

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: In chambers, at Auckland
 Environment Judge M Harland sitting alone pursuant to Section 279 of the
 Act, on the papers

Date: 19 July 2012

**MINUTE AND FURTHER DIRECTIONS RELATING TO
EVIDENCE OF DR THORNE**

Introduction

[1] An issue has arisen about the interpretation of my Minute of 18 June 2012 relating to the filing of any evidence by Dr Thorne for Tipapa Limited. ("Tipapa"). Dr Thorne is a noise expert residing in Queensland, but he received his Doctor of Philosophy in Health Science from Massey University in New Zealand.



[2] At the pre-hearing conference held in Christchurch on 8 June 2012, Mr Carr a director and the representative for Tipapa in these proceedings confirmed that there was a strong probability that Dr Thorne would be called by Tipapa as a witness. In my Minute issuing from the prehearing conference¹ I noted that Mr Carr agreed to provide any evidence intended to be called by Tipapa from Dr Thorne by Monday 9 July 2012. I then noted that Meridian and the Council wished to reserve the right of reply to any evidence filed by Dr Thorne.² The directions made were as follows:

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.

[3] Mr Carr has filed evidence in response to Dr Chiles (the noise expert for Meridian) to which he attaches a statement of qualifications and experience for Dr Thorne and a document entitled "*Hurunui Wind Farm Noise and Human Perception, a review for Mr John Carr,*" by Noise Measurement Services Pty Ltd signed by Dr Thorne. At page 5 of the review document, under the heading "*Qualifications to prepare this review*" Dr Thorne says, among other things:

I have read the evidence-in-chief prepared by Dr Stephen Chiles on behalf of the applicant, and the evidence of Mr Stuart Camp on behalf of the Council. While I have concerns regarding these items of evidence, I will not be attending the hearing, and so no further comment is made...

Approval is given for this Review to be tendered by Mr Carr to the Environment Court on the specific understanding that I am not available to the Hearing.

[4] There still remains some confusion about whether or not Dr Thorne is to be a witness for Tipapa or not. Various documents have been filed by those interested in this issue on



¹ Dated 18 June 2012
² At paragraph [4]

the topic.³ In his email of 5 July 2012, Mr Carr clarified that the material attached to his evidence-in-chief, constitutes Dr Thorne's full evidence for this proceeding, but it is still not clear whether or not Dr Thorne is to be made available at the hearing for cross-examination. Meridian and the Council only intend to file evidence in reply to Dr Thorne's evidence if he is being called as a witness to confirm his brief, and will be made available for cross-examination at the hearing. If he is not to be called, then Meridian considers there is nothing of substance arising from his brief that requires a response, and will in due course make a submission to that effect. Mr Carr's response is as follows:

I confirm that whether Dr Thorne is a witness or whether I represent him in Court, will be advised to the Court two weeks following receipt of any rebuttal by Dr Chiles or Mr Camp. Should one or both of these persons decide not to submit a rebuttal of his evidence, it will be taken that one or both accept Dr Thorne's evidence as accurate and factual as written.⁴

[5] The first point is that Dr Thorne is not a witness in the case as he has not filed his own statement of evidence. The fact that he has authorised the two documents authored by him to be attached to Mr Carr's evidence, does not change this. Mr Carr's email as outlined above seems to accept this. Mr Carr cannot however, even with Dr Thorne's authority, give evidence on his behalf. It follows that Mr Carr cannot purport to make himself available for cross-examination in place of Dr Thorne or assume Dr Thorne's expertise as his own.

[6] The Court can have regard to the two documents attached to Mr Carr's evidence, and clearly Tipapa wishes the Court to treat these two documents as evidence in its case. The relevance of the two documents however, and/ or the weight that should attach to them is for the Court to determine. Mr Carr cannot assume that if Meridian and the Council choose not to file rebuttal evidence to the material provided by Dr Thorne but attached to Mr Carr's evidence, the Court will simply "*accept Dr Thorne's evidence as accurate and factual as written*".

[7] Even though the two documents from Dr Thorne are attached to Mr Carr's evidence, given that Tipapa wishes the Court to treat them as evidence, Meridian and the Council are quite within their rights to ask for Dr Thorne to be made available to be cross-examined by their counsel. If Dr Thorne is not made available for cross-

³ Memorandum by Counsel for Meridian dated 2 July 2012; email from Mr Carr dated 5 July 2012;

Memorandum by Counsel for the Council dated 5 July 2012; further Memorandum by Counsel for Meridian dated 5 July 2012; further email from Mr Carr dated 5 July 2012

⁴ Email, 5 July 2012



examination then the Court may decide that the documents attached to Mr Carr's evidence from Dr Thorne are not evidence in the case and/or they are to be given little, if any, weight. I reiterate that Mr Carr cannot make himself available for cross-examination in place of Dr Thorne.

Directions

[8] I direct the following:

- (a) Mr Carr is not permitted to give evidence in place of or on behalf of Dr Thorne at the hearing, including purporting to make himself available for cross-examination in place of Dr Thorne.
- (b) Tipapa is to confirm by **5pm on 26 July 2012** whether or not Dr Thorne is to be a witness in the hearing and made available for cross-examination. If he is not made available for cross-examination, the Court will receive submissions at the hearing about what weight, if any, should attach to the two documents from Dr Thorne attached to Mr Carr's evidence.
- (c) Whether or not Meridian and/or the Council choose to respond to the evidence of Dr Thorne that has been filed is a matter for them.
- (d) The timetable for filing any rebuttal evidence in relation to the two documents by Dr Thorne attached to Mr Carr's evidence is extended to **10 August 2012**, given that there has been a delay in the court being able to attend to this matter.

DATED this 19th day of July 2012

