

**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 for Meridian Energy Limited

24 May 2012

BELL GULLY

BARRISTERS AND SOLICITORS

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May it please the Court:

1. Mr Carr has requested that the Court approve an additional expert to give evidence on potential health effects, on the basis Dr Shepherd seemingly has concerns that he is the “sole representative acting for the Society and Tipapa”. In addition, he is concerned he may be disadvantaged because Meridian will have three experts attending. Mr Carr has not attached any correspondence from Dr Shepherd setting out his concerns.
2. Meridian Energy Limited (**Meridian**) considers granting this request is not necessary, and with respect, to do so would be inappropriate for the following reasons.
3. The brief CV of Dr Welch does not disclose any expertise relevant to health effects arising from windfarms.
4. Dr Shepherd may not have been briefed on his role and duties as an expert attending caucusing at this stage. He is not a representative acting for his client(s) as Mr Carr suggests. He need not be concerned about the fact that the other experts might disagree with him. Each expert is independent, and will be expressing their views on this basis.
5. Caucusing is not a numbers game. Scientific consensus need not be balanced out by competing views.
6. The time for identification of witnesses¹ and for a witness to present evidence in chief² has long since passed. We have no idea what Dr Welch will be raising at caucusing or how that will be relevant to the matters at issue. Inviting Dr Welch to attend caucusing will no doubt be an encouragement to him or others to call further evidence in chief or attend at the hearing, with the potential to throw the timetable and hearing into disarray.

¹ Minute to the parties 16 February 2012.

² Record of Pre-Hearing Conference 12 December 2011, para [10](c).

7. Further, Mr Carr has omitted to mention that Dr McBride, the independent expert engaged by Council to report on health related issues, will be attending caucusing. We are aware that Dr McBride is a joint author of academic papers with Dr Shepherd, and so there will no doubt be some areas of consensus between them.³ The position regarding numbers (to the extent it is relevant) is therefore not as Mr Carr represents it.
8. Further, although there are three health experts being called by Meridian, Tanya Breen's rebuttal evidence will be confined to responding to concerns raised by project opponents about potential effects of the turbines on people with autism spectrum disorder. This is a discrete area of expertise under the general health effects banner. Her evidence will not overlap with Dr Shepherd's to any significant extent.
9. It is unclear from his letter what it is that Mr Carr is seeking. While the Court has the power to call evidence, calling an expert is an unusual course for a Court to take,⁴ and is a course that the Court should be wary of taking, lest it be thought to be "descending into the arena".⁵
10. It is of interest that Dr Shepherd's brief refers to his having been engaged by Glenmark Community Against Wind Turbines⁶. There has been no request from the Society in relation to this matter.

³ Shepherd, D., McBride, D., Welch, D., Dirks, K. N., & Hill, E. M. (2011). *Evaluating the impact of wind turbine noise on health-related quality of life*. *Noise and Health*, 13(54), 333 – 339; Welch, D., Shepherd, D., Dirks, K., McBride, D., & Marsh, S. (2011). *Noise and Health Related Quality Of Life in People Living Near a Motorway*. Proceedings of the Institute of Acoustics Volume 33 Pt.3, 10th International Congress on Noise as a Public Health Problem (ISBN: 978-1-61839-079-0), London, England, 24 – 28 July 2011. P. 957-962

⁴ *Kawarau Jet Services Holdings Ltd v Queenstown Lakes District Council* [2010] NZEnvC 419 at [41]

⁵ See Hon Mr Justice F Sheppard, "Court witnesses: a desirable or undesirable encroachment on the adversary system?" (1982) 56 ALJ 234

⁶ Evidence in Chief, para 1.6.

11. It is also of note that there are already five experts providing evidence in relation to purported health issues – including some with considerable expertise. This is not a situation where there is a legitimate area of concern being expressed, and no witnesses are being called to assist the Court.



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A J L Beatson

Counsel for Meridian Energy Limited

24 May 2012