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-I of the RMA

Between

Meridian Energy Limited

Applicant

and

Hurunui District Council and Canterbury Regional Council

Consent Authorities

Memorandum of Counsel on behalf of Meridian Energy Limited

27 January 2012

BELL GULLY
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May it please the Court:

Friend of Submitters

1. In its Minute to the Parties dated 16 January 2012 the Court directed that Meridian is to respond by 27 January 2012 whether or not it agrees to appoint a Friend of the Submitters.

2. Meridian is cognizant of the representations that have made by some of the parties to the proceedings and the views that have been expressed by the Court regarding this issue. Meridian has carefully considered those matters as well as a range of other factors and, with respect, has determined that it does not consider it either necessary or appropriate that a Friend of Submitters be appointed at Meridian's cost to assist other parties, including for the following reasons:

   (a) Most of the parties to the proceedings are members of Glenmark Community Against Windfarms Incorporated, which has received a $50,000 grant from Hurunui District Council to assist it with its legal and planning costs;

   (b) An experienced Environment Court Commissioner has convened a very successful parties conference. Another one is to be scheduled early this year. These meetings in large part fulfil the purpose of a Friend of Submitters;

   (c) We are at the evidence preparation and exchange stage of proceedings. We cannot see how a Friend of Submitters can (or should) help with the engagement of experts or preparation of expert (or lay) evidence for the opponents. The directions regarding the format of evidence are clear and detailed. At the Pre-hearing conference held on 5 December 2011, the Court gave clear guidance to the parties regarding the distinction between submissions and evidence, and the nature of opinion evidence. These matters were discussed in the parties conference held last year and if there are any residual uncertainties they can be discussed in the one to be held this year. For lay witnesses, the Court provides significant latitude if the normal rules regarding admissibility of evidence are

transgressed, and we would not expect it to be the role of a Friend of Submitters to review briefs to advise on admissibility or strategic issues in any event;

(d) A number of the questions Mr Carr seeks an answer to are not likely to be able to be readily resolved by a Friend of the Submitters – for example, while a Friend of the Submitters could advise the proper process to follow to seek a witness summons (which is readily ascertainable in any event – either on-line or in discussions with any Court Registry staff), he or she would not (presumably) advise on the merits of doing so. We respectfully suggest that parties seeking a sounding board about strategic matters such as these should engage a professional advisor to provide advice that is in their interests;

(e) In our experience, the proposed appointment is unprecedented in the consenting context. While a Friend of Submitters has been appointed in respect of several applications that have been called in and subjected to the EPA fast track processes, those applications are subjected to very tight timeframes (decisions are expected to be made within 9 months of lodgement of an application). No participant in these proceedings is subjected to anything like the timeframes experienced in those cases. For example, Community Open Days in relation to this project were held in May 2010 and Jan 2011. The applications were initially lodged on 21 February 2011. The application for direct referral was filed on 18 August 2011. The parties do not have to lodge briefs of evidence in chief until 27 April 2012, and a hearing date has not yet been set.

Letter from Tipapa Limited

3. We have received a copy of a letter sent by Mr Carr to the Court relating to questions arising from an alternative access to the site that was proposed by Tipapa during consultation and was thoroughly investigated by Meridian.

4. In its evidence Meridian has outlined in detail the investigations that were conducted into the alternative access options proposed by Mr Carr and the reasons why those access options were not pursued by Meridian.

5. The access options proposed by Mr Carr do not form part of Meridian's application. We respectfully suggest that the focus of the present proceedings should be on whether or not the access that is proposed by Meridian and that is the subject of the application causes unacceptable adverse effects, rather than whether some other access that does not form part of the application is 'better' than what is proposed.

6. To the extent alternative access to the site is relevant (which is moot given that the traffic experts do not identify significant adverse effects associated with the proposed access), Meridian suggests the issue to be resolved is whether or not Meridian has given sufficient consideration to these matters. As the High Court noted in the *Hayes* decision, when it comes to consideration of alternatives it is not the role of the Court to determine what it considers is the best access, and it should not decline consent on the basis it thinks the proposed access is not the best. The focus should be on the merits of the proposal that is before the Court.

7. We are happy to elaborate on any matter raised in this memorandum if that would be of further assistance to the Court.

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A J L Beatson

Counsel for Meridian Energy Limited

26 January 2012