

17 November 2020

Reference: ODIN27035

Vanessa Nevjestic  
Adviser, Listings Compliance (Perth)  
ASX Compliance Pty Limited  
Level 40 Central Park  
152 – 158 St Georges Terrace  
PERTH WA 6000

By email: [Vanessa.Nevjestic@asx.com.au](mailto:Vanessa.Nevjestic@asx.com.au)

## **Response to ASX Letter - Orcoda Limited ('ODA' or 'Company') Queries regarding Accounts**

Dear Vanessa

We refer to your letter dated 11 November 2020 and respond as follows (adopting the numbering in your letter):

1. Does ODA consider the Variation Agreement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?

No.

If the answer to question 1 is "no", please advise the basis for that view.

*It only varied the 2020 snow season and did not affect future years. The variation agreement was headed Exceptional Circumstances 2020 Snow Season – Agreement. The original 9 year (5+2+2) Agreement for the Provision of Services contract contained an exceptional circumstances clause \*e.g. COVID-19) that allowed the parties to negotiate a separate position for the season without affecting the ongoing contract. The Company's view at the time as not being material, was due in part to the right of compensation being somewhat 'baked in' the original Mt Buller Agreement and in another part due to uncertainty as to the financial scope of this compensation.*

*Being aware that the Company stood to be compensated resulted in the Board not considering the Variation Agreement material at any particular stage, as the outcome of the variation agreement negotiations were:*

- Initially non-existent (pre-variation agreement, but triggered by the event); and
- Uncertain (due to the pre-conditions); and
- Finally, certain but unknowable in as far as whether the ultimate sum to be received would reflect a fair compensation for the pandemic and government impacted loss of only a single ski season from the nine in total.

*To illustrate why Orcoda has not considered the variation agreement in and of itself to have a material impact on the price or value of the securities, the full sequence of Orcoda's disclosures and reporting on Mt Buller should be chronologically sequenced.*

*Defining the latest standalone announcement on 26 October 2020 as the "Relevant Date" suggests that the following prior disclosures were not "relevant (see a to g below)*

- a. The 'Mt Buller Agreement for the Provision of Services' was announced on 11 June 2020 and it stated in that release that "COVID-19 restrictions may have an effect on our

*achievements this ski season but the nature of this agreement should provide long term benefits to the customers of Mt Buller Resort and Orcoda stakeholders”.*

- b. *On 7 July 2020, the second lockdown was announced by the Victorian Government.*
- c. *On 8 July 2020 the second lockdown came into effect – and reported across the country.*
- d. *On 31 July 2020, the Quarterly Activity Report disclosed that “The Resource division revenues this quarter will be up on last quarter but our Mt Buller transport project, **is down on forecasts as a direct result of the COVID-19 problems in Victoria.**” [Our emphasis.]*
- e. *On 31 August 2020, in the Company’s Appendix 4E, in answer to the following, this disclosure was made:*
  - *Q: Any other factors which have affected the results in the period. or which are likely to affect results in the future, including those where the effect could not be quantified.*
  - *A: COVID-19 had an impact on operations which caused a reduction in revenue across operations... The Mt Buller contract revenue has also been affected because of stage 4 restrictions being imposed in Melbourne and stage 3 restrictions applying to the rest of Victoria.*
- f. *On 8 September, the Company executed a three-page letter headed “Exceptional Circumstances 2020 Snow Season – Agreement” to compensate the Company for the 2020 ski season, as envisioned in the original Mt Buller Agreement.*

*This agreement was to compensate for loss of revenue as previously disclosed.*

- g. *On 30 September 2020, the Company published its Annual Report. In the 1<sup>st</sup> paragraph on page 10 of the Annual Report with the Victorian Government’s blessing and in line with relevant Accounting Standards and ASX Listing Rules, described the following:*

*“Matter subsequent to the end of the financial year*

*The Victorian State Government through Mt Buller & Mt Stirling Management Board entered into an exceptional circumstances agreement with Resource Connect Logistics Pty Ltd, a wholly owned subsidiary of Orcoda Limited to compensate Orcoda for the cancellation of the Snow Season as a result of COVID-19. This agreement was for the gross sum of \$654,000. After various adjustments including satisfying conditions precedent relating to existing arrangements, Orcoda is expected to receive an amount of \$292,329.”*

*Relevantly, the extreme fluidity of the impact of COVID19 on Orcoda’s business was summarised in the next paragraph:*

*“The impact of the Coronavirus (COVID-19) pandemic is ongoing and it had an impact on operations which caused a reduction in revenue across operations during the current financial year. The situation is rapidly developing and is dependent on measures imposed by the Australian Government and other countries, such as maintaining social distancing requirements, quarantine, travel restrictions and any economic stimulus that may be provided, therefore it is not practicable to estimate the potential impact, positive or negative, after the reporting date.”*

