

**In the High Court of New Zealand  
Auckland Registry**

**CIV-2019-404-**

**I Te Kōti Matua O Aotearoa  
Tāmaki Makaurau Rohe**

**Under** the Judicature Amendment Act 1972

**In The Matter of** Section 159 Local Government (Auckland  
Transitional Provisions) Act 2010

**Between** **Franco Belgiorno-Nettis**  
Plaintiff

**And** **Auckland Unitary Plan Independent  
Hearings Panel**  
First Defendant

**And** **Auckland Council**  
Second Defendant

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**Affidavit of Franco Belgiorno-Nettis in support of Application for Judicial  
Review**

Dated: 11<sup>th</sup> December 2019

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I, **Franco Belgiorino-Nettis**, of Takapuna, swear:

1. I make this affidavit in support of my application for review, following the release of new reasons by the Auckland Unitary Plan Independent Hearings Panel (**IHP**), and following the decision of the Court of Appeal.
2. I live at 17a Sanders Avenue, Takapuna. I also own a unit number 5 at the Promenade Terraces. This block of 18 units is on the corner of The Promenade and Hurstmere Road, Takapuna. The Promenade Terraces have been 'upzoned' in the Proposed Auckland Unitary Plan (**PAUP**) to terraced housing and apartment building zone (**THAB**), and are covered by the same additional height control, as adjacent land occupied by a motel called The Emerald Inn and owned by Emerald Group Limited.
3. I earlier challenged the decisions of the IHP by both appeal and judicial review proceedings. These were heard together before Justice Davison in June 2017. Those proceedings were opposed by the Council and Housing New Zealand Corporation, who maintained that giving reasons was "impossible".
4. My appeal to the Court of Appeal was upheld, with the Court disagreeing that reasons were "impossible" with the Court of Appeal identifying how it had been done in relation to the Precincts and setting-out how reasons could be provided. However, the Court of Appeal declined the relief sought to quash the underlying decisions but, as I understand it, the Court of Appeal left the door open to fresh proceedings in the light of new reasons to be provided by the IHP.
5. I received the IHP's reasons signed by Judge Kirkpatrick for the Independent Hearings Panel (**IHP** or the **Panel**) on 14 October 2019 and an erratum provided on 24 October 2019. Copies are attached as **Exhibits "A" and "B"**.
6. After reviewing the new reasons, and taking legal advice, I notified the Council's solicitors and some interested parties of my intention to challenge the new reasons by further proceedings. I attach a letter from my lawyer dated 6 November 2019 as **Exhibit "C"**. I also attach the Council's reply by letter from its solicitors, Brookfields, dated 11 November 2019, as **Exhibit "D"**.



7. I have brought these further proceedings to test, again, the adequacy of the IHP's reasons. I consider that there are very important public interest issues in having the Courts consider these questions. It is about the respect for the rights of submitters who participated in a very lengthy hearings process, and who are affected by decisions, which do not show that their concerns have been heard, or even understood.
8. I appeared before the IHP as a submitter at hearing sessions on the various dates, and in relation to the following topics:
  - a) Business Zone Topics relevant to Lake Road, on 9 September 2015;
  - b) Residential Zone Topics-22 October 2015;
  - c) Topic 078-additional height controls-22 October 2015
  - d) Site Specific Topics-Topic 081 on 28 April 2016.
9. At the hearing of the site specific topics in Topic 081 on 28 April 2016, I appeared for myself, and the Body Corporate of the Promenade Terraces and I addressed the evidence that I had filed on both the Lake Road sites, and the Promenade Block, and other site-specific sites at Takapuna. This was before a Panel comprising Mr Des Morrison (chair), Mr Les Simmons, and Mr Alan Watson. My submission was initially allocated a timeslot of 15 minutes, but I recall being heard with witness, Tracy Ogden Cork, for just under 2 hours.
10. I take issue with the IHP's statements in the new reasons that my submissions were "*general submissions raising concerns about intensification and building height in Takapuna at a general strategic or growth management level*" and as such "*were accordingly not recommended to be accepted*". Elsewhere the Panel says under the heading "*Strategic reasons*" and "*Consequences of Strategic reasons*", individual submissions which ran counter to the prior strategic recommendations of the Regional Policy Statement (**RPS**) "*necessarily resulted in the recommendation of rejection of individual submissions which ran counter to that strategy*".

