

Record of Pre-hearing Conference

Before: Judge J E Borthwick

Held: Monday 5 December 2011 at 10.00 am

Appearances:

Mr A Beatson & Mr H Tapper for Meridian Energy Limited
Mr K Smith & J Silcox for Hurunui District Council
Ms M Dysart for Canterbury Regional Council
Mr M Archbold for self
Mr Wallace for Ms S Barnes & Mr S Barnes
Mr A Baxter for self
Ms B Burgham for self
Mr N Burgham for self
Ms K Fitsimmons for self & Mr M Fitsimmons
Mr G Higginson for self & Ms J Higginson
Mr Wallace for Glenmark Community Against Wind Turbines Incorporated
Ms J McKone for self & Mr T McKone
Mr G McLean for self & Ms M McLean
Ms A Marr for self
Ms B Mears for self
Mr D Mears for self & Ms V Mears
Mr E Pyle for New Zealand Wind Turbines Association
Mr J Ryan for self
Ms N Stanley for self
Mr G Thomas for self
Mr J Carr for Tipapa Limited
Mr H Turnbull for self & Ms Y Turnbull

No Appearance

Mr P Croft, Ms A Goodship, Greta Valley School, Mr C Herbert, Ms L Love, Mr T McBreen, Ms K McLachlan, Mr H McLachlan, Ms E Messervy, Mr M Messervy, Ms H Pankhurst, Mr J Pankhurst, Ms J Symonds, Ms P Vincent.

Introduction

[1] A pre-hearing conference was held for this direct referral on 5 December 2011 for the purposes of case management and setting down an evidence exchange timetable.



[2] In the court's Minute dated 30 September 2011, the court posed questions to counsel and the section 274 parties to be answered at the pre-hearing conference on 5 December 2011. This minute deals with those matters and with other matters raised at the conference.

Correction of name

[3] Glenmark Community Against Wind Turbines Incorporated has notified the Registry and the other parties that their name was incorrectly stated in the section 274 notice (the notice was lodged under the name Hurunui Community Against Wind Turbine Incorporated). As Glenmark Community Against Wind Turbines Incorporated is a submitter in respect of the consent applications, it has standing to be a party to these proceedings. I will direct that the Registry correct the court's record.

Reporting Council

[4] The Hurunui District Council has agreed to take on the role of reporting council. This is an important role and I am grateful for its participation. Lawyers Mr K Smith and Ms J Silcox from Buddle Findlay act in this capacity.

Tipapa Limited's submission

[5] Meridian Energy and Hurunui District Council raised a concern about Tipapa Limited's submission. Evidently there are three versions of the submission, one of which has three new attachments.

[6] Mr Carr, on behalf of Tipapa Ltd, has identified a typed submission from the court's records which he says replicates the handwritten submission. The three new attachments have been removed from the typed submission. All remaining attachments are now properly ordered (with page numbers appearing at the bottom of the submission). The court will shortly distribute a copy of the typed submission.



Parties' conference

[7] Notice has now been sent concerning the parties' conference to be held on Monday 19 December 2011 at the St John's Hall, Amberley. All parties are welcome to attend but it is specifically aimed at assisting unrepresented parties. For parties that cannot attend a further parties' conference is expected to be held in the New Year.

Friend of Submitters

[8] The appointment of a friend of submitters, such as independent counsel or a senior planner was left open, and will be further considered by Meridian Energy Ltd. As I pointed out to Meridian, the court is reluctant to commit court time and resources to a lengthy hearing unless it is confident that the parties will be ready to proceed.

[9] If I consider it necessary the court will appoint an Environment Commissioner into this role and will seek to recover its costs from Meridian pursuant to section 285(3) of the Act.

