

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

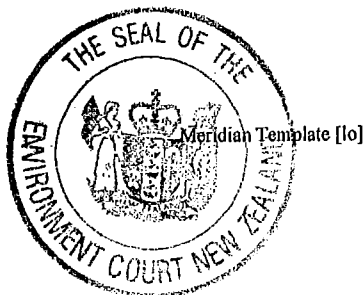
Court: Judge M Harland in chambers in Auckland, on the papers

Date: 22 August 2012

**SECOND MINUTE OF THE ENVIRONMENT COURT
IN RELATION TO DECLARATION OF INTEREST
BY COMMISSIONER SUTHERLAND**

Introduction

[1] In my Minute of 16 August 2012 I sought the parties' input into my final decision about the appropriateness of Commissioner Sutherland sitting as a member of the Court in circumstances where his son is employed by the applicant, Meridian. Both Glenmark and Mr Carr on behalf of Tipapa object to Commissioner Sutherland sitting as a commissioner on this hearing. This Minute records my final decision, having carefully read and considered the submissions made on the topic.



Glenmark's objection

[2] In his Memorandum of 20 August 2012, Mr Wallace very fairly and properly set out the reasons why Glenmark objects to Commissioner Sutherland sitting as a commissioner on this hearing. He was careful to articulate that Glenmark's concern focuses on apparent or unconscious bias rather than alleging real or actual bias on the part of Commissioner Sutherland.

[3] Mr Wallace referred to the test succinctly articulated in *Saxmere Company Limited v Wool Board Disestablishment Company Limited*¹ by Tipping J at paragraph [37] as follows:

The crucial question in this appeal is whether a fair-minded, impartial, and properly informed observer could reasonably have thought that the Judge might have been unconsciously biased in favour of the party represented by Mr Galbraith QC.

[4] Mr Wallace submitted that given the naturally close relationship between a father and son, particularly a father and son who practice in the same field of expertise, there was a risk that an independent lay observer would consider that Commissioner Sutherland might be unconsciously biased in favour of Meridian. For these reasons Mr Wallace submitted that it would be unsafe to proceed with the hearing of this application by Meridian with Commissioner Sutherland sitting as a member of the Court.

Tipapa's objection

[5] Mr Carr on behalf of Tipapa also objects, and although not couched in the same terms, I am satisfied that his objection in the main also relates to the suggestion of apparent bias.

Decision

[6] Prior to the submissions being received from the parties to this proceeding, Commissioner Sutherland indicated that were there to be any opposition to his involvement as a member of the Court he would withdraw from the proceedings. Given the opposition that has arisen, and Commissioner Sutherland's very fair stance on the



matter, there is in fact no need for me to make a decision on the issue. Nonetheless, to avoid any doubt, I record that Commissioner Sutherland will not be involved in the hearing as a member of the Court. He will be replaced by Deputy Commissioner Gollop.

Other matters

[7] Mr Carr in his email communication to the Court of 16 August 2012 requested from the Court:

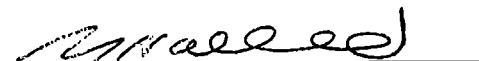
...the background of Commissioner Oliver, the other Commissioner selected for this hearing, as regards the cases she has heard in the Environment Court, and any connection direct or indirect that she has, or has had, with Meridian. Also any public statements that she has made, or written, on the subject of wind or renewable energy.

[8] As has occurred in this case, if there are any potential difficulties the proposed member of the Court would declare an interest. No such interests have been declared by the members of the Court now convened to hear this case.

[9] An overview of the Commissioners' backgrounds is available on the Court's website and the cases in which Commissioner Oliver has been involved are too numerous to list and in any event are a matter of public record. The Court is not obliged and will not be providing the information sought.

[10] There is nothing of which I am aware that would prevent Commissioner Oliver and/or Deputy Commissioner Gollop from undertaking their duty to independently hear and participate in the decision-making involved in this case.

DATED this 22nd day of August 2012



M Harland
Environment Judge

