



13 November 2018

Mike Riddell

By email: [fyi-request-8883-bae8b4b2@requests.fyi.org.nz](mailto:fyi-request-8883-bae8b4b2@requests.fyi.org.nz)

Dear Mike

**16 OCTOBER 2018: OFFICIAL INFORMATION ACT REQUEST**

In your email dated 16 October 2018 you requested: *“all NFC staff communication and documentation to the Board's March 2018 meeting regarding the feature film 'Guinea Pig Club'. In relation to this, minutes of the Board's decision should also be provided.”*

We have attached materials to this letter as Appendices (Appendix 1: Letter to the Board; Appendix 2: Extract from the Development & Production Update Paper to the Board; Appendix 3: Extract from the Minutes of the March 2018 Board Meeting). In each set of materials provided, information has been redacted where the documents contain information outside the scope of the request or one of the withholding grounds under the OIA applies, in which case the specific ground is noted by the redaction.

You will see in the Minutes that the Board noted a letter of complaint was written to the PM. The NZFC acknowledge that at that stage this was the information to hand but that the letter may not have gone forward and the minutes may need to be corrected.

Also within the scope of your request, is *The Guinea Pig Club* Board Recommendation Paper. This material is not able to be provided, on the following grounds under the OIA:

- Section 9(2)(a): information withheld as necessary to protect the privacy of natural persons;
- Section 9(2)(b)(ii): information withheld as necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- Section 9(2)(ba)(i): information withheld as necessary to protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied;

Staff did not have any other written communication with the Board in relation to the project, *The Guinea Pig Club* towards the March 2018 Meeting. As this written communication does not exist, under section 18(e) of the OIA, we cannot provide a

response to this part of the request.

In reviewing your request under the OIA, we were required to balance public interest in openness and transparency with other considerations laid out in the OIA. As you are aware, the OIA allows and accounts for the possibility of information not being released in order to protect or prevent harm to others and their interests. In this case, upon consideration, we do not consider that the withholding of this information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Please let us know if you have any questions or wish to discuss. The CEO, Annabelle Sheehan, would be happy to meet to discuss any outstanding questions you may have.

Please be aware that you have the right, by way of complaint to an Ombudsman under section 28(3) of the OIA, to seek investigation and review of our decision.

Yours sincerely



Katie Baker

**ACTING HEAD OF BUSINESS AFFAIRS**

# APPENDIX 1

The Board  
NZFC  
Ghuznee Street  
Wellington

[REDACTED] s 9(2)(a)

20 March 2018

Dear Board members

### The Guinea Pig Club

Thank you for your support of The Guinea Pig Club over the last 10 years. It has been much appreciated and is the reason we are so close to commencing the production.

I write to outline the position of the project as we head to the expiration of your funding offer and to seek your views on some important matters.

#### Changes to the Gap Lending Market

s 9(2)(b)(ii) About two years ago, I did a deal with [REDACTED] in the UK to lend against equity and gap for the film. Their standard terms were to lend [REDACTED] [REDACTED] This was the model we had on [REDACTED] [REDACTED] and I am sure other NZ films used this as part of their financing as well. The unsold territories loan amounted to [REDACTED]

s 9(2)(b)(ii) Since your last funding offer and without warning, they changed the lending rate to around [REDACTED] This was towards the end of [REDACTED] and resulted in [REDACTED] [REDACTED] to the finance plan.

They say this is due to the effects of life in the multi platform world, Netflix and other broadcast models and the volatile landscape of the international distribution world.

I should stress that this change is not exclusive to The Guinea Pig Club. It is market-wide. I have been running a backup lending plan with [REDACTED] [REDACTED] out of the US. They too have dropped their unsold gap lending - in fact, [REDACTED] s 9(2)(b)(ii) They are reviewing their lending policy and may increase it to [REDACTED] of the budget at some point in the future but that does not help us now.

#### Presales

s 9(2)(a) and s 9(2)(b)(ii) Another setback after your last extension was the loss of an airline presale worth around [REDACTED] The company apparently decided they didn't want a film with an airplane crash in it. [REDACTED] from [REDACTED] has attended TIFF and Berlin since the last application. She reports she is pushing a replacement [REDACTED] a [REDACTED] and a [REDACTED] on top of the [REDACTED] she has already brought in as presales. New presales will take time to close and probably won't be in place by the time of the deadline.

