

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

DECISION ON AN OBJECTION UNDER SECTION 357 OF THE ACT BY THE
TUCKER BEACH RESIDENTS SOCIETY INCORPORATED

Introduction

1. On 12 July 2018 the Middleton Family Trust applied to have Further Submission 2802 (“FS2802”) made by the Tucker Beach Residents Society Incorporated (“TBRS”) struck out under Section 41D of the Act on various grounds.
2. FS2802 was subsequently struck out by the Chair of the Hearing Panel on 8 August 2018. The grounds for the striking out decision were essentially that “Tucker Beach Residents” is not a legal person as defined by the Resource Management Act 1991 (“the Act”), as there was no evidence that, prior to or at the time of lodging of FS2802, “Tucker Beach Residents” comprised a group of two or more people with a common purpose of opposing the Middleton Family Trust submission. Accordingly, the Chair held that it would be an abuse of process under section 41D to allow a further submission not lodged by a legal person to proceed.
3. On 29 August 2018 the TBRS filed a Notice of Objection under section 357(2) of the Act in relation to the striking out of FS2802 to the Proposed District Plan (“the Objection”).

4. I have been appointed by Queenstown Lakes District Council (“Council”) as an Independent Hearing Commissioner under the Act to hear and determine this Objection.
5. A hearing in relation to the Objection was held at Queenstown on Monday 26th November 2018. The TBRS was represented by its legal counsel, Mr Graeme Todd and Mr Ben Gresson, together with the President of the TBRS, Mr Will Hodgson.
6. On the morning of the Objection hearing it became apparent that the original Applicant, the Middleton Family Trust, was not aware of the Notice of Objection or the hearing date. During the course of the hearing, counsel for the Trust, Ms Jayne Macdonald, sought leave to make a written submission to the Commission in relation to the legal submissions presented by counsel for the TBRS no later than 7th December 2018. This request was followed up by an email to Council dated 26th November 2018.
7. The hearing was adjourned on 26th November 2018 pending consideration of the Middleton Family Trust request.
8. Having considered the relevant matters, I issued a Minute dated 28 November 2018 granting leave for the Middleton Family Trust to provide a written response to Mr Todd’s legal submissions by Friday 7th December 2018. At paragraph 5 of the Minute I recorded my preliminary determination of the Objection (pending the further consideration of any submissions from the Middleton Family Trust).
9. I was subsequently advised on Thursday 6th December 2018 by its counsel that the Middleton Family Trust would not be taking up the opportunity to make submissions in respect of the Objection.

Matters for Determination

10. I concur with the Chair of the Hearing Panel that the relevant questions are:¹
 - (i) Was the Tucker Beach Residents an unincorporated body of persons at the time FS2802 was filed?

¹ Decision on Application to Strike Out Further Submission dated 8 August 2018 at paragraph 6.

- (ii) If the answer to (i) is yes, is the TBRS successor to the Tucker Beach Residents?

Was the Tucker Beach Residents an unincorporated body of persons?

11. The Hearing Panel decision very helpfully set out the law in relation to the definition of “person” in section 2 of the Act, with which I concur.² Under section 2, a person “*includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate*”. It is accepted that in order to be an unincorporated body of persons 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.
12. Whether or not an unincorporated group exists for the purposes of the Act is a question of fact.
13. I am satisfied, based on the affidavits of Mr Hodgson, Mr Farrell, Mr Hutchins, Ms Onions and Ms Rudd in support of the Notice of Objection, together with the oral evidence of Mr Hodgson at the hearing (including the timeline of events of 17 May 2018) that:
 - (i) Mr Hodgson, Mr and Mrs Hutchins, Ms Onions and Ms Rudd formed an unincorporated group (the Tucker beach Residents) on 17 May 2018 for the purposes of filing a submission to the Queenstown Lakes Proposed District Plan in opposition to the submission of the Middleton Family Trust; and
 - (ii) the Tucker Beach Residents group was formed prior to the lodging of the submission (FS2802) at 4:22pm on 17 May 2018; and
 - (iii) the Tucker Beach Residents listed in (i) above, whom opposed or had concerns about the Middleton Family Trust proposal, had a similar or related purpose under the Act and had agreed to move in concert.

² Ibid at paragraph 7.

14. Accordingly, I find that the Tucker Beach Residents group was an unincorporated group for the purposes of the Act at the time FS2802 was filed. I also note that had the affidavit evidence that I had before me been made available to the Chair of the Hearing Panel, it is quite possible that he would have come to a different conclusion on this evidential point.³

Is the Tucker Beach Residents Society Incorporated a successor to the Tucker Beach Residents?

