

Pat Evans

From: Tipapa Events [tipapaevents@tipapa.com]
Sent: 5 April 2012 11:57
To: S & B Barnes; A Baxter & N Stanley; Andrew Beatson; N & B Burgham; M & K Fitzsimmons; A Goodship; Chris Herbert; G & J Higginson; Lisa Kissell; L Love; A Marr; T McBreen; J & J McKone; H & K McLachlan; J McLachlan; G & M McLean; David Meares; Belinda Meares; Lyn Meares; V Meares; Ellie Messervy; M Messervy; Eric - NZ Wind Energy Assn; Kerry Smith; Gary Thomas; H & Y Turnbull; Phoebe Vincent
Subject: Fwd: Email for Judge Harland.
Attachments: CCE04042012_00000.jpg; CCE04042012_00001.jpg; CCE04042012_00002.jpg; CCE04042012_00003.jpg; CCE04042012_00004.jpg; CCE04042012_00005.jpg; CCE04042012_00006.jpg; CCE04042012_00007.jpg; CCE04042012_00008.jpg; CCE04042012_00009.jpg

----- Forwarded message from johncarr@tipapa.com -----

Date: Wed, 04 Apr 2012 00:26:11 -0600
From: John Carr <johncarr@tipapa.com>
Subject: Email for Judge Harland.
To: tipapaevents@tipapa.com

----- Forwarded message from johncarr@tipapa.com -----

Date: Tue, 03 Apr 2012 22:17:06 -0600
From: John Carr <johncarr@tipapa.com>
Subject: Email for Judge Harland.
To: holly.o'connell@justice.co.nz

Dear Holly

In my letter to Judge Harland dated 26 March I raised the matter of the "Cost Sharing Agreement" between Meridian Energy Limited and Hurunui District Council.

Unknown to me on Friday 30 March the Hurunui District Council put out a press statement on the subject of the Cost Sharing Agreement. This was reported on in The Press on Monday 1 April on page A8. The Council's actions have put the debate on the agreement into the public domain.

In view of the above I feel that it is appropriate that I send the above Cost Sharing Agreement to Judge Harland rather than wait for Meridian's or the Council's solicitors to do so. The agreement is attached and I ask that you forward it to Judge Harland.

The core clause that I ask Her Honour to adjudicate upon is Clause 8.1 on page 5. Further, the clauses that may also be relevant are Clauses 4.5(f) and 4.5(g), particularly the latter.

Please acknowledge receipt of this letter. Thank you.

Regards

John Carr

----- End forwarded message -----

----- End forwarded message -----

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Dated

20, June,

2011

COST SHARING AGREEMENT

(Agreement between Hurunui District Council and Meridian Energy Limited for the payment of costs associated with a request for direct referral pursuant to section 87D of the Resource Management Act)

HURUNUI DISTRICT COUNCIL

MERIDIAN ENERGY LIMITED

BUDDLEFINDLAY

AD

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AD 1/22

DATED

2011

PARTIES

- A. HURUNUI DISTRICT COUNCIL ("the Council" or "Consent Authority")
- B. MERIDIAN ENERGY LIMITED ("Meridian")

1. SHORT DESCRIPTION

- 1.1 This is an agreement by which Meridian agrees to pay the actual and reasonable costs incurred by the Council in administering and processing resource consent application No. RC110011 including the costs of all necessary and incidental steps required to decide a request for referral to the Environment Court under section 87D of the Resource Management Act 1991 ("RMA" or "the Act").

2. DEFINITION

- 2.1 In this agreement the following terms have the following meanings:

- (a) actual and reasonable costs means any reasonable costs, expense, disbursement, fee, charge, remuneration or other amount payable by Meridian to the Council for the Council's own charges, or those sums which the Council must pay to a third party which have been incurred for the purposes of processing and determining the application;
- (b) Annual Plan or LTCCP means the Council's Annual Plan or Long Term Council Community Plan;

3. INTERPRETATION

- 3.1 In interpreting this agreement, unless otherwise stated:

