

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

Decision No. [2019] NZEnvC 18

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to clause 14(1) of the
First Schedule of the Act
BETWEEN CAREYS BAY ASSOCIATION
INCORPORATED
(ENV-2018-CHC-223)
Appellant
AND DUNEDIN CITY COUNCIL
Respondent

Court: Environment Judge J R Jackson

Hearing: In Chambers at Christchurch

Date of Decision: 12 February 2019

Date of Issue: 12 February 2019

REVIEW OF REGISTRAR'S DECISION

A: Under section 281B(3) of the Resource Management Act 1991 the decision of the Deputy Registrar of the Environment Court declining to waive the filing fee is confirmed.

REASONS

Introduction

[1] On 17 December 2018, the Careys Bay Association Incorporated (“the Association”) appealed part of a decision of the Dunedin City Council (“the Council”) on the Second Generation Plan for Dunedin (“the 2GP”). The Association considers not enough protection has been provided to Careys Bay in the 2GP.

[2] The Association paid the requisite filing fee when it lodged its appeal but subsequently applied¹ to have the fee refunded on grounds that the proceeding concerns a matter of genuine public interest.

[3] The Registrar's decision dated 19 December 2018 refused the application for refund stating that she was not satisfied the proceedings were a matter of public interest, noting that matters of public interest must involve more than just matters which may be of interest to some members of the public². Further, there was no indication the proceedings would not continue if the powers to waive the fee were not exercised.

[4] The Association has now sought a review of the Registrar's decision³.

The Law

[5] Under section 281A RMA the Registrar may waive, reduce or postpone the payment of a (filing) fee:

281A Registrar may waive, reduce, or postpone payment of fee

- (1) The Registrar may waive, reduce, or postpone the payment to the Court of any fee prescribed by regulations made under this Act.
- (2) The powers in subsection (1) may be exercised only if –
 - (a) the person responsible for paying the fee is unable to pay the fee in whole or in part; or
 - (b) in the case of proceedings concerning a matter of public interest, the proceedings are unlikely to be commenced or continued if the powers are not exercised.

In its application the Association relies on section 281(2)(b).

[6] The Association has applied, under section 281B RMA to apply to an Environment Judge to reconsider the matter. Section 281B(3) states that an Environment Judge may confirm, modify or reverse the decision of the Registrar. A Judge can only waive the payment of the fee if one or other of the grounds in section 281A(2)(a) or (b) are made out. When reviewing a decision, a Judge "should reconsider the merits afresh, and without any assumption about the correctness or otherwise of the original decision"⁴.

¹ Application to refund of Environment Court fees dated 18 December 2018.

² *Reid v Taraura District Council* [2010] NZEnvC 21.

³ Email to the Registry from Mr Cecchi (Chairman of the Association) dated 26 December 2018.

⁴ *Flavell v North Shore City Council*, A038/2008.

Consideration

[7] In support of the its initial application the Association submitted that⁵:

We are appealing the DCC changing the status of Careys Bay Special Character of Careys Bay. We feel this is an issue that effects the entire New Zealand Community. Careys Bay is a[n] asset to all of New Zealand. The Careys Bay Hotel is listed as one of Dunedin's top 10 must see attractions. We feel that Special Character designation is protection of Careys Bay and was granted by the Environment Court and should not be removed by the DCC in its 2GP changes and is in the public interest of all New Zealanders who come to Careys Bay for its natural beauty and the Special Character designation protects Careys Bay from irreversible damage to the Bay or its environment.

We are also looking to tighten up on the Noise Control on the Port Otago container terminal in Careys Bay. This is for the benefit of all the residents in Careys Bay. We are asking for the peace and quiet and enjoyment of our homes.

[8] In applying for a review of the Registrar's decision the Association added that:

Careys Bay is a national asset, advertised by the Cruise Ship and tourist companies as a site to visit and they contribute[s] millions of dollars to the Dunedin economy. It is also a place where people visit for peace and tranquility and we feel that our special character keep and preserve these reasons for people want [sic] to come to Careys Bay.

If we can impose proper noise controls on Port Otago for night time enjoyment for residents[,] [t]his would be precedent setting and could be used in all port [sic] in New Zealand to set noise limits which affect the surrounding areas.

[9] I accept that Careys Bay is an important and special place to those who reside there. However, the fact that Careys Bay may be a tourist attraction and visited by the wider public generally which may be effected by the 2GP does not make it "a matter of public interest" under the Act.

[10] I have read the original submission by the Association and its notice of appeal to see whether any matters of national importance are directly raised. They are not. Clearly Careys Bay is in the coastal environment, but the issue of inappropriate development on the national values of that environment has only been raised peripherally.

⁵ Application to refund of Environment Court fees dated 18 December 2018.

[11] Accordingly, I agree with the Registrar that these proceedings are not of interest to the wider public beyond the immediate parties to the proceeding.

[12] Finally (and importantly) the Association has still not indicated whether it would continue with the proceeding if the refund were to be refused which is required under the Act⁶ when making a decision of this nature. Given this I cannot be satisfied that the proceedings are unlikely to be continued if the refund is not granted.

[13] Under s 281B(3) RMA I will confirm the Registrar's decision and decline to grant the refund.

For the court:

J R Jackson
Environment Judge

⁶ Section 281A(2)(b).