15. Section 2A of the Act provides as follows:

2A 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 unincorporate, the successor shall include a body of persons which is corporate and composed of substantially the same members.

16. The Chair of the Hearing Panel found that there was no evidence before him that the TBRS was a successor to the unincorporated group of Tucker Beach Residents. I note that in reaching this conclusion, the Chair was not supplied with the application to incorporate the TBRS, nor with a list of its members.⁴ The Chair also noted that, in addition, he would have needed to be satisfied that the TBRS was made up of “substantially the same members” as the original unincorporated group.

17. The Certificate of Incorporation of the TBRS dated 11 June 2018, together with the application dated 5 June 2018 was appended Mr Hodgson’s affidavit dated 28th August 2018. I have also been supplied with the Register of Members of the TBRS, which was introduced by way of affidavit evidence by the Secretary of the TBRS, Mr Martin. I note that the membership database for the TBRS is held and maintained by McClean & Co, Chartered Accountants, and accordingly I am satisfied that the Register of Members is a bona fide list of the individuals who have joined the TBRS.

³ Ibid at paragraph 11.

⁴ Ibid at paragraph 13.

18. The Register of Members establishes that all of the original members of the Tucker Beach Residents group (Mr Hodgson, Mr and Mrs Hutchins, Ms Onions and Ms Rudd) are also members of the TBRS. I am therefore satisfied that the TBRS comprises substantially the same members as the Tucker Beach Residents group for the purposes of section 2A of the Act. In reaching this conclusion, I accept Mr Todd's submission, based on the findings in *Friends of Michael Avenue Reserve*, that it does not matter that the members of the TBRS have substantially increased since FS2802 was filed (as has been the case) in order for it to be a valid successor to the original group.⁵

19. In reviewing the documents provided in support of the Objection, I note that the TBRS application was not signed by all of the individuals comprising the original Tucker Beach Residents group, notwithstanding that all of these individuals have joined as members. Mr Hodgson explained the reason for this was that not all of the members of the original group were able to attend the inaugural meeting of the TBRS on 5th June 2018, at which time the application was prepared and executed.⁶ As an application for an incorporated society provides for up to 15 members to register, the application proceeded on the basis of 15 of those physically present at the meeting that evening, although I note that 19 people attended the meeting in total. I am satisfied that nothing turns on the identity of the signatories to the application for incorporation, which was merely a matter of practicality and expediency.

Decision

20. I have concluded that the Objection be upheld and that FS2802 be reinstated on the basis that the additional affidavit evidence before me, supplemented by the oral evidence of Mr Hodgson at the hearing, establishes that:

- At the time Submission 2802 was filed, the Tucker Beach Residents comprised a group of two or more people who had a similar and related purpose who had agreed to move in concert, and accordingly comprised a legal person as defined by the Act; and

⁵ *Friends of Michael Avenue Reserve v Auckland Council* [2015] NZEnvC 100.

⁶ The Minutes of the meeting of 5th June were introduced into evidence at the hearing.

- The TBRS is a valid legal successor to the Tucker Beach Residents, as it is composed of substantially the same members.

21. In considering any appropriate relief to be granted, I have had regard to the Chair of the Hearing Panel's Minute dated 30 July 2018, in which he sets out the reasons for rejecting Mr Healey's evidence in support of FS2802. I am satisfied that the decision for refusing to hear the evidence of Mr Healey was not related to the strike out application, which had not at that time been decided, but for other valid reasons concerning procedural fairness. I also note that Mr Todd did have the opportunity to make submissions to the Hearing Panel in support of FS2802, which outlined the concerns of the TBRS. The Chair noted that those submissions would be "*among the material the hearing panel takes into account when deliberating on the Middleton Family Trust's submission*".⁷
22. Accordingly, although the Objection is upheld, I am satisfied that provided the Hearing Panel continues to take account of Mr Todd's submissions on FS2802 in its deliberations and subsequent decision, any relief should not extend to a reopening of the Stage 2 of the Proposed Plan hearing for the reasons set out in the Chair's Minute dated 30 July 2018. To do so would effectively re-confer a right that was effectively extinguished prior to the striking out decision on the grounds of procedural fairness, and would be inequitable with respect to Council and the other parties. I also note that Mr Todd did not apply for relief in this respect during his submissions at the hearing.
23. However, as FS2802 is a valid submission to the Proposed District Plan, the TBRS's right to appeal any decision of the Hearing Panel is preserved.



Jane Taylor
Commissioner

14 December 2018

⁷ Minute of the Chair of the Hearing Panel dated 30 July 2018 at paragraph 10.