

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

Date: 23 May 2012

**MINUTE OF THE ENVIRONMENT COURT REGARDING ALTERNATIVE
ACCESS ROUTES AND TIPAPA LTD'S REQUEST FOR THE COURT TO
ISSUE WITNESS SUMMONSES**



Introduction

[1] This Minute deals with two issues raised by Mr Carr on behalf of Tipapa Ltd (“Tipapa”) relating to:

- (a) access to the proposed wind farm site; and
- (b) Whether or not the Court should issue witness summonses in relation to a number of witnesses Tipapa wants to call to give evidence at the hearing.

Access to the proposed wind farm site

[2] Meridian’s application proposes an access route to the site that turns off State Highway 1 onto Motunau Beach Road and then crosses private land. Meridian contends that prior to selecting this access route it evaluated various other alternative access options, which it then rejected for sound reasons. It contends that its proposed access route does not raise any significant adverse effects and therefore the Court is not required to look at alternative access routes to the proposed site.

[3] Tipapa contends that there are significant adverse effects that arise from Meridian’s proposed access route via Motunau Beach Road and therefore an alternative access route to the proposed wind farm should be considered by the Court. Tipapa proposes access to the site via Reece’s Road.

[4] By way of completeness I refer to the fact that there have been a number of recent documents filed in Court relating to this issue:

- (a) Emails to the Court from Mr Carr on behalf of Tipapa and vice versa between 22 and 24 April 2012;
- (b) Memorandum filed by Meridian dated 24 April 2012;
- (c) Response by Mr Carr on behalf of Tipapa dated 26 April 2012;
- (d) Memorandum from Hurunui District Council dated 27 April 2012,



(e) Email to the Court from Mr Carr on behalf of Tipapa dated 29 April 2012.

[5] In summary, Tipapa contends that it should be able to raise in evidence the alternative access route via Reece's Road and Meridian contends that it should not. Meridian says that alternative access to the site is irrelevant because the traffic experts do not identify significant adverse effects associated with the proposed access. Tipapa disputes this and seeks leave for further evidence to be filed on this point. Meridian opposes.

[6] Some of these issues have been the subject of Minutes issued by Judge Borthwick, who was previously case managing this proceeding. In particular, Judge Borthwick's Minute of 3 February 2012 has come under the spotlight. The part of the Minute that is relevant to the issue concerning the Court at this time relates to directions she had previously made¹ concerning the conferencing of proposed traffic and road management expert witnesses. Judge Borthwick directed both Meridian and Mr Carr to attend the conference with their traffic witnesses.² At paragraph [8] of her Minute Judge Borthwick said:

It does not follow from the directions that Meridian is obliged to amend the application for resource consent to provide alternative access (nor is this outcome excluded). The purpose of the directions is stated in clause 11 of the Draft Hearing Procedures. The matters raised by Mr Carr on behalf of Tipapa Ltd are ideally suited to this type of conference.

[7] Mr Carr for Tipapa has interpreted paragraph [8] of Judge Borthwick's Minute as indicating that the Court will give equal consideration to both proposed access routes with the inference being that it will select the best one. This is not the law.

[8] The principles established in the case law indicate that whether alternatives should be considered depends partly on the Court determining that the threshold of significant adverse effects has been established on the evidence. The Court cannot determine this issue until it has heard all of the evidence.

[9] Tipapa is granted leave to put evidence before the Court about alternative routes, but it needs to understand that the Court may not be able to take such evidence into account if it determines that there are no significant adverse effects. Further Tipapa needs to understand that if the Court determines that there are significant adverse effects, this does

¹ Minute 16 January 2012
² paragraph [7]



not mean that it will or can accept the alternative route put forward by it. It will be up to Meridian and Hurinui District Council to decide whether they wish to respond to this evidence.

[10] The Court's ability to consider an alternative access route to that proposed by the applicant will no doubt be the subject of legal submission at the hearing. It is inappropriate for the Court to make any binding findings on this issue without the benefit of hearing the evidence and legal submissions.

[11] I direct that Tipapa file any further evidence about alternative routes on or before 8 June 2012 with the right of any party to file evidence in reply by 29 June 2012.

Witness summonses

[12] Mr Carr on behalf of Tipapa has indicated he wishes the Court to issue witness summonses in respect of thirteen witnesses. Most of the witnesses have current or former connections with either Meridian or Hurinui District Council and in each case the issuing of the summons is opposed.

[13] Despite the fact that the parties have filed submissions about whether or not witness summonses should issue, I intend to deal with it at the judicial conference scheduled for 8 June 2012 rather than on the papers.

DATED at Auckland this 23rd day of May 2012



M Harland
Environment Judge

