

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2011] NZEnvC 325

**IN THE MATTER** of the Resource Management Act 1991 (**the Act**) and of an appeal pursuant to section 87G of the Act

**BETWEEN** MERIDIAN ENERGY LIMITED

(ENV-2011-CHC-90)

Applicant

Hearing: In chambers at Christchurch

Court: Environment Judge J E Borthwick

Date of Decision: 3 October 2011

Date of Issue: 3 October 2011

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**DECISION OF THE ENVIRONMENT COURT**

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A: The application for waiver is declined.

B: Under section 281 of the Act I make the following *orders*:

(a) Tipapa Limited is to serve a copy of its section 274 notice on all of the parties to the proceedings; and

(b) confirm in writing to the Registrar of the Environment Court the parties served and date that service was effected

- by **12 October 2011**.



## REASONS

### Introduction

[1] Tipapa Limited has applied for a waiver to do two things; firstly waive the requirement to serve a section 274 notice on parties to the proceedings; and secondly to waive a requirement to serve any further documents on the parties to the proceeding.

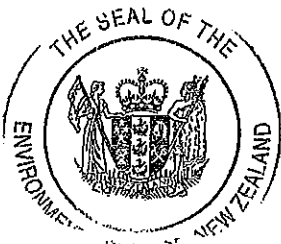
[2] In the application for waiver dated 23 September 2011 Mr Carr, whom I assume is a director, states that he travels on business frequently both domestically and internationally and that he will not have the time or resources to fulfill this requirement. He adds that he may miss deadlines as he may not receive notices on time.

### Section 281

[3] Section 281 of the RMA states (relevantly):

- (1) A person may apply to the Environment Court to –
  - (a) Waive a requirement of this Act or another Act or a regulation about –
    - ...
    - (ia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings...
    - (v) the persons on whom anything shall be served.
    - ...
- (2) The Environment Court shall not grant an application under this section unless it is satisfied that none of the parties to the proceedings will be unduly prejudiced.
- (3) Without limiting subsection (2), the Environment Court shall not grant an application under this section to waive a requirement as to the time within which anything shall be lodged with the Environment Court (to which subsection (1)(a)(ii) applies) unless it is satisfied that –
  - (a) The appellant or applicant and the respondent consent to that waiver; or
  - (b) Any of those parties who have not so consented will not be unduly prejudiced.
  - ...

[4] There are two questions to be answered on an application for waiver under section 281 of the Act. They are:



- (A) will any of the parties to the proceeding be unduly prejudiced<sup>1</sup>?
- (B) should the court exercise its discretion in favour of the applicant?

### **Consideration**

[5] There are 45 parties to these proceedings and I have not sought their views in relation to this application. That is because I am in no doubt that if Tipapa Limited does not comply with both the Act and the court's directions in regards to service of documents then other parties to the proceeding will be unduly prejudiced.

[6] Service is an essential part of the court processes. The parties are entitled to be fully informed of each other's position and this is to be done in a timely manner so that all views may be considered.

[7] Tipapa Limited does not provide any reasons as to why no person would be unduly prejudiced. The statements made by Mr Carr in support of the application, indeed the service of the application for waiver itself, tend against the suggestion that the company does not have the resources to comply.

[8] Tipapa Limited, or any party for that matter, can save time and reduce costs by emailing or faxing documents to parties that have provided an email address or fax number for this purpose (see section 352 of the Act).

[9] That said, I am aware that some parties may not want to be served with all documents that they are entitled to receive. This is going to be discussed further at a prehearing conference likely to be held in early December 2011 (a notice of prehearing conference will follow in due course).

### **Outcome**

[10] The application for waiver is declined.



<sup>1</sup> Section 281(2) and (3) of the Act.

[11] As it appears that Tipapa Ltd may not have served a copy of its notice to become a party to these proceedings, I have made directions extending the time that this is to be done.

For the Court:


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**J E Borthwick**  
**Environment Judge**

Issued<sup>2</sup>: 3 Oct 11

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