## Budget changes

s 9(2)(b)(ii) With the clock ticking on the NZFC offer, I had to find a way to deal with these sudden changes to available finance. There was not time to find additional equity at this level and pre-selling too many territories was slow and could be disadvantageous to the film. The clearest way was to [REDACTED] the budget from [REDACTED] to [REDACTED] a [REDACTED]

This was achieved principally through reductions to the [REDACTED] (producer, director, cast) amounting to [REDACTED] and by trimming the [REDACTED] by [REDACTED] primarily by reducing the shooting schedule from [REDACTED] to [REDACTED] s 9(2)(b)(ii)

s 9(2)(b)(ii) There were numerous smaller nips, tucks and percentage reductions (things like [REDACTED] to get us there but we still have:

- the same cast;
- the same director; and
- an entirely acceptable shooting schedule of [REDACTED] main unit days plus [REDACTED] days allowed for UK shooting.

s 9(2)(b)(ii)

Notwithstanding this cut, the mathematics of film finance plans (X must be a percentage of Y but can be no more than Z) means we still face a hole of [REDACTED] s 9(2)(b)(ii)

## Methods of completing the finance plan

[REDACTED]

[REDACTED] has offered to complete the finance of the film.

His previous terms will be well known to you. I have not worked with [REDACTED] before but he says he has [REDACTED] is currently financing films in [REDACTED] and has scheduled a meeting with the NZFC CEO to discuss [REDACTED] in NZ movies.

s 9(2)(a)  
and  
s 9(2)(b)(ii)

His original proposal for The Guinea Pig Club included an [REDACTED] which was not compatible with the current Terms of Trade and was rejected by NZFC staff. [REDACTED] compromised on that and forwarded a proposal based on [REDACTED] [REDACTED] It now appears that his equity/gap model could be used on this and other NZ films if he and the NZFC can negotiate an agreement on the way film revenue is split. Like all commercial arrangements, it will take compromise but the philosophical difference over an [REDACTED] [REDACTED] has been resolved.

██████████ says he has only ever received a ██████████ he has invested in and his returns come from film revenue. In other words, he does not feel he is gouging.

s 9(2)(a)  
and  
s 9(2)(b)(ii)

As the NZFC requires producers to bring private funding to their projects and we know there are very limited sources in NZ, it would be good if there was a way to access what ██████████ can bring for both The Guinea Pig Club and future NZ movies.

### ██████████ *Entertainment Investors*

s 9(2)(b)(ii) ██████████ the previously mentioned US based lender, has given us a recent introduction to ██████████ Entertainment Investors. ██████████ says they have funds to deploy and are very nimble. They cover a wide range of lending so I will report back on developments if they are positive.

### *Other equity investors*

At the time of writing, we are in discussions with other potential equity partners.

These are;

- ██████████ and a group of ██████████ business people; and
- a contact of Executive Producer ██████████ based in ██████████ who has offered ██████████ or just under ██████████ a substantial part of the funding shortfall. We are currently discussing terms.

s 9(2)(a)  
and  
s 9(2)(b)(ii)

It may be that those discussions are concluded by the time of the Board meeting in which case staff can report the outcome to you directly.

### *ATL equity and deferrals*

As another means of completing the finance, I am offering up to ██████████ as equity and writer Mike Riddell and Executive Producers ██████████ and ██████████ have offered to defer ██████████ of their fees for an extra ██████████ giving us the funding needed to cover the shortfall.

s 9(2)(a)  
and  
s 9(2)(b)(ii)

The Terms of Trade state "wherever possible, we prefer that producers complete their finance plan for the film without deferrals."

We would prefer that too but, given we are required to have the film financed by the deadline or lose 10 years of work, we are prepared to invest in our own project on acceptable commercial terms.

Staff have rejected this model as well for the understandable and appreciated reason that they do not wish to see filmmakers work for nothing.