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11. In other words, the IHP is now saying that submitters like me were wasting our time, and that our submissions were going to be dismissed outright, as running counter to the strategy in the RPS. I dispute this, and consider this illustrates that the Panel has not correctly read my submissions or evidence in coming to its new reasons. I disagree that just because my submissions indicated concern at heights at some specific sites, does not equate with my submissions running counter to the RPS strategy. Worse, the new reasons suggest that any submitter identified as 'anti'-intensification in terms of the RPS strategy would necessarily have their submissions rejected.
12. My concerns were about the building height were where those heights would have created evident negative environmental effects to the nearby land and local amenities. I was not opposed to additional height controls as a blanket opposition. I had concerns about the process of notification of the additional height controls at the start of the process, and to the improper identification of additional zone height controls on the wrong sites. My submissions and evidence did not oppose the Metropolitan Centre zoning or the potential for intensification for Takapuna. On the contrary, my intention was to limit the inappropriate high rises in identified specific sites adjacent to the Takapuna waterfront and along Lake Road but to increase the capacity in other areas especially closer to the bus routes and the Akoranga Bus Station where intensification could have been more immediate and also more suitable for affordable housing.
13. In the initial submissions which I made, and in the further submissions which I made, there were concerns expressed about specific building heights in identified locations in Auckland and in Takapuna. In particular I supported a submission (by way of further submission) of Auckland 2040 Incorporated (#1473) seeking a more balanced approach, and a freeze on Terraced Housing and Apartment Building (**THAB**) zoning in Takapuna and that all THAB zoned land be zoned Mixed Housing Suburban (**MHS**) until a full precinct urban design study had been prepared in the interests of community expectations that issues such as shading, dominance, height and infrastructure would be addressed.
14. At the same time, I also supported a submission seeking intensification, by the Barrys Point Road Owners Collective to provide for apartment

development within a Mixed-Use Zone environment adjacent to the Northern Busway. In the proposed plan, Barrys Point Road was predominantly zoned Business-Light Industry in the proposed plan as notified. This would have prevented residential development.

15. More importantly, in my submissions and evidence I identified opportunities for further intensification around Takapuna, in particular:

- a) in evidence for residential hearing topics 059/060/062/063 I identified opportunities to increase the height in Tennyson Street, Takapuna (zoned THAB in the PAUP) where there were opportunities for intensification without shading effects to neighbouring residential areas, and being close to the main bus route. In my evidence on this topic I identified opportunities for up to 10 storey buildings in this area (higher than what Council proposed). My evidence stated *inter alia*:

#### TENNYSON AVE

In another site in Takapuna the Ngati Paoa Iwi Trust and the NZ Defence Force are asking to increase the height of the proposed THAB to 10 storeys. This is in Tennyson Ave with the numbers 36-38-40 on one side and 39-41-43-45-47-49-51 on the opposite side.

I know this area because I often walk along there .... **And I would certainly agree that this area could be perfect for even up to ten storeys or at least a big part of it.** In fact it is at the bottom of a downhill "no-exit" road and located mainly to the south/south west of other existing residential properties therefore with limited shading effect to the neighbouring residential area and also so close to the main bus route.

(Emphasis **supplied**)

- b) In my evidence filed by the plaintiff for Topic 081 in relation to Fred Thomas Drive and Barrys Point Road in Takapuna (zoned predominantly Business-Light Industry in the PAUP), my evidence stated *inter alia*:

My interest in this area originated after various considerations about the possibility of a more effective intensification of Takapuna and especially to find a way to reduce a proposed intensification



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all along the waterfront starting from Hurstmere Road, then to The Strand and finally to end up along Lake Road. This excessive intensification of the waterfront with proposed zoning for high rises can have a serious detrimental effect to a part of Takapuna which is very important for all the Auckland community.