- h. *On 16 October 2020, a quarterly activities report published stated that “The Resources division revenues were up this quarter over last quarter as a result of the Mt Buller transport project but was down on forecasts as a direct result of the COVID-19 problems in Victoria”.*
- i. *On 26 October 2020 (the “Relevant Date” as defined in the Query Letter), the Company published the stand-alone release that the above full sum appeared now assured. It is notable that the above did little more than restate the prior disclosure (nearly a month earlier), except that it contained the certainty of having satisfied relevant pre-conditions.*

*In summary, preceding the “Relevant Date” the Company provided ongoing guidance as to revenue impact on the Mt Buller Project due to the VIC shut-downs including in:*

- 1. In the original release when announcing the 9 year agreement*
- 2. Two Quarterly Activity Reports;*
- 3. One Appendix 4E;*
- 4. One Annual Report to shareholders.*

*In addition, the following information was public knowledge:*

- 1. Victoria “second wave lock-downs”; and*
- 2. Mt Buller Ski Fields being located in Mt Buller, Victoria and therefore would be impacted by Stage 3 lockdown restrictions.*

3. When did ODA first become aware of the Variation Agreement? In answering this question, please specify when ODA first entered into the Variation Agreement.

*On 8 September 2020, the Company executed a three-page letter headed “Exceptional Circumstances 2020 Snow Season – Agreement” to compensate the Company for the 2020 ski season, as envisioned in the original Mt Buller Agreement. This agreement was to compensate for loss of revenue as previously disclosed.*

*Due to the exceptional circumstance clause contained in the Mt Buller Agreement, Orcoda was previously aware of a compensatory mechanism from the agreement’s inception.*

4. If ODA first became aware of the Variation Agreement before the Relevant Date, did ODA make any announcement prior to the Relevant Date which disclosed the Variation Agreement? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe ODA was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps ODA took to ensure that the information was released promptly and without delay.

*Yes. As previously advised to the ASX, and reiterated above, the Variation Agreement was detailed in the Annual Report on 30 September 2020 – see point 1 above.*

*With respect to Listing Rules 3.1A, the following exceptions to Listing Rule 3.1 were applicable.*

*Listing Rule 3.1A: The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*

*The Variation Agreement range of compensation was highly relevant to:*

- 1. Whether or not the ski season would recommence in 2020; and*
- 2. The pre-conditions not yet being fulfilled.*

*Listing Rule 3.1A.2 applied: [T]he information is confidential and ASX has not formed the view that the information has ceased to be confidential.*

*Strict confidentiality applied following the initial execution (because the government were negotiating with many parties at the same time due to the same issue). The Company did receive assurances that confidentiality would be lifted prior to the release of its audited full year financial report. The Victorian lock-in laws themselves, were by very definition “not confidential”.*

*Listing Rule 3.1A.3 applied: A reasonable person would not expect the information to be disclosed.*

*On 26 October 2020 (the “Relevant Date” as defined in the Query Letter), the Company published the stand-alone release that the full sum appeared now assured which restated the prior disclosure (of nearly a month earlier), after the certainty of having satisfied relevant pre-conditions was met.*

5. Please clarify the following:

- 5.1 How the Variation Agreement relates to and/or amends the Mt Buller Agreement? Please provide details.

- 1. Ensured that the Variation Agreement (except for compensation for Ski Season 2020), did not otherwise impact the Mt Buller Agreement for years 4 + 2 + 2).*
- 2. It compensates for loss of projected profit and expenses for the Ski Season 2020.*

3. *Released a partial guarantee pro rata for the 2020 Ski Season.*
4. *Included performance indicators or pre-conditions for part of the \$654,000 – see 5.3.*

5.2 What is the term of the Variation Agreement?

*Two months. The Variation Agreement compensated losses for the 2020 Ski Season due to the COVID19 season.*

5.3 What key performance indicators did ODA have to meet to receive the final portion of the \$654,000 payment for the 2020 snow season?

*To receive the last payments of the \$654,000 negotiated position (as previously announced an additional \$294,000), it required that Orcoda:*

1. *Written confirmation that we had our key suppliers locked in for the 2021 Snow Season*
2. *Issue a complete plan to the satisfaction of Mt Buller on how the 2021 season would be run taking into consideration the lessons learnt from the 2020 season.*
3. *Provide an asset management plan including the number of buses that we would supply and the age of those vehicles.*
4. *Provide an upgrade to the customer app that allowed customers to book trips on the rideshare and shuttle buses.*
5. *Provide a system to count the number of persons on each vehicle*
6. *Provide a reporting regime plan that showed how we would meet our contractual KPIs in the 2021 season.*
7. *Deliver a Final Report to Mt Buller satisfaction per above.*

*In the Mt Buller Agreement (except for point 3), Orcoda did not have to do the above plan until end December in each year. To receive the additional compensation payments Orcoda had to do 3, plus the above, within an early timeframe to receive the final payment.*

5.4 What is the total consideration payable to ODA pursuant to the Variation Agreement and/or the Mt Buller Agreement for the 2020 snow season and has that consideration now been received by ODA?

