes to the NPS for Freshwater will effectively require the setting of environmental bottom lines for water quality, defining quality attributes and standards for receiving environments. More stringent receiving water standards could be set in regional and unitary plans, with implications for reviews of consent conditions.

### • **CMG Meeting 8 November 2013**

After the Best Practice Workshop the CMG adopted the following action points:

#### **Action Points**

1. Engage with the Water NZ initiative to improve consenting practices
2. Clarify current practice issues (ie, move on from legacy "war stories")
3. Identify which perceived inconsistencies can be addressed (eg, monitoring requirements)
4. Seek constructive dialogue with Water NZ with an aim to identifying and implementing priority solutions such as Guidance Notes.

- **Examples of Differing Discharge Consent Conditions for Community Wastewater Treatment Plants**

The following examples were provided after the workshop to illustrate reasons why differences occur in the consenting process and conditions of consent.

- Sensitive Receiving Environment: very stringent wastewater quality conditions and frequent monitoring (weekly), because of receiving environment comprising very small watercourse entering estuary with shellfish farming; proven technology commissioned prior to re-consenting; a long term of consent recognises the investment in plant and commitment required to meet conditions.
- Conventional lower-tech systems discharging into large water bodies where nutrient loads, including seasonal effects are a key concern; pathogens are an issue where the receiving water body is classified for contact recreation; treated wastewater quality limits are moderate and monitoring less frequent (monthly) as these more robust systems are not generally subject to quick fluctuations; some have shorter terms due to nutrient loads, with a longer term granted where commitment made to reduce nutrients during life of consent.
- Discharges to land: a key issue can be discharge of nitrogen, also concerns regarding pathogens affecting water supply bores – covered by piezometer monitoring; no limits on discharge quality parameters other than N and P due to discharge to land, but frequent monitoring of all parameters (weekly).

Key differences illustrated by these examples are:

- Higher level of treatment (hence investment) is required for more sensitive receiving environments and those sites have more intensive monitoring requirements (although permit holders may have to do this anyway to ensure their mechanical plants are operating effectively).
  - The surety gained from higher quality discharges/less effects of the discharge and monitoring allows a longer consent term to be applied.
  - Lower tech plants have less frequent monitoring requirements in recognition that more frequent sampling will not gain any more information.
  - Lower tech plants generally have shorter terms in recognition of the need to readdress quality limits against changing standards and policy in the future and future growth.
- **Reasons why Consents Officers might need to look up the pipe**
    - The treatment method may be pivotal to addressing community values and resolving environmental or community concerns (eg, the Biological Treatment Filter option has been accepted by some iwi as satisfying their concerns with regard to discharge of treated human waste to water – consent conditions prescribe use of the BTF to ensure that the adverse cultural effects are addressed).
    - Section 107 RMA – where relevant, conditions can and do require the permit holder to undertake works during the term of the permit to achieve discharge standards over time (eg, “UV treatment to be installed by 2018”).
    - Environmental monitoring programmes are often inter-dependent on the treatment method(s) being used and operational monitoring needs.

## ● **Draft Principles for Consenting Practice (For Consent Authorities)**

The following is a draft set of principles for consenting practice relating to discharges taking account of matters raised by Water NZ (these should be regarded as “work in progress”).

1. Encourage early up front meetings with applicants, well before pre-lodgement, to clarify/confirm expectations and any points of concern with their project
2. Ensure that the processing team dealing with the application (processing officer and the technical expertise they draw on) has the appropriate technical understanding amongst them to adequately understand the operation, its effects and draft RMA permit conditions to suit.
3. Consents Officers should satisfy themselves that the proposed treatment system is capable of achieving the treatment standards that the application says will be achieved and which will be required by the consent conditions.
4. Consider, as far possible under the provisions of the RMA (Part 2, Sections 104, 107 etc), the cost-benefit of all applications in terms of the level of treatment and monitoring required by the conditions and the affordability of the community in question.
5. Take care and achieve consistency in condition drafting, particularly with regard to monitoring and compliance requirements.
6. Have the owner and operator in mind when preparing conditions (in terms of practicality of consent conditions).
7. Keep conditions as simple as possible (include lookup tables and graphs where possible), ensure that conditions are effects based and supported by relevant evidence.
8. Use percentile limits where practicable rather than absolute limits to reduce technical non-compliance and better control actual effects (to be able to use percentile limits there needs to be enough data generated by the sampling frequency).
9. Build more flexibility into consent conditions where appropriate (eg, a stepped down monitoring regime enabling the monitoring frequency to be stepped down over time if the relevant standards/ percentile limits are complied with, without requiring a variation to the conditions).
10. Circulate draft consent conditions to get applicant input (if non-notified process).

Adoption of these principles should assist in achieving better consistency in processing practice, however the actual outcomes of the consenting process will continue to be influenced by community expectations (ie, NPS Freshwater, Regional Plans, submissions on applications), further information/evidence presented during the process and the judgements made by decision-makers.

## ● **Draft Work Priorities**

Bearing in mind the proposed changes to the NPS Freshwater, in relation to water quality attributes and standards, the following priorities to work on with Water NZ will be promoted by CMG:

- Guidelines for standardisation or better consistency in wording of conditions where possible.
- Guidelines for standardisation in design of monitoring programmes (sampling/data/info).

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