The beach, the reserves and part of the residential area can be badly affected by this excessive intensification and once done there will be no way to go back.

I support a rezoning of the area around Fred Thomas Drive and Barrys Point Road in Takapuna to "Mixed Use" for many reasons.

**1. Takapuna has a big potential for intensification for its location and the extension and conformation [sic] of the area. A large area called "Takapuna Strategic" has been identified as a Special Housing Area. This area is the centre of a future intensification of Takapuna.**

**2. But in my view the best and more immediate intensification can be achieved in the area around Fred Thomas Drive and Barrys Point Road. This area is so close to the Akoranga bus station of the Northern Busway that is perfectly positioned for a substantial intensification where people can easily walk directly to the bus station without having to take two buses to go to work.**

3. My understanding is that Auckland Transport is going to use the bus stations of the Northern Busway as transfer points for most of the connections to the city. People living close to these main bus stations will reduce the need to transport them from the various suburbs to the bus station.

4. Barrys Point Reserve at the moment is totally unutilized or practically abandoned but with a good make over and simple landscaping it can become the recreational centre of a large number of residents and not only for the Fred Thomas Drive and Barrys Point Road area but also for a big part of the "Special Housing Area". The intensification will require the creation or protection of these important recreational areas.

(Emphasis supplied)

- c) In evidence filed for topic 081 in relation to the Promenade Block both the evidence which I filed for myself identified opportunities



for intensification of Takapuna at Barry's Point Road, Fred Thomas Drive, Anzac Street and up to Akoranga busway station as a means of obtaining an efficient and affordable intensification without affecting existing residential areas and avoiding negative impacts on public amenities and reserves, and stated *inter alia*:

**The body-corporate of "The Promenade Terraces" has made a proposal for the intensification of Takapuna that we believe is more suitable for the area. We have identified the land around Barrys Point Rd, Fred Thomas Drive, Anzac St and up to the Akoranga busway station as the best way to obtain a much more efficient and affordable intensification for the good of the community and not for the interest of some single big landowners.** The Council should consider intensification especially where all residents and property owners are asking for it, as is the case for Barrys Point Rd, and especially where it is easily and quantitatively more achievable, and in a location that could benefit from redevelopment in terms of existing character. **Another example could be the land (so close to the main bus route) at the end of Tennyson Ave where a request for higher THAB has been submitted by a couple of land owners.**

21. The North Shore doesn't need additional expensive housing for the future generations, there is plenty of it, it is more important to have affordable houses so the younger generations can now have a better chance to buy their first home. People in very expensive housing most likely will never use the public transport adding to the traffic issues that can result with intensification.

**22. Let's do the intensification properly in areas that still have good amenity, but where land values make it more affordable for a greater range of people; and ensure that areas of very high public value and coastal character are developed to further support the existing character and quality of the public realm which is for all to enjoy as a recreational destination. In our submission the building height has a substantial impact on character of public realm and Takapuna Beach is one of the city's most highly valued public areas;**

(emphasis supplied)

16. I had indicated the possibility of additional heights at the bottom part of Tennyson Ave because there were two submissions asking for extra



