

**IN THE MATTER** of a resource consent application under  
Section 87C(1) of the Resource  
Management Act 1991 (**the Act**)

**BETWEEN** MERIDIAN ENERGY LIMITED  
(ENV-2011-CHC-000090)

Applicant

**AND** HURUNUI DISTRICT COUNCIL  
CANTERBURY REGIONAL  
COUNCIL

Respondents

***BEFORE THE ENVIRONMENT COURT***

Court: Environment Judge M Harland,

Appearances: Mr Beatson and Mr Tapper for Meridian Energy Ltd ("Meridian")  
Mr Smith and Ms Silcock for Hurunui District Council ("the District  
Council")  
Ms Dysart for Canterbury Regional Council ("the Regional Council")

Mr Wallace for Glenmark Community Against Wind Turbines  
Incorporated ("Glenmark")

Mr Carr, director of Tipapa Limited ("Tipapa")

Mr Messervy for himself and Mrs E Messervy

Mr Turnbull for himself and Mrs Y Turnbull

Date: 18 June 2012

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**MINUTE AND DIRECTIONS ARISING FROM A PRE-HEARING  
CONFERENCE  
HELD IN CHRISTCHURCH 8 JUNE 2012**

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## **Introduction**

[1] A pre-hearing conference was held in Christchurch on 8 June 2012. At the outset of the pre-hearing conference I outlined that the purpose of it was to make directions about the procedural steps that were needed to progress the matter to a hearing, rather than it be a forum to discuss the substance of the case. This is because the substance of the case will be the subject of the hearing. Matters relating to the procedure to be followed at the hearing were also discussed. The directions made at the conference are now recorded in this Minute. Where necessary, sufficient background is provided to give a context to the directions.

## **Pre-hearing matters**

### *Possible conflict of interest – Tanya Breen*

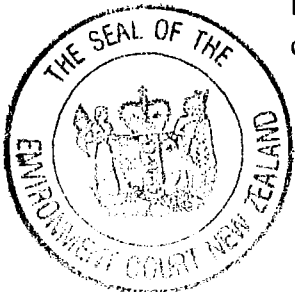
[2] Ms Breen, a psychologist with expertise in relation to Autistic Spectrum Disorders, is a proposed witness for Meridian. Ms Breen had raised with Mr Beatson the possibility of a connection with me. Ms Breen is a psychologist who practiced in Hamilton. When I was practicing as a solicitor in Hamilton I was occasionally involved in cases in which Ms Breen was a witness. I also had an occasion to brief her in relation to a family matter. I advised the conference that my dealings with Ms Breen were purely professional and did not in my view amount to a conflict of interest which would require me to be unable to hear this case. Apart from Mr Wallace, who wished to obtain further instructions on the issue, no other party has any issue with my continued involvement in the case because of this.

### *Directions*

[3] Mr Wallace is directed to provide Glenmark's view on this matter as soon as possible, but in any event no later than **22 June 2012**.

### *Is Dr Thorne intended to be a noise witness for Tipapa?*

[4] Mr Carr confirmed that there was a strong probability that Dr Thorne would be called by Tipapa as a witness. Mr Carr agreed to provide any evidence intended to be



called by Tipapa from Dr Thorne by Monday 9 July 2012. Meridian and the Council wish to reserve the right to reply to any evidence filed by Dr Thorne.

*Directions*

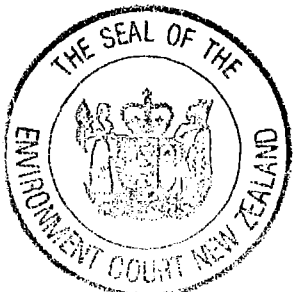
- (a) Mr Carr is to provide any statement of evidence by Dr Thorne to the Court by **5.00pm 9 July 2012**; and
- (b) A copy of any statement of evidence by Dr Thorne is to be served on all parties by **5.00pm 9 July 2012**. The previous directions relating to hard copies apply to service, unless a party has indicated it is prepared to accept service by way of email. In the event that an email service copy is indicated as being sufficient, then a scanned copy of the signed statement of evidence is to be provided;
- (c) Meridian and the Council are to file evidence in reply to Dr Thorne's evidence by **5.00pm 31 July 2012**. Service copies are to be provided to each of the parties in terms of the direction outlined in paragraph (b) above.

*Mr Camp's purported conflict of interest*

[5] Mr Camp is a noise witness for the District Council. Mr Carr for Tipapa contends among other things that Mr Camp has a conflict of interest. This matter is able to be covered by Tipapa during cross-examination at the hearing, and is not a matter to be determined before the hearing.

