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

MINUTE CONCERNING LEAVE FOR THE MIDDLETON FAMILY TRUST TO MAKE SUBMISSIONS ON AN OBJECTION UNDER SECTION 357 OF THE ACT BY THE TUCKER BEACH RESIDENTS SOCIETY INCORPORATED

- On 12 July 2018 the Middleton Family Trust (Submission 2332) applied to have the submission of the Tucker Beach Residents Society Incorporated ("TBRS Inc.") struck out under Section 41D of the Act on various grounds. Submission 2802 made on behalf of the TBRS Inc. was subsequently struck out by the Chair of the Hearing Panel on 8 August 2018.
- On 29 August 2018 the TBRS Inc. filed a Notice of Objection under Section 357(2) of the Act in relation to the striking out of Submission 2802 to the Proposed District Plan. A hearing was subsequently set down for 9:00am on 26 November 2018.
- 3. On the morning of the Objection hearing (26 November 2018) 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 Inc., Mr Graeme Todd, no later than 7th December 2018. This request was followed up by an email to Council dated 26th November 2018.

- 4. The Hearing was adjourned on 26th November 2018 pending consideration of the Middleton Family Trust request.
- 5. It may be helpful to record that having heard the case for the Objector, TBRS Inc., and also having considered the submissions made on behalf of the Middleton Family Trust to the Chair of the Hearing Panel, I have come to the interim view that the Objection be upheld and that Submission 2802 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 agreed to move in concert, and accordingly comprises a legal person as defined by the Act; and
 - The TBRS Inc. is a valid legal successor to the Tucker Beach Residents, as it is composed of substantially the same members.
- 6. There is no provision in the statutory process for a third party, notwithstanding that the party may have originally applied for the strike out action under Section 41D, to be heard on an objection under Section 357(2). Accordingly, there was no requirement that third parties be notified of the Notice of Objection, or the hearing date and time. Further, Section 358 does not confer appeal rights on third parties, irrespective of whether or not they have participated in the objection process.
- 7. Notwithstanding the strict statutory position in relation to Section 357(2) objections, Section 39 of the Act requires me to establish a process that is appropriate and fair to all of the parties. Accordingly, having considered Ms Macdonald's request, I am prepared to grant leave for the Middleton Family Trust to provide a written response to Mr Todd's submissions, which is to be received no later than **5pm on Friday** 7th **December**. Mr Todd will then have an opportunity to reply by **5pm on Wednesday** 12th **December**.

8. I note that Mr Todd's submissions do not raise any additional matters of law (which are not in dispute); rather, the evidence gaps that were apparent in the Chair of the Hearing Panel's decision have been addressed. Given my interim conclusion in paragraph 5 above, it would be appreciated if Ms Macdonald could advise whether she wishes to proceed with the filing of a response at her earliest convenience, notwithstanding that leave has been granted on the basis set out above.

Jane Taylor

Commissioner

28 November 2018