Evidence exchange timetable

[10] Having heard from the parties present, by consent, I directed that:

- (a) evidence-in-chief for Meridian and any party in support is to be served by **27 January 2012**;
- (b) evidence-in-chief for Hurunui District Council and Canterbury Regional Council is to be served by **13 February 2012**;
- (c) evidence-in-chief for all other parties is to be served by **27 April 2012**;
- (d) those witnesses engaged in expert conferencing are to update their evidence-in-chief by either track changing the evidence or filing supplementary evidence by **8 June 2012**;
- (e) any rebuttal evidence from Meridian is to be filed by **15 June 2012**;
- (f) at the time of evidence exchange four extra copies of all evidence is to be forwarded to counsel for the Hurunui District Council, assembled by them into lever-arch folders, and filed in court on **22 June 2012**. The parties will ensure that the evidence is tabulated, indexed and where briefs exceed 20 pages a table of contents will be provided.



[11] The draft hearing procedures have been amended to record the same.

Conduct of the hearing

[12] It is possible that this proceeding will be transferred to another division of the Environment Court, in which case the presiding Judge will make his or her own directions as to the conduct of the hearing.

[13] If I hear the applications for consent, the hearing will commence with the presentation of opening submissions from parties calling expert evidence (only). Meridian will present their legal submissions in full. All other parties calling expert evidence will then provide a short synopsis of their case including (but not limited to) the issues to be addressed by their expert witnesses. It is my preference to hear either sequentially from experts giving evidence within the same field of expertise and that those witnesses are held over to answer the court's question as a panel (i.e. hot-tubbing of expert witnesses).

Expert conferencing

[14] Conferencing of experts in the fields of noise, health, landscape/amenity and property valuation¹ is to occur after all evidence-in-chief has been exchanged. Conferencing is to happen pursuant to the Environment Court Practice Note and Expert Witness Code of Conduct. More specific directions on conferencing will be made in the New Year.

[15] **Seven working days** after each conference concludes a joint witness statement will be filed in court and served on all of the parties. The timetable has allowed one month for conferencing. The conferences shall be facilitated by an Environment Commissioner.

[16] At the conclusion of expert conferencing the experts must confirm or amend their evidence with the court and parties. The timetable for evidence exchange makes allowance for this, with any further evidence to be filed by **8 June 2012**.

¹ Property valuation is only required if expert evidence is filed. Meridian is to produce a 'will say' brief, if it does not file evidence-in-chief on this matter.



Venue

[17] I have noted that most parties would prefer the hearing to be held as close to them as possible. The court will endeavor to do this, but notes that it may not be possible.

Transmission of evidence

[18] In the District Council's reporting memorandum dated 21 November 2011, most parties responding indicated that they would like a hard copy of the evidence served on them. That being the case I direct that the parties are to formally serve a hard copy of their evidence on all other parties to the proceeding.

[19] I further direct that the parties provide five extra hard copies of their evidence to the District Council, together with an electronic copy of the same. The extra copies are for the Environment Court (the District Council will collate the evidence and lodge it with the court). This is instead of the parties sending their evidence direct to the court.

[20] The District Council has (or will) create a website address to host the evidence and documents relevant to these proceedings.

[21] The District Council requests electronic documents are to be no larger than 2mb each, and are either in a word.doc or a pdf format. A covering letter identifying the parties and a short explanation of the documents that are attached is to accompany the evidence. The District Council will advise the parties of the email address to send the evidence and details of the website.

Further correspondence from Tipapa Limited

[22] An email dated 6 December 2011 from Mr Carr on behalf of the company was lodged with the Registrar asking further questions in regards to the summoning of witnesses. I attach a copy of the email to this Record, and I answer Mr Carr's queries as follows:

- (i) all parties have the right, and will be given the opportunity, to cross-examine the witnesses called by Meridian Energy or Hurunui District Council. These persons do not need to be summonsed as they are to attend and give evidence;



- (ii) a further minute will issue on the timing of any witness summons once the hearing date is known. The witness summons concerns persons not called by any party to give evidence;
- (iii) I will not, at this stage, issue any direction that persons wishing to summons a witness must also give notice of the matters in respect of which they wish to examine. To do so would be irregular, but I caution Mr Carr that it is my expectation that he contact those persons whom he wishes to summons and ascertain whether they are available to give evidence that may assist the court. If they are available then they should be briefed. Further, for evidence to be admissible in court it must be relevant - that is to say it has a tendency to prove or disprove anything that is of consequence to the determination of the proceeding;²
- (iv) the parties should note the possibility that they may open themselves up to a costs application if the hearing has been unduly extended by calling witnesses whose evidence is not relevant;
- (v) when summoning a witness to the Environment Court the witness is entitled to be paid by the party requiring his or her attendance;³
- (vi) finally, I am not sure for what purpose Tipapa Ltd wishes to file a memorandum in response to the court's Minute dated 30 September 2011. The time for doing this has long since passed. Any issues that Mr Carr wished to raise in respect of the Minute should have been addressed at the pre-hearing conference.