*Further particulars*

[6] Counsel for Meridian filed a memorandum dated 7 June 2012 seeking further particulars. Meridian contended that during the course of preparing rebuttal evidence, its experts have identified a small number of matters arising from briefs filed on behalf of project opponents about which they require further information. These matters are said to either relate to methodologies leading to conclusions which are not fully explained in the evidence of the relevant witnesses, or are copies of material referred to and relied upon by the opponents' witnesses that are not widely available. The witnesses referred to by Meridian which are the subject of this request are Dr Shepherd and Mr Huson, witnesses for Glenmark.



*Particulars arising from Dr Shepherd's evidence*

[7] Meridian has requested that Dr Shepherd provide it with copies of studies referred to in paragraphs 4.6 and 4.7 of his evidence-in-chief dated 30 April 2012. Mr Wallace indicated there was no difficulty in providing the information sought.

Directions

[8] Glenmark is directed to provide Meridian with copies of the studies referred to in paragraphs 4(a) (i) and (ii) of counsel for Meridian's memorandum dated 7 June 2012. This information is to be provided no later than **5.00pm 18 June 2012**.

*Particulars arising from Dr Huson's evidence*

[9] Meridian has requested Mr Huson provide it with full details of the attenuation measurements he undertook which are outlined on page 7 of his evidence-in-chief dated 26 April 2012 including:

- (a) The test standard used in the detailed test with methodologies;
- (b) Photographs and drawings of the spaces tested and equipment notifications (if there are any), otherwise a description of the same;
- (c) Details and dimensions of the windows and window openings;
- (d) Summary of constructions and internal fittings;
- (e) Details of equipment types, settings, and calibration;
- (f) Measured spectra in third octave bands for individual outdoor and indoor positions; and
- (g) Results for each individual room tested in third octave bands.

[10] There was a discussion about who was calling Mr Huson as a witness. Mr Carr contended that Mr Huson did not have certain information he required from Dr Chiles (the noise expert for Meridian). Mr Wallace confirmed that Mr Huson is Glenmark's witness rather than a witness for Tipapa. This means that requests relating to Mr



Huson's evidence are to be directed through Mr Wallace, who is counsel for Glenmark. It follows from this that Mr Carr does not have the right to speak for Mr Huson, given that Mr Huson is Glenmark's witness. Mr Carr does, however, have the right to cross-examine Mr Huson at the hearing on behalf of Tipapa.

[11] Mr Wallace indicated that Mr Huson is agreeable to providing the answers to the further particulars sought.

[12] Mr Beatson advised that Mr McKinney, a witness for Meridian, will make available the information upon which he relies after Mr Huson's position is clarified, no later than two weeks after Mr Huson has provided the further particulars sought..

#### Directions

[13] Glenmark is to provide the information referred to in paragraph [9](a)-(g) by **5.00pm 15 June 2012.**

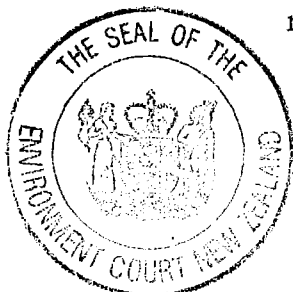
[14] Mr McKinney is to provide copies of the information upon which he relies by **5.00pm 29 June 2012.**

#### *Studies referred to in 24 February meeting*

[15] Mr Carr asked for copies of two studies referred to during a meeting held with Commissioner Manning on 24 February 2012 which he thought might be relevant to the issue of noise attenuation and which he believed Meridian witnesses had access to. One was a study he believed had been done in relation to Auckland airport. Mr Carr has requested these are made available to him as they are not part of the public domain. Mr Beatson confirmed that these studies are not referred to by any witness in this case and therefore do not form part of the evidence. Mr Beatson is prepared to make these studies available as soon as possible or in any event no later than one week after Meridian has considered Mr Huson's response.

#### Directions

[16] The studies referred to in the meeting on 24 February are to be made available to Mr Carr no later than one week after Meridian has considered Mr Huson's response.



*General comment*

[17] Generally speaking any studies or source material referred to or relied on by any expert witness in his or her evidence that is exchanged in relation to this case should be made available to any other party at his or her request. "Evidence exchanged" means the written brief evidence of an expert witness that is circulated to the parties and is intended to be read by the Court as part of the evidence in the hearing. If there is any dispute about what should be made available, an application can be made to the Court for the Court to determine the issue.

*Extension of evidence exchange timetable*

[18] Further time is needed to exchange rebuttal evidence. Given that the hearing is some time away, there is no prejudice to any party if an extension is granted to the timetable already set. In addition, timetable directions need to be made in relation to the exchange of expert conferencing statements.