- (a) all references to the RMA and to sections mean the Resource Management Act and sections of that Act;
- (b) the Council's powers, functions or duties under the RMA are not limited by this agreement;
- (c) the word "including" does not imply any limitation;
- (d) references to singular terms include the plural and vice versa and references to any gender includes both genders;
- (e) headings are included for ease of reference and do not affect the interpretation of this agreement;
- (f) references to clauses and schedules are to clauses and schedules of this agreement;
- (g) references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and

- (h) any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

4. BACKGROUND TO THIS AGREEMENT

- 4.1 Meridian has applied to the Council for resource consent to establish and operate a wind farm and associated activities at Greta Valley ("the application").
- 4.2 The application was publicly notified by the Council on 9 April 2011. Submissions to the application closed on 24 May 2011.
- 4.3 Section 87D provides that an Applicant may request the Consent Authority to allow the resource consent application to be determined by the Environment Court in the first instance.
- 4.4 Meridian has made a request to the Council pursuant to section 87D. Section 87F requires the Council to:

- (a) consider a request made under section 87D;
- (b) give its decision about that request within 15 working days after receiving it; and
- (c) in all other respects to undertake the assessments in sections 87E and 87F.

- ✓ 4.5 The Council must attend to all of the functions and tasks required of it under the RMA relating to the application including but not limited to:
 - (a) assessing the completeness of the application;
 - (b) notifying the application;
 - (c) receiving and collating submissions on the application;
 - ✗ (d) preparing reports about the application either under section 42A or under section 87F;
 - (e) where a request under section 87D is made for a referral of the application to the Environment Court to consider and decide that request;
 - ✗ (f) where a request under section 87D has been granted, providing a report to the Environment Court to comply with section 87F;
 - ✗ (g) participating in the Environment Court proceeding to support the report under section 87D, or as directed by that Court.
- ✗ (the administrative tasks)

5. PURPOSE OF THIS AGREEMENT

- 5.1 The purpose of this agreement is to provide a proper and adequate mechanism through which the actual and reasonable costs of the Council associated with completing the administrative tasks are paid to the Council by Meridian.

6. REIMBURSEMENT

- 6.1 Meridian will pay to the Council all fixed costs for the application as required by section 36 of the RMA.
- 6.2 In addition to the costs payable under paragraph 6.1, Meridian agrees to pay to the Council all actual and reasonable costs incurred, in completing the administrative tasks and any other tasks required of the Council to discharge its functions or duties under the RMA in respect of the application. For the avoidance of doubt actual and reasonable costs payable by Meridian include:
- (a) where the Council is required to prepare a report to the Environment Court all costs associated with completing that report, including assessing the application under sections 104-112 (inclusive) and recommending resource consent conditions or commenting on proposed consent conditions; and
 - (b) taking all and any steps required to file a report under section 87F in the Environment Court including if necessary lodging a submission, or a notice under section 274, for the purposes of presenting that report to the Court;
 - (c) where the Court requires the Council to support or justify its report under section 87F, or in any other way, to present evidence or to present submissions to the Court, the costs associated with those attendances;
 - (d) all disbursements including filing fees payable to the Ministry of Justice on the filing of any report, submission, or a notice under section 274.
- 6.3 Meridian acknowledges that agreeing to meet the actual and reasonable costs that will be incurred by the Council means that it will have to pay for the costs of consultants (which terms includes experts appointed by the Council in its sole discretion subject to clause 6.4) who are engaged to advise the Council, or assist it, in any aspect of the application, but Meridian:
- (a) will only be obliged to pay for those costs associated with the appointment of a consultant where that person acknowledges he or she has the capacity, qualifications and skills to undertake the work, and undertakes the work in a professional manner; and
 - (b) prior to undertaking the work an estimate of that consultant's costs is submitted to the Council.
- 6.4 The Council will inform Meridian, prior to engaging any consultant to advise or assist it on any aspect of the application, of the following matters:
- (a) the consultant's identity, capacity, qualifications and skills to undertake the relevant work; and
 - (b) the estimated time and cost that is likely to be incurred in carrying out the work.
- 6.5 Meridian must immediately advise the Council if it has concerns about the identity, capacity, qualifications or skills to undertake the relevant work, of any nominated consultant or any estimate by that person of time and cost that is likely to be incurred in carrying out the work.

