

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of a submission to the Proposed
District Plan – Stage 2

BY

**TUCKER BEACH RESIDENTS
SOCIETY INCORPORATED**
(submitter #2806)

**SUBMISSIONS ON BEHALF OF TUCKER BEACH RESIDENTS SOCIETY
INCORPORATED**

Dated: 30 July 2018

Solicitors:

G M Todd/B B Gresson
PO Box 124
Queenstown 9348
P 03 441 2743
F 03 441 2976
graeme@toddandwalker.com;
ben@toddandwalker.com

MAY IT PLEASE THE PANEL:

Introduction

1. These submissions are on behalf of the Tucker Beach Residents Society Incorporated (“**TBR Society**”) in response to an application by the Middleton Family Trust (“**Middletons**”) (submitter #2332) to strike out the TBR Society’s submission to Stage 2 of the Proposed District Plan (“**PDP**”).
2. The TBR Society makes application to be a successor to the submission filed on 17 May 2018 in the name of Tucker Beach Residents, which was an unincorporated group at the time the submission was filed. The TBR Society was incorporated on 11 June 2018. A copy of the Certificate of Incorporation is attached and marked with the letter “**A**”.
3. It is submitted Tucker Beach Residents as an unincorporated body had standing to file a submission to the PDP. The TBR Society likewise has standing to pursue the submission as its successor.

Section 2 Resource Management Act 1991 – meaning of “person”

4. Section 2 of the Resource Management Act 1991 (“**Act**”) defines a “*person*” as including “*the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporated*”.
5. The Tucker Beach Residents at the time of filing the submission was an “unincorporated body of persons”. The body of persons comprised residents of Tucker Beach Road and its surrounds who had agreed to file a submission opposing the Middletons’ submission.
6. The application by the Middletons to strike out the Society’s submission at [19] claims “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. Unincorporated group – must have members – a group of people

with a common purpose. Submission names no individuals – prima facie it's not a group with a common purpose”.

7. It is 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. The similar and related purpose was the opposition to the proposal sought by the Middletons. By agreeing to file and pursue its submission the group had agreed to move in concert.
8. It is submitted there is no requirement for the submission itself to have named each member of the group.
9. 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. To the extent it might be relevant it also refers to other members yet to be named.
10. The Middletons' application at [20] claims in order for an unincorporated body of persons to have standing under the Act “there must have been a meeting to discuss any opposition (or support), and reached agreement on a common purpose **prior to** lodgement of any submission”.
11. It is noted this assertion is not supported by any case law. The TBR Society refutes the suggestion that an unincorporated body has to prove there was a meeting held between members prior to the filing of its submission in order to fit within the definition of person under the Act. It is submitted the hearing authority simply needs to be reasonably satisfied that the submitter was a group formed for a similar or related purpose and with the intention of acting in concert. It is submitted the email of Mr Hodgson referred to above satisfactorily demonstrates that there was in fact this group, and it did have this intention.
12. It is submitted that to place too strict a burden on the submitter to prove it had the requisite standing to file a submission would be contrary to the intention of the Act to facilitate and encourage public participation.

Section 2A Resource Management Act 1991 – successors

13. Section 2A of the Act provides:

Successors

(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 unincorporated, the successor shall include a body of persons which is corporate and composed of substantially the same members.

14. It is submitted the TBR Society is a successor of the Tucker Beach Residents submission as it is composed of substantially the same members as the unincorporated Tucker Beach Residents group. Mr Hodgson and Ms Summer, the two named individuals at the time of filing, are now members of the incorporated body.

15. It is submitted the fact that new members have since joined the TBR Society is irrelevant in assessing whether the TBR Society is a successor. The Court has interpreted s 2A (2) to mean that a substantial portion of the members of the original unincorporated group (more than 50 per cent) must be members of the incorporated group.¹ It has held that it does not matter if the group has substantially increased in size following the filing of the submission.²

Conclusion

16. It is submitted there is sufficient evidence before the Panel to confirm that the Tucker Beach Residents were at the time of filing the submission an unincorporated body of persons pursuant to s 2 of the Act, as they were a group of two or more people formed for a related purpose and who agreed to move in concert.