*Directions*

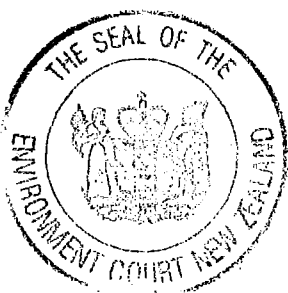
[19] Any witness caucusing statements are to be exchanged by **5.00pm 15 June 2012.**

[20] Any rebuttal evidence by Meridian is to be exchanged by **5.00pm 22 June 2012.**

*Dr Welch*

[21] By Minute dated 30 May 2012, I excluded Dr Welch from attending the expert conferencing meeting dealing with the topic of health. Mr Carr for Tipapa had contended that Dr Shepherd (a witness for Glenmark and Tipapa) may have suggested that Dr Welch might need to be called as a witness to respond to Dr Petrie, a witness who is to give rebuttal evidence for Meridian. Dr Petrie was to attend the health conferencing meeting referred to above.

[22] Mr Wallace for Glenmark accepted that the decision about whether or not Dr Welch will be called as a witness will be made after Dr Petrie's rebuttal has been received and considered. Dr Petrie's evidence was to be filed by 15 June, but the time for exchanging all rebuttal evidence is extended as outlined above by a week.



[23] If Dr Welch is sought to be called as a witness and leave is granted for him to file evidence, Mr Smith for the District Council sought to reserve leave to respond to any such evidence.

*Directions*

[24] The evidence of Dr Petrie is to be exchanged no later than **5.00pm 22 June 2012**.

[25] Mr Wallace is to advise the Court and the parties whether or not Dr Welch is to be called as a witness by **5.00pm 29 June 2012**. If Glenmark does not wish to call Dr Welch as a witness, Mr Carr must advise the Court whether Tipapa wishes to call Dr Welch as a witness by **5.00pm 2 July 2012**.

[26] Further directions regarding any evidence proposed to be called by Dr Welch including whether or not leave should be granted for such evidence to be called, will be dealt with thereafter.

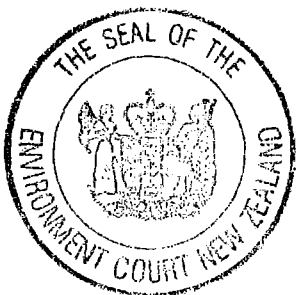
*Copies of evidence*

[27] Mr Carr has provided a disc of Tipapa's evidence to the parties, but Mr Turnbull and the Council have requested hard copies of Tipapa's evidence.

*Directions*

[28] Mr Carr is directed to provide a hard copy of Tipapa's evidence to Mr Turnbull **before he goes away on 3 July 2012**.

[29] Mr Carr is directed to provide copies of Tipapa's evidence to the Registry of the Environment Court (attention Ms H O'Connell). The Council is to provide a space in the evidence folders it has been directed to file with the Court in order for Tipapa's evidence to be inserted into them by the Registry.



## Hearing issues

### *Site visit*

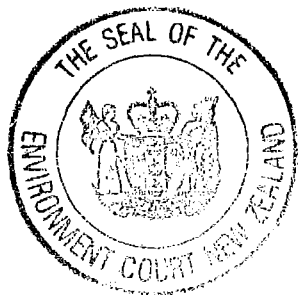
[30] It is usual, but not mandatory for the Court to undertake a site visit. Typically the Court invites the parties to identify what they think needs to be viewed by it. Almost always an itinerary is agreed upon by the parties. The members of the Court then visit the site, but not in the company of the participants. Sometimes the Court needs to have a particular aspect of a site visit identified for it; for example a discharge point into a river, viewing a site from the sea or being accompanied around an industrial site. The Court decides who that person should be, but almost invariably a staff member from the relevant Council, who is not involved in the subject matter of the case, fulfils this task. The person selected travels to the site independently of the Court and simply identifies the relevant aspect of the site. There is no discussion about the substance of the case with the accompanying person.

[31] The parties did not have an opportunity to discuss amongst themselves the timing of the site visit or what it should include prior to the prehearing conference. These matters were discussed in a general way at the conference and it was signalled that two site visits might need to be conducted as follows:

- (a) a familiarisation site visit to be undertaken after opening addresses, and
- (b) a more substantial site visit to be undertaken later, probably after the evidence in relation to landscape has been heard.

[32] Several of the section 274 parties, including Mr Turnbull, were concerned to ensure that the site visit in respect of their properties was undertaken before the lambing season commenced. Lambing is likely to commence in the last week of August. As far as possible the Court will accommodate this request. If necessary it could occur before the hearing commenced (ie even before opening addresses).

