

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of an objection under section 357 of the
Act
BY TUCKER BEACH RESIDENTS
 SOCIETY INCORPORATED

SUBMISSIONS ON BEHALF OF TUCKER BEACH RESIDENTS SOCIETY
INCORPORATED

Dated: 26 November 2018

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MAY IT PLEASE THE COMMISSIONER:

Introduction

1. These submissions are on behalf of the Tucker Beach Residents Society Incorporated ("**Society**") in support of its objection against the decision of the Chair of the Hearings Panel to strike out the Society's submission on the Queenstown Lakes Proposed District Plan ("**PDP**").
2. The Society submits on the basis of its submissions filed on 30 July 2018 in opposition to the application by the Middleton Family Trust ("**Middletons**") to strike out its submission, and the further evidence filed in support of this objection, the Society's submission was valid under the Resource Management Act 1991 ("**Act**") and the Chair was wrong to strike out the submission.
3. The evidence in support of this objection is in the form of affidavits from Bryan Hutchins, Michelle Rudd, Vicki Onions, Will Hodgson, Ben Farrell and Robin Martin. All of these individuals were members of the unincorporated Tucker Beach Residents Group at the time the submission was filed and are now members of the Society.

Section 357 Resource Management Act 1991

4. Under s 357(2) of the Act "a person whose submission to an authority is struck out under section 41D has a right of objection to the authority".

Section 2 Resource Management Act 1991 – meaning of "person"

5. The provisions of the Act relating to what constitutes a "person" for the purpose of filing a submission are set out in the Society's submissions opposing the Middleton's application to strike out the Society's submission¹, and in the subsequent decision of the Chair.²
6. Under s 2 a person "includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate".
7. Relevantly, in order to be an "unincorporate body of persons" under s 2 of the Act there must be two or more persons who have a similar or related purpose in relation to some function or proceedings under the Act, and who have agreed to move in concert.

¹ Submissions of the Society opposing the application to strike out, 30 July 2018 at 4.

² Decision of the Chair 8 August 2018 at 7.

8. The Society in its submissions referred to an email of Mr Hodgson who informed the group's counsel that Ms Vicki Onions (referred to by Mr Hodgson as Vicki Summer) had joined as a member of the group, among others not named in the email.
9. The Chair in his decision determined this was insufficient evidence that there was in fact a group formed at the time the submission was filed. He notes the Society's submission was lodged at 4.22pm on 17 May 2018, prior to the above email correspondence which was at 8.36pm on 17 May 2018.
10. The Society submits the affidavits filed in support of this objection provides the evidence the Chair considered was insufficient at the time he determined the strike out. The affidavits confirm that during a meeting between Mr Hodgson, and planners Mr John Edmonds and Mr Ben Farrell, Mr Farrell spoke to Mr Bryan Hutchins who confirmed he and his wife Penny wished to be a part of this group. Mr Hodgson then had subsequent conversations with Ms Onions and Ms Rudd who both confirmed their desire to join the group.
11. The affidavit evidence confirms these conversations were prior to the filing of the submission. It also confirms the individuals being residents of Tucker Beach and opposing or having concerns about the Middleton's proposal had a similar or related purpose under the Act, and by agreeing to file a submission had agreed to move in concert.

The Society is a Successor to the Submission


12. Section 2A of the Act provides:
 - (1) *In this Act, unless the context otherwise requires, any reference to a person, however described or referred to (including applicant and consent holder), includes the successor of that person.*
 - (2) *For the purposes of this Act, where the person is a body of persons which is unincorporate, the successor shall include a body of persons which is corporate and composed of substantially the same members.*
13. Although the Chair found the Society's submission was invalid on the basis there was no evidence that it constituted a person under the Act, he went on to state that he also had no evidence that the Society was a successor of the unincorporated group.
14. The Society submits the Commissioner does have such evidence before her in the form of the application to form the society as appended to Mr Hodgson's affidavit, and the register of members appended to the affidavit of Mr Martin.
15. These documents show that all of the individuals who joined the unincorporated group on 17 May 2018 are now members of the Society. On this basis the Society

submits the group is a successor as it is composed of “substantially the same members”³ as the unincorporated group.

16. As previously submitted to the Chair, the Society submits it not does not matter that the group has substantially increased in size and taken in new members since the submission was filed in order for it to be a successor to the original group.⁴

Conclusion

17. The Society submits given the evidence before the Commissioner, and particularly in light of the further evidence filed in support of the objection, that:
- a. The unincorporated Tucker Beach Residents Group at the time of filing the submission constituted a person under the Act as it comprised a group of people with a similar and related purpose who agreed to move in concert; and
 - b. The Society is a successor to the unincorporated group as it is composed of substantially the same members.
18. For these reasons, the Society submits it has a valid submission to the PDP and the decision of the Chair to strike out the submission should be overturned.



G M Todd/B B Gresson

Counsel for Tucker Beach Residents Society Incorporated

³ Resource Management Act 1991, section 2A(2).

⁴ *Friends of Michael Avenue Reserve Inc v Auckland Council* [2015] NZEnvC 110