

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**Decision No. [2018] NZEnvC 69**

|               |  |
|---------------|--|
| IN THE MATTER | of the Resource Management Act 1991  |
| AND           | of an appeal pursuant to s 120 of the Act  |
| BETWEEN       | SAVE THE OTAGO PENINSULA<br>INCORPORATED SOCIETY<br><br>(ENV-2017-CHC-38)<br><br>Appellant                                       |
| AND           | DUNEDIN CITY COUNCIL<br><br>Respondent<br><br>PENINSULA HOLDINGS TRUST<br><br>Applicant  |
| AND           | GRAEME GRANGER, CRAIG WERNER,<br>HAMISH FORRESTER, KATRIN<br>BERKENBUSCH, MEGAN BARDELL, TOM<br>MYERS<br><br>Section 274 parties |

Court: Environment Judge J R Jackson

Hearing: In Chambers at Christchurch

Date of Decision: 11 May 2018

Date of Issue: 11 May 2018

---

**PROCEDURAL DECISION**

---

A: Under section 279(1) of the Resource Management Act 1991 the Environment Court confirms that the following section 274 parties: Graeme Granger, Craig Werner, Hamish Forrester, Katrin Berkenbusch, Megan Bardell and Tom Myers — are substituted for the appellant Save the Otago Peninsula Incorporated.

Save the Otago Peninsula Incorporated Society v Dunedin City Council



- B. Under section 281 of the Act the time for the (new) appellants to lodge all their evidence (in writing) is extended to 25 May 2018, and the time for the appellant to respond to 8 June 2018.
- C. Costs are reserved.

## REASONS

### Introduction

[1] Some section 274 parties in this proceeding – Graeme Granger, Craig Werner, Hamish Forrester, Katrin Berkenbusch, Megan Bardell and Tom Myers – have applied to be substituted as appellants in the place of some of the Otago Peninsula Incorporated (“STOP”). They have also applied to amend the timetable for the lodgement and service of their evidence.

[2] The applications are opposed by Peninsula Holdings Trust the applicant for the resource consents which are the subject of the appeal.

### Background

[3] By application dated “June 2016” and subsequently amended in “October 2016” the trustees of the Peninsula Holdings Trust (“PHT”) applied to the Dunedin District Court subdivision and land use consents in respect of the land at 78 Cape Saunders Road, Portobello on the ocean side of the Otago Peninsula.

[4] The land contains 260 hectares held in nine titles.

[5] The proposal was to create originally 12 (later 11) allotments together with “landscape building platforms” to allow rural living on the new allotments. There were submissions on the proposal.

[6] On 22 March 2017 a Hearing Commissioner for the Council granted subdivision consent for approximately five (5) rural living allotments (Lot 1, 2, 3, 4, and 7) and a large consolidated balance lot.



[7] On 2 May 2017 STOP appealed. Mr Granger and others subsequently joined as section 274 parties.

[8] Mediation took place on 30 August 2017.

[9] By memorandum dated 27 October 2017 the parties reported that agreement had not been reached and sought timetabling directions which were given in due course.

[10] Later, as Mr Page explains it:

... because much the same parties were involved in enforcement proceedings in relation to the same site, the applicant sought further time for its evidence in chief by way of counsel's memorandum of 1 November 2017. The timetable proposed was not opposed by the 274 parties and the court amended its directions. The section 274 parties' evidence was then due 4 May 2018.:

[11] The applicant served its evidence in accordance with the court's direction on 29 March. At that time the 274 parties would have known that the case would proceed.

[12] Further discussion then took place between the applicant and STOP (the appellant). A settlement proposal was put to the applicant by STOP on 10 April 2017, the 274 parties having been consulted.

[13] On 30 April 2018 STOP advised the Registrar and the parties it was withdrawing its appeal. Some of the section 274 parties have withdrawn also.

[14] On 1 May 2018 the section 274 parties applied to be substituted as appellants. They also applied to extend the timetable for lodging evidence by an unspecified period.

[15] For PHT Mr Page submits that the applicant would be disadvantaged because granting the section 274 parties' application would inevitably cause unreasonable delay. He submits that the delay would be unreasonable because:

- (a) The section 274 parties had their own rights of appeal from the Council's decision, chose not to exercise them, and have simply ridden on the coat tails of STOP ever since. Had those submitter parties invested in their own appeal then this application (and the resulting delay) would not be necessary.
- (b) STOP has had the benefit of experienced counsel and have also had the benefit of expert advice from Boffa Miskell (see the notice of withdrawal of appeal dated 30 April 2018 paragraph 3 to 6). By contrast the section 274 parties do not appear to have



taken advice nor do they explain the evidence they propose to adduce that could not reasonably have been finished by 4 May in accordance with the court's direction.

- (c) It seems inevitable to the applicant that it will face further cost and delays because to date the section 274 parties have not invested in their case in a responsible fashion.

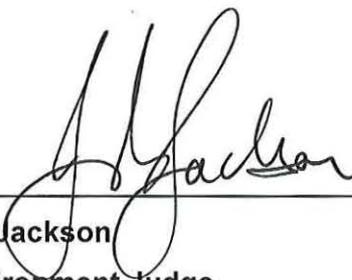
[16] While Mr Granger and his co-appellants could have acted more expeditiously, I can understand that they might have been disconcerted by the STOP withdrawal especially in this rather complicated situation where there are separate enforcement proceedings<sup>1</sup> in respect of the same resources before the court.

[17] Further, the basic premise of PHT's opposition is that there will be further delays as a result of the late lodging of evidence. I do not accept that. No hearing date has been allocated yet and a three week extension will not affect any date that is given.

[18] Accordingly these applications by Mr Granger and others will be allowed.

[19] As some consolation for the PHT the court will endeavour to set this matter down for hearing as soon as possible – possibly early July 2018 but more likely late July or early August 2018. Mr Granger and his co-appellants should ensure that their witnesses are available in that period (Thursday 17 July to Friday 10 August).

For the court:

  
\_\_\_\_\_  
J R Jackson  
Environment Judge



<sup>1</sup> *Caradoc-Davies v Clearwater* [ENV-2017-CHC-32, 33 and 34].