[33] The parties agreed to liaise with one another to prepare a draft itinerary for each of the site visits. The Court indicated its willingness to see everything everyone wants it to see, providing that it is relevant to the issues in contention.





[34] Mr Carr indicated his opposition to any staff member from the District Council assisting the Court on the site visit. Mr Carr is invited to reflect on his stance given the above explanation.

*Directions*

[35] The parties are to liaise and Mr Smith for the Council is to provide the Court with a suggested itinerary for the site visit/s by **31 July 2012**.

*Hearing procedure*

[36] It was agreed that the following procedure will be adopted at the hearing:

- (a) Meridian will present its opening address;
- (b) The remaining parties will then present a mini-opening. The mini-opening will be a brief summary of their overall case;
- (c) The Court will then conduct a familiarisation site visit;
- (d) Meridian will then present its evidence in relation to the project;
- (e) Thereafter topic evidence will be given in relation to landscape, noise, ecology, health, tourism, valuation and traffic as follows:
  - (i) Each of the witnesses in relation to each of the topics listed for each of the parties will give the evidence sequentially, starting with the expert on a particular topic for Meridian followed by Council's expert, and then the other parties' experts.
  - (ii) Any expert evidence in rebuttal on a particular topic will follow thereafter.
  - (iii) The position in relation to the "hot-tubbing" of such witnesses is reserved. "Hot-tubbing is where the witnesses on a given topic are all present at the same time in the witness box. Often they are asked the same or a similar question and each is given the opportunity to respond to the question.



- (iv) The order of the topic evidence is yet to be decided, and the parties are invited to discuss the order of such evidence and reach agreement on it. If agreement is not forthcoming, the Court will determine what topics are heard when.
- (v) Before each topic, each party will be able to present a mini-opening of the matter it wishes to draw the Court's attention to in relation to that topic;
- (f) The remaining parties will then sequentially open their cases (but not repeating the openings that they have made in relation to the topic evidence) and will then sequentially call any remaining witnesses for their respective cases;
- (g) Meridian will close at the end of the case.

*Directions*

[37] The parties are to prepare a schedule of witnesses given the above outline, with each party giving an indication of the length of time they are likely to require for cross-examination. If possible the parties are to agree on the order in which the topics should be addressed. The purpose of the schedule is to ensure that the witnesses and parties are inconvenienced in the least possible way by attending the hearing at the time nearest to when they are required. The Council is to provide the Registry (Ms O'Connell) with an indicative schedule of witnesses **no later than 2 July 2012**.

[38] If any party believes the hot-tubbing of witnesses in relation to a particular topic would be helpful, then it should raise that issue by **2 July 2012**.

*Evidence by way of video link*

[39] Mr Wallace for Glenmark indicated that Mr Huson is resident in Australia, and he may be requesting that the Court arrange to have his evidence heard by way of video link. Mr Carr, for Tipapa, indicated that Dr Thorne may also be in this position.

[40] The Registry is to make inquiries once the venue has been finalised to see whether evidence is able to be given in this way. If it is, then the necessary applications will need to be made to the Court.



### *Venue*

[41] The parties were advised that Lincoln is the venue at this stage, but the Court is happy to look at alternatives if suitable alternatives are able to be found. The parties are to suggest alternative venues to the Registry (Ms O'Connell) no later than **29 June 2012** in order for their suitability to be considered. The final decision about the venue is for the Court.

### *Length of hearing*

[42] Mr Beatson was hopeful that the hearing would take three weeks. Mr Smith indicated that he is involved in a three-week hearing starting 22 October. Mr Wallace's view was that the hearing was likely to take four weeks, and he will be seeking to be excused from the parts of the hearing.

[43] At this stage the indication is that four weeks may need to be allocated, but this will depend on the schedule of witnesses to be provided by **2 July**. The Court indicated that it was intending to hear openings, undertake the familiarisation site visit and read the evidence for the first week, with the intention that the Court will try and sit in two-week blocks, with a week off inbetween.

### *Witness summonses*

[44] Mr Carr for Tipapa has indicated he wishes to summons a number of witnesses. His reasons for summoning the witnesses were outlined in his letter to the Court of 2 May 2012. The witnesses Mr Carr wishes to summons on behalf of Tipapa are predominantly employees or former employees of Meridian and the District Council. Both Meridian and the Council oppose Tipapa's application, as it concerns them. The reasons for opposition by the District Council are outlined in Mr Smith's memorandum of 8 May 2012 and for Meridian, in Mr Beatson's memorandum of 10 May 2012.