DATED at CHRISTCHURCH this 12th day of December 2011




J E Borthwick

Environment Judge

HurunuiPHC5Dec11.doc

Issued: 15 December 2011.

² Section 7 Evidence Act 2006.

³ Resource Management Act 1991 section 284(1).

DRAFT HEARING PROCEDURES

Introduction

1. This document describes how the Environment Court intends to conduct the hearing on the applications for resource consent made by Meridian Energy Limited in relation to a proposed wind farm within the Hurunui District.
2. These procedures may be subject to further direction or amendment.

Requests to deviate from the procedures

3. If any person wishes to deviate from any requirement identified in these procedures, a written request to the court will be required.
4. Any such request must contain a full explanation of why the deviation is sought.
5. In considering the request to deviate from the procedures, the court will identify parties who shall be specifically notified of the request and the court's decision on whether or not it gives its permission to deviate from the procedures.
6. All written requests to deviate from the procedures received before the hearing, as well as the court's decisions on those requests, will be made available on the reporting Council's website.

Objectives

7. The following objectives will guide the hearing procedures adopted by the court:
 - a) To ensure a fair hearing procedure which is in accordance with statutory requirements and the requirements of natural justice;
 - b) To avoid unnecessary formality;
 - c) To conduct an efficient process which minimises the costs and time involved in the process, whilst still ensuring a fair and transparent process;



- d) To provide parties with an adequate opportunity to be heard, whilst minimising the length of oral presentations, avoiding the repetition of information and the presentation of irrelevant material;
- e) To recognise tikanga Māori where appropriate and give effect to the Māori Language Act 1987, and receive evidence written or spoken in Māori.

Definitions

8. When used in this document, these words are intended to have the meanings given:

Submission – a submission on the application for resource consent.

Submitter – a person who made a submission.

Party – the applicant and all submitters who have indicated a wish to be heard at the hearing.

The Councils – the Canterbury Regional Council and the Hurunui District Council which are the councils responsible for the Plans to which the applications for resource consent relate.

The Reporting Council – Hurunui District Council is the reporting Council and it is responsible for conferring with the parties in accordance with the court's directions and reporting back to the court. The reporting Council will also make available the evidence on its website.

Evidence – evidence is a statement that sets out facts but may also include opinions.

Expert Evidence – a statement that sets out facts, that is provided by a person who is an expert in their field. Expert evidence must comply with the Environment Court Practice Note – Expert Witness Code of Conduct (available at the following website - <http://www.rma.co.nz/practice-note.pdf>). These requirements include stating the relevant qualifications of the expert and a duty to the court to be independent and not advocate for the party who engages the witness.

Witness – is a person who provides a statement of evidence to the court.



Expert witness – is a person who provides expert evidence to the court. An expert witness must comply with the Environment Court Practice Note – Expert Witness Code of Conduct.

Presentation – a presentation is a statement made by a party or a representative for the party, which is not evidence and which includes advocacy and/or legal submissions.

Cross-examination – the questioning of another party's witness which will often be in the form of leading/closed questions. (Usually these are questions which can be answered with a "yes" or "no").

Friend of Submitter – a person engaged, or appointed by the court, to provide non-partisan advice to submitters on the court's process.

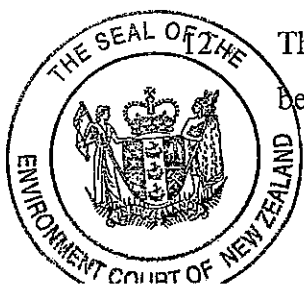
Pre-hearing conference

9. The court may convene pre-hearing conferences before the hearing begins to consider process matters relevant to the hearing.
10. Should the court decide to convene a pre-hearing conference, the court's Registry will inform all parties.

