

IN THE MATTER of a resource consent application under sections 87C-1 of the Resource Management Act 1991

BETWEEN MERIDIAN ENERGY LIMITED

ENV-2011-CHC-000090

Applicant

AND HURUNUI DISTRICT COUNCIL

Consent Authority

AND CANTERBURY REGIONAL COUNCIL

Consent Authority

BEFORE THE ENVIRONMENT COURT

Environment Judge M Harland on the papers

**MINUTE OF THE ENVIRONMENT COURT IN RELATION TO PROPOSED
WITNESS SUMMONSES BY TIPAPA LTD**

Introduction

[1] As directed, Mr Carr on behalf of Tipapa Limited ("**Tipapa**") provided a list of the witnesses it intends to call at the hearing of this proceeding. Included in the list were fifteen witnesses Tipapa indicated in respect of which it wishes witness summonses to issue. Meridian Energy Limited ("**Meridian**") and the Hurinui District Council ("**the District Council**") oppose the issuing of the witness summonses.



The respective positions

[2] Tipapa has requested that witness summonses be issued to require the following people to attend the hearing and give evidence on its behalf:

- [a] Mr Tim Lusk, Former Chief Executive of Meridian Energy;
- [b] Mr Ken Smales, General Manager of Meridian Energy;
- [c] Ms Sheila Watson, Natural Resources Manager of Meridian Energy;
- [d] Ms Alison Van Pollen, Consents Manager Hurunui Wind of Meridian Energy;
- [e] Mr Jock Foster, Chairman Greta Valley School Board of Trustees;
- [f] Mr Simon Batchelor, Lead turbine hosting landowner, Greta Valley;
- [g] Mr Kerry Smith, counsel for Hurunui District Council;
- [h] Councillor Russell Black;
- [i] Ms Sue Stevenson, hosting landowner, Omihi;
- [j] Mr Peter Inkson, hosting landowner, Omihi;
- [k] Mr Hugh Turnbull, hosting landowner, Omihi;
- [l] Ms Judith Batchelor, Manager Environmental Services, Hurunui District Council;
- [m] Mr David Edge, Manager Roads and utilities, Hurunui District Council;
- [n] Mayor Winton Dalley, Mayor Hurunui District Council;
- [o] Mr Andre Dalziel, Chief Executive Officer, Hurunui District Council.



[3] The Court has received memoranda from counsel for Meridian¹ and the District Council² opposing this, and requesting that the Court require Tipapa to file “will say” statements for each witness it intends to summons and to outline the documents to be produced by any such witness. Six of the witnesses Tipapa has listed are said to have a connection with the Council and four have a connection (either past or present) with Meridian. The thrust of the opposition is that the witnesses listed would not be able to give evidence that is relevant to the issues that the Court needs to determine. There is a concern that the hearing time will be lengthened as a result.

[4] Tipapa has responded³ asserting that the witness summonsed will contribute to the proceedings in Court and will be relevant. The last two letters assert that the witnesses to be called by the Council (both staff and expert) will essentially not give independent evidence because they are purportedly being paid for by Meridian. It is unclear whether this allegation is tied in with the witness summons issue, but I have decided to return to it after dealing with the witness summons issue.

Witness summonses in the Environment Court

[5] Section 278(3)(a) of the Resource Management Act (“the RMA”) permits the Registrar of the Environment Court to issue a summons requiring the attendance of a witness if directed to do so by an Environment Court Judge. Various cases have considered when a witness summons can be set aside or when one should not issue. Counsel for Meridian has helpfully listed some of these cases in his Memorandum of 22 March 2012.

[6] Before directing the Registrar to issue a witness summons I must be persuaded that the witness’s evidence will be relevant to an issue in the proceedings. An assertion to that effect is insufficient to establish relevance. In addition Tipapa needs to understand that if a witness summons is issued that does not enable it to cross-examine the witness; rather it is only able to examine the witness “in chief”, that is to ask questions which are non-leading.

¹ Memoranda dated 22 March and 2 April 2012
² Memoranda dated 26 March and 29 March 2012
³ Letters dated 23, 26 and 29 March 2012



[7] Given the list of witnesses Tipapa has said it wishes to summons, the request by both Meridian and the District Council for Tipapa to be required to provide “will say” statements before the Court considers whether or not such summons should issue is reasonable.

[8] Whilst it is up to Tipapa how it chooses to run its case, this particular matter is one which it would be assisted by the obtaining of legal advice.

Directions in relation to witness summons issue

[9] If Tipapa wishes to pursue the request for the issue of witness summons, I direct that it file within ten working days a memorandum identifying:

- [a] the reasons why it wishes to call each of the witnesses proposed;
- [b] the topics it intends the witnesses to address;
- [c] a list of documents and/or other material it would like each witness to produce at Court; and
- [d] an explanation as to why it considers that the evidence that each witness might give could be material to the Court’s consideration in light of the issues before it.

[10] I direct Tipapa to serve a copy of the memorandum (if it wishes to proceed with its request for the issue of witness summons) on all of the parties to this proceeding. Such parties shall have a period of ten working days from receipt of any such memorandum to respond to it, if they wish to do so.

[11] The Court will then deal with the issue on the papers.

The allegation by Tipapa against District Council witnesses

[12] The letters by Tipapa dated 26 and 29 March 2012 request that the Court rule on the legality or otherwise of a purported agreement between Meridian and the District



Council's regarding the payment of the District Council's costs and expenses in these proceedings.

[13] The Court is only able to determine matters within its jurisdiction and only if there are proper applications before it. This matter goes beyond case management and deals with a matter of substance, although it is unclear what Tipapa wishes to achieve by the allegation. It could be that the company wishes to challenge the independence of some of the Council's witnesses and therefore the weight that should be given to any evidence. This would normally be done through cross-examination, although the fact that a third party is paying for expenses associated with a particular witness does not necessarily mean that the evidence is to be disregarded. It could be that Tipapa is seeking something more fundamental which would require an application or notice of motion, but which would need to be based on an issue that the Court has the power (or jurisdiction) to determine. Again whilst this is a matter for Tipapa, it is an issue upon which it would be beneficial for it to obtain legal advice.

[14] Should Tipapa wish to advance these matters, it should clarify what it is seeking to achieve by filing a memorandum within ten working days outlining with specificity the following:

- [a] the outcome it is seeking; and
- [b] The reasons why and how it says the Court can and should deal with this issue; and
- [c] Any principles of law upon which it relies

[15] Meridian and the District Council then have a further ten working days to respond.

[16] I will consider what further directions might be required thereafter.



DATED at Auckland this 16th day of April 2012

For the Court:



M Harland
Environment Judge