[45] Under s278 of the Resource Management Act the Court can direct the Registrar to issue a witness summons requiring the attendance of a witness. In other words the Court has discretion about whether or not it should issue a summons. If a summons is issued, the witness summonsed becomes the witness of the party requesting the summons. This means that the party summoning the witness cannot cross-examine the witness and is essentially "stuck" with the answers received from



the witness, be they helpful to that party's case or not. Other rules of evidence may apply; suffice to say that the topic is far from straight forward from a legal perspective.

[46] The application by Tipapa was heard at the pre-hearing conference, with the parties concerned with the issue then able to elaborate on the matters contained in their prior communications with the Registry.

*Mr Tim Lusk*

[47] Tipapa wishes the Court to issue a witness summons to require Mr Lusk, a former chief executive of Meridian until December 2011, to attend the hearing. The reasons why Mr Lusk's evidence is said to be relevant are outlined in paragraphs 1(a) to (d) of Mr Carr's letter dated 2 May 2012.

[48] At the hearing Mr Carr elaborated that he wished to adduce evidence from Mr Lusk relating to a community meeting where Mr Lusk is purported to have told those present (14 members from the community but seventy written indications of opposition also presented) that if the community did not want the wind farm it would not be done. Mr Carr maintains that Mr Lusk indicated that an independent survey would be commissioned by Meridian to establish the community's views on the matter. Mr Carr also contended that Mr Lusk repeated this view before the District Council, but one month later rejected that this had been said, and furthermore refused to commission an independent survey.

[49] Mr Carr contended that Mr Lusk's purported behaviour was a misrepresentation that had been relied on by the community and he wanted Mr Lusk called to give evidence to hear him repeat these matters on oath.

[50] Mr Beatson for Meridian outlined the reasons for opposing the application in paragraphs [4] to [12] of his memorandum of 10 May 2012. Mr Beatson submitted that the purported commitments are the subject of evidence from Mr Carr and others, and Mr McKinney will cover these matters in his rebuttal evidence which is yet to be filed. It was submitted that Mr Lusk is no longer Meridian's CEO, and has no mandate to speak for it in relation to the proposal. Meridian's main objection related to the relevance of any evidence Mr Lusk could give to the issues required by the Court to be determined.



*Decision*

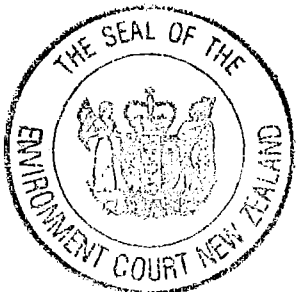
[51] I decline to issue a witness summons in relation to Mr Lusk. The Court is required to determine the merits of the proposal within the framework of the application before it, and in accordance with the law that applies to it. The matters Mr Carr seeks to adduce from Mr Lusk are not relevant to the issues the Court has to determine.

*Mr Smales*

[52] Mr Smales is the General Manager, Renewable Energy at Meridian. Mr Carr set out the reasons why he wished the Court to issue a summons in relation to Mr Smales in paragraphs 2 (a) to (d) of his letter of 2 May 2012.

[53] At the pre-hearing conference, Mr Carr outlined that he wished Mr Smales to give evidence about the following:

- (a) What was discussed at a meeting held on 15 September 2010 at Meridian's office where Mr Carr contends that Mr Smales agreed that Mr Carr could commission a landscape expert and Meridian would pay for that expert, with the result that Mr Carr then proceeded to arrange for a landscape witness to be briefed, but Meridian refused to pay the expert's costs;
- (b) The value of Tipapa's property. Mr Carr accepted whilst this was an important issue for Tipapa, it was a minor point in relation to any evidence that could be adduced from Mr Smales;
- (c) The statistics provided by Meridian to support the proposal, including:
  - (i) that \$54 million will be spent in the North Canterbury region during the building of the wind farm;
  - (ii) that 33,000 homes will be provided with electricity if consent is granted. Mr Carr wants Meridian to provide verification of the homes that are provided with electricity from the White Hills wind farm in Southland and the Makara wind farm as well. He submitted that this is relevant to the Court understanding how, what he referred to as the "marketing hype" matches with the reality. His understanding is that



the wind farms at White Hills and Makara have significant problems with breakdowns, and he believes this evidence needs to be before the Court;

- (d) In relation to traffic, he wishes to question Mr Smales about the expert view that there will be minimal traffic effects generated by the proposal. By way of comparison he wants to highlight that the problems with breakdowns at other wind farms result in heavy traffic on the roads, such traffic being required to transport large pieces of equipment and machinery needed to fix the breakdowns.

