

5 May 2011

Taylors Mistake Association and Bach Owners
c/- Brad McDonald and Jim Turpin

By email

Dear Jim and Brad

ENFORCEMENT ORDERS

Today's prehearing conference went well.

The Judge was initially very negative towards our proposal to apply for a certificate of existing use rights and relinquish this responsibility to the Council, however came around to our proposal which I think is a fantastic outcome for the bach owners.

The process involves applying to the Council for a certificate of existing use rights. We will need to produce sufficient evidence with that application to satisfy the Council that the baches were lawfully established. The application will likely be heard by a Commissioner (given the Council's conflict as the landowner and a party to the proceedings). Importantly Otto will **not** be involved in this process – his only real remedy being a High Court review of the Council's process if it issues a certificate. I will liaise with the Council to better understand their requirements in respect of the information required – there is very little law on the issue of certificates of existing use rights and procedural requirements.

Whether the issue of existing use rights is ultimately determined by the Court or the Council detailed information evidencing existing use rights will be required so better in my view to do it well once.

The Court is reluctant to simply leave matters with the Council and has adjourned the proceedings to a prehearing conference in October with the parties to file a joint memorandum as to progress or a decision on an application for existing use rights.

If the decision by the Council is favourable this will provide the Council with a platform for reconsidering its position in the respect of the unscheduled baches (and baches generally) and may result in Otto abandoning his application or the Court simply refusing to grant the orders sought.

The Association needs to consider whether it wishes to be heard on the application – if this is the case it will need to make an application. Jim, please confirm your earlier decision that you would apply to be an interested party (or advise otherwise).

In the meantime, you might like to ask the bach owners for any information or records they have in respect of their individual baches. It is essential that they each make available whatever information they have as soon as possible. It will be very difficult to satisfy the Council in the absence of sufficient information so would encourage each of the bach owners to make this a priority. It is conceivable that the Council might issue individual certificates in respect of some baches and not others if they are not satisfied in respect of each bach.

Perhaps someone should talk to Ray Rankin and ask whether or not he wishes to be part of the application to the Council (and as an aside whether or not he has received documents from Otto).

I suggest we meet on Monday to discuss matters. Importantly I should delegate some tasks to ensure that this matter is progressed efficiently – it will be costly enough without me having to do work that can be completed by others.

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Jim, I suggest we meet at our office at **2pm on Monday 9 May** – Brad is available.

Perhaps have a think about instructing a historian/librarian to collate all the material and provide a short history of the baches. I know that an incredible amount of work has already been done in this respect which will no doubt make the job that much easier. A complete and tidy history might have some value for individual bach owners beyond the proceedings. We can discuss this on Monday however should make some decisions given the relatively short timeframes.

If any of the bach owners have any questions I would encourage them to put these to you over the weekend with a view to discussing them on Monday.

Kind Regards.

Yours faithfully
WHITE FOX & JONES



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