- 6.6 A consultant providing an estimate of costs does not give Meridian any rights, or powers, in relation to:
- (a) the appointment of that consultant; or
 - (b) the termination of the appointment of that consultant; or
 - (c) the direction of, or instruction to, that consultant, about the work to be undertaken or the way in which it is to be undertaken; or
 - (d) instructing that consultant not to provide a report or advice to the Council.
- 6.7 In this agreement actual and reasonable costs include but are not limited to:
- (a) the usual costs charged by the Council for the time and attendances of its staff for carrying out administrative tasks and any other tasks required to discharge the Council's functions and duties under the RMA;
 - (b) costs incurred in appointing a consultant;
 - (c) costs incurred by a consultant in undertaking the tasks for which he or she has been contracted including that consultant's disbursements;
 - (d) any filing fees required to be paid by the Council to the Ministry of Justice, or any other Department of the Crown, or any other charges which might be imposed by an external agency;
 - (e) all costs associated with publication, or copying of the application; for example, where copying is requested by a submitter or other member of the public, and includes postage, and Council staff time to attend to those tasks;
 - (f) attendances of Council staff, or consultants to:
 - (i) prepare for and attend mediation whether conducted under the auspices of the Environment Court or otherwise; and/or
 - (ii) prepare for and attend any facilitation meeting which may be organised by Meridian or any other party;
 - (iii) prepare for and attend any consultation meeting with Meridian or any other party;
 - (g) attending to the preparation and filing of a submission, or notice under section 274, which step may be required to ensure that the Council can effectively provide a report to the Environment Court as required by section 87F. Nothing in this agreement in any way restricts the nature or extent of the Council's power to prepare a report under section 87F(3) including the nature of any recommendations made in the report by the Council;
 - (h) the costs of hiring any venue, providing catering, producing publications of any sort (including notices of meetings), preparing and circulating any meeting minutes, or travelling required for any mediation, consultation, or facilitation between Meridian, other parties, or Council staff (or any of them);

- (i) sundry expenses as are properly and reasonably associated with the processing of the application.
- 6.8 This agreement does not apply to costs which might be incurred by the Council when a proceeding (arising from a determination of the Environment Court in respect of the application) is before the High Court, Court of Appeal or Supreme Court.
- 7. CALCULATION OF ACTUAL AND REASONABLE COSTS**
- 7.1 Actual and reasonable costs will be calculated according to the Council's usual practice which includes:
- (a) that the time and attendances for Council's staff will be charged to Meridian at the hourly rate specified for fixed charges under section 36 of the RMA or as alternatively specified in the Council's Annual Plan or Long Term Council Consultative Plan, plus GST (if any); and
 - (b) internal charges (such as printing or vehicle use) will be charged at the rate of 100% of the charge that the Council has set for those charges plus GST (if any); and
 - (c) costs for goods and services, or for the provision of any disbursements, will be charged to Meridian at 100% of that cost of supply plus GST (if any); and
 - (d) costs of any consultant will be charged to Meridian at 100% of the cost of supply plus GST (if any).
- 8. COSTS NOT TO BE INCURRED**
- 8.1 The Council will not seek to recover from Meridian under this agreement any costs that might be incurred for the preparation and presentation of a submission on the application under section 98 of the Resource Management Act 1991 where that submission is opposed to granting resource consent. This provision does not prevent the Council or Meridian from seeking costs as an order of the Environment Court.
- 9. STANDARD TERMS AND CONDITIONS**
- 9.1 Payment Terms:
- (a) the Council will submit accurate tax invoices monthly in arrears to Meridian;
 - (b) the Council may invoice at any time even after the determination of the application;
 - (c) the tax invoice supplied by the Council will include at least the following information:
 - (i) where the charge is for costs accrued by an hourly charge-out rate the number of hours worked, an adequate description of the work undertaken, and the total hours billed; and
 - (ii) where the cost is a disbursement an adequate description of that disbursement; and

- (iii) where the cost includes a fee for an external contractor an adequate description of that work and a copy of the contractor's account.

