

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2011-CHC-090

In the matter of the Resource Management Act 1991

Between **MERIDIAN ENERGY LIMITED**

Applicant

And **HURUNUI DISTRICT COUNCIL and
CANTERBURY REGIONAL COUNCIL**

Consent Authorities

**MEMORANDUM FOR HURUNUI DISTRICT COUNCIL RELATING TO
DIRECTIONS FOR WITNESS SUMMONSES AND IN RESPONSE TO THE
MEMORANDUM OF TIPAPA LIMITED ON 2 MAY 2012**

DATED 8 May 2012

BUDDLE FINDLAY
Barristers and Solicitors
Christchurch

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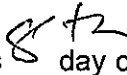
MAY IT PLEASE THE COURT:

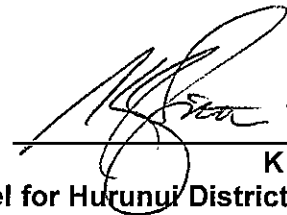
1. On 16 April 2012 Mr Carr, for Tipapa, was directed to file a memorandum within ten working days identifying:
 - (a) the reasons why he wishes to summons each of the named potential witnesses;
 - (b) the topics those witnesses are expected to address;
 - (c) a list of documents and/or other material each witness is to produce at Court; and
 - (d) an explanation as to why the evidence is material to the Court's consideration.
2. Mr Carr filed a memorandum on 2 May 2012 to comply with that direction. Tipapa still wants to summons Council staff and counsel. Hurunui District Council continues to oppose the application by Tipapa. The Council opposes summonses being issued for Ms Judith Batchelor, Manager Environmental Services for the Council; Mr David Edge, Manager Roads and Utilities for the Council; and Mr Andrew Dalziel, Chief Executive of Hurunui District Council; and me in my capacity as counsel.
3. The grounds of opposition continue to be:
 - (a) evidence from these proposed witnesses has no probative value and is irrelevant; and
 - (b) certain evidence sought is protected by solicitor/client or legal professional privilege which has not been waived.
4. No grounds have been provided to explain how evidence from Ms Batchelor, Mr Edge or Mr Dalziel is probative and relevant. It is difficult to discern what Tipapa considers may be gained from attempting to procure evidence from Ms Batchelor. Most of the anticipated evidence appears to be an attempt to undermine the Council's noise expert, Mr Stuart Camp. The allegation is that Mr Camp has a conflict of interest (which allegation is not accepted). However, the basis for that allegation is said by Mr Carr to be Mr Camp's relationship with Meridian and Meridian's expert Dr Chiles (refer Tipapa memorandum paragraph 12(c)). Mr Carr does not explain how or why any conflict of interest is said to have materialised, or how that would disqualify Mr Camp or otherwise compromise his ability to comply with the Code of Conduct for experts.

5. Whether or not Mr Camp's evidence is acceptable to the Court does not rely on evidence from Ms Batchelor of the sort Mr Carr has said will be obtained from her. For example, the fact that one expert might consider the evidence of another in preparation for a hearing is both unremarkable and irrelevant.
6. Where Mr Carr wants access to correspondence between Ms Batchelor and counsel that communication is privileged. Privilege has not been waived.
7. The evidence anticipated from Mr Edge is irrelevant. The intention to summons him to present evidence on Motunau Beach Road and Reeces Road misses the point of the case. There is no linkage between Reeces Road and the success or failure of this application. Reeces Road is not part of Meridian's application. Nor is Mr Edge identified as the author of any road safety assessment work relating to the application site or access proposed by Meridian in its application. Traffic-related matters are already addressed by expert witnesses who have filed evidence-in-chief.
8. Mr Dalziel appears to be the subject of a summons for an ulterior purpose. Mr Carr discloses an attempt to get access to Council-related information through the Ombudsman and appears to be attempting to use a summons to get material previously denied to him by Mr Dalziel. Furthermore, from paragraph 15 of Mr Carr's memorandum, he has challenged the appointment of Mr Camp (or the continued retention of Mr Camp) with the Council. The Council's reason for appointing Mr Camp, and its attitude to the matters raised by Mr Carr about Mr Camp, are irrelevant in deciding on the admissibility of Mr Camp's evidence or the weight to place on it.
9. Finally, Mr Carr has stated an intention to summons me, in my capacity as counsel for Hurunui District Council. In his memorandum, Mr Carr says that he wants to review an email sent to Dr McBride dated 9 August 2011. He also argues that I should be directed to bring to Court all other emails, file notes, and correspondence relating to this matter between me, Ms Batchelor, Mr Camp and Dr McBride as well as a request for what he describes as my qualifications in the field of health.
10. Mr Carr also says he wants to know why I became involved and on whose instructions, and makes other unfounded accusations about the preparation of the evidence.
11. All communications between me, in my capacity as counsel for Hurunui District Council, with the Council (including its senior employees) and

witnesses engaged for the purposes of this litigation, are absolutely privileged against disclosure. Mr Carr has not disclosed how he obtained a copy of my email to Dr McBride but the Council has not waived privilege. My instructions are that the Council will not waive privilege.

12. Whatever Mr Carr thinks of that correspondence, he is not able to access it in this manner.

DATED at Christchurch this  day of May 2012


K G Smith
Counsel for Hurunui District Council