

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 FOUR LIMITED, WORLDWIDE FIVE LIMITED,
Applicants

Next event date

MEMORANDUM OF COUNSEL AS TO ADDITIONAL EVIDENCE

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 by way of cover for the evidence required by the Panel's minute of 11 October 2019. The need for this additional evidence arises from the Applicants' view that the expert witnessing that it understood the Panel considered helpful to resolve differences between the Applicants' expert witnesses and the s42A officers, would be unlikely to achieve such a resolution. That conclusion was reached after good faith participation by the Applicants' expert witnesses in caucusing with the s42A officers.
- 2 The Applicants set out their position in a memorandum of Counsel on behalf of them and Woldwide One Ltd and Woldwide Two Ltd. New directions were issued by way of the Panel's Minute of 11 October 2019.

INFORMATION PROVIDED

- 3 The information provided is that listed at paragraph 8 of the Applicants' memorandum of 9 October 2019.
- 4 Some initial feedback on the s42A officers' proposed consent conditions is also provided, given time constraints. The Applicants will provide a full set of draft conditions that they support to the s42A officers and endeavour to achieve as much agreement as possible, prior to the resumption. Any remaining disagreements as to conditions will then be addressed as part of the Applicants' right of reply.

RATIONALE

- 5 The Applicants accept that it is helpful if experts can agree and resolve matters, so that these need not be determined by the Panel. Nevertheless, in situations where this appears unachievable, it will be necessary for the Panel to determine on the basis of evidence before it, which evidence it prefers.
- 6 Closely related to this is the amount of evidence and detail that can be reasonably required of the Applicant in order for the decision makers to be in a position to make a determination on the applications. Aligned to that is the purpose for which the information is sought. It is submitted that in view of the inability to reach absolute certainty in matters such as those before the current Panel, there is a limit to the detail and information required in order to provide the Panel with sufficient evidentiary basis on which to determine the applications.
- 7 It is the Applicants' position that the further evidence now voluntarily provided is perhaps already beyond that limit. It is for that reason that it has not

provided the further detail (beyond that now provided) requested by the s42A officers. It wishes to record that while it agreed to the updated timetabling, this does not signal acceptance that it is reasonable or necessary for the s42A officers to:

- 7.1 Attempt to provide this detail themselves;
 - 7.2 Obtain external reports to provide this detail;
 - 7.3 Incur any further cost to try and disprove what the Applicants have provided by way of this further evidence.
- 8 The Panel is respectfully requested to note that the Applicants' experts are independent experts who have undertaken to comply with the Environment Court's Expert Witness Practice Note. As such their duty is to assist the Panel and the Panel is entitled to rely on their evidence as such. There is a limit to the extent to which further inquiries into the reliability of their expert opinions is necessary, appropriate or reasonable.
- 9 The Applicants are aware that under due process they have a right of reply, which they can use to provide any outstanding details that may have arisen through the hearing and s42A officers' evidence. They wish to clarify that they consider that:
- 9.1 The enclosed further evidence addresses to the appropriate level all matters that they understood the Panel sought to have addressed through expert witness caucusing;
 - 9.2 That and any further material they choose to provide (including a finalised set of proposed conditions) as part of that Right of reply, along with the other evidence and application documentation submitted thus far, will provide sufficient evidence and details to enable a determination of the applications.
- 10 They would be opposed to any further attempts by the s42A officers to obtain or produce detail or information that is not reasonably necessary to determine these applications.

Dated 25 September 2019

A handwritten signature in blue ink, appearing to be 'M. J. [unclear]', written in a cursive style.

J M van der Wal
Solicitor for the Applicants