

**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, in Chambers in Auckland, on the papers

Date: 30 May 2012

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**MINUTE OF THE ENVIRONMENT COURT IN RELATION TO  
ATTENDANCE OF AN ADDITIONAL HEALTH EXPERT  
AT THE HEALTH CAUCUS MEETING**

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**Introduction**

[1] Currently four experts have exchanged evidence in relation to the topic of health effects. The expert caucus meeting is scheduled to take place in Auckland today. Tipapa Limited ("Tipapa") and Glenmark Society against Wind Turbines Society ("the Society") sought to involve a new witness (Dr Welch) in that meeting. Meridian and the Hurunui District Council ("the Council") opposed. Due to other Court hearing commitments, I



was unable to issue this Minute before today, but via the Registry indicated that my decision was that Dr Welch was not permitted to attend the scheduled meeting with reasons to follow. This Minute sets out the reasons for this decision.

### Tipapa and Glenmark's position

[2] Dr Shepherd is the expert intended to appear at the health caucus meeting on 30 May for the Society and Tipapa. By letter dated 24 May 2012 Mr Carr, on behalf of Tipapa indicated the following:

Dr Shepherd feels that there will be greater benefits arising at the health caucus meeting on 30 May to be held in Auckland, were he not the sole representative acting for the Society and Tipapa. In addition, there is a possibility that he may be disadvantaged. The reason being that Meridian Energy will have acting for them and present at the caucus, three health experts – Dr Black, Dr Petrie, and Tanya Breen (a registered psychologist).

[3] To this end, the email indicates that Dr Shepherd "*wishes to have appointed Dr David Welsh... Dr Welch has agreed to attend and act for the Society and Tipapa.*" The letter then goes on to explain Dr Welch's expertise. He is a senior lecturer in the School of Population Health at the University of Auckland, with a background in psychology, physiology and epidemiology. It is indicated that Dr Welch has taught extensively on the topic of research methods. His strengths are said to be in relation to the design of research, questionnaire design, the statistical analysis of data, and data management.

[4] Mr Carr's email purported to speak for the Society as well as Tipapa. I was concerned about this, given that the Society is represented in these proceedings by counsel. I requested that the Registry forward the material filed in Court to Mr Wallace, counsel for the Society to obtain his view. The material included Mr Carr's email and memoranda filed on the topic by Meridian and the Council.<sup>1</sup>

[5] In a memorandum dated 28 May 2012, Mr. Wallace counsel for the Society confirmed that Mr Carr was not authorised to make any submissions to the Court on behalf of it. Nonetheless Mr Wallace confirmed that Mr Carr was expressing the views of members of the Society, and that the Society also sought to have Dr Welch attend the caucusing meeting.

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<sup>1</sup>Both memoranda are dated 24 May 2012.



[6] Mr Wallace submitted that the need to involve Dr Welch arises because Meridian intends to call Dr Petrie<sup>2</sup> as a rebuttal witness without having adduced any evidence-in-chief from him. It is submitted that "... *the matters Dr Petrie will respond to would have been known to the applicant from the parties' submissions, so that it appears that Dr Petrie might have been held back, thereby denying the parties the usual opportunity to present evidence in reply.*"<sup>3</sup>

[7] The Society's position is that overall the evidence timetable can still be amended to allow additional evidence to be exchanged well before the hearing date, given that the hearing commences on 27 August 2012.

#### The Council's position

[8] Because the Council's memorandum was filed before the Society's, it did not address the Society's position as it is now outlined. The Council opposed the application on the grounds that:

- (a) Dr Welch had not previously been identified as a witness by Tipapa or the Society, and as such has not exchanged evidence as previously directed;
- (b) the application lacked proper form, namely it was not an interlocutory application supported by an appropriate affidavit;
- (c) the reasons advanced for Dr Welch's participation were inadequate and did not include an assertion that health-related effects could not be addressed by the experts already scheduled for the caucus meeting;
- (d) The suggestion that Dr Shepherd might feel outnumbered was not a ground to justify Dr Welch's attendance at the meeting.

[9] The Council also noted that its expert witness, Professor David McBride, would be attending the conference as well as other health experts called by Meridian.

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<sup>2</sup> Also a professor and referred to as such in the email correspondence from Meridian's counsel. Memorandum dated 28 May 2012 by counsel for the Society, paragraph [5].



