

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2016-AKL-_____

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

AND

IN THE MATTER of an appeal under section 156 of the LGATPA 2010 against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

AND

IN THE MATTER of Proposed Plan Hearing Topic 017 RUB South (Submission No. 3866) and Topics 080 and 081 Rezoning and Precincts (Further Submission No. 496)

BETWEEN **JOHN SELF, ADRIANA SELF and ROGER CLARK**
as Trustees of **SELF FAMILY TRUST**

Appellant

AND

AUCKLAND COUNCIL

Respondent

NOTICE OF APPEAL
Dated **15** September 2016

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To: The Registrar
Environment Court
Auckland

1. **SELF FAMILY TRUST (the Trust)** appeals against a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. It has the right to appeal the Council's decision under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to matters addressed in the Trust's submission (3866) on the proposed plan and its further submission (496).
3. Submission 3866 concerned all land at Puhinui Peninsula and requested that:
 - The proposed location of the Rural Urban Boundary at Puhinui Peninsula to generally follow the old MUL and the retention of Rural zonings as shown on Maps 48 and 55.
 - The references in the corresponding Historic Heritage maps to sites and places of value and sites and places of significance to Mana Whenua.
4. Submission 3866 sought that:
 - The Proposed Plan including the text and maps be amended to provide for the extension of the Rural Urban Boundary at Puhinui to follow the coastline. All land in the area should be brought within the Rural Urban Boundary and as a consequence be rezoned for a range of urban purposes including but not limited to General Business, Mixed Use and Residential. In the case of the Self land as identified in Council's structure planning process the predominant zoning should be Mixed Housing Suburban.
 - All references to sites and places of value and significance be removed from the maps and that the corresponding plan rules be removed.

5. Further Submission 496 related to the same subject matter as Submission 3866 and:
 - Supported Submission 3370 – NZ Archaeological Association;
 - Opposed Submission 4485.20 – Auckland Volcanic Cones Society Incorporated;
 - Opposed Submission 6386 – Te Akitai Waiohua Waka Taua Trust.
6. The Trust is not a trade competitor for the purposes of section 308D of the RMA.
7. The Trust received notice of the decision on 19 August 2016.
8. The Trust is appealing Council’s rejection of the Independent Hearing Panel’s recommendations in report 432 concerning 3.3 (Crater Hill) and 3.4 (Puhinui Peninsula) which proposed that:

“4. Panel recommendations and reasons

In summary:

- i. the Panel recommends removal of the Rural Urban Boundary from the precinct, including from the Pukaki peninsula and around Pukaki Crater and Crater Hill;*
- ii. the Panel supports the precinct and agrees in part with the changes generally proposed by Council and in response to the submitters. The Panel recommends these changes in addition to:*
 - a. the rezoning of Sub-precincts C and H (Pukaki Peninsula) to Future Urban Zone (and the deletion of those as sub-precincts); and*
 - b. the rezoning of new Sub-precinct I around Crater Hill to Residential – Single House Zone, Residential – Mixed Housing Suburban Zone, Coastal – Coastal Transition Zone and Open Space – Conservation Zone;*

for the reasons set out in section 1.4 above.”

9. The reasons for the appeal are as follows:

General

- (1) The Council decision fails to give effect to the principle of sustainable management of resources.
- (2) The decision fails to take account of relevant case law, in particular *Central Earthmovers Ltd, Gock, Self Trust and Tam v Manukau City Council* A91/2002 and *Gavin H Wallace Ltd and Others v Auckland Council* [2012] NZEnvC 120, both of which were known to staff (but both of which had been decided against Council).
- (3) The decision was based on incomplete and inaccurate information and reached through a flawed process which constituted a denial of natural justice.

In particular, and without derogating from the generality of the above:

Process Issues – Section 290A RMA

- (4) The submitter was given no right of audience before the decision-makers who considered only a paper summarising the predetermined position of Council staff whose evidence and opinions had been rejected by the Independent Hearings Panel.
- (5) Decision-makers did not consider or have access to:
 - Council's own structure planning proposals for the subject land.
 - The appellant's submission on the Unitary Plan.
 - The appellant's further submission.
 - The evidence produced to the Independent Hearings Panel.
 - Legal submissions presented to the Independent Hearings Panel.
 - The IHP report on submissions.

- (6) The Mayor, Mr L W Brown, is recorded as saying at the meeting:

*“... the advice of our experts including Stephen Brown who is our landscape expert is that providing for residential on the flanks of Crater Hill will **compromise the values that that outstanding natural feature has** and so that is why staff are recommending against that.”*

- (7) The Mayor who has followed the Crater Hill litigation, chose not to mention to Councillors’ previous statements made on oath by Stephen Brown in the *Central Earthmovers* case and referred to in the Court Judgment as follows:

“[219] In Mr Brown’s opinion, many of the contradictions applying to Pukaki Lagoon also apply to Crater Hill. Flanked by housing across Tidal and Portage Roads, with market gardens along its northern and western flanks, a quarry excavating its southern inner wall, and the South-western Motorway cutting through the eastern side of the hill, it too is very considerably modified and compromised.

