

**BEFORE THE HEARING PANEL OF SOUTHLAND REGIONAL COUNCIL**

**In the matter** of sections 88 to 115 of the Resource Management Act 1991

**And**

**In the matter** Applications for resource consents by:

**WORLDWIDE ONE LIMITED, WORLDWIDE TWO LIMITED,**  
Applicants

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**MEMORANDUM OF COUNSEL FOR THE APPLICANTS AS TO WITNESS  
CAUCUSING AND FURTHER HEARING**

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## **INTRODUCTION**

- 1 This memorandum is provided on behalf of the Applicants (Woldwide One Ltd and Woldwide Two Ltd only) to seek an urgent suspension of all directions for their applications (aside from those for the filing of legal submissions) pending the provision of the Panel's ruling as to key legal matters relevant to whether the existing modelling can be relied on.
  
- 2 It is also provided in response to the further emails from the Chair, from which it is evident that there has been some confusion on the part of the various attendees for the respective caucusing sessions as to what was to be covered when. It is hoped that the matters set out below will assist in providing a clear way forward.

## **KEY POSITION**

- 3 It is the Applicants' position that the 2017 consents should not be considered as part of the existing environment, both for reasons of fairness and as a matter of law. It is also their position that the Applicants' past alleged non-compliances are irrelevant to what the existing environment should include. On that basis the losses modelled thus far fairly and conservatively estimate what should be seen as the environment against which the proposal is to be assessed.
  
- 4 If the Panel finds in favour of the Applicants on these matters, that renders further details surrounding the past conduct and need to model the scenario including the 2017 consents unnecessary. That is because on the Applicant's position, the existing environment is not reliant on past compliance, but rather is reliant on what can and is likely to be done under the pre-2017 consents and the associated permitted activity rules.
  
- 5 If the Panel rules that the 2017 consents and/or past alleged non-compliances should be taken to affect the existing environment to the extent that they invalidate the Applicants' modelling, which then cannot be relied on, then the Applicants will:
  - 5.1 Withdraw the current applications for Woldwide One Ltd and Woldwide Two Ltd;
  
  - 5.2 Surrender the 2011 Woldwide Two Ltd discharge permit;

- 5.3 Rely only on the 2012 Woldwide One Ltd discharge permit and associated permitted activity rules and the 2017 suite of consents.

## REASONS

- 6 While it is accepted that this Panel is not really in a position to place any real weight on the financial viability of the proposal, that issue is of course of essential importance for the Applicants. As matters stand, the costs incurred to date are already at or very close to the point at which they will have outweighed the financial benefit from increasing the cow numbers. It was this benefit that was intended to fund the extra mitigation.
- 7 Furthermore, and more importantly, the entire process, not least of which was the very unfortunate course of events at the planners' caucusing on Thursday 3 October, has taken a very heavy physical and emotional toll on the Applicants' directors. They feel they lack the emotional and physical strength to continue to face what they perceive as a sustained series of attacks on them and their integrity. They would rather walk away from the entire process than have to continue down that route.
- 8 They therefore do not consider that they are in a position to take on the extra financial, emotional and physical burden involved with the further caucusing, or the further modelling of the "2017 scenario". These steps are only necessary if the 2017 consents should be considered as part of the existing environment and past conduct can somehow exclude large parts of what could be considered as lawful going forward if these consents are not granted.
- 9 It is their position that they have, through their applications, further documentation and the further evidence provided by them and their witnesses prior to and at the hearing, provided sufficient information for the Panel to be able to determine the applications. This is if it is accepted that neither the 2017 suite of consents, nor their past conduct should properly exclude parts of what has been modelled.
- 10 There are two exceptions to this:
- 10.1 The further information they wish to provide in order to demonstrate that the 2017 suite of consents ought not to be considered as part of the existing environment. They intend to provide that information along with the legal submissions on that particular issue;

10.2 The responses on the proposed conditions and the landholding issue that would form part of their right of reply, should the Panel rule in their favour on what should be properly taken into account for the existing environment.

#### **INTENDED FURTHER CONDUCT OF HEARING**

11 The Applicants consider that in view of the above constraints, they are not in a position to continue incurring the further cost and stress involved with the further caucusing. They have therefore reluctantly requested their experts to cease immediately preparing for the caucusing scheduled for 8 October 2019 (which they believed – perhaps mistakenly – to have been to address the further factual matters around these specific applications). They have also requested them not to attend the caucusing on that date. The Applicants' directors do not intend to participate.

12 Instead, Counsel is instructed to file the legal submissions, along with evidentiary materials that will provide the basis for the submission that the 2017 consents should not be considered as part of the existing environment. On grounds of fairness and legal principle. Should the Panel rule in the Applicants' favour on the 2017 consents and the Applicants' past conduct, that will have eliminated the key source of uncertainty and cost. In that case they will be willing to have the hearing reconvene briefly for:

12.1 The s42A officers to address the factual scenario where neither past alleged non-compliances nor the 2017 consents exclude the existing environment as relied on by the Applicants, being that which could lawfully exist in the absence of the s2017 consents, and in reliance the issues of fairness;

12.2 The provision of the Applicants' right of reply, including on the "landholding" issues and consent conditions.

13 The Applicants' directors are aware that there is a risk that the Panel might decide to rely on s104(6) if it considers that the above course is unlikely to provide sufficient information to enable them to grant the consents. It is the Applicants' position that this ought not to occur, but that if it becomes clear that this is the likely outcome, then they will withdraw these particular applications (not those for the other hearing), as they cannot incur the further costs and stresses involved with continuing to provide more and more information at ever increasing costs.

- 14 While they accept that the Panel may well have liked to have had all the additional information that might come from the current directions, they sincerely regret that it is beyond what is achievable or sustainable from a financial, emotional and physical cost point of view. They apologise to the Panel for any inconvenience this may cause.

**DIRECTIONS SOUGHT**

- 15 The Applicants respectfully request urgently that the Panel:
- 15.1 Suspends all current timetabling aside from the provision of legal submissions and associated evidence concerning the issue of the s2017 consents;
- 15.2 Provides its ruling on that as soon as practicable after receiving the Applicants' submissions and materials.

Dated 7 October 2019



J M van der Wal  
Solicitor for the Applicants