

BEFORE THE ENVIRONMENT COURT
HELD AT CHRISTCHURCH

ENV-2010-CHC-262

BETWEEN

O SNEOP

Applicant

AND

CHRISTCHURCH CITY COUNCIL

First Respondent

AND

TREVOR SIDNEY GRAHAM AND
DIANNE BARBARA GRAHAM

Second Respondent

AND

EVAN MITTA RAHURAHU AND
BEVERLEY JOAN RAHURAHU

Third Respondent

[and other Respondents as listed
on the following page]

AFFIDAVIT OF BRADLEY HAIG MCDONALD IN SUPPORT OF SECOND TO
FOURTEENTH RESPONDENTS' NOTICE OF OPPOSITION

Sworn ^{30th} March 2011

WHITE FOX & JONES
Barristers and Solicitors
P O Box 1353
Telephone (03) 353.0650
Facsimile (03) 353.0652
CHRISTCHURCH NZ

Solicitor Acting: T W Evatt

AND ROSEMANRY PURSE AND LORRAINE ABBOT

Fourth Respondent

AND ANN ELIZABETH JAMES

Fifth Respondent

AND RON MOORE AND JOAN MOORE

Sixth Respondent

AND SANDRA MCSHERRY AND ADRIAN ANDERSON AND HELEN TIMMS

Seventh Respondent

AND GREGORY JOHN MCCLURG AND
TREVOR SIDNEY GRAHAM AND
RICHARD ANDREW LOGAN

Eighth Respondent

AND JASON CUMMING MCDONALD

Ninth Respondent

AND TIMOTHY ROBERT COOK AND LYNN COOK

Tenth Respondent

AND DARYL TENNYSON NEATE

Eleventh Respondent

AND MARGARET ANNE THOMAS

Twelfth Respondent

AND KAY CAROLE HUNTER

Thirteenth Respondent

AND GORDON ROSS RICHDALE

Fourteenth Respondent

AND RAYMOND ALEXANDER RANKIN

Fifteenth Respondent

**AFFIDAVIT OF BRADLEY HAIG MCDONALD IN SUPPORT OF SECOND TO
FOURTEENTH RESPONDENTS' NOTICE OF OPPOSITION**

I, **BRADLEY HAIG MCDONALD**, Solicitor, of Christchurch, swear:

- 1 I am the spokesperson for the Second to Fourteenth Respondents, being the owners of Baches Number 28, 30, 32, 33, 47, 48, 49, 51, 52, 55, 56, 57, and 58 (hereafter referred to as the *Baches* and *the Bach Owners*). I am authorised to swear this affidavit on behalf of the Bach Owners.
- 2 This affidavit is sworn in support of the Bach Owners' notice of opposition to the application for enforcement orders.

Background

- 3 I am the brother of Jason McDonald, who is the owner of Bach 51. My grandparents acquired Bach 51 in the 1960's and the bach has been in the family ever since. I use the Bach from time to time. I look after Jason's interest in the Bach 51 so far as on going issues in relation to occupation and the bach's status are concerned.
- 4 I am on the executive of the Taylors Mistake Association and was appointed as the spokesperson for the Bach Owners following Mr Snoep's first application for enforcement orders.
- 5 Through my use of Bach 51 and my involvement with the Association and other Bach Owners generally, I have a good understanding of the issues relevant to this proceeding, including in particular the Bach Owners' belief that the baches were all lawfully established and enjoy existing use rights under the Resource Management Act 1991.
- 6 The purpose of my affidavit is to outline the basis for the Bach Owners' belief.
- 7 The Baches were established between 1890 and 1945. As a result much (if not all) of the evidence in support of existing use rights is historical.
- 8 Although the issue of existing use rights has never been decided, many if of the facts relevant to the existence of existing use rights were traversed by the parties and the Environment Court in Save the Bays (Decision No. C50/2002).

