

Our reference: APP-20191052
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7 October 2019

Applications for resource consents by:

WORLDWIDE ONE LIMITED, WORLDWIDE TWO LIMITED

Counsel Memorandum of 7 October 2019

1. I would like to take the opportunity to comment on the 7 October Memorandum of Counsel from J M van der Wal to the Hearing Panel. Council received a copy of the Memorandum via Ms Bragg.
2. I acknowledge the Applicant's directors are upset by the recent developments. My staff are not seeking to upset anyone. Rather, their role is to be auditors of the application and advisors to the Hearing Panel, both of which are necessary for good decisions to be made on resource consent applications.
3. A critical starting point in this work is the modelling of the existing environment in Overseer. From this starting point the environmental effects of the applicant's proposal can be assessed. This existing environment 'baseline' must be properly understood and presented with absolute clarity.
4. At the adjournment of the hearing last week the Hearing Panel directed that expert caucusing occur on Monday and Tuesday of this week so that the component activities within this baseline could be established and (if necessary) later modelled in Overseer.
5. However, in his Memorandum, Mr van der Wal has asked that expert caucusing to establish this baseline be ceased immediately. He asked that instead be given an opportunity to provide a legal submission from which the Hearings Panel should establish the facts of the existing environment, and from there ask for particular scenario(s) to be modelled if necessary.
6. Mr van de Wal's proposition is that the existing environment be represented by either the 2011 consent or the 2017 consent (plus, in either case, any associated permitted activities).

7. Mr van der Wal's preference is the 2011 consent provides the foundation for this baseline. In either scenario the correct baseline for the existing environment needs to be settled upon.
8. Even if the Hearing Panel agreed with Mr van der Wal's proposition I suggest that expert caucusing would still be required. This would be to establish what activities would exist in the environment under that consent, and what may need to be amended in any future nutrient budgeting to establish the baseline. For example, caucusing may be needed to establish whether the intensive winter grazing on the State Highway 96 / Marcel block that the applicant has modelled was permitted. In another example, caucusing may be needed to establish where effluent from wintering barns on Woldwide 1 and 2 could lawfully be discharged in relation to the modelled discharges. In the Council staff's view neither are clear currently.
9. If Mr van der Wal's request is granted then this will take away the s42A officers' opportunity to assist the Hearing Panel in establishing whether the 2011 or 2017 consents represent the existing environment. It will also take away the chance to provide useful advice on what, if any, changes may need to be made to the applicant's nutrient modelling and their Assessment of Effects.
10. Therefore I request that if Mr van der Wal's request is granted the s42A officers be provided an opportunity to provide information and analysis showing what activities form part of the existing environment and why, in their expert opinion, the 2017 consent has been implemented.
11. For the record, my officers remain available for expert caucusing.

Scope issue

12. On a further matter, if the Hearing Panel agreed that the 2011 consent presents the existing environment baseline, then I would alert them to a question of scope that I consider should be addressed.
13. The application as notified sought additional cows and did not seek land to be added to the dairy platform.
14. The application now seeks to include the State Highway 96/Marcel block within the dairy platform. This land was not part of the dairy platform under the 2011 consent.
15. Council was not alerted to the matter of additional land in the application. Rather, as notified, the application described the existing environment as including the activities authorised by the 2017 consent, and by therefore by definition incorporated the State Highway 96/Marcel block as land that was already within the dairy platform.
16. If the Hearing Panel accepts Mr van der Wal's proposition that the 2017 consent is not part of the existing environment, then a question of scope arises: whether the addition of the State Highway 96/Marcel block to the dairy platform sought by this current application should have been included in the application as notified.
17. I suggest that the matter of additional land is a change in scope which Mr van der Wal's proposition would not address if accepted.

Timing

18. I respectfully request that if the Hearing Panel determines that the s42A officers are entitled to provide their view and evidence, that sufficient time be made available to prepare this.

A handwritten signature in black ink that reads "Michael Durand". The signature is written in a cursive style with a large initial 'M'.

Michael Durand
Consents Manager