

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

ENV-2020-CHC-128

**I TE KŌTI TAIAO  
KI ŌTAUTAHI**

**UNDER**

the Resource Management Act 1991

**IN THE MATTER**

of an application under s 149T of the Act

**BY**

**OTAGO REGIONAL COUNCIL**

Applicant

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**MEMORANDUM OF COUNSEL ON BEHALF OF WILLOWRIDGE  
DEVELOPMENTS LIMITED**

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Dated: 23 December 2020

**TODD & WALKER** law  
LAWYERS | NOTARY PUBLIC

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## **MAY IT PLEASE THE COURT:**

### **Introduction**

[1] This memorandum of counsel is in response to the Court's minute issued on 17 December 2020 whereby Willowridge Developments Limited (**Willowridge**) was directed to respond in respect of the following:

- (a) the sub-section under s 274 of the Resource Management Act 1991 (**Act**) upon which it relies in seeking to join as a party to the proceedings, and addressing the matters identified by the Court at paragraph [5] of its minute, being in relation to its powers to give decisions on the provisions and the matters raised in submissions; and
- (b) if it considers it can pursue the application under s 274 of the Act, demonstrating it has an interest in the proceedings that is greater than the interest that the general public has.

### **Sub-section under s 274 of the Act**

[2] Willowridge relies on s 274(1)(d) to join as a party to the proceedings. Willowridge is a person who has an interest in the proceedings that is greater than the interest that the general public has and is not a person identified in s 308A of the Act, being a trade competitor of a party who a decision has been made in favour of. The proceeding is not an appeal meaning Willowridge's right to be a party cannot be limited by s 274(1)(d).

[3] At paragraph [5] of the Court minute it states:

As the first instance decision-maker, the Environment Court is empowered to give a decision on the provisions and the matters raised in submissions (s 149U(6) and Schedule 1, cl 10(1)) The decisions must include the reasons for accepting or rejecting the submissions. Willowridge, however, is not a submitter. Does it not follow that there is no decision for the court to make?

[4] It is understood this to mean, because the Court is empowered to make decisions on submissions, in order for a party to ask the Court to make

a decision on the relief it seeks it must have made a submission seeking that relief.

- [5] Willowridge respectfully disagrees and submits the fact Willowridge is not itself a submitter does not preclude it in participating in the determination of submissions. Whilst not asking the Court to make a decision on its own submission, it is seeking to make its case and present arguments to the Court in its consideration of other submissions. In this regard it is noted that Willowridge is not seeking relief that has not already been sought by other parties in their submissions.<sup>1</sup>
- [6] In essence the circumstances are not materially different to if a Court was hearing and determining an appeal against a decision on a Proposed District Plan submission pursuant to s 290 of the Act and Willowridge was seeking to join as a party under s 274(1)(d) of the Act to that appeal having not made a submission.
- [7] In that scenario, the Court in determining the appeal has the same power, duty and discretion as the person whose decision the appeal is brought (s 290(1)). In the case of a Proposed Plan that includes giving decisions on the provisions and matters raised in submissions (clause 10, Schedule 1), just as a Court is empowered to do as first instance decision maker.
- [8] In either case, whether the Court is acting in its appellate role or as a first instance decision maker, the fact a party did not make a submission on the matters to be decided on does not prevent such party from joining under s 274 to the proceedings and presenting its case on such matters provided it has standing to do so under s 274, such as under s 274(1)(d).

### **Interest greater than the interest the general public has**

- [9] Paragraph [6] of the Court's minute states:

Finally, assuming there is a relevant sub-section under which Willowridge can give notice, it will need to demonstrate that it has an

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<sup>1</sup> John Edmonds & Associates (80067), Remarkables Park Limited (80013), Vivian and Espie Limited (80037), RCL Henley Downs Limited (80071), Queenstown Lakes District Council (80076).

interest in the proceedings that is greater than the interest that the greater public has. Without deciding the matter, it will need to demonstrate that the fact that it is carrying on business as a land developer confers a greater interest than landowning public in general, including other persons whose business it is to live and work the land, e.g. farmers or agricultural contractors.

[10] Willowridge submits it is important to note it is only seeking to join the proceedings in relation to two issues, namely the rules related to residential earthworks activities and the respective activity status for such activities.<sup>2</sup>

[11] Willowridge carries on business as a residential land developer and undertakes a number of large scale development projects in the Otago region.<sup>3</sup> The vast majority of earthworks associated with its developments are in excess of 2500m<sup>2</sup>, triggering the restricted discretionary activity status. It is and will be directly affected by the two rules it is interested in.

[12] The test for whether a person has an interest in the proceedings that is greater than the general public is whether the interest is of an advantage or disadvantage which is not remote.<sup>4</sup> The Environment Court has further explained this to mean:<sup>5</sup>

It is the relationship between the interest and the consequent effect of the proceedings on the interest which is relevant, rather than the actual interest itself which is important. Picking up once again on the key theme of “some advantage or disadvantage, such must be direct and not just emotional or intellectual.

[13] Willowridge being a residential land developer has an interest in developing land and carrying out the requisite activities to do so, including obtaining the necessary resource consents. It is submitted there is a direct consequential effect on this interest of Plan rules that restrict residential development.

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<sup>2</sup> Willowridge section 274 notice at [5].

<sup>3</sup> <http://willowridge.co.nz/projects-willowridge-developments.html>

<sup>4</sup> *Purification Technologies Limited v Taupo District Council* [1995] NZRMA 197 at 204.

<sup>5</sup> *Wallace Group v Auckland Council* [2017] NZEnvC 106 at [25].

[14] It is submitted Willowridge's interest is not the same as a person who lives and works the land such as a farmer or agricultural contractor as it is unlikely the activities carried out by those types of persons would trigger the 2,500m<sup>2</sup> earthworks standard for residential development, or at least do so regularly.

**Conclusion**

[15] On the basis of the above Willowridge submits it has standing to join as a s 274 party pursuant to s 274(1)(d) and has demonstrated it meets the requirements of s 274(1)(d) by being a person with an interest in the proceeding that is greater than the interest that the general public has.

Dated: 23 December 2020



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G M Todd / B B Gresson  
Counsel for Willowridge Developments Limited