¹ *Gold Mine Action Inc v Otago Regional Council* (2002) 8 ELRNZ 129

² *Friends of Michael Avenue Reserve Inc v Auckland Council* [2015] NZEnvC 110

17. Further, it is submitted the TBR Society, being comprised of the same plus further members as the unincorporated group, has the right pursuant to s 2A of the Act to pursue the submission as a successor.

18. It is therefore submitted that the application by the Middletons to strike out the TBR Society's submission should be rejected.



G M Todd/B B Gresson

Counsel for Tucker Beach Residents Society Incorporated



11 June 2018

TODD & WALKER LAW
PO BOX 124
QUEENSTOWN 9348

**TUCKER BEACH RESIDENTS SOCIETY INCORPORATED
2706672**

Letter ID: 3152529
Barcode: 10064754725
Our Ref: MAI
Registry Key: 8820656

Please find attached the Certificate of Incorporation for the above mentioned incorporated society. Registered documents for this society (including rules) can be viewed for free online at www.societies.govt.nz by conducting a **Register Search**.

After incorporation a society has an ongoing obligation to continue to file certain information with the Registrar of Incorporated Societies. These include:

- Annual financial statements
 - Changes to the rules of the society (including a change of the society's name)
 - Changes to the society's address details (registered office and contact address)
- Annual financial statements and address details are able to be update online at www.societies.govt.nz using your registry key. This website also gives societies the ability to include additional information about their activities. Features include entering a society's:

- **Purpose** eg "the society promotes netball in the North Shore area etc."
- **Public telephone, website and email details** to enable people viewing the website the ability to contact a society directly or visit their website.
- **Officers** which enable the public to contact specific people within a society.

Please contact our office on freephone 0508 SOCIETIES (0508 762 438) or visit <http://support.business.govt.nz> if you have any enquiries regarding this letter.

Registrar of Incorporated Societies



CERTIFICATE OF INCORPORATION

TUCKER BEACH RESIDENTS SOCIETY INCORPORATED

2706672

TUCKER BEACH RESIDENTS SOCIETY INCORPORATED is incorporated under the Incorporated Societies Act 1908 this 11th day of June 2018.

A handwritten signature in black ink, appearing to be "D. Smith".

Registrar of Incorporated Societies



Ben Gresson

From: Ben Gresson
Sent: Monday, 30 July 2018 2:28 p.m.
To: Ben Gresson
Subject: FW: Further Sub id=2911

ActionName: District Plan Review
Assigned (Actionstep): 2911
Organization (Actionstep): gtoddlaw

From: Will Hodgson [mailto:hodgsonwill@yahoo.co.nz]
Sent: Thursday, 17 May 2018 8:36 p.m.
To: Graeme Todd <graeme@toddandwalker.com>; Ben Gresson <ben@toddandwalker.com>
Cc: Ben. Farrell <Ben.Farrell@jea.co.nz>; John. Edmonds <john.edmonds@jea.co.nz>
Subject: Re: Further Sub id=2911

Thanks Graeme,

I have been in touch with Vicki Summer. She is on board as one of the "Tucker Beach Residents" along with others. I will have their names for you tomorrow that think the same as we do, that a less intensive development is more appropriate.

Regards,
Will

From: Graeme Todd <graeme@toddandwalker.com>
To: Ben Gresson <ben@toddandwalker.com>
Cc: Will Hodgson <hodgsonwill@yahoo.co.nz>; Ben. Farrell <Ben.Farrell@jea.co.nz>; John. Edmonds <john.edmonds@jea.co.nz>
Sent: Thursday, 17 May 2018 4:17 PM
Subject: FW: Further Sub id=2911

Graeme Todd LLB, Notary Public
Principal
P: +64 3 441 2743 | M: +64 27 433 0457 | F: +64 3 441 2976
E: graeme@toddandwalker.com
W: www.toddandwalker.com



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