- height for those particular areas that I considered also very suitable and affordable but that was opposed by Council and not recommended by the Panel. The same reasoning could have been also applied for additional height in the THAB zone at the bottom end of Braken Avenue and Byron Avenue. All of this would have meant a number of apartments a lot higher than the reduction required to protect the waterfront.
17. I supported Mixed Use Zoning with also additional height for the areas along Barrys Point Rd and Fred Thomas Drive (close to the Akoranga Bus Station) because in these areas there won't be any shading or dominance affecting existing residential areas. Additional capacity for apartments in these two areas would lead to thousands of more affordable apartment units. They would be more affordable (compared to waterfront locations) because the cost of land in Barrys Point Rd and Fred Thomas Drive is a lot lower than land closer to the waterfront.
  18. I also do not believe that the submissions that I made in relation to protecting residential amenity for properties adjacent to the coast, and seeking to enhance and preserve public reserves adjacent to the coast, including the Takapuna Camping Ground Reserve adjacent to the Promenade Block can be properly said to be 'running counter' to the strategy in the RPS.
  19. Given the inaccurate characterisation of my submissions and evidence I am concerned whether the IHP actually reconvened as directed by the Court of Appeal. I am also concerned that all Panel members did not understand the correct Lake Road area they were dealing with given the 'erratum' later issued for Lake Road.
  20. I am also concerned that the new reasons by the IHP do not identify how the IHP addressed or reconciled conflicts between the witnesses, given that the evidence of no one witness in particular is referred to in the new reasons. This is in contrast with how the IHP addressed its recommendations in the Precincts.
  21. The submissions and further submissions to the Promenade Block and to the Lake Road sites were supported by expert evidence called by me and other submitters. Specifically, in relation to the Promenade Block I appeared with Ms Tracey Ogden-Cork, who in a 70 page brief of evidence

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undertook a detailed urban design study of the Promenade Block and whether the Mixed Housing Urban zone was the appropriate zoning<sup>1</sup>.

22. In relation to the Lake Road sites, I appeared in front of the Panel on 28 April 2016 and presented evidence in relation to both the MUZ land on the East and West side of Lake Road and on the residential area to the East of Lake Road. Limitations on height in this area were supported by the Tindall Foundation and Auckland 2040 Inc. Auckland 2040 Incorporated appeared and called expert planning and architectural evidence in relation to the land on the eastern side of Lake Road, from a planner, architect, and a planner/valuer<sup>2</sup>. The IHP's new reasons do not address any of the expert evidence I have referred to.
23. The IHP, in its interim guidance notes said that it would take into account what was already built. The Promenade Terraces are concrete, three level terrace style units, with underground parking and were constructed in the early 2000's. They are each individually owned. An aerial photograph of the Promenade Terraces is shown below. To the right-hand side of the photograph can be seen across the road the six level Mon Desir apartments (partly obscured). Behind the Promenade Terraces is the Emerald Inn site owned by the Emerald Group Limited. In the distance next to the coast can be seen the camping ground reserve.



<sup>1</sup> Statement of Tracey Ogden-Cork (CB007930)

<sup>2</sup> Statement of planner, Brian Putt (COA 0382) and Richard Burton (CB008034), and statement of Steven Matthews, architect (COA 0396).

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24. It is in my view fanciful or artificial zoning to zone the Promenade Terraces as THAB Zone, with an additional height control of 22.5 metres, which is much higher than their existing built form (of about 9 m in height, covering three levels and an underground car park), and which will never be achieved as a credible development. Any developer would need to buy-up each of the individual units in the Promenade Terraces, and demolish them, which is an unlikely scenario. This does not represent what is there, or realistic future development scenarios.
25. Similarly, on the adjacent corner, the Mon Desire Apartments, which are located within the metropolitan centre zone. The height of the Mon Desire Apartments is approximately 18 m. These apartments are in individual ownership. It is an unlikely scenario that these apartments will ever be built any higher than the existing built form, such that the height indication in the Unitary Plan is not a realistic indication of what will ever be built in the foreseeable future.
26. This means that the zoning imposed in relation to the Emerald Inn site, at the Promenade, and owned by The Emerald Group Limited, does not achieve a "transition" with what has been built nearby and which already exists, because it will be substantially higher, at 22.5 metres, than compared to the Promenade Terraces (also zoned THAB, with additional height control) but at approximately 9 metres high. As a result, in the morning units in the Promenade Terraces (which are to the west of the Emerald Inn Site) will lose direct sunlight from any higher built form on the Emerald Inn site, with a higher built form of up to 22.5 m. The loss of direct sunlight in the morning is of concern, and will also affect amenities such as the common swimming pool. A further concern is also the visual dominance effects with the height allowed by the Emerald Inn site being substantially higher than adjoining buildings within the block.
27. Similarly, when the sun sets in the West, then the higher built form at 22.5 m in the Emerald Inn Site (in the Promenade Block), has potential to shade and adversely affect residential properties along Alison Avenue (12 m) and the camping ground reserve zoned land located to the West.
28. The Promenade Block is close to the Takapuna Northern Reserve. A camping ground operates from the Reserve as well as other public amenities and a café. The camping ground has cabins, and caravans and