The Terms of Trade do not outlaw deferrals or equity investments by the filmmakers.

s 9(2)(b)(ii) [REDACTED] has confirmed that some form of [REDACTED] deferral is present in almost every film they do at this budget level.

We can reduce this component if we lock any of the other equity or gap in time.

## Script

Of course, the script will play a crucial part in all this too. We received script notes from the NZFC in November 2017 and sought a drawdown from NZFC staff for a revision in January 2018. To date, they have withheld funds from the pre-agreed development deal which was part of your funding offer as they wanted to assess the implications of the budget cut.

s 9(2)(a)  
and  
s 9(2)(b)(ii) [REDACTED] Bond company [REDACTED] has read the script and reviewed the revised budget.

s 9(2)(b)(ii) Whilst we would never expect a bond company to say there is plenty of room within a budget to achieve the script, [REDACTED] issued a Letter of Intent to bond the film based on the [REDACTED] budget on [REDACTED]

s 9(2)(b)(ii) She has a list of budget categories she wants us to look at (as is usual) and suggested that, at 117 pages, [REDACTED]

On 15 March 2018, we again asked the NZFC staff for a drawdown to work on the NZFC notes and the page reduction [REDACTED] but they are still are not able to agree.

s 9(2)(b)(ii)

We contend that a film with a budget of over [REDACTED] is still substantial in today's world and that the result will be something we can all be proud of.

Of course, we would like a bigger budget but we have been obliged to work with a changing marketplace.

Our absolute intention is to keep the essence and tone of the story and we s 9(2)(b)(ii) believe we can achieve that despite the reduction of shooting days from [REDACTED] to [REDACTED] and some trims in other categories.

s 9(2)(b)(ii) So far, I have had script notes from several iterations of the NZFC, [REDACTED]

[REDACTED] And I have kept a running comparison of the varying and, at times, contradictory requests made of the script.

At the moment, the NZFC is the only party seeking further script changes – other than technical ones from the bond company.

We are keen to do another pass and hope you can release funds agreed in the last Board decision.

### Conditions for commencing closing

I have been forwarding documents to the NZFC staff as they are completed. Other than the final form of the finance plan, from our perspective, the only remaining ones are:

1. The SPV – which is normally done when closing commences and can be done in a day.
2. The script – as above.
3. SPG application – this has been prepared but is waiting for the locked form of the finance plan. It will be ready a day or two after that.

There are numerous documents which will be amended, added to and changed as a normal part of the closing process. This is why closing takes 12 weeks.

### Timeframe

I must admit it is becoming increasingly difficult to hold this world together. [REDACTED] and the cast are needing constant assurance the project is likely to happen, [REDACTED] if we don't start closing in the next 2 months, [REDACTED] needs to advise the market the show is in production to keep up sales interest, [REDACTED] needs to keep funds aside for us or move them to another project, [REDACTED] wants to know the show is real.

s 9(2)(a)  
and  
s 9(2)(b)(ii)

And I know you have pressure to reallocate funds to other film projects.

From the producer's perspective, the truly hard part of the process – international presales, a significant domestic distribution MG, international lending, attracting names – has been achieved.

To date, we have attached:

International cast  
[REDACTED]

s 9(2)(a)  
and  
s 9(2)(b)(ii)

NZ director  
[REDACTED]



International sales company

s 9(2)(b)(ii) [REDACTED] has been active in a couple of markets and has secured [REDACTED]. They have provided sales estimates which range from a low of [REDACTED] to a high of [REDACTED].

Domestic Distributor

s 9(2)(b)(ii) [REDACTED] is a strong supporter of the project. They have offered [REDACTED].

Domestic broadcaster

s 9(2)(b)(ii) [REDACTED] has offered [REDACTED] as a [REDACTED] and [REDACTED] has offered [REDACTED] as a [REDACTED].

Gap/equity lender

s 9(2)(b)(ii) [REDACTED] from the UK has offered to lend a total of [REDACTED] against presales, unsold territories and the [REDACTED].

