

**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

**Memorandum of Counsel on behalf of Meridian Energy
Ltd – Request for Directions**

5 July 2012

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 the outstanding issues Meridian Energy Ltd (**Meridian**) considers need to be resolved by the Court in order for Meridian to decide whether or not to file rebuttal evidence in response to Dr Robert Thorne's 'evidence', and to complete the schedule of witnesses. These issues are as follows:
 - (a) Whether Mr Carr should be required to confirm whether or not he will call Dr Thorne as a witness at the hearing at this juncture;
 - (b) If Dr Thorne is not to be called as a witness, whether Mr Carr can be an 'appointed representative' of Dr Thorne; and
 - (c) Whether Mr Carr is an expert witness for the landscape, tourism, valuation, and traffic topics.
2. These issues have been raised in the Memorandum of Counsel on behalf of Meridian dated 2 July 2012 (**Meridian's memo**), and in correspondence from Mr John Carr to Judge Harland e-mailed to the Hearing Manager on 4 July with the subject 'Reply to Memorandum of Counsel on behalf of Meridian Energy Ltd dated 2 July 2012' (**e-mail**).
3. Counsel for Hurunui District Council has filed a memorandum in relation to issue (a) above, dated 5 July 2012.

Dr Thorne – witness or not?

4. Mr Carr has usefully confirmed in his e-mail that the document attached to his statement of evidence constitutes Dr Thorne's brief of evidence for this proceeding.
5. As noted in Meridian's memo, Meridian intends to file evidence in reply to Dr Thorne's evidence only if Dr Thorne is being called as a witness to confirm his brief, and will be made available for cross examination at the hearing. If he is not to be called, then Meridian considers there is nothing of substance arising from his brief that requires a response, and will in due course make a submission to that effect. If Dr Thorne is to be called and be made available for cross examination, Meridian will file rebuttal evidence.

6. Accordingly, Meridian seeks a direction 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.

Mr Carr – ‘appointed representative’ or not?

7. Mr Carr advises in his e-mail that should Dr Thorne not be available to be a witness at the time of the Court hearing then he will “act on his behalf” as Dr Thorne’s ‘appointed representative’.
8. As noted in our Memorandum dated 2 July 2012, no person can be an ‘appointed representative’ of, or provide answers on behalf of, another witness – let alone an expert witness.
9. Meridian seeks a direction that:
 - (b) Mr Carr cannot be an ‘appointed representative’ and give evidence and answer questions on behalf of Dr Thorne at the hearing.

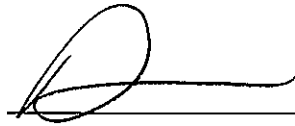
Mr Carr – expert witness or lay witness?

10. In Meridian’s memo, we outlined our concern about lay witnesses giving evidence as part of each topic as we had understood this is what was being sought by Mr Carr.
11. We understood from the Minute and direction arising from a pre-hearing conference held on 8 June 2012 (dated 18 June 2012) that when topics are dealt with each party will make submissions, then call their respective experts in that topic. After the topics are dealt with all other witnesses are to make any remaining submissions and call any remaining witnesses. We support this approach to the hearing and it accords with our understanding of what was agreed at the pre-hearing conference.
12. Calling any or all lay witnesses under each topic in respect of which they have expressed an opinion would be neither efficient nor convenient (for them or anyone else).

13. It is now clear from Mr Carr's e-mail that he considers he should give evidence as part of the landscape, tourism, valuation, and traffic topics on the basis he is an expert witness.
14. In the Court's Minute dated 15 June 2012 the Court emphasised that whether a witness is an expert depends on their qualifications within a purported area of expertise, and their experience. Notably, the Court observed that an expert is not an expert because they believe themselves to be so. Whether a person has sufficient expertise to qualify as an expert witness is one to be objectively assessed by the Court.
15. Mr Carr has not provided any evidence that he has qualifications or expertise in respect of the landscape, tourism, valuation, and traffic topics.¹
16. Commissioner Menzies has already concluded that Mr Carr did not have the necessary expertise to justify his attendance at the landscape, noise and traffic additional expert caucusing sessions.
17. In respect of the valuation and tourism topics, Mr Carr's views as an operator of a tourism business and his opinion on valuation as an owner of property can be canvassed in his submissions and evidence to the Court. The opinion of the experts can be challenged during cross examination. There is no basis for the assertion that Mr Carr is qualified as an expert witness in these areas. If the fact he operates a modest business or owns a property is sufficient qualification then we respectfully submit that every interested person may be capable of showing they are an 'expert' witness' in some respect or other.
18. Further, Mr Carr has exchanged evidence from expert witnesses for the traffic topic (Mr Messervy) and for the valuation topic (Mr Manning).
19. Meridian seeks a direction that:
 - (c) Mr Carr is not an expert witness in the landscape, noise, tourism, valuation, and traffic topics and is accordingly to present his

¹ Mr Carr's Evidence in Chief dated 27 April 2012

evidence as a witness on behalf of Tipapa Ltd at the appropriate time in the hearing.



AJL Beatson

Counsel for Meridian Energy Limited

5 July 2012