The Land

- 9 There has in the past been some debate as to the status of the land the Baches are on. My understanding is that the Baches are all on unformed legal road. This 'road' is unlikely to ever be formed.
- 10 The land has been in the control of the local authority for circa 100 years. The Council has had responsibility for and control of the land since taking



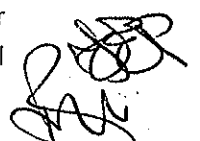
over from the Sumner Borough Council in 1945. The Council owns the land as unformed legal road.

The Baches

- 11 The Baches have all been authorised since circa 1910 in various forms by the local authority, both as licensees, and at one stage as ratepayers.
- 12 I am not aware of the Baches having been significantly altered since their establishment. All the Baches are similar in character, form and use to that which existed immediately following their establishment. Certainly, the character, intensity and scale of the Baches has remained the same (or similar) for at least the last 40 years. No new Baches were built after 1945. The last building permit allowing a renovation to a bach was issued in 1968.
- 13 Since their establishment, the existence of the Baches has remained uncertain, which has no doubt played an important part in maintaining much of the original character of the Baches through to today.
- 14 Permits for the Baches were issued starting from around 1911. Bach owners were required to pay an annual licence fee.
- 15 The public were excluded from Taylors Mistake during WWII (between 1939 and 1945).
- 16 Following the establishment of the Christchurch City Council and amalgamation of the Sumner Borough Council in 1945, the Council continued to issue and renew licenses.
- 17 Baches were listed for rating purposes and rates were paid.
- 18 The Council granted licenses to Bach Owners in 1979, authorising their continued occupation for a period of ten years, expiring on 31 March 1986. The licence fee was \$50 per annum. A condition of the licence was that the Baches would be removed on the expiry of the licence. The licenses were signed under protest by Bach Owners, in particular in response to the requirement to remove baches on the expiry of the licence. Following the expiry of the licenses, the Council resolved to allow the baches to remain pending further consideration.

Planning Provisions

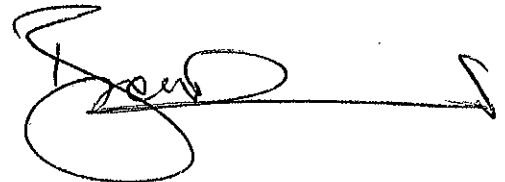
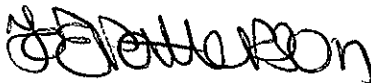
- 19 I am not aware of any district scheme or planning provisions prohibiting or regulating the use of the land the Baches are on or their occupation prior to their establishment.
- 20 In 1931, the Council (then the Sumner Borough Council) introduced controls in relation to the occupation of the Baches, including the need for a building permit, testimonials confirming the occupant's good character and payment of an annual licence fee. I'm not sure whether the Council



was acting in its capacity as the landowner or planning authority in respect of the issue of permits.

- 21 Either way, on the basis that permits and later licences were issued and re-issued I assume the necessary building permits were obtained, the owners were deemed to be of good character and fees were paid.
- 22 My belief is that all the Baches were established without first having to obtain the approval of the Council to a planning application.
- 23 If the Baches were established without the Council's approval (whether as the landowner or planning authority), then the establishment and occupation of the Baches was regularised through the subsequent issue of permits and licences.
- 24 Despite numerous (almost constant) reviews and plan changes, Council Hearings, Commissioners decisions, Planning Tribunal and Environment Court hearings and decisions, mediations and the corresponding body of evidence, I am not aware of there being any planning provisions regulating the use of the land and occupation of the baches prior to 1968 (when the Council undertook the first review of its then District Scheme) and certainly prior to their establishment.
- 25 My belief is that the Baches were established well before any requirement for planning permission, have remained more or less the same in character, scale and intensity since their establishment and consequently enjoy existing use rights.

SWORN by BRADLEY HAIG)
 MCDONALD this 30th day of March)
 2011 before me:)

A Solicitor of the High Court of New Zealand

Katherine Elizabeth Patterson
 Solicitor
 Christchurch