I know there are many other boxes to tick and believe we will do that appropriately during the closing process.

s 9(2)(b)(ii) For now, I request you allow us time to negotiate an arrangement with [REDACTED] and/or bring the possible equity players to the table. And I would appreciate your view on the [REDACTED].

s 9(2)(b)(ii) Any of these proposals would bring the total amount of private investment in the project to [REDACTED].

Should you choose to reduce your funding offer or rescind it, the project will not be able to proceed. I will understand but be disappointed as we are so close to starting a film described by the NZFC's script assessor as "a story which deserves to be told".

Kind regards

s 9(2)(a) [REDACTED]

## **APPENDIX 2**

#### 4. Conditional Offer Letters

Title	Category	Budget	NZFC	Producer/ Director
<i>Guinea Pig Club</i>	Feature	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	Producer: [REDACTED] Exec Producers: [REDACTED] [REDACTED] Director: [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] Outside scope of request

s 9(2)(a)  
and  
s (9)(2)(b)(ii)

#### **Guinea Pig Club**

The second NZFC Conditional Letter of Offer to this project was made in June 2017, extended in October, extended again in December 2017. The most recent extension advised the producers that this final offer expires 28 March 2018 with no further extension available.

The producers have since requested that the film is closed with a [REDACTED] s 9(2)(b)(ii) with accompanying variations to the original finance plan, particularly around pre-sales, gap and private investment. Their current proposals include finance options that are not in line with our Terms of Trade, and others that are outside recent precedent so the project may not be able to commence closing before the Conditional Offer Letter expires. We will update the current status of the project at the Board meeting.

## **APPENDIX 3**

## Extract from “Minutes of 253rd (March 2018) Board Meeting”

### 6.4 *Guinea Pig Club* (late paper)

P Jalfon noted a potential conflict of interest due to involvement as a consultant for production company Field Theory in previous years; The Chair approved P Jalfon’s presence during the discussion and decision as P Jalfon has no ongoing interest or involvement with the project and her involvement was sufficiently long ago to negate any potential conflict with this project.

A Sheehan and L Saunders spoke to the *Guinea Pig Club* paper:

- A comprehensive update on project developments regarding script, finance plan and overall packaging was provided and discussed. The Board noted the completion guarantor’s view that the current script could not be made for the current budget of [REDACTED] and would require a redraft to be made for this budget. It was also noted that there has been a lack of appetite in the international market for the project in its current form. s 9(2)(b)(ii)
- It was noted that the Producer has not met all of the conditions in the conditional offer letter in order to commence closing. While alternative financing options were provided by the Producer, these options either were not supported by any commitments or firm offers with clear terms from the proposed financiers, or contained terms that did not fit within the NZFC’s Terms of Trade.
- The Board agreed that *Guinea Pig Club* is a project with great potential and indicated they would like to see the project resubmitted in future with an adjusted script and package that gave the project the best possible chance of attracting the required finance and attachments but unfortunately do not see it (in its current form) as being financially and commercially viable, and with additional work and support the script and package can be adjusted to give it the best chance of attracting additional finance and attachments.
- It was noted that Mike Riddell (writer) wrote a letter of complaint to PM. Staff will consult with MCH & Minister’s office in any written response.

After discussion, the Board **RESOLVED** to **APPROVE**:

1. That the current offer of financing is revoked on the basis that the structure of the project has significantly changed from the time the original offer was made, as per the provisions of the 2<sup>nd</sup> Extension of Conditional Offer letter dated 22<sup>nd</sup> December 2017;

2. That NZFC Staff be mandated to meet as soon as possible with the Producer and Executive Producer [REDACTED] <sup>s 9(2)(a)</sup> in order to feedback on this decision and to discuss how the script could be further developed and the project repackaged in order to address likely budget constraints and make it more attractive to the market;
3. That, pending a satisfactory outcome of the above meeting, the cap on development loans is raised from [REDACTED] for this project on a non-precedential basis; and <sup>s 9(2)(b)(ii)</sup>
4. That the NZFC make available a further development loan of up to [REDACTED] <sup>s 9(2)(b)(ii)</sup> to support such script and repackaging work with the intention that the Producer would re-apply to the Board at the appropriate point for a new offer of funding based upon the revised script and package for the project.

Moved by T Greally; Seconded by B O'Riley.