[54] Mr Beatson outlined Meridian's opposition to Mr Smales being summonsed in his memorandum at paragraphs [13] to [21]. Essentially, Meridian's response is that:

- (a) The breakdown of the \$54 million is a matter that Mr Muldoon ( a witness for it) gives evidence about, and Mr Carr will be able to cross-examine Mr Muldoon about this at the hearing;
- (b) The details about turbine breakdowns at Makara or White Hills are irrelevant to the Court assessing the merits of the Hurunui project. If the Court is agreeable to this line of questioning, however, Mr Beatson submitted that Mr Carr could cross-examine Mr Muldoon about these matters;
- (c) In relation to the households supply, Mr Beatson challenged the relevance of comparisons to other wind farms, but in the event that the Court felt this was relevant, other witnesses called by Meridian could address this issue.
- (d) Meridian does not accept that it agreed to pay for an independent landscape expert to be called by Tipapa.

[55] Mr Carr originally wished the information he sought to be provided by Meridian to be independently audited, but as Mr Beatson noted, the information requested by Mr Carr is not currently in report form. In any event, Mr Beatson submitted that a party cannot require witnesses who are subject to a summons to prepare a report or to pay for them to have it audited.



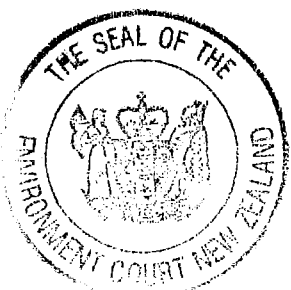
*Decision*

[56] I decline to issue a witness summons in relation to Mr Smales.

- (a) In relation to the question of the payment of the landscape expert, unfortunately this is not a matter that this Court is empowered to deal with. I apprehended that Mr Carr might be concerned that there was no landscape witness being called to give evidence apart from those for Meridian and the District Council. It is evident that Mr Carr distrusts the District Council's approach to this case, which extends down to any witnesses it intends to call. There is however a landscape witness being called by the residents. Ms Anne Steven is to be a landscape witness for Glenmark. There was a suggestion that initially Ms Steven was to act for both Glenmark and Tipapa. Mr Wallace confirmed that Ms Steven is a witness for Glenmark, and accordingly Mr Carr for Tipapa is able to cross-examine her about landscape matters if he chooses at the hearing.
- (b) In relation to the issues of the financial benefits or otherwise to the community and/or the households that will be supplied with electricity, the relevance of the White Hill and Makara comparisons is a topic to be determined at the hearing. I am satisfied from that the information Meridian has provided, that other witnesses will be able to cover these topics which will enable Mr Carr to cross-examine on the topics if they are found to be relevant.
- (c) Likewise, there are other witnesses who can be cross-examined by Mr Carr about traffic and valuation issues.
- (d) I do not need to address the audit issue because of this ruling, but I agree with Mr Beatson that a witness if summonsed cannot be compelled to bring something that does not currently exist.

*Ms Watson*

[57] Ms Watson is the Natural Resources Manager for Meridian. Mr Carr's reasons for wishing to summons Ms Watson are outlined in paragraphs 3 (a) to (d) of his letter of 2 May. Essentially, Mr Carr wants to adduce evidence from Ms Watson about the application for resource consent for this project dated 18 February 2011 which she signed on behalf of Meridian. Mr Carr challenges some of the



information provided in the application, and contends that "*Ms Watson's submission makes a number of statements that are misleading or wrong*" and that subsequent emails "... *have considerable relevance to the way Meridian operate.*"

[58] Meridian's response is outlined in Mr Beatson's memorandum from paragraphs [22] to [28]. Mr Beatson outlines that there are other witnesses which Meridian will call in relation to the application that, it submits, can be cross-examined by Mr Carr.

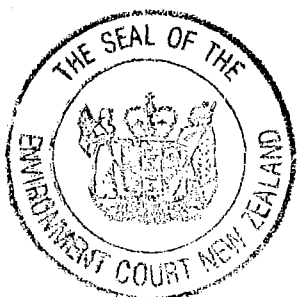
#### *Decision*

[59] The application to summons Ms Watson is declined. Her evidence is not necessary as there are other witnesses who can give detailed evidence about the aspects of the application which Tipapa challenges. Mr Carr can cross-examine these witnesses about the matters contained in the application which he challenges, subject to these challenges being relevant to an issue the Court must determine.

#### *Ms van Polanen*

[60] Ms van Polanen is the Consents Manager for the District Council. Mr Carr's reasons for wishing to summons her are included in paragraphs 4 (a) to (d) of his letter of 2 May 2012. Mr Carr wishes to question Ms van Polanen about a cost-sharing agreement entered into between Meridian and the Council. Mr Carr contends that because of this cost-sharing arrangement, the District Council's position in relation to Meridian's application before the Court is not independent from that of Meridian. Specifically he refers to an email which Ms van Polanen is purported to have sent relating to who the District Council should select as its expert health and noise witnesses. I was advised that Mr Carr has attached this email to the evidence he has exchanged.