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campervans. I regular walk in the area. People at the reserve can often be seen having dinner outside and enjoying the summer evenings. In my view the IHP's decision has the potential to significantly affect the enjoyment of these public amenities. Yet the new reasons given by the IHP do not engage with the evidence of Ms Ogden-Cork at all. Her evidence was the only evidence to address the Promenade Block in context.

29. Similarly, the reasons given by the IHP do not appear to recognise the conflict in the Council's position in relation to the Promenade Block. The Council had earlier filed evidence from planners Mr Patience & Ms Ip. However, their evidence was later withdrawn by decision of the Council's governing body. Their evidence was only produced to the IHP under summons from Housing New Zealand Corporation. After the close of hearings, the Auckland Council's solicitors filed closing remarks which (now) supported the evidence of Patience & Ip in relation to the Promenade Block. While Patience & Ip recommended retention of the THAB zoning over part of the Promenade Block, they recommended the removal of the additional height control on the Promenade Block and supported by the Council's solicitors. The IHP, in its new reasons, appears to be unaware of the Council's change of position.
30. Given that the governing body of Auckland Council had earlier resolved to withdraw the evidence of Mr Patience & Ms Ip, I do not know on what basis the Council could have made a proper decision given that the Court of Appeal found that there were "no reasons" in the IHP's initial recommendations.
31. I respectfully ask that the Court quash and set-aside the zoning and height control decisions of the Auckland Council in relation to the Lake Road Blocks and the Promenade Block.

Sworn at Auckland this 11th  
day of December 2019 before me:



**A Barrister/Solicitor of the High Court of New Zealand**

Richard McLeod  
Solicitor  
Auckland



"A"

EXHIBIT NOTE 'A'

This is the annexure marked A referred to in the Auckland Unitary Plan the affidavit of F Belgiorno-Nettis INDEPENDENT HEARINGS PANEL sworn at Auckland on 11 December 2019 Te Pāpāti Kōwhiri o te Mahere Kotahitanga o Tāmaki Makaurau Before me



FRANCO BELGIORNO-NETTIS

A Barrister and Solicitor of the High Court of New Zealand

v

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL and AUCKLAND COUNCIL

Introduction

Pursuant to the order made by the Court of Appeal in its decision dated 22 May 2019 in *Belgiorno-Nettis v AUPiHP & Auckland Council* [2019] NZCA 175 at paragraph [117], and following the decision dated 10 October 2019 of the Supreme Court in *Belgiorno-Nettis v AUPiHP & Auckland Council* [2019] NZSC 112, the Panel gives its reasons for its recommendations to the Auckland Council relating to the zoning and height requirements for The Promenade and Lake Road Blocks in Takapuna.

Strategic reasons

Takapuna is an existing metropolitan centre, as identified in the Auckland Plan and as provided for in the proposed zonings in the Auckland Unitary Plan (AUP). The Panel agreed with that identification and that proposed zoning. In particular, Takapuna's location, existing population and level of business activity and existing transport infrastructure all make it an important centre in terms of the development strategy in the Auckland Plan for a quality compact urban form.

Looking to the future, Takapuna is reasonably close to the Northern Motorway (including the approaches to the Auckland Harbour Bridge) and the Northern Busway. Lake, Hurstmere, Taharoto and Esmonde Roads are busy arterial roads with provision for public transport. Takapuna is therefore likely to remain a transport focal point. It should therefore also remain a location for population and business growth in keeping with the centres and corridor strategy pursued by the Panel in its overall approach to making recommendations on submissions relating to zoning and intensity of development.

