

11. OCEAN OUTFALL CONSENT APPEAL

General Manager responsible:	General Manager City Environment
Officer responsible:	City Water & Waste Manager
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PURPOSE OF REPORT

1. The purpose of this report is to advise the Council regarding the resource consent decision for the ocean outfall received on 2 November, and to seek endorsement of staff actions to lodge an appeal on a number of minor conditions within the consents. The full text of the decision is available on the Environment Canterbury website.

EXECUTIVE SUMMARY

2. The decision from Environment Canterbury for the ocean outfall was received on 2 November 2005. Although the ocean outfall decision is generally favourable for the Council, there are a number of consent conditions which may be difficult to fully comply with. The impact of this would be that from time to time the Council would be in breach of one or more of the resource consents for the ocean outfall. This situation can be avoided if an appeal is lodged within 15 days of receipt (ie by 25 November) of this decision to those consents, and suitable changes to the consent are agreed. Staff have lodged an appeal on the consents where there is concern regarding the wording of conditions, due to the short period available for this process. It should be noted that it is possible to withdraw the appeal at any time.

FINANCIAL AND LEGAL CONSIDERATIONS

3. The Council would wish to be fully compliant with any resource consent. Where it is known that breaches are a possibility, action should be taken to avoid the breach, either by compliance with the consent or by seeking an appropriate change to the consent. Any future non compliance of any consent condition could lead to enforcement action being taken by the consenting authority. The Council would then be subject to negative press and could be subject to penalties under the Resource Management Act.

STAFF RECOMMENDATION

It is recommended that the Council lodge an appeal with Environment Canterbury on 25 November to the ocean outfall resource consent conditions, addressing the issues raised in Attachment A and Attachment B.

BACKGROUND ON OCEAN OUTFALL CONSENT APPEAL

4. The Council applied in 2001 for an estuary discharge consent. This was not granted on terms favourable to the Council and after further evaluation, the Council resolved to prepare an Assessment of Environmental Effects for an Ocean Outfall Pipeline, no less than 2km long. A short term estuary discharge consent was then negotiated as a resolution to the appeal lodged by the Council with the registered interested parties, to that appeal. As part of the negotiations, a number of key milestones were agreed as follows.
 - (a) Ocean current modelling completed by 30 April 2004.
 - (b) Reconfiguration of oxidation ponds completed by 30 April 2004.
 - (c) Report available on water quality from plant upgrade by 31 August 2004.
 - (d) Lodge ocean outfall consent by 20 December 2004.
 - (e) Let construction contract within eight months of ocean outfall consent being granted.
 - (f) Ocean outfall operational within 19 months of contract being awarded, or 30 November 2009, whichever is earlier.
5. Items (a)–(d) have been completed to date, and Environment Canterbury have been advised that as a result of the Request for Information Process (ROI), contractors have advised that construction is likely to take 24 to 30 months in total. In all other respects, the Ocean Outfall project is on schedule.

Introduction

6. The decision on the ocean outfall consents was received from Environment Canterbury on 2 November 2005, granting all consents subject to conditions for consents applied for from Environment Canterbury, Christchurch City Council and Banks Peninsula District Council, as well as a recommendation to the Christchurch City Council regarding the granting of temporary and permanent easements over land vested in the Christchurch City Council under the Reserves Act.
7. The decision is 381 pages in length and is generally very favourable to the Christchurch City Council to achieve the outcomes being sought. The commissioners noted "*the submissions in relation to the project were largely concerned with conditions which should regulate the construction of works when commissioned, rather than mounting an attack on the project itself. It is obvious to us that the consultation process was thorough and effective.*"
8. The decision has therefore granted the consents being sought, and concentrated on suitable conditions to provide the community with confidence that the construction and operation will be undertaken in a manner that will not be significantly detrimental to the community or environment.
9. Analysis of these conditions shows that the great majority of these conditions are suitable and helpful to the Christchurch City Council. However, there are some conditions that require further consideration and amendment in order for the Council to have confidence that it can be in full compliance with the consents. These matters are largely in relation to monitoring requirements. For that reason an appeal document has been drafted with the intention of lodging an appeal within the 15 working day period allowed for this process.

Consent Conditions

10. There are four conditions out of a total 214 that the Council may have difficulty in achieving full compliance with. These are listed in (Attachment A), including a commentary on issues surrounding the problem conditions.
11. It is important that these conditions be amended at least in part, for the Christchurch City Council to have confidence that full compliance can be achieved for the future, based on the knowledge of the existing wastewater characteristics.
12. In addition to the conditions listed in the attachment being considered for appeal, staff have written to Environment Canterbury seeking their views on how a small number of other conditions will be interpreted by ECan. Some of these matters are minor, and could be considered administrative. However, on other matters the response may lead to additional consents also requiring amendment to ensure that CCC can achieve full compliance. This letter is Attachment B. Depending on how ECan responds to this letter there may be a need to add additional unfavourable conditions to the list in Attachment A.

OPTIONS

13. No Appeal

(a) Breach of Consent Conditions

CCC will inevitably be in breach of at least one of the conditions detailed in Attachment A. This would result in poor public perception of the ocean outfall as a solution for wastewater disposal and therefore compromise the ocean outfall being viewed as a successful project and major infrastructural improvement by the community. After the consent became operative (ie no appeals or appeals resolved) the Council could seek a variation to conditions. This option is not likely to be viewed by the community favourably, as the community would expect that where the Council is aware of issues, these would be resolved at the time of the decision. It is also noted that a breach in conditions will have financial implications in the future due to costs of seeking a variation, defending any court action, or payment of any penalties that may be imposed.

(b) Submitters Appealing

Other submitters may also appeal on conditions within the consents under consideration. CCC would not be permitted to address matters of concern with consents appealed by other submitters unless CCC had also lodged an appeal.

PREFERRED OPTION

14. **Lodge Appeal**

(a) Costs

Additional costs are likely to be incurred. It is expected that the appeal costs will be moderate, as it is likely that a negotiated settlement could be achieved rather than requiring a hearing at the Environment Court. These costs would be significantly less than defending a breach of a consent condition or seeking a variation to the consent at a later time.

(b) Time

The Council has a programme in place to meet milestones within the estuary discharge consent. A protracted appeal process could place these milestones at risk. It is noted that although some time has been programmed for an appeal process, delays would only be incurred on consents that are appealed. The Council's many concerns are with the ongoing operational consents. Consents that are not appealed would become final. Providing the issue regarding mercury in sediments can be resolved through negotiation, and no submitters appeal any of the construction consents, work could proceed on construction while the operational monitoring conditions are resolved through the appeal process.