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	**Mr JOE GOCK and Mrs FAY GOCK** owners of land at 93 Pukaki Road, Puhinui, 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 8TH DAY OF MAY 2018

Next Event Date:

Case Manager:

Solicitor for Applicant:
Peter Kemps
Kemps Weir
PO Box 62 566
AUCKLAND1546
Ph: (09) 525 7711
Email: peter@kempsweir.co.nz

Counsel Acting:
Mr Alan Webb
Quay Chambers
P O Box 106215
AUCKLAND 1143
Ph: (09) 374 1653
Email: webb@quaychambers.co.nz

TO:	The Registrar of the High Court at Auckland
AND TO:	The Respondent
AND TO:	Self Family Trust
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 **JOE AND FAY GOCK** 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**) **UPON THE GROUNDS** that the decision was erroneous at law, 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.

Right of Appeal

1. The decision of the Environment Court confirming the decision of the Auckland Council (**Council**) dated 18 April 2018 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 Environment Court's decision.

2. The appellants were parties to the Environment Court proceedings under s274 of the Resource Management Act 1991.

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:

3.1.1. The Court erroneously held that the word "but" as used between s148(1)(b)(i) and (ii) meant "and";

3.1.2. The Court erroneously held that the words "within the scope of submissions" as used in s148(1)(b)(ii) meant "requested by submissions"; and

3.1.3. In the alternative the Court erroneously identified that submissions "effectively seek" the *alternative solution* decided by the Council when it rejected the IHP provisions, were sufficient to satisfy the requirements of s148 LGAPTA.

Second Error

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

4.1.1. 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 ignored critical evidence about:

4.1.1.1. The progressive sale of land on the Pukaki Peninsula out of Maori ownership and into the current landholdings;

4.1.1.2. How the mauri of Pukaki Peninsula was being severely adversely affected by current farming practices on Pukaki Peninsula;

4.1.1.3. How the waterways would continue to be subject to further serious adverse effects from run-off and nitrogen loading from continued farming practices; and

4.1.1.4. How the proposal to include the land within the RUB would provide a pathway through structure planning in consultation with Tangata Whenua for Tangata Whenua themselves to 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, and Chapter B6 of the Plan as part of establishing new land uses within Pukaki Peninsula, and not be stuck with the status quo

4.1.2. In determining the location of the RUB under Chapter G1 of the Plan the Court:

4.1.2.1. Failed to properly consider or misunderstood the Objectives in Chapter B2.2.1 and Policies in Chapter B2.2.2 of the Plan;

4.1.2.2. 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:

4.1.2.3. Did not consider the regional plan provisions in Chapters A and B1 of the Plan;

4.1.2.4. The setting of the location of the RUB is a regional level macro planning issue, but the Court erroneously treated the location of the RUB as a spatial land use decision which is a district level planning issue to be finally resolved through structure planning;

4.1.2.5. 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

4.1.2.6. Failed to recognise the restrictions on land use within Pukaki Peninsula (for Tangata Whenua, and in respect of economic farming practices) arsing because different parts of Pukaki Peninsula is owned by different landowners

4.1.3. The Court refused to give any weight to the decision of the Environment Court in *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120, and consequently, 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:

5.1.1. In determining how Policy B2.2.2(f) of the Plan should be applied:

5.1.1.1. 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. That is a completely different process to setting the location of the RUB as part of the regional policy process; and

5.1.1.2. The Court also 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. However, that is not what the structure plan guidelines in the Plan say.

5.1.2. 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.

5.1.3. 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.

5.1.4. In discharging its obligations under the RMA and Chapters B3, B4, B5, B6, B7, B9 and D10 of the Plan the Court relied on a specific development outcome on Pukaki Peninsula to the exclusion of all other development outcomes, and then:

5.1.4.1. Erroneously based its conclusions about the potential adverse effects and suitability of including Pukaki Peninsula within the RUB based on that outcome; and

5.1.4.2. Even if the Court was required to undertake an assessment of the potential development/land use outcomes for the Pukaki Peninsula if it was included in the RUB, the Court had insufficient information to determine conclusively what development would in fact occur, and what potential adverse effects would arise.

Fourth Error

6. 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 outside the RUB and such decision was so unreasonable that no reasonable Court could have made that decision.

Sixth Error

7. There was a breach of natural justice arising from the foregoing errors of law.

Questions of Law

8. Did the Court err in law in any of the respects noted above and in particular:

   8.1.1. Did the Court err in law by applying a wrong legal test to s146 LGATPA?

   Answer: Yes

   8.1.2. Did the court err in law by failing to take into account relevant considerations?

   Answer: Yes

   8.1.3. Did the Court err in law by taking into account irrelevant considerations?

   Answer: Yes

   8.1.4. Did the Court err in law by reaching conclusions that no reasonable Court could have reached?

   Answer: Yes

   8.1.5. As a result of the foregoing was there a breach of natural justice?

   Answer: Yes.

Grounds of Appeal

9. The grounds of appeal are set out in paragraphs 3 - 7 of this notice of appeal.

WHEREFORE THE APPELLANT SEEKS:

1. That this appeal be allowed.

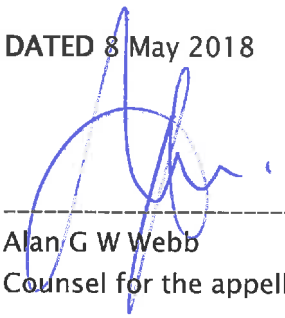
2. An order that the Court's decision be set aside as unlawful.

3. Any 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 8 May 2018



Alan G W Webb
Counsel for the appellant

This notice of appeal is filed by Peter Kemps, of the firm Kemps Weir, solicitor for the appellants.

The address for service of the appellant is c/- Alan Webb, barrister at the offices of Quay Chambers, Level 7, 2 Commerce Street, Auckland.

Documents for service on the appellant may be left at the address for service or may be posted to PO Box 106215, Auckland 1143 or emailed to webb@quaychambers.co.nz.