

**In the Environment Court  
Christchurch Registry**

**ENV -2011-CHC-090**

Under the Resource Management Act 1991  
And in the matter of a resource consent application under sections 87C-1 of the RMA

Between

**Meridian Energy Limited**

Applicant

and

**Hurunui District Council and Canterbury Regional Council**

Consent Authorities

And

**Others**

Interested parties

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**Memorandum of Counsel on behalf of Meridian Energy  
Ltd dated 2 July 2012**

**2 July 2012**

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**BELL GULLY**

BARRISTERS AND SOLICITORS  
AJL BEATSON  
WELLINGTON LEVEL 21, 171 FEATHERSTON STREET  
PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND  
TEL 64 4 915 6800 FAX 64 4 915 6810

**May it please the Court:**

1. This memorandum sets out Meridian's views regarding 'hot-tubbing' of experts and seeks an extension of time for filing a schedule of witnesses to the Court Registry.
2. In addition, Mr Carr has e-mailed the Hearing Manager for Project Hurunui in response to the direction at paragraph 37 of the 'Minute and Directions arising from a Pre-Hearing Conference' dated 18 June 2012 (the **Minute**). Three matters arise from that correspondence.

**Dr Thorne – witness or not?**

3. Mr Carr advises that his Noise witness will be either Dr Robert Thorne or himself as Dr Thorne's 'appointed representative'.
4. Mr Carr has further stated that he will advise the Court who will be the witness in Court within two weeks of receipt of the evidence from Meridian and the Council in reply to Dr Thorne's evidence. Mr Carr's propositions give rise to two concerns.
5. Firstly, either Dr Thorne is to be called as a witness or he is not. No person can be an 'appointed representative' of, or provide answers on behalf of, another witness – let alone an expert witness.
6. Secondly, the Court directed that Mr Carr is to provide any statement of evidence by Dr Thorne to the Court and serve it on all parties by 5pm on 9 July 2012 (para 4(a)). If (and only if) evidence is filed by Dr Thorne, then paragraph 4(c) provides that Meridian and the Council are to file evidence in reply to Dr Thorne's evidence by 31 July 2012 (para 4(c)).
7. Meridian indicated at the Pre-Hearing Conference that it had not responded to Dr Thorne's notes (attached to Mr Carr's evidence) on the basis it was indicated in those notes that Dr Thorne is not to be called as a witness at the hearing.
8. Meridian intends to file evidence in reply to Dr Thorne's evidence only if Dr Thorne is being called as a witness to give evidence at the hearing, provides a brief, and will be available for cross examination. If he is not

to be called, then Meridian considers there is nothing of substance to respond to.

9. Mr Carr is attempting to circumvent the intention of the Minute, which was to confirm whether or not Dr Thorne will be attending the hearing as a witness, if he is to attend then to elicit his evidence, and finally to allow Meridian (and the Council) time to respond to that evidence.
10. Meridian seeks directions that:
  - (a) Mr Carr is to confirm by 9 July 2012 whether or not Dr Thorne will be attending the hearing, presenting evidence and be available for cross examination;
  - (b) if Dr Thorne is to attend the hearing, then Mr Carr is to exchange Dr Thorne's evidence by 9 July 2012; and
  - (c) Meridian and the Council are to file any rebuttal by 31 July 2012.

#### **Topics – lay witnesses**

11. The inference from Mr Carr's e-mail is that he intends to present lay evidence separately in respect of each topic. The Minute does not anticipate this.
12. We are concerned that if lay witnesses are to give evidence as part of each topic this has the potential to throw the hearing, and schedule, into disarray. Many lay witnesses have raised multiple issues, some covering all or nearly all topics. For example, Marianne McLean, David Meares, and Mark Archbold have each raised all of the following issues in their evidence:
  - (a) Landscape and Visual Effects;
  - (b) Noise;
  - (c) Health;
  - (d) Property valuation; and
  - (e) Traffic.

13. If lay witnesses are to present evidence for each topic as these are dealt with, this is likely to inconvenience them and the other parties/witnesses. For example, parties may have to cross examine the same lay witness on multiple occasions. In addition, it will make it more difficult to establish the correct time for commencement and duration of each topic.
14. We note that the Court indicated that the purpose of the schedule of witnesses is to ensure that the witnesses and parties are inconvenienced in the least possible way by attending the hearing at the time nearest to when they are required (paragraph 37 of the Court's Minute).
15. We raise this matter at this stage in order to ensure there is no confusion at or before the hearing about what is intended to occur.

#### **Carr – cross examination**

16. We are presently preparing a schedule for witnesses' attendance at the hearing. Mr Carr advises:

On the matter of cross questioning I have earlier advised the Court that I intend to cross examine all, or a high majority, of the witnesses listed on the witness list of Meridian dated 27 January, and the witness list of Council dated 13 February. The length of time is likely to range from one hour to one and half hours, to 15 to 30 minutes depending on the witness.
17. This does not provide the level of specificity required in relation to the time anticipated for cross examination of each witness. We will circulate the list of witnesses to Mr Carr so that he can provide greater specificity regarding his intentions.

#### **Schedule of Witnesses**

18. We have been in discussions with the Hurunui District Council, and the indicative schedule of witnesses will not be ready to file today. We request an extension of the timetable by 2 weeks to allow sufficient input from all of the parties.



19. Meridian seeks a revised direction that:

- (a) The Council is to provide the Registry (Ms O'Connell) with an indicative schedule of witnesses no later than 16 July 2012.

**'Hot-tubbing'**

20. For completeness, the Court sought the parties' views on 'hot-tubbing' of witnesses (paragraph 38 of the Minute).

21. At this stage Meridian does not see a need for 'hot-tubbing' of witnesses in relation to any topic. This process is unlikely to elicit any information that will be helpful for the Court that cannot be obtained through the normal course of evidence preparation, caucusing between experts, and cross-examination.



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AJL Beatson  
Counsel for Meridian Energy Limited  
2 July 2012