Facilitation and mediation

11. The court may invite or require parties or particular groups of parties to meet at any stage prior to, or during the hearing, to discuss matters or issues which are relevant to those parties. Such meetings may have one or more of the following purposes:
 - a) facilitate clarification or narrowing of issues between parties;
 - b) facilitate the joint presentation of submissions, evidence or cross-examination on common topics;
 - c) facilitate resolution of specific issues.

The court may direct that facilitation meetings be conducted by way of mediation before a court appointed mediator.



13. The court may direct that the friend of submitter undertakes a specific administrative role at the facilitation meetings.
14. The court's Registry will inform all parties who have been invited to, or who are required to attend, facilitation meetings via email (unless other contact arrangements have been put in place).
15. The facilitator or mediator must prepare a facilitation meeting report detailing the parties who attended, the issues or procedures that were agreed and the issues that are outstanding. The facilitation meeting report will be distributed to all parties within five working days of the meeting taking place. The facilitation report will not detail any "without prejudice" discussions or confidential settlements.

Expert Witness Conferencing

16. The court may direct that expert witnesses within a particular field confer together with a view to resolving differences, narrowing and/or clarifying issues and avoiding repetition.
17. Conferencing is to be conducted in accordance with the Environment Court Practice Note.
18. Expert witnesses who are directed to conference must:
 - a) seek to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
 - b) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and matters on which they do not agree, including the reasons for their disagreement.
19. In conferring with another expert witness and in preparing a joint witness statement, the expert witness must exercise independent and professional judgment and must not act on the instructions or directions of any person to withhold data or information, or to withhold or avoid agreement, or as to the contents of the joint witness statement.



Site visit

20. The court intends to conduct its first site visit soon after the applicant's opening address. A site visit provides the court with an opportunity to view the location the subject of the hearing so that it has a visual representation to aid in its understanding of the evidence to follow.
21. The reporting Council, having conferred with the parties, is to file at the commencement of the hearing a memorandum proposing how the site visit would best be managed and detailing the views and locations of particular interest to the parties. The parties should also include a map of the site visit area.

Witnesses evidence requirements

22. If a party is providing evidence from a witness, then a statement of evidence will meet the requirements detailed in Appendix A.
23. The statements of evidence shall be lodged with the court and served on the District Council on the date identified in Appendix B.
24. The District Council will make all statements of evidence available on its website once it has been served.

Appearance of witnesses

25. The court will not indicate prior to the commencement of the hearing whether it requires the attendance of the witnesses and so parties are to prepare on the basis that all witnesses will need to attend the hearing in person and make an oath or affirmation that the statement of the evidence is true and correct.
26. The evaluative evidence of the planning witnesses may be called last. All parties calling planning evidence are to produce an agreed bundle of documents including the statutory documents that are referred to in evidence.
27. As the court will pre-read the evidence witnesses will not read out the statement of evidence at the hearing.
28. Expert witnesses are to present a concise summary, that identifies the key points of evidence and may explain relevant figures, plans and tables and summarise any



changes resulting from facilitation or caucusing which occurred following submission of their statement of evidence.

29. The hearing will proceed on the basis that all other parties will have read the material of interest to them.

Cross-examination

30. The court will allow cross-examination of witnesses.
31. Parties who wish to cross-examine a particular witness will give notice of that witness to the court and the party calling the witness, by a date to be specified.
32. The court encourages parties with similar interests to group together for the purpose of cross-examining.
33. The court will not allow repetitive or irrelevant cross-examination.
34. Where appropriate the court will allow re-examination of witnesses by legal counsel calling that witness. That may be before and/or after questions from the court.

Order of Witnesses

35. The court will hear sequentially from witnesses giving evidence within related fields of expertise. Having given their evidence (including cross-examination) the witnesses are to remain and be available to answer any questions from the court (unless released earlier). The parties will be given an opportunity to re-examine the witnesses on any matters arising from the court's questions.
36. Those parties calling expert witnesses are to consider giving a short opening and full closing presentations.
37. The court may ask any question it thinks fit of any witness. Such questions will generally be after cross-examination but may be at any point in the presentation by that representative or witness.



