

Minute to the Parties

[1] The registry has received an email dated 8 November 2011 from Mr Carr of Tipapa Limited which has been referred to me.

[2] Mr Carr's email raises issues to do with the court's procedure, which he advises will be of interest to the other parties. I will attempt to address the matters raised in this Minute. Parties are reminded that there is a pre-hearing conference scheduled for **5 December 2011** – where procedural issues can also be raised.

Hurunui District Council's Questionnaire

[3] Hurunui District Council has agreed to perform the role of reporting Council to the court. As part of this role it has circulated a questionnaire to all parties in the proceeding seeking a response to matters raised by the court in its Minute dated 30 September 2011.

[4] Mr Carr is concerned about the tone of the questionnaire and also the timeframes proposed timetable for evidence exchange. He is unable to answer all of the questions (because he does not understand what is being asked of him). Finally he puts five questions to the court about the status of the questionnaire.

[5] Dealing with the last matter, I answer those five questions as follows:

- (1) is Hurunui Council's questionnaire attached a legally binding document.

Answer: No

- (2) am I obliged to answer all the questions in the questionnaire, notwithstanding my comments above? *Answer: No*



- (3) if I am unable at this time to answer questions set out in the attached document do I lose my rights to respond to them at a later date when I feel confident that I can answer the questions not initially answered? *Answer: No*
- (4) is the timetable set out in paragraph (r) a timetable set down by the court or proposed by the Hurunui District Council? If proposed by the Council what legal standing does that have in the court? *Answer: No*
- (5) am I correct in assuming, with regards to this case, that the only legal obligations on the section 274 submitters are directions handed down by the court? *Answer: Yes*

[6] That said, as I point out in the Minute, it is important that each party provides the information sought so that it may be included in the reporting memorandum. Given the large number of parties to this proceeding, it is extraordinarily difficult for the court to receive, collate and consider individual responses before the next court event (in this case the pre-hearing conference).

[7] As Mr Carr does not identify those questions that he does not understand, I am unable to give him further assistance. My expectation is that any party may seek clarification from the District Council as to its questionnaire. Indeed the questionnaire invites parties to do this by contacting Helga Rigg at the Hurunui District Council on 03-3140020.

The tone and content of the questionnaire

[8] I have considered the questionnaire. In my view the questionnaire, both in its content and tone, is entirely appropriate. The questionnaire seeks information from the submitters on matters of interest to the court. This is important as:

- (a) it focuses the parties on the essential issues of fact and opinion to be resolved and the legal issues to be decided;
- (b) it identifies the services required of the court including mediation, conferencing of expert witnesses and the eventual hearing; and



- (c) it identifies any other matters on which arrangements should be made or directions given to ensure the fair, orderly and efficient hearing of the proceedings.

Conferencing of expert witnesses

[9] I note in the proposal that there be expert conferencing before the exchange of evidence-in-chief. Subject to what the parties have to say, I am not inclined to make those directions. At the pre-hearing conference those parties calling expert witnesses are to address the following:

- a. if landscape, rural character and amenity or recreational use of land are in issue, should parties who are giving evidence on their own behalf attend during the first part of an expert witness conference to outline to the experts how they personally value these attributes? This may inform the expert witnesses as to the perceptual and associative values attaching to the area and also its recreational use. This does not preclude the parties also attending and giving evidence;
- b. if the court makes this direction, then whether conferencing should follow the exchange of evidence-in-chief;
- c. if the conferencing takes place before the exchange of evidence-in-chief whether 'will say' briefs of evidence are to be produced and the timing of those briefs (clause 5.7 of the Consolidated Practice Note 2011);
- d. in preference to an open-ended direction to 'conference' a direction that the parties confer and agree in advance on the matters to be referred to the conference.



Evidence exchange timetable

[10] Quite apart from what I have had to say about conferencing, the proposed timetable for evidence exchange looks too 'tight', given the intervening Christmas/New Year holidays. Mr Carr was concerned about this as well.

Parties' conference

[11] I am informed that Mr Carr, and other parties, have contacted the registry on a number of occasions seeking legal advice. My noting this is not intended as a criticism as it simply reflects the complexity of the proceedings and the parties' unfamiliarity with court proceedings.

[12] I remind parties that the registry, and for that matter the court, is not able to give legal advice in relation to these proceedings. It is for this reason that the court urged Meridian to consider the appointment of a friend of the submitters.

[13] I indicated in the last Minute that I intended to refer the proceeding to a parties' conference for the purpose of explaining the court's process. While no-one is excluded, the conference is primarily for the benefit of those parties who are not legally represented.

[14] The conference is to be convened by Commissioner C Manning at 3pm on **19 December 2011** at the St John's Hall in Amberley (formal notice of this conference, including the address details, will be sent out). The conference will last three hours.

[15] During this session Commissioner Manning will expand on the draft hearings procedure that was attached to the 30 September 2011 Minute (and which will be updated following the pre-hearing conference). The format of this conference is flexible and is aimed to be as informative as possible. Below is an outline of the types of things to be covered in this session.



- a) discussion about what is evidence –
 - i) fact and opinion;
 - ii) evidence and presentations (submissions);

- b) cross-examining witnesses;
- c) how to seek directions/clarification from the court;
- d) a discussion about court procedure; and
- e) how individual parties with similar interests may co-ordinate through, for example:
 - joint presentations (where one person/counsel makes a presentation on behalf of several parties). This is allowed and encouraged where presentations are of a similar nature.
 - parties may also combine to appoint one person to cross-examine witnesses on behalf of them all. This is also encouraged as it focuses the cross-examination thus avoiding repetitious questioning.

DATED at CHRISTCHURCH this 15th day of November 2011



J E Borthwick
Environment Judge

Issued¹: 16/11/2011