*[220] Mr Brown’s evidence was that the combination of housing, motorway, industry near Tidal Road and the quarrying operations mean that **the natural landscape values of Crater Hill are appreciably diluted.***

*[221] He deposed that, as a whole, **Crater Hill has modest aesthetic appeal.** It retains a relatively **low physical profile**, merges almost seamlessly into the wider landscape and is **quite difficult to differentiate from its wider setting** when viewed from any distance.*

*[222] In his view, although less distinctive in its overall scale than Pukaki Crater, it is still discernible as a volcanic feature and is one of few such remaining natural features in this part of Auckland. While its landscape values and character are **scarcely of note at the regional level**, it remains a feature of note at the sub-regional level*

and is a subtle component of the coastal environment, albeit somewhat divorced from the harbour proper.”

- (8) The Mayor’s omission to fully quote Stephen Brown had the potential to mislead members of the Governing Body of Council who may not have understood the reasons for Stephen Brown’s evidence lacking credibility and not being acted on by the IHP.
- (9) The Governing Body was not referred by staff to the further passages in the decision of the Environment Court in *Central Earthmovers Ltd*, in particular the following:

“[232] It is important to recall that, even for outstanding natural landscapes and also for the preservation of the natural character of the coastal environment, section 6(a) and (b) provide for protection from inappropriate subdivision, use and development, not absolute protection.”

- (10) The reference in the staff report to “prime soils” was unsupported by any direct evidence. The evidence produced to the Independent Hearings Panel on this matter was:

“The soils are too poor for market gardening, as outlined in Annexures to Brian Putt evidence.”

Jonathan Maplesden – 15 February 2016

“The Self family know from personal experience that the land is uneconomic for either rural or horticultural use. They are not aware of any soil testing or report that concludes that their land is of the standard of a prime soil.”

Will say statement by Jonathan Maplesden on behalf of Self Trust – 11 April 2016

- (11) The staff report was capable of giving a misleading impression as to the viability of the land for agricultural purposes. Further, the staff report did

not refer to the Best Practice Approaches for Changes to the Rural Urban Boundary which provided that any change should avoid “elite soils”.

- (12) Accordingly, given the denial of natural justice in respect of the process and the biased report presented by Council officers to the Governing Body, and the incomplete information provided by the Mayor, the Governing Body’s decision should be given no weight at all in terms of s290A RMA.

Findings ignored by Governing Body

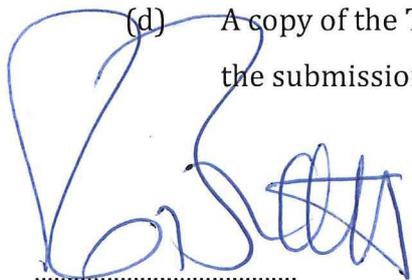
- (13) The Governing Body failed to address the following findings of the IHP:

- **The cultural and traffic effects could be managed through suitable provisions.**
- **The edge of the Coastal Management Area is a logical boundary and including the two Outstanding Natural Features of Pukaki Crater and Crater Hill.**
- **The multiplicity of overlays and relevant provisions would be sufficient for the protection and management of Pukaki Crater and Crater Hill.**
- **The Panel’s proposal was no different from many other volcanic features which exist within the Rural Urban Boundary across the region.**
- **Arguably better protection was afforded within the Urban Zone because of the more prescriptive land use and development controls.**
- **Leaving a relatively small pocket of land outside the Rural Urban Boundary, but surrounded by land inside the Rural Urban Boundary had little planning merits (notwithstanding the 27 hectares of elite soil on the Pukaki land).**

- **The residential zonings for the Self land coupled with the additional provisions recommended were appropriate and would ensure that the feature was protected.**
 - **As to the Pukaki Peninsula land a Future Urban Zone would provide the opportunity for a careful consideration of the appropriate land use, taking into consideration the existence of the Special Purpose – Maori Purpose Zone around Pukaki Marae, the sensitivity of the coastline and adjoining waterway, and the soils.**
10. The Court is respectfully requested to give significant weight to the recommendation of the Independent Hearings Panel which reviewed reports, heard evidence at first hand, questioned the evidence, heard cross-examination, and heard legal submissions before making its recommendation to the Governing Body.
- 11. The Trust seeks the following relief:**
- (1) That Auckland Council's decision be set aside.
 - (2) That the Independent Hearings Panel recommendation to Auckland Council concerning location of the Rural Urban Boundary at Puhinui and consequential zonings, including but not limited to the Self land, be accepted and adopted, subject to any modifications considered by the Court to be necessary and appropriate.
 - (3) Costs.
12. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

13. The Trust **attaches** the following documents to this notice:

- (a) A copy of the Independent Hearings Panel recommendation.
- (b) A copy of the relevant decision.
- (c) A list of names and addresses of persons to be served with a copy of this notice.
- (d) A copy of the Trust's submission and further submission (with a copy of the submission opposed or supported by its further submission).



R E Bartlett QC
Counsel for the appellant

15 SEPTEMBER 2016

Date

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.