Hearing date, venue and schedule

38. The hearing will commence on the date specified in the timetable identified in Appendix B and unless directed otherwise, parties will be heard in the order and within the time limits shown in Appendix C.
39. The court will send by post the parties a notice of the time and place of the hearing.
40. Following the receipt of cross-examination notices, the reporting Council, in consultation with the parties, will prepare for the court's consideration a detailed hearing schedule identifying specific order of appearances and provisional timeframes.
41. Once the details are finalised by the court, the schedule will be available on the reporting Council's website and the court will email a copy to all parties (unless other contact arrangements have been put in place).
42. The reporting Council will prepare updates to the schedule during the hearing to reflect progress and any necessary changes. The court will inform any party affected by changes to the schedule by email (unless other contact arrangements have been put in place).
43. Because of the uncertainty of the length of presentations and cross-examination, specific times cannot be allocated to those appearing. Parties will be advised of a time by which they and their witnesses must be present. Parties and their witnesses may need to wait some time before they are called or return the next hearing day.
44. So far as is practicable, the court will work with parties to accommodate scheduling requirements. However, where necessary, parties may request that they or their witnesses be heard out of order, so as to accommodate other engagements.

Te Reo and Tikanga Māori

45. Any party, counsel or witness may speak in Te Reo Māori. At least 10 working days prior notice of intention to use Te Reo Māori is to be given to the court, so that attendance of an interpreter can be arranged. However, any karakia, powhiri, or mihi, will not be translated into English language unless the presenter wishes



and has given such prior notice. Note that the Māori Language Act 1987 expressly provides that no person may insist on being addressed in Te Reo.

Written record

46. The court will have the proceedings at the hearing recorded, and the recording transcribed. The transcripts will be made available on the reporting council's website and will be emailed to the parties by the court generally 2-5 days after the day to which the transcript relates.

Decision

47. As soon as practicable after the court has completed the hearing the court will release its decision.



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Appendix A – Requirements for evidence and presentations

1. All witnesses must provide a written statement of evidence on the dates specified in the record of pre-hearing conference and specified in appendix B.
2. The statement of evidence can refer to reports provided as part of the application or a submission without providing a copy of that report again in the statement.
3. All expert witnesses providing evidence must provide an executive summary at the beginning of their evidence.
4. In addition to serving the evidence on all of the parties, five hard copies and an electronic copy of all evidence shall be provided to the Hurunui District Council. These copies are for the court.

Hard copy requirements

5. All text shall be single-sided A4 with 1½ spacing and minimum font size of 12.
6. Non-text exhibits shall be single sided and provided in A3 or A4.
7. If the statements of evidence for any party are more than 20 pages in total, the hard copies shall be paginated, tabulated and contain a table of contents.
8. Each statement shall be signed by the witness who is to give that evidence.
9. All coloured exhibits shall be provided as colour copies of good quality.
10. Permission from the court be sought to deviate from the hard copy requirements.

Electronic copy requirements

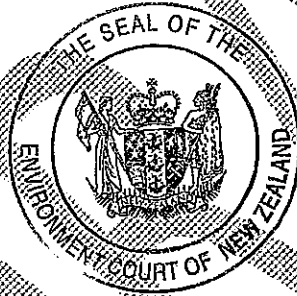
11. If the electronic copy of a party's witness' statements of evidence is greater than 2MB, a disk with a copy of the evidence shall be provided to the District Council.
12. If the electronic copy of a party's witness' statements of evidence is less than 2MB, the electronic copy of evidence can be delivered the District Council via email.
13. The electronic copies should, where practicable, be provided as a word .doc or as a pdf format. Where this is not practicable other arrangements can be made with the court.



14. Any party unable to create electronic copies of their evidence must contact the court (attention: Lauren Williams) to make other arrangements before the date the evidence is lodged.

