

IN THE MATTER of the Resource  
Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes  
Proposed District Plan

AND

IN THE MATTER of Further Submission 2802  
lodged by Tucker Beach  
Residents

## **DECISION ON APPLICATION TO STRIKE OUT FURTHER SUBMISSION**

### **Introduction**

1. At the hearing on 12 July 2018, Ms Macdonald, counsel for the Middleton Family Trust (Submitter 2332) ("MFT"), applied to have Further Submission 2802 lodged by the Tucker Beach Residents ("TBR") struck out on the grounds that there was no evidence TBR was a legal person.
2. I issued a Minute on 13 July 2018 setting out a timetable for receipt of submissions from TBR on this application, and reply from the MFT.
3. Due to an administrative oversight this Minute was not served on TBR. Counsel for TBR advised by email on 23 July 2018 that TBR had only become aware of the Minute the previous day and sought an extension of time to lodge submissions. This was granted, and the period for MFT to lodge a reply was duly extended.
4. In the interim, the Tucker Beach Residents Society Incorporated ("the Society") appeared on 26 July 2018 on the basis that the Society was successor to TBR. The submissions responding to the strike out application were lodged by the Society on 30 July 2018.
5. I have been delegated the Council's powers to make procedural decisions in relation to hearing of submissions on the Proposed District Plan. That includes the powers provided under section 41D of the Act to strike out submissions.

## Matters to Consider

6. The questions to answer are:
- a) Was TBR an unincorporated body of persons at the point when FS2802 was filed?
  - b) If the answer to (a) is yes, is the Tucker Beach Residents Society Incorporated successor to TBR?

### Was TBR an Unincorporated Body of Persons?

7. The definition of “person” in section 2 of the Act indicates that an unincorporated group does have legal status. Ms Macdonald outlined the legal requirements for an unincorporated body to have standing under the Act as follows<sup>1</sup>:

*To be an unincorporated body which is a separate legal person under 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 RMA, and who have agreed to move in concert<sup>2</sup>. Unincorporated group – must have members – a group of people with a common purpose<sup>3</sup>.*

8. I accept that to be a succinct analysis of the requirements. I also accept that the existence of an unincorporated group is a question of fact. Ms Macdonald submitted the caselaw suggests there should have been at least one meeting of the group and that it must have reached agreement on a common purpose prior to lodgement of any submission.

9. Mr Todd, counsel for the Society submitted:

*... the Tucker Beach Residents at the time of filing its submission was in fact a group of people with a similar and related purpose who agreed to move in concert. .... To show that these members existed, an email from Mr Will Hodgson to Tucker Beach Residents’ counsel dated 17 May 2018 (the same day the submission was filed) is attached to these submissions and marked with the letter “B”. The email refers to at least two members of the Tucker Beach Residents group, being Mr Hodgson himself and Ms Vicki Summer. ...”<sup>4</sup>*

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<sup>1</sup> Legal Submissions for Middleton Family Trust (#2332), dated 11 July 2018, at paragraph 19  
<sup>2</sup> *Gold Mine Action Incorporated v Otago Regional Council* (2002) 8 ELRNZ 129 at [37]  
<sup>3</sup> *Appealing Wanaka v Queenstown Lakes District Council* [2015] NZEnvC 23  
<sup>4</sup> At paragraphs 7 and 9

10. As Ms Macdonald noted in her reply on behalf of the MFT, the email referred to in the Society's submissions was sent at 8:36 pm on 17 May 2018. The Council records show that FS2802 was lodged at 4:22 pm on that day.
11. On the face of it, there is no evidence of a group of people acting with a common purpose at the time the further submission was lodged. While there appears to have been two persons so minded in the evening of 17 May 2018, there is no evidence of any agreement being reached on their common purpose prior to the further submission being lodged. That omission might easily have been remedied had I been supplied with a brief statement by Mr Hodgson, but, as it is, I have only his email, which does not say when he spoke to Ms Summer. Thus, on the facts before me I must conclude that TBR at the time the further submission was lodged was not an unincorporated body of persons.

#### **Is the Tucker Beach Residents Society Incorporated Successor to TBR?**

12. While I do not need to answer this question, given the answer to the previous question, as Ms Macdonald appeared to concede that "*at best, the evidence for TBR is that it was constituted of two members at the time the FS was filed*"<sup>5</sup>, I have considered this question also.
13. Mr Todd provided a copy of the Certificate of Incorporation of the Tucker Beach Residents Society Incorporated, but did not provide a copy of the application to incorporate the society. That document may have established that both Mr Hodgson and Ms Summers were founding members of the society. I would still have needed to consider Ms Macdonald's argument that the Society is not made up of substantially the same members as TBR, but in the absence of the application form I cannot conclude that they were. On the facts before me, there is, therefore, no evidence that the Society is successor to the TBR.

#### **Outcome**

14. On the facts provided I have concluded that "Tucker Beach Residents" is not a legal person as defined by the Act. There is no evidence that, prior to or at the time of lodging the further submission, "Tucker Beach Residents" comprised a group of people (two or more) with a common purpose of opposing the MFT submission.

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<sup>5</sup> Reply Submissions for Middleton Family Trust – Application to Strike Out Further Submission from Tucker Beach Residents, dated 6 August 2018, at paragraph 14

15. It would be an abuse of process to allow a further submission not lodged by a legal person to proceed. Consequently, Further Submission 2802 is struck out under section 41D of the Act.

8 August 2018

A handwritten signature in blue ink, appearing to read "Nugent", written in a cursive style.

Denis Nugent  
Hearing Panel Chair