*\$654,000 and yes.*

6. Please confirm that ODA is complying with the Listing Rules and, in particular, Listing Rule 3.1.

*We confirm that the Company is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*

7. Please confirm that ODA's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ODA with delegated authority from the board to respond to ASX on disclosure matters.

*We confirm that the above responses have been authorised and approved by ODA's Board in accordance with ODA's continuous disclosure policy.*

Yours faithfully

Sally McDow  
Company Secretary



11 November 2020

Reference: ODIN27035

Mr Julian Rockett  
Company Secretary  
Orcoda Limited  
Unit 312, 434 St Kilda Road  
Melbourne, Victoria 3004

By email: Julian.Rockett@boardroomlimited.com.au

Dear Mr Rockett

**Orcoda Limited ('ODA'): Query Letter**

ASX refers to the following:

- A. ODA's announcement entitled *"Long term Victorian Government Contract for Mt Buller Ski Resort"* lodged on the ASX Market Announcements Platform ('MAP') and released at 4:46 PM AEST on 11 June 2020, disclosing, amongst other things, that ODA's wholly owned subsidiary Resource Connect Logistics had signed a nine year contract (five year term plus two additional two year options) with the Mt Buller and Mt Stirling Resort Management Board to provide Guest Transit Services and Rideshare services to Mt Buller Ski Resort customers during the yearly ski seasons for contract revenue of approximately \$2,000,000 to \$3,000,000 per annum (the 'Mt Buller Agreement').
- B. ODA's announcement entitled *"Mt Buller Update Announcement"* lodged on MAP and released at 10:49 AM AEDT on 26 October 2020 (the 'Relevant Date'), disclosing, amongst other things, that:
- ODA had entered an Exceptional Circumstances Transport Variation Agreement with the Mt Buller & Mt Stirling Resort Management Board (the 'Variation Agreement') which resulted in several KPIs that ODA had to meet to receive the final portion of the \$654,000 payment for the 2020 snow season; and
  - ODA has completed that task and is expecting to receive its final 2020 payment shortly.
- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- D. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:
- "an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*
- E. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied:
- "3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*
- 3.1A.1 One or more of the following applies:*
- *It would be a breach of a law to disclose the information;*
  - *The information concerns an incomplete proposal or negotiation;*

- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *The information is generated for the internal management purposes of the entity; or*
- *The information is a trade secret; and*

3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

3.1A.3 *A reasonable person would not expect the information to be disclosed."*

F. ASX's policy position on the concept of "confidentiality", which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:

*"Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule."*

#### **Request for information**

Having regard to the above, ASX asks ODA to respond separately to each of the following questions and requests for information:

1. Does ODA consider the Variation Agreement to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. If the answer to question 1 is "no", please advise the basis for that view.
3. When did ODA first become aware of the Variation Agreement? In answering this question, please specify when ODA first entered into the Variation Agreement.
4. If ODA first became aware of the Variation Agreement before the Relevant Date, did ODA make any announcement prior to the Relevant Date which disclosed the Variation Agreement? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe ODA was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps ODA took to ensure that the information was released promptly and without delay.
5. Please clarify the following:
  - 5.1 How the Variation Agreement relates to and/or amends the Mt Buller Agreement? Please provide details.
  - 5.2 What is the term of the Variation Agreement?
  - 5.3 What key performance indicators did ODA have to meet to receive the final portion of the \$654,000 payment for the 2020 snow season?
  - 5.4 What is the total consideration payable to ODA pursuant to the Variation Agreement and/or the Mt Buller Agreement for the 2020 snow season and has that consideration now been received by ODA?
6. Please confirm that ODA is complying with the Listing Rules and, in particular, Listing Rule 3.1.
7. Please confirm that ODA's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of ODA with delegated authority from the board to respond to ASX on disclosure matters.

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### When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **9:30 AM AWST Monday, 16 November 2020**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, ODA's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require ODA to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsCompliancePerth@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

### Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in ODA's securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

### Suspension

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in ODA's securities under Listing Rule 17.3.

### Listing Rules 3.1 and 3.1A

In responding to this letter, you should have regard to ODA's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that ODA's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

### Release of correspondence between ASX and entity

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

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## Questions

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours faithfully

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**Vanessa Nevjestic**  
Adviser, Listings Compliance (Perth)