9.2 Meridian will pay the invoice not later than the 20th of the month following the date of invoice.

Requests for Information (Local Government Official Information and Meetings Act 1987)

9.3 The Council shall immediately advise Meridian of any request received by it for information under the Local Government Official Information and Meetings Act 1987 in relation to this agreement or the application.

Termination Rights

9.4 Meridian may terminate this Agreement with immediate effect, or withhold any payment, if the Council is or becomes insolvent or bankrupt, or is or goes into voluntary or compulsory administration, receivership, liquidation or is otherwise dissolved.

10. RELATIONSHIP MANAGERS

10.1 The Council and Meridian will each appoint a Relationship Manager to facilitate this agreement who will:

- (a) be the primary point of contact for communication between each of them; and
- (b) have responsibility for the performance of each party's obligations under this agreement.

10.2 The Relationship Managers in clause 9.1 are listed in Schedule 1 to this agreement.

11. RECORDS

11.1 The Council will keep adequate records to generally accepted accounting standards, and will have a system which enables those records to be held to ensure prompt and accurate verification of any cost referred to in this agreement. Those records must be maintained by the Council for a period of not less than 12 months after the completion of this agreement and be available for review, copying and use by Meridian.

12. GENERAL PROVISIONS

12.1 This agreement does not prevent either party from seeking or obtaining in any Court of competent jurisdiction an order for costs associated with presenting a case in the proceedings to which this agreement relates.

13. VARIATION

13.1 This agreement may only be varied by agreement in writing signed by the parties.

14. SEVERABILITY

- 14.1 If any term of this agreement becomes invalid or unenforceable in any way, that invalidity or unenforceability will not impair or affect any other provision and all remaining provisions will be in full force and effect.

15. SURVIVAL

- 15.1 If Meridian withdraws its application for resource consent it will remain liable for all actual and reasonable costs which have been incurred up to and including the time of that withdrawal.
- 15.2 Any clause of this agreement intended to survive will survive and continue in force after the expiry of this agreement.
- 15.3 The expiry or termination of this agreement does not affect the accrued rights or remedies of either party.

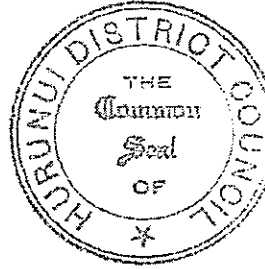
16. WAIVER

- 16.1 Any waiver of rights under this agreement is only effective if it is communicated in writing to the other party. For the purposes of waiver an email message between the Relationship Managers is sufficient compliance.

17. DISPUTE RESOLUTION

- 17.1 If Meridian disputes any amount of any invoice submitted for payment it will pay the sum specified in the invoice which is not in dispute on the due date.
- 17.2 Meridian and the Council will use the following procedure to resolve any and all disputes concerning this agreement:
- (a) the party raising the dispute will provide written notice of that dispute and the reason for it to the other party as soon as is reasonably practicable. That notice must notify the matter in dispute and provide adequate reasons to explain the dispute;
 - (b) when written notice of a dispute is given and agreement is not reached between Meridian and the Council, they will appoint a mediator to assist in resolution of the dispute. If they are unable to agree on a mediator, he or she will be appointed by the President of the New Zealand Law Society or that President's nominee;
 - (c) Meridian and the Council will co-operate with the mediator to resolve the dispute;
 - (d) if the dispute is settled the resolution will be final and binding on Meridian and the Council;
 - (e) if the dispute is not settled within 14 days after the mediator has been appointed, or in any extended time which Meridian and the Council agree to in writing, mediation ceases;
 - (f) the costs of appointment of the mediator will be borne equally by Meridian and the Council including the mediator's fees, costs including travel costs, and all disbursements.

THE COMMON SEAL of)
HURUNUI DISTRICT COUNCIL)
was hereto affixed by and in the)
presence of:)



[Signature] Mayor
[Signature] Chief Executive

SIGNED for and on behalf of)
MERIDIAN ENERGY LIMITED by)

[Signature]

Ken Smales
Ken Smales

Signature
General Manager Renewable Development
Position

[Signature]
Witness

Humphrey Tapper, Legal Counsel, (COUNCILOR)
Humphrey Tapper