This approach of examining higher-order considerations before moving to address specific submissions about specific areas is discussed in sections 1, 4.4.4, 6.1 and 6.2 of the Panel's overview of recommendations.

As set out in sections 1 and 6 of the Panel's overview of recommendations and elsewhere in the Panel's particular recommendations, projected growth requires substantial increases in the provision of residential capacity. Key higher-order objectives and policies of the AUP to be given effect to (as set out in the Auckland Regional Policy Statement in Section B2, and in particular the objectives and policies for urban growth and form in B2.2 and for a quality built environment in B2.3) are to provide for increased capacity and intensification around centres and along corridors to try and achieve a more compact urban form that would have a reduced urban footprint and transport demand.

Takapuna was therefore recommended by the Panel to be confirmed as one of many appropriate locations for intensification for those reasons. Mr Belgiorno-Nettis' general submissions raising concerns about intensification and building height in Takapuna at a general strategic or growth management level were accordingly not recommended to be accepted.

### **Consequences of strategic reasons**

As observed in section 4.4.4 of the Panel's overview:

It is somewhat ironic that the mapping exercise, which logically comes at the end of the statutory plan preparation process, is usually the first point of contact for users of the plan and the aspect of the plan that tends to generate the greatest number of submission points. While the hierarchy of the statutory planning documents indicates a top-down logic, the response of most people to planning controls is from a bottom-up perspective.

This difference in perspective may account for some misunderstanding by submitters of how the Panel approached its assessment of submissions and the making of its recommendations. Following the hierarchy of the statutory planning documents<sup>1</sup> and the prior strategic recommendations for the Regional Policy Statement necessarily resulted in the recommendation of rejection of individual submissions which ran counter to that strategy.

One of the consequences of the strategic recommendations to increase capacity by providing for more intensive development around centres was to make spatial changes to zonings, as described in section 4.4.4 of the Panel's overview of recommendations. Achieving additional residential capacity required making provision for taller buildings in and around metropolitan centres where, among other

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<sup>1</sup> *Environmental Defence Society Inc v New Zealand King Salmon Ltd* [2014] NZSC 38 at [10] – [15].

things, employment opportunities and commercial services are currently available and expected to increase.

### **Local reasons**

The North Panel of the whole Panel heard submissions and evidence on the zoning, precincts and heights of buildings in Takapuna, including the submissions and evidence presented by Mr Belgiorno-Nettis. Parties who were heard in relation to this area included the Council and Housing New Zealand.

Other relevant submissions considered included those seeking to rezone The Promenade block in Takapuna from Terrace House and Apartment Building zone (as notified) to Mixed Housing Urban zoning, or otherwise reduce the development levels of the block, including submissions by James H Young (947 and FS 1936), Wendy Stachnik (987), David and Lesley Lane (1194), Serena Park (1240), Rex and Christine de Lille (1287), Judith Bern (1518 and FS 517), Murray Nicholson (1570), Sheryl A Collard (1576 and FS 3253), Yvonne Diack (2237), Richard and Nancy Whitney (2255), Richard Toulson (2268), Janice Mardon (2272), Stephanie Knight (2476), Frances Helleur (2853), Muriel Wood (3050), A and R McNaughton Family Trust (3076), Anne Young (3366), Victoria McPherson (3551), Morton Bakewell Trust (3820), Dion and Marie Vela (4130), Mark Helleur (4161), Alison L Sherning (5617 and FS 3254), Norma Steel (5830), Issa Abdulahad (6991), Body Corporate 312977 (7074), John Mortimer (7340), Robert Richard Kornman (FS 761), John S Morton (FS 1682), Michael P Glading (FS 1748) and Barbara A Scarfe (FS 2436). A submission seeking to retain the development potential was received from Emerald Group Ltd (3608).