**Meridian's position**

[10] Meridian's initial memorandum in opposition<sup>4</sup> was filed before the Society's position was outlined in its memorandum, nonetheless counsel for Meridian sent an email to the Registry<sup>5</sup> addressing in general terms why it was calling Professor Petrie.

[11] In the initial memorandum the grounds for opposing were outlined to be the following:

- (a) Dr Shepherd's expressed concerns did not emanate directly from him, but were via Mr Carr;
- (b) the brief curriculum vitae of Dr Welch did not disclose any expertise relevant to health effects arising from wind farms;
- (c) the time for identification of witnesses and for witnesses to present evidence-in-chief has long passed<sup>6</sup>
- (d) Dr McBride (the independent expert engaged by the Council) is a joint author of academic papers with Dr Shepherd, and therefore Meridian submitted that *"there will no doubt be some areas of consensus between them."*

[12] Following Mr Wallace's memorandum on behalf of the Society, Mr Beatson's email indicated that there is disagreement about whether or not Professor Petrie's evidence is evidence-in-chief or in reply, with Meridian contending the latter and the Society suggesting that it may be the former. I have not seen this evidence and can make no determination on this issue at this time.

**Decision**

[13] Although Mr Carr's letter was not absolutely clear, it appeared to suggest that the Court should call Dr Welch as a witness. Mr Wallace's memorandum confirmed that

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<sup>4</sup> Dated 24 May 2012  
<sup>5</sup> Email dated 28 May 2012  
<sup>6</sup> Minutes to the parties 16 February 2012, and record of pre-hearing conference 12 December 2011, paragraph [10] (c)



this interpretation may have been intended. It is very rare for the Court to call a witness of its own volition and it is difficult to see how it could be justified in this situation, particularly as the intention appears to be for Dr Welch to support the cases for Tipapa and the Society. If this course of action is seriously contended it should be advanced by way of interlocutory application. Mr Carr is invited to discuss the Society's view on this with Mr Wallace.

[14] Mr Wallace's memorandum seems to indicate that the Society may wish to call Dr Welch as a witness and certainly this also can be implied from Mr Carr's email. Given the timetable imposed to date, leave would be required for this to occur. No proper application and supporting documentation has been filed which enables the Court to fully understand the basis for the suggestion.

[15] My decision is that Dr Welch should not attend the expert conferencing scheduled for 30 May. This is because:

- (a) There is nothing before me to indicate with any degree of specificity the nature of the evidence it is intended that Dr Welch will give. There is nothing to indicate he has read and carefully considered the evidence presented so far on health effects, neither is there any indication of the parts of the evidence exchanged so far that Dr Welch's evidence proposes to address, nor any identification of the areas in which he will be taking a different view from the other expert witnesses;
- (b) There is nothing from Dr Shepherd himself outlining why he believes this extra evidence is needed. In fairness to Dr Shepherd, he should express his own views on this matter rather than for them to be relayed through Mr Carr;
- (c) Although Mr Wallace's memorandum outlines that Dr Welch's evidence may be needed to counteract that of Professor Petrie, no real analysis of any specificity has been provided to enable me to properly determine this issue.

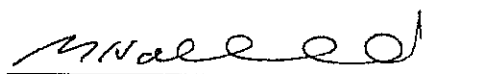
[16] The health expert caucusing meeting will proceed in the absence of Dr Welch. Should Tipapa and/or the Society wish to seek leave for Dr Welch to give evidence for



either or both of them, then a proper application needs to be made to the Court covering the matters referred to in paragraph [15]. This material is required to fully inform the Court and the other parties of all matters relevant to the request. Mr Wallace will be well familiar with what is required, Mr Carr may not. Mr Carr is invited in the first instance to discuss the Society's view on this with Mr Wallace. If both parties wish to seek leave for further evidence to be called from Dr Welch it may be that a joint application and documentation can be filed. If not, then I can cover with Mr Carr what will be required from a procedural perspective at the pre-hearing conference scheduled for 8 June 2012.

[17] There is plenty of time available for these matters to be properly considered before the hearing. If leave is granted and any further evidence called impacts on the agreed outcomes resulting from expert conferencing that has already occurred, then that position can be addressed by further directions.

DATED at Auckland this 30th day of May 2012



M Harland  
Environment Judge

