

BEFORE THE ENVIRONMENT COURT

IN THE MATTER

of the Local Government Act 1974

AND

IN THE MATTER

of referral of objections to the proposed stopping of portions of Higham Road pursuant to section 342 and Schedule 10 of the Act by Auckland Council (formerly Rodney District Council)

**MEMORANDUM OF COUNSEL FOR SOUTH HEAD ACTION GROUP INCORPORATED
AND VARIOUS INDIVIDUAL OBJECTORS**

**BROOKFIELDS
LAWYERS**

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MAY IT PLEASE THE COURT:

Introduction

1. The South Head Action Group Incorporated ("SHAG") objected to the proposed road stopping. In terms of the proceedings before this Court, it is intended that SHAG be an umbrella organisation to advance the concerns of its members and numerous individual objectors. **Attached** and marked "A" is a list of persons that wish to be represented by SHAG. The list also identifies the objection number for those individuals that lodged objections and membership status.
2. The objectors listed will rely on the SHAG objection and the individual objections. A list of issues drawn from the objections is set out below.

Issues

3. The following general issues are raised in the objections:
 - (i) Failure to consult and inadequate consultation;
 - (ii) Preservation of public access and growing demand for access to the coast;
 - (iii) Future use of the paper road;
 - (iv) Denial of use of the paper road;
 - (v) Existing boat ramp, structures and activities;
 - (vi) Tangata whenua and historical matters;
 - (vii) Inconsistency with relevant planning documents;
 - (viii) Decision making process, information relied upon and legal tests applied;
 - (ix) Inferiority of proposed alternative access;
 - (x) Public interest v private interests; and

- (xi) Failure to undertake strategic planning and provide for public access to the coast.

Information required

- 4. It is SHAG's understanding that the only information currently before this Court regarding the Council's decision is that submitted by Simpson Grierson (by letter dated 29 October 2010).
- 5. SHAG considers that all information relied upon by the Council in making its decision should be provided to the objectors and the Court as soon as possible. It seeks that the Court make directions accordingly.
- 6. The information will assist in refining the case to be presented by SHAG. For example, SHAG may call a surveyor if it considers that the survey information relied upon by the Council is flawed. Currently, SHAG is unable to identify what survey information the Council relied upon, despite requests for this information.

Evidence

Expert evidence

- 7. SHAG will call expert recreation planning evidence.
- 8. At this stage, SHAG reserves the right to call expert planning and surveying evidence.
- 9. If the Council intends calling Mark Johannsen (formerly Group Manager: Property Services and the reporting officer in respect of the proposed road stopping) SHAG will not call its own planning expert. If the Council does not intend calling Mr Johannsen, SHAG seeks confirmation that he will be made available to give evidence on behalf of SHAG.
- 10. It is anticipated that the information requested above will include detailed survey data and plans. If that is the case and the information is considered to be accurate, SHAG may not call expert surveying evidence.

11. SHAG may also call Andrew McPhee, a planner who spoke to the Auckland Regional Council's objection at the hearing.

Evidence from local residents

12. SHAG will call evidence from local residents addressing the following matters:

(i) Recreational use including:

- (a) swimming
- (b) horse riding;
- (c) biking;
- (d) walking;
- (e) kayaking;
- (f) fishing; and
- (g) picnicking.

(ii) Tangata whenua / local history;

(iii) A representative of SHAG.

13. SHAG anticipates that evidence will be called from up to seven local residents to cover the above matters.

Total witnesses

14. Overall, SHAG will call up to ten witnesses.

Mediation

15. SHAG does not wish to mediate. SHAG is strongly of the view that the road stopping should not proceed and consideration of the alternative "easement" offered is not therefore warranted. It will not resile from that position and therefore sees little benefit in mediation.

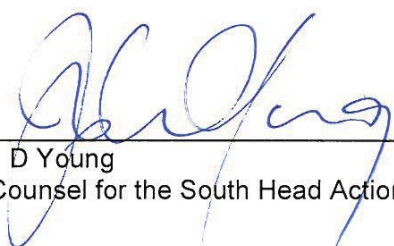
Evidence exchange

16. Provided the information requested above is provided as soon as possible, SHAG considers that a contemporaneous exchange of evidence is desirable.

Hearing time

17. SHAG considers that this matter will need 4 days hearing time. A site visit also be required.

DATED the 29th day of November 2010



J D Young

Counsel for the South Head Action Group Incorporated