[61] Mr Smith for the District Council acknowledged that there is a cost-sharing agreement between Meridian and the Council, which he submitted clearly says that the Council must act independently. He contends that the Council has done exactly that by briefing Professor McBride to assist it with noise/health expert evidence. He submitted that Ms van Polanen's view that she did not support the appointment of Professor McBride is therefore irrelevant.





[62] To the extent that the cost-sharing agreement is relevant to the issues the Court needs to determine (and it is not clear that it is relevant), there are other witnesses who could be cross-examined about this issue. Before this is to occur, however, I would need to be satisfied of the relevance of such a line of cross-examination. This is an issue that can be dealt with at the hearing.

*Decision*

[63] I decline to issue a witness summons in relation to Ms van Polanen.

*Mr Smith*

[64] Mr Smith is counsel for the District Council. Mr Carr wishes to issue a witness summons against Mr Smith, and his reasons for so doing are outlined in his letter of 2 May 2012 at paragraphs 7 (a) to (d). Mr Carr wishes to conduct an investigation into the briefing of Professor McBride. Mr Carr refers to an email from Mr Smith to Professor McBride dated 9 August 2011. As Mr Smith notes, Mr Carr has not disclosed how he obtained a copy of this email, and the District Council has not waived privilege.

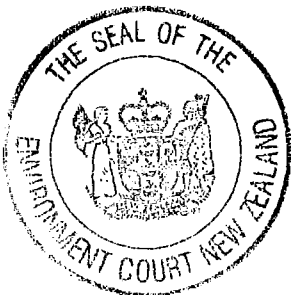
[65] Mr Smith is counsel for the District Council. The communications between him and his client relating to these proceedings are privileged. It is concerning that the email appears to have found its way into Mr Carr's hands. And the District Council may well take steps to have the copy of the email returned to it. The matters Mr Carr wishes to raise are not relevant to the issues the Court needs to consider.

*Decision*

[66] I have no difficulty in deciding that a witness summons should not issue against Mr Smith.

*Mr Black*

[67] Mr Black is a councillor for the District Council. As it transpires, Mr Carr has confirmed that Mr Black is prepared to give evidence in support of Tipapa's case.



The evidence he seeks to adduce relates to traffic issues. I have already addressed in a previous Minute the issue of alternative routes.<sup>1</sup>

*Ms Stevenson*

[68] Ms Stevenson is a landowner who has purportedly refused to allow Meridian access over her property. The reasons why Mr Carr wishes the Court to issue a witness summons against Ms Stevenson are outlined in his letter of 2 May 2012 at paragraphs 9 (a) to (d). The access over Ms Stevenson's property is from the alternative transport route that Mr Carr wishes to advance. Mr Carr contends that Ms Stevenson is a financial beneficiary of the wind farm and he wishes to adduce evidence from her, from which it seems he wishes the Court to draw the inference that she has somehow been "bought off" by Meridian.

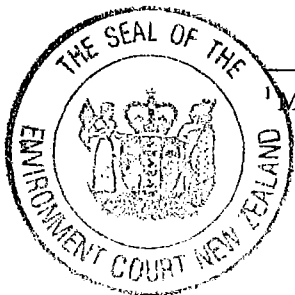
[69] Mr Beatson advised that the rebuttal evidence to be filed by Meridian will cover the topic of alternative routes, but he reiterated that Meridian does not accept that the Court is able to consider an alternative traffic route. Meridian will be asking the Court to consider its application on the basis of the access route it proposes. As I have already outlined, Meridian's application will therefore stand or fall on the evidence it adduces on this point. Meridian is entitled to run its case in the way it chooses, and given that it is relying on the route it has selected, any evidence from Ms Stevenson would be irrelevant. Even if Meridian was proposing the route Mr Carr has suggested as an alternative, the types of matters Mr Carr wishes Ms Stevenson to give evidence about are irrelevant to the issues the Court needs to consider.

*Decision*

[70] I decline to issue a witness summons against Ms Stevenson.

*Mr Inkson*

[71] Mr Inkson was a submitter in opposition to Mainpower's Mount Cass wind farm, which was heard by another division of the Environment Court in 2011. Mr Carr's reasons for wishing a witness summons to be issued in respect of Mr Inkson are outlined in his letter of 2 May 2012 at paragraphs 10 (a) to (d). Mr Carr contends



that Mr Inkson whilst originally opposing the application, then during the application process changed his approach and became a hosting landowner for Meridian.