Presentations

15. Any party may make a presentation to the court before that party presents its evidence (if any). Such presentations should not repeat the written submission or the evidence. Parties with common interests are encouraged to present joint presentations.
16. Except with the permission of the court, presentations by the applicant should be no more than 3 hours in length. The Councils and Glenmark Community Against Wind Turbines Inc and any other party calling expert evidence should be no more than one hour and all other parties no more than 30 minutes in length.
17. Permission from the court may be sought to deviate from the presentation requirements.



Appendix B - Timetable

The Councils' s87F reports available on the reporting Council's web site	16 December 2011
Meridian and any supporting party evidence to be served	27 January 2012
Meridian and any supporting party evidence available on the website	3 February 2012
The Councils' evidence to be served	13 February 2012
The Councils' evidence available on the website	17 February 2012
All other parties' evidence to be served	27 April 2012
All other parties' evidence available on the website	2 May 2012
Updated evidence from experts engaged in conferencing	8 June 2012
Meridian rebuttal evidence to be served	15 June 2012
Meridian rebuttal evidence available on the website	20 June 2011
Cross-examination notices available on the website	To be advised
Schedule for witnesses and presentations	To be advised
The reporting Council (Hurunui District Council) is to assemble the evidence into lever-arch folders and file with the court	22 June 2012



Hearing start date	To be advised
All information identified in the timetable above must be provided by 5pm on the date shown	



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Appendix C : maximum time limits

Applicant	<p>The applicant may make a <i>presentation</i> themselves or via counsel or other representative.</p> <p>Any expert witnesses called by the applicant will be sworn in, present a summary of their evidence.</p> <p>Each witness may be asked supplementary questions and cross-examined.</p>	<p>3 hr</p> <p>15 mins each witness</p> <p>1 hour each party per witness</p>
Hurunui District Council and Canterbury Regional Council	<p>The Councils may each make a <i>presentation</i> themselves or via counsel or other representative.</p> <p>Any expert witnesses called by the Councils will be sworn in and present a summary of their evidence.</p> <p>Each witness may be asked supplementary questions and cross-examined.</p>	<p>1 hour each Council</p> <p>15 mins each witness</p> <p>1 hour each party per witness</p>
Submitters	<p>Each submitter may make a <i>presentation</i> themselves or via counsel or other representative.</p> <p>Any expert witnesses called by the submitter will be sworn in and present their summary of evidence.</p>	<p>30 min each submitter, unless calling expert evidence then 1 hour per submitter.</p> <p>15 mins each witness</p>



	Each witness may be asked supplementary questions and cross-examined.	1 hour each party per witness
Submissions	In reverse order those parties calling expert witnesses may be invited to present full closing presentations. The applicant will be heard last.	
Submissions by legal Counsel to the court	At the court's request, legal counsel may present legal submissions on any matter which has arisen during the course of the hearing.	



DRAFT

Judge Borthwick
Environment Court
Christchurch

Tipapa
Greta Valley
6 December 2011

Your Honour

MERIDIAN ENERGY. HURUNUI WIND.

I appreciate the time that you gave to the Pre Hearing conference yesterday I think that it was very beneficial. I am sorry that I am having to write to you with a further question. I hope that Meridian will take on board your guidance to pay for a lawyer who is a Friend of the Submitters. It would also make our lives immensely easier.

My question concerns summoning witnesses.

1. I will wish to cross examine the majority of Meridian's expert witnesses, and all of Hurunui's expert witnesses. Do I have that opportunity as a right to do so during the Court hearing, or do I have to summons them, therefore include them in my list of those I wish to summons?

2. I confirm that I will be seeking to summons a number of other witnesses for cross examination at the Court. In doing so I take on board your guidance to me at yesterday's meeting.

Please advise me whether at the time of providing my list of those that I wish to summons I need to state the nature of my enquiry of them, or can I do it when I formally apply to summons them. Further by which date do I need to supply my list of names to the Court, and how long before the Court hearing am I required to make the formal application for those on my list to attend Court.

I confirm that I now feel in a position to complete the questionnaire sent out by Hurunui District Council on 7 November, and I will be submitting it to the Council before the end of this week.

Thank you for your time.

Yours sincerely

John Carr

On behalf of Tipapa Limited.

