

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,
WORLDWIDE FOUR LIMITED, WORLDWIDE FIVE LIMITED**

Applicants

MEMORANDUM IN RESPONSE TO COUNCIL LETTERS

Duncan Cotterill
Solicitor acting: J M van der Wal
PO Box 5, Christchurch 8140

Phone +64 3 379 2430
Fax +64 3 379 7097
hans.vanderwal@duncancotterill.com

INTRODUCTION

- 1 This Memorandum is filed in response to the letters sent to the hearing Panel for the above applications by the Manager Consents of the Southland Regional Council (SRC) seeking further directions and amendments to existing directions.

- 2 In relation to Woldwide One Ltd and Woldwide Two Ltd the amendments and further information requests are opposed. The timetabling issued in the Minute of 8 October 2019 is supported.

- 3 In relation to the Woldwide Four Ltd and Woldwide Five Ltd applications the Applicants' expert witnesses will provide factual clarification on those points that they understood the Panel sought them to address. This will be provided to the extent and in the detail which the Applicants consider is necessary for the Panel to understand the effects of the proposal better and to determine the applications. This information will be provided to the Panel by close of business 11 October 2019. They seek that the hearing reconvene as initially indicated, on 24 or 25 October 2019, immediately following that for Woldwide one Ltd and Woldwide Two Ltd.

REASONS

Directions in Relation to Woldwide One Limited and Woldwide Two Limited Applications

- 4 The directions issued on 8 October 2019 in relation to the applications by Woldwide One Limited and Woldwide Two Limited are gratefully accepted and supported. The Applicants do not accept that any further information beyond that implicit in the Minute is required in order to determine the applications or better understand the effects of the proposal. They consider that the provision of the legal submissions and further evidence, as well as the right of reply subsequently, will provide the Panel with sufficient information both to understand the effects of the proposal and to determine the application. It is their position that any further adjournments or additional caucusing and information will lead to unreasonable delay contrary to the Resource Management Act s21 requirements and additional costs that are unreasonable for the Applicants to have to incur.

Requests in Relation Woldwide Four Limited and Woldwide Five Limited Applications

- 5 Both Applicants oppose the further directions sought, as well as any further adjournments. As per the Panel's directions their expert witnesses have caucused in good faith. The requests by the SRC Consent Manager lead the Applicants to conclude there is insufficient common ground between the s42A officers and the Applicants' experts evidence on what was required by the Commissioners, what is reasonably necessary to understand the effects of the proposal on the environment and what is reasonably necessary to determine the applications. On this basis they do not agree to any further caucusing.

- 6 Instead the Applicants will provide, by close of business on 11 October 2019, further factual clarifications of the matters which they understood the Panel sought to have clarified through caucusing. The Applicants consider that that information, along with the right of reply that will also be provided for these particular applications, will be sufficient to enable the Panel to determine the applications.

- 7 The reality is that the financial picture for these Applicants is fairly similar to that previously outlined in relation to the Applicants Woldwide One Limited and Woldwide Two Limited. Woldwide Four Ltd and Woldwide Five Ltd are also in a position where any further delays and further costs incurred through additional provision of information and caucusing would reach a level where it would no longer be financially feasible to continue. Those would effectively amount to the same outcome as a refusal. They therefore have no option but to request the Panel to determine the applications on the basis of what would have been provided by the time the Applicants' reply has been provided.

- 8 The Applicants' witnesses confirm that the information they understood was to be settled through caucusing was as follows:
 - 8.1 Confirmation that for both WW4 & WW5 that the Overseer modelling of FDE effluent and barn slurry is consistent with the areas specified in the original application;

 - 8.2 Confirmation of the source of information used to estimate the NPKS rating for the imported slurry dairy organic fertiliser;

- 8.3 A brief summary of the evidence used and method for modelling IWG on the Gladfield Block.
 - 8.4 A brief summary of the evidence used and method for modelling IWG on the Cochran Blocks for both WW4 and WW5.
 - 8.5 Confirmation that the active riverbed area (clear in Google satellite images) that is in Woldwide Five title has not been included in Overseer modelling.
 - 8.6 Some brief commentary and a table to outline the outcome of modelling the addition of the WW4 Cochran Block to WW5 to produce an Aparima River catchment current vs proposed nutrient loss assessment.
 - 8.7 A brief summary of the additional Phase 1 WW4 mitigation undertaken to demonstrate P loss reduction with Phase 1. This will include appropriate mitigation references.
 - 8.8 Confirmation that the Collies Block has been modelled as was agreed by ES staff to be dairy grazing.
 - 8.9 'Publishing' of final Overseer changes via the online Overseer software system to enable all model inputs to be audited by Ms Phillips.
- 9 It is this information that will be provided to the Panel by 11 October 2019.
- 10 The Applicants confirm that they are available for the resumption of the hearing on 24 and 25 October. They seek that the hearing resume then for the right of reply to be provided and the case upon which the Panel has requested to determine the applications to be concluded by the Applicants.

COMMUNICATIONS FROM CONSENTS MANAGER SOUTHLAND REGIONAL COUNCIL

- 11 In Counsel's email to the Panel of 8 October 2019 concerns were raised regarding direct communication between the Southland Regional Council Consents Manager and the Panel members. This approach is considered to be contrary to the rules of procedural fairness and the statutory provisions governing the holding of such hearings. As indicated in the Applicants'

opening legal submissions, the Panel has delegated authority of the Council and has its position as the determiner of these applications. Specific officers have been appointed under s42A to assist the Panel in making its decision. Manager Consents is not one of them. He has no status before this hearing. "The Council" is not party to these applications, but is the body with the quasi-judicial function of determining these applications, which, as indicated, has been delegated to the Panel.

- 12 It is understood that it is the Consents Manager who is responsible for appointing this Panel and ensuring it has the delegated authority to determine these applications on behalf of the Council. That delegation having been made, it is important that he is seen in no way to attempt to influence the Panel as to how they fulfil that delegation, but that they are left to exercise their quasi-judicial function without any such interference.
- 13 Although counsel is not concerned that this Panel will allow itself to be influenced by those letters, the Applicants wish to raise these issues as a matter of formal record.

DIRECTIONS SOUGHT

- 14 The Applicants for both hearings therefore seek that:
- 14.1 The Minute and Directions of 8 October 2019 regarding the Woldwide One Limited and Woldwide Two Limited hearing be confirmed and not amended;
- 14.2 For the Woldwide Four Limited and Woldwide Five Limited applications the Panel confirms that:
- 14.2.1 No further witness caucusing is to occur;
- 14.2.2 The information required from the Applicants can be provided as proposed by the end of business 11 October 2019;
- 14.2.3 The hearing will resume as soon as possible after the conclusion of the Woldwide One and Two hearing resumption on 24 or 25 October 2019 for the provision of the remaining information and submissions necessary to determine the applications.

Dated 9 October 2019

A handwritten signature in blue ink, appearing to read 'J M van der Wal', with a stylized flourish at the end.

J M van der Wal

Solicitor for the Applicants