[72] Mr Beatson submitted that Mr Inkson's evidence is irrelevant to the issues the Court needs to consider in relation to this case.

*Decision*

[73] I decline the application to issue a witness summons for Mr Inkson. I agree with Mr Beatson that his evidence is irrelevant to the matters this Court must consider.

*Mr Turnbull*

[74] Mr Carr agreed to withdraw his application for a witness summons in relation to Mr Turnbull, as he is an active s274 party. It is withdrawn by leave.

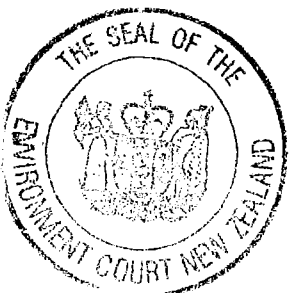
*Ms Batchelor*

[75] Ms Batchelor is the Manager of Environmental Services for the District Council. Mr Carr's reasons for asking the Court to issue a witness summons are outlined in his letter of 2 May 2012 in paragraphs 12 (a) to (d). Mr Carr wishes to call Ms Batchelor to adduce from her evidence about her recommendation to appoint Mr Camp (the noise expert witness for the District Council) in circumstances where, Mr Carr contends, Mr Camp has a conflict of interest because of some unspecified relationship with Meridian.

[76] Mr Smith opposed the application on the grounds that the evidence has no probative value and is irrelevant. The District Council does not accept the allegation that Mr Camp has a conflict of interest, but in any event it is a matter than can be covered by Mr Carr in his cross-examination of Mr Camp and Professor McBride.

*Decision*

[77] I decline to issue a witness summons against Ms Batchelor. I am not satisfied that Ms Batchelor would be able to give any evidence that is relevant to assist the Court in its consideration of the issues it needs to consider.



***Mr Edge***

[78] Mr Edge is the Manager of Roads and Utilities at the District Council. Mr Carr has outlined the reasons why he wishes to summons Mr Edge as a witness in his letter of 2 May 2012, at paragraphs 13 (a) to (d). Mr Carr wishes to summons Mr Edge because he contends he has not been consulted or approached by Meridian regarding roading and water matters. Mr Carr wishes to adduce evidence from Mr Edge about traffic safety issues in relation to both the route proposed by Meridian and the alternative route which he is suggesting.

[79] Meridian is not seeking consent for a water take at this stage, and therefore the Court does not have any jurisdiction to deal with this issue. In relation to matters of traffic, the District Council has engaged an independent expert witness, Mr Chesterman, to assess the traffic effects arising from the application, and he will be a witness in the case.

[80] After some discussion, Mr Carr accepted that he can cross-examine other witnesses about traffic-related matters, and withdrew his application for a witness summons against Mr Edge. It was withdrawn by leave.

***Mayor Winton Dalley***

[81] Mr Carr indicated his desire to apply for a witness summons in relation to the Mayor, outlining the reasons for that in his letter of 2 May 2012 at paragraphs 14 (a) to (d). Mr Carr wishes to adduce evidence from Mayor Dalley so that the Court could hear “*in more detail*” the views of the Mayor of Hurunui District on the “*stunning landscape through Omihi and Greta Valley,*” and need for safety on the roads “*for all travellers driving within the Hurunui District.*”<sup>2</sup>

[82] Mr Carr now wishes to approach Mayor Dalley to see whether he is prepared to voluntarily give evidence, although it is noted that the Mayor’s opinion about matters is likely to be inadmissible and is also likely to be irrelevant to the issues before the Court.



<sup>2</sup> Mr Carr’s letter of 2 May 2012, paragraph 14(d)

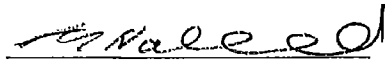
*Decision*

[83] I decline to issue a witness summons in relation to Mayor Dalley.

*Mr Dalziel*

[84] Mr Dalziel is the Chief Executive of the District Council. Mr Carr's reasons for applying to the Court to issue a witness summons for Mr Dalziel are outlined in paragraphs 15 (a) to (d) of Mr Carr's letter of 2 May 2012. Mr Carr's main reason for wishing to summons Mr Dalziel related Mr Dalziel's decision that he should not be provided with a copy of the Minutes of a publicly-excluded Council meeting. Following discussion, Mr Carr advised that he has taken this issue up with the Ombudsman, and the information he sought has been directed to be provided to him. Mr Carr accepted that he could cross-examine Mr Carr regarding the alleged conflict of interest issue, and on that basis withdrew his application for this witness summons. It was withdrawn by leave.

**SIGNED** this 18<sup>th</sup> day of June 2012



M Harland  
Environment Judge

