

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

TE KOTI MATUA O TAMAKI MAKARAU

CIV-2018-404-_____

IN THE MATTER the Local Government (Auckland Transitional Provisions) Act 2010 and the Resource Management Act 1991

BETWEEN **JOHN SELF, ADRIANA SELF and ROGER CLARK as Trustees of SELF FAMILY TRUST**, owner of land at Crater Hill, Auckland

Appellants

AND **AUCKLAND COUNCIL** a local authority constituted pursuant to the provisions of the Local Government (Auckland Council) Act 2009 having its principal office at Auckland

Respondent

**NOTICE OF APPEAL AGAINST A DECISION OF THE ENVIRONMENT COURT
DATED THIS 10th DAY OF MAY 2018**

Next Event Date:

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TO: The Registrar of the High Court at Auckland
AND TO: The Respondent
AND TO: Joe & Fay Gock
AND TO: Mr T Edwards
AND TO: Auckland international Airport Limited
AND TO: Volcanic Cones Society Incorporated
AND TO: Boards of Airlines Association New Zealand incorporated

THIS DOCUMENT NOTIFIES YOU THAT the appellants **JOHN SELF, ADRIANA SELF and ROGER CLARK as Trustees of SELF FAMILY TRUST**, will move the High Court at Auckland by way of appeal against the decision by the Environment Court at Auckland [ENV-2018] NZEnvC 49 rejecting an appeal by the Self Family Trust on the new Auckland Unitary Plan (**Plan**) for the reasons set out below and on other grounds to be referred to in written submissions which will be filed and served in advance of the hearing of this appeal.

The Decision Appealed Against

1. The decision of the Environment Court dated 18 April 2018 confirming the decision of the Auckland Council (**Council**) dated 22 July 2016 as to the location of the Rural Urban Boundary (**RUB**) in the vicinity of the Pukaki Peninsula and Crater Hill (Nga Kapua Kohuora) as shown on map "C" annexed to the Court's decision.
2. The appellants were appellants in the Environment Court proceedings.

The Errors of Law

First Error

3. The Court applied a wrong legal test in its interpretation of and approach to s148 of the (Local Government Auckland Transitional Provisions) Act 2010 (**LGAPTA**), in particular:

- (a) The Court erroneously held that the word “but” as used between s148(1)(b)(i) and (ii) meant “and”;
- (b) The Court erroneously held that the words “within the scope of submissions” as used in s148(1)(b)(ii) meant “requested by submissions”.

Second Error

4. The Court failed to take account of relevant matters when it addressed its obligations under the Resource Management Act 1991 (**RMA**) and the relevant planning documents, including:

- (a) In determining how to discharge its obligations under the RMA to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga as a matter of national importance under s6(e) of the RMA and its obligations under ss7 and 8 of the RMA and Chapter B6 of the Plan, in the context of setting the location of the RUB, the Court failed to consider how the proposal to include the land within the RUB would better recognise and provide for the matters in s6(e) of the RMA as a matter of national importance, or to have particular regard to the matters in ss7 and take into account the Treaty of Waitangi under s8 of the RMA.
- (b) In determining the location of the RUB under Chapter G1 of the Plan the Court:
 - (i) Failed to properly apply the Objectives in Chapter B2.2.1 and Policies in Chapter B2.2.2 of the Plan;
 - (ii) Failed to properly apply the overarching purpose of the regional policy statement as to the location of the RUB within the hierarchy of regional and district level provisions within the Plan:

- (iii) Did not consider or correctly apply the regional plan provisions in Chapters A and B1 of the Plan;
 - (iv) Failed to recognise that transport management in Auckland is largely under the control of the Regional Land Transport Plan prepared under the Land Transport Management Act.2003, which is independent of the Plan, but related through the regional policy statement; and
- (c) Erroneously refused to give any weight to the decision of the Environment Court in *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120, and erroneously determined that the decision was of little relevance.

Third Error

5. The Court took account of irrelevant matters when it discharged its obligations under the RMA and the relevant planning documents including:
- (a) In determining how Policy B2.2.2(f) of the Plan should be applied:
 - (i) The Court erroneously held that the “structure plan process” needed to be followed whenever the location or movement of the RUB is being considered, however, structure plans are a method to establish the pattern of land use and the transport and network services within a defined area as an appropriate foundation required for the district plan change process to rezone land.
 - (ii) The Court erroneously considered that only structure plans required consideration of all Mana Whenua and coastal environment matters (as opposed to only scheduled matters) in setting the location of the RUB.

- (b) In determining how Policy B2.2.2(2)(j) of the Plan should be applied the Court erroneously held that in locating the RUB, elite soils must be avoided, and the Court failed to recognise that the requirement to avoid elite soils was not absolute but should be considered in the overall context of the soil's significance to sustain food production across the values for which elite soils are protected.
- (c) In determining how the New Zealand Coastal Policy Statement should be applied, the Court erroneously determined that the entire Pukaki Peninsula was within the coastal environment.

Fourth Error

- 6. The Court failed to apply *Man O'War Station v Auckland Council* [2017] NZCA 24. In particular, the Court failed to identify and evaluate the effects of the proposed new land uses on the features or qualities for which Crater Hill had been classified as an Outstanding Natural Feature.

Fifth Error

- 7. The Court failed to evaluate the beneficial effects of the proposed new land uses enabled by relocating the Rural Urban Boundary including preservation and rehabilitation of the coastal edge, protection of known archaeological sites around the coastal edge, provision of public access via a new esplanade reserve network, provision of public access to Crater Hill through the vesting of 62% of the land for public use.

Sixth Error

- 8. The Court erred in determining that restricting land use to horticulture and agriculture better fulfilled the RMA objective of recognising and providing for tangata whenua interests.

Seventh Error

9. As a consequence of the above, the Court erroneously determined that the most appropriate, efficient and effective way of achieving the purpose of the RMA pursuant to s32 of the RMA, was to keep Pukaki Peninsula and Crater Hill outside the RUB and such decision was so unreasonable that no reasonable Court could have made that decision.

Questions of Law

10. Did the Court err in law in any of the respects noted above and in particular:
 - (a) Did the Court err in law by applying a wrong legal test to s146 LGATPA?
 - (b) Did the court err in law by failing to take into account relevant considerations?
 - (c) Did the Court err in law by taking into account irrelevant considerations?
 - (d) Did the Court err in law by reaching conclusions that no reasonable Court could have reached?
 - (e) As a result of the foregoing was there a breach of natural justice?

Grounds of Appeal

11. The grounds of appeal are set out in paragraphs 3 – 9 of this notice of appeal.

WHEREFORE THE APPELLANT SEEKS:

1. That this appeal be allowed.
2. An order that the Court's decision be set aside.
3. Such other relief the Court sees fit.

4. That the respondent pay the costs of and incidental to this appeal to the appellants.

This application is made in reliance upon and s299 of the RMA and in reliance on Rule 20 of the High Court Rules and relevant case law.

DATED 10 May 2018



R E Bartlett QC
Counsel for the Appellant

This **NOTICE OF APPEAL** is filed by **David Clark**, of the firm Wilson McKay, solicitors for the appellant.

The address for service of the appellant is at the offices of Counsel, **Russell Bartlett QC**, Level 13, 70 Shortland Street, Auckland.

Documents for service on the Appellant may be left at the address for service or may be posted to PO Box 4338, Auckland 1140 or emailed to Counsel bartlett@shortlandchambers.co.nz