To assist in achieving the increased capacity and intensification that the Panel had found was appropriate for Takapuna, the residential land with frontage to The Promenade and Hurstmere Road was recommended to be zoned Terrace Housing and Apartment Buildings. As well, additional building height to 22.5m was to be permitted given the character of development on the other side of The Promenade and Hurstmere Road (intensive residential development and commercial development respectively). This increase was considered to have only limited effect on the residential areas to the north and east.

At the periphery, for the properties with frontage to Earnoch and Allison Avenues, the degree of intensification was recommended to be reduced by zoning those properties Mixed Housing Urban.

The resultant split zoning across the block bounded by The Promenade, Hurstmere Road and Earnoch and Allison Avenues also reflected the existing pattern of development, with the more intensive uses (short-term accommodation and residential apartments) on that part zoned Terrace Housing and Apartment Buildings, and also the intensity that could be achieved and expected in the future while providing sufficient protection of amenity values within the zone and at its edges.

The area to the west of Lake Road, south of the centre, was considered to be quite different to the area to the northeast of the centre. The character and amenity values of that area were already in a state of transition. The proximity of that area to the centre and to major transport options justified intensification through the application of the Terrace Housing and Apartment Buildings zone. As well, increased building height to 22.5m, as also provided for on other land zoned Terrace Housing and Apartment Buildings, was found to be appropriate to encourage intensification.

In recognition of the proximity to other areas that were zoned mainly for residential uses, the Panel was also relying on the general development controls in the Terrace Housing and Apartment Buildings zone that have particular regard to protecting the residential amenity values of neighbouring areas.

### **Conclusion**

After the consideration and weighing of the evidence and submissions, no compelling reasons were identified as to why the residential areas immediately adjoining the metropolitan centre of Takapuna should not provide for greater capacity and a higher level of intensification. Mr Belgiorno-Nettis' particular submissions and evidence about the zoning and building height provisions in the residential areas around the Takapuna metropolitan centre were accordingly not recommended to be accepted.

Dated: 14 October 2019

For the Panel:



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**D A Kirkpatrick**

Environment Judge

Chairperson, Auckland Unitary Plan Independent Hearings Panel

"B"

**EXHIBIT NOTE**

This is the annexure marked B referred to in the affidavit of F Belgiorno-Nettis sworn at Auckland on 11 October 2019 before me

**AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL**

*Te Paepae Kaiwāwāo Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

Before me 

**FRANCO BELGIORNO-NETTIS**

A Barrister and Solicitor of the High Court of New Zealand

v

**AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL  
and AUCKLAND COUNCIL**

The Panel's attention has been drawn to the absence of clear reference to the Mixed Use zoning on either side of Lake Road to the south of the Takapuna Metropolitan Centre in the reasons given for our recommendations dated 14 October 2019.

The reasons given also relate to that area of Mixed Use zoning. To make this clear, the reasons should be amended so that the last two paragraphs under the heading "Local reasons" on page 4 read as follows:

The area on either side of Lake Road, south of the centre, was considered to be quite different to the area to the northeast of the centre. The character and amenity values of that area were already in a state of transition. The proximity of that area to the centre and to major transport options justified intensification through the application of the Terrace Housing and Apartment Buildings zone to the west of Lake Road and of the Mixed Use zone on either side of Lake Road. As well, increased building height to 22.5m, as also provided for on other land zoned Terrace Housing and Apartment Buildings, and 21m to the west and 18 metres to the east in the Mixed Use zone, was found to be appropriate to encourage intensification.

In recognition of the proximity to other areas that were zoned mainly for residential uses, the Panel was also relying on the general development controls in the Terrace Housing and Apartment Buildings zone and the Mixed Use zone that have particular regard to protecting the residential amenity values of neighbouring areas.

Dated: 21 October 2019



For the Panel:

A handwritten signature in black ink, appearing to read 'D A Kirkpatrick', written over a horizontal line.

**D A Kirkpatrick**

Environment Judge

Chairperson, Auckland Unitary Plan Independent Hearings Panel

