

Standard Conditions Manual

Management Plans

Disclaimer

The information in this Standard Conditions Manual is, according to the Auckland Council's best efforts, accurate at the time of publication. Auckland Council makes every reasonable effort to keep it current and accurate. However, users of the Conditions Manual are advised that:

- Although the conditions are "standardised", in the sense that they should be applied consistently where they are required, this does not mean that they should all be applied in every instance. Applicants need to consider the nature of the activity, and the characteristics of the site and its surroundings in considering whether to apply each and every condition.*
- The standard conditions should be used with caution as a starting point from which appropriate conditions for the individual consent should be drafted to align with the requirements of ss108, 108AA and 220 of the Resource Management Act 1991.*
- Further guidance as to whether to apply the conditions are included in the guidance notes that accompanies each condition.*
- Users should take specific advice from qualified professional people before undertaking any action as a result of information obtained in this Standard Conditions Manual.*
- Auckland Council does not accept any responsibility for, or liability whatsoever whether in contract, tort, equity or otherwise (including negligence) arising from the use of, or reliance on, this Standard Conditions Manual. This includes, without limitation, any liability arising from any error, or inadequacy, deficiency, flaw in or omission from the information provided.*

Introduction

Large scale projects that require design modification or technical certification once the consent is granted are challenging, as conditions need to include a degree of discretion and yet not be *ultra vires* (not legal). Management plan conditions can be useful in this context.

Conditions that require management plans must provide clear performance or environmental standard that are to be certified by an appropriately qualified and experienced person. A council officer can act as a certifier but not an arbitrator. Critical adverse effects need to be identified and avoided, remedied or mitigated via conditions before a decision to grant is made and not left to be addressed by a future management plan. Management plans should be limited to non-critical operational processes that lie behind a performance standard e.g. a certified noise report could be used to complement noise limits specified by other conditions.

Conditions can refer to specific mandatory aspects of an existing management plan that has been submitted as part of an AEE or is currently in use. Future management plans can also be required as condition of consent where the management plan will provide detailed information on how the consent holder will comply with other conditions of consent.

The Use of Management Plan Conditions

Flexibility

Management Plan conditions are a useful tool to provide flexibility for both the consent holder and the council by providing for matters of detail to be dealt with after the consent application has been granted, particularly for larger and more complex proposals. In some cases draft management plans may be developed by the applicant, submitted as part of the application and finalised prior to the consent determination. For more complex applications it is usual for management plans to be finalised after consent has been granted. This enables the applicant to further advance the proposed development beyond the consent phase with more certainty and engage contractors and experts who may all input into the finalisation of the management plan.

Certification

To accommodate flexibility (and minimise lengthy delays) it is important that the council retains the ability to make changes to the management plans without the need for formal review of the conditions. One method of achieving this flexibility is to provide for the plans to be 'certified' by a council officer.

As outlined in recent case law, this matter may be addressed by the management plan containing clear objectives as to the purpose of the plan and the methods to be employed to meet the performance standards set by the relevant conditions of the consent. The inclusion of clear objectives enables the plans to be certified by a council officer by measurement against the objectives. The decision maker thus determines the objectives of the management plan and the bottom line conditions and the certifier has the ability to direct changes to the management other than the objectives and conditions.

The key elements for management plans include:

- clear objectives for the council officer to measure the plan against;
- ability of the certifier to withhold certification until he or she is satisfied the plan will achieve the objectives;
- ability of the council to be able to require changes to management plans and if necessary to halt works until the changes are made
- minimum environmental standards (expressed in the conditions of consent) so that if these are breached the council can request or require changes to the management plan and/or take enforcement action.

Liability

The certification of management plans may in some circumstances raise liability issues for the council. For example, management plans that include matters that are not relevant under the RMA such as a Health and Safety Plan or transport controls covered under other legislation applicable to NZTA or Auckland Transport. In these cases, the following advice note should be added immediately after the relevant management plan condition.

Advice Note: Certification of Management Plans

Certification of the **XXX** Management Plan by the council relates only to those aspects of the management plan that are relevant under the Resource Management Act 1991. The certification does not amount to an approval or acceptance of suitability by the council of any elements of the management plan that relate to other legislation, for example, but not limited to, the Building Act 2004, the Heritage New Zealand Pouhere Taonga Act 2014, or the Health and Safety in Employment Act 1992.

Example of a Management Plan Condition Wording

Condition **XX**: **YYYY** Management Plan to be provided

Prior to the commencement of **yyyy** activity/ commencement of construction on the site the consent holder must submit a **YYYY** Management Plan (**YYYYMP**) to the Team Leader Compliance Monitoring [**specify area**] for certification, to confirm that the activities undertaken in accordance with the **YYYYMP** will achieve the objectives of the plan and compliance with the relevant consent conditions. Any subsequent review of the **YYYYMP** must also be submitted to the Team Leader Compliance Monitoring for certification. The consent holder must meet the costs of the production, certification, monitoring and review of the **YYYYMP**.

The overall objective of the **YYYYMP** must be to set out the practices and procedures to be adopted to ensure compliance with consent conditions and also to meet the following objectives:

(List the relevant objectives of the particular management plan.)