

## Pat Evans

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**From:** David Meares [david.meares@gmail.com]  
**Sent:** 13 May 2012 1:00 p.m.  
**To:** Ryan Stuart; Ecan Laura Hull; Turnbull Hugh & Yo; Kerry Smith; Bell Gully Andrew Beatson; NZWEA Pyle; Bell Gully Natasha Garvan; Meares Belinda; Symonds Judy; McKone Jan & John; Love Leigh; Messervy Murray and Ellie; Baxter Alec and Nancy Stanley; Goodship Jill; Pankhurst Heather And John; McBrean Todd; Barnes Sarah & Sam; Marr Annette; Carr John; McLachlan Felicity & Julia; McLean George and Marianne; Pearson Scott; McLachlan Hamish and Katrina; Perriam Fran, John, Daniel; Fitzsimmons Kathryn and Mark; Meares David; Wallace Malcolm; Herbert Chris; Vincent Phoebe; Meares Vivi; Meares Lyn; Thomas Gary; Higginson Graeme + Jo  
**Subject:** Fwd: Expert Witness Caucusing

Begin forwarded message:

**From:** John Carr <johncarr@tipapa.com>  
**Subject:** Expert Witness Caucusing  
**Date:** 11 May 2012 4:55:58 PM NZST  
**To:** [david.meares@gmail.com](mailto:david.meares@gmail.com)

David

Please forward this letter to all parties, sent this afternoon to Andrew Beatson. Except the Environment Court which is not involved at this stage.

Thank you.

John

Dear Mr Beatson.

I refer to my email on the matter of Tim Crighton, Tanya Breen and Keith Petrie.

I have received your response to the questionnaire of Hurunui District Council dated 21 November 2011. I note your response to question (i) on page 6. I have spoken with Commissioner Manning and, on his advice, with the Registrar of the Environment Court in Auckland.

I set out below a copy of the letter from the Registrar, please note its content, and clause 5.4 of the Code of Practice for expert conferencing.

In summary the purpose of expert conferencing is that it involves only those that have provided written evidence AND will be witnesses in the Court case.

Tanya Breen and Keith Petrie have given no written expert evidence, in fact no written evidence whatsoever, and are not witnesses in the Court case. Tim Crighton has not given any written expert evidence, in fact no written evidence whatsoever, and is not a witness in the Court case. That fact that I have provided an unsigned copy of Crighton Anderson's report on Tipapa to the Court on 26 April does not enable Meridian to claim that Tim Crighton has submitted any evidence. He has not.

As regards your belief that your answer in clause (i) page 6 of the Council's questionnaire in some ways allows you to include these persons is astonishing. Your answer in this question has no relevance whatsoever. The questionnaire has no legal standing as you well know.

As set out in the letter below from the Registrar, should you wish to proceed to try and include these persons you will need to write to the Environment Court for leave to do so, copying all parties who will have the right of reply.

Therefore, unless the Court so decide, Tanya Breen, Keith Petrie, and Tim Crighton have no standing whatsoever in Meridian's application, the forthcoming caucusing, and the Environment Court case.

Please confirm that their names have been withdrawn by Meridian.

Yours sincerely

John Carr

#### LETTER FROM THE REGISTRAR

A copy of the Court's Practice Note is attached. Para 5.4 covers the purpose of expert witness conferences. Whilst it doesn't expressly exclude anyone, it's clear that its purpose is for expert witnesses to confer (i.e. those who are to appear and give evidence) and no one else. I'd think if there is a suggestion that anyone other than an expert witness is being invited to attend the conferencing, then in the normal course of events, that would require leave of the Court.

#### CLAUSE 5.4

##### Expert Witness Conferences

5.4.1 Expert conferencing is a process by which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Such a conference is a structured discussion between peers within a field of expertise which can narrow points of difference and save hearing time (and costs). All experts have a duty to ensure that any conference is a genuine dialogue between them in a common effort to reach agreement about the relevant facts and issues. It should be understood that the term 'expert' means a person who would be recognised by the Court as an expert in his or her field by reason of relevant qualifications and/or experience. Persons not having such qualifications and experience will not participate in conferences unless otherwise agreed by all parties or directed by the Court.

5.4.2 Like mediation, conferencing is a private procedure and, apart from any agreed primary data, and the joint statement produced at the conclusion of the conference, what is said or done at the conference cannot be referred to or relied on in any proceeding before the Court. In that sense it is a 'without prejudice' discussion, although those participating may report back to the parties engaging them.

5.4.3 Every person at an experts' conference who is participating in his or her role as an expert witness, must agree to comply with the Code of Conduct for such witnesses, and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.

5.4.4 The Court expects that expert conferencing will occur prior to a hearing as a matter of course. In many circumstances it will be most advantageous to do so before full briefs of evidence are prepared, with the conference proceeding on the basis of summarised 'will say' briefs being exchanged beforehand (see para 5.7.1). In most cases the parties should be able to make the arrangements without Court intervention,

although the Court will be willing to assist if required. Sound preparation is essential and the parties must allow adequate time for this process to be completed. Counsel are responsible for ensuring that the experts have all necessary documentation to enable proper preparation, and for briefing the experts on the process to be followed and their responsibilities as participants.

5.4.5 Either by agreement of the parties, or at the Court's direction, the conference may be facilitated by another expert (who has not been engaged to act by a party to the proceeding), or by an Environment Commissioner or any other person. If the conference is facilitated by a Commissioner, that person may sit as a member of the Court to hear a proceeding on the same matter only if the parties and the Court are satisfied that is appropriate. In cases where there are only two witnesses within a given field of expertise, or where the experts have agreed to manage the process themselves, facilitation may not be necessary.

5.4.6 The Court may limit the cross-examination of experts on the matters agreed to at the conference, and may restrict the calling of any further evidence, particularly where a witness attempts to introduce an issue or issues which the participants in the conference agreed did not need to be considered.

5.4.7 While the experts participating in the conference may agree on matters within their fields of expertise, it should be understood that their agreement will not necessarily bind any party to a particular overall outcome, or to the wording of conditions.

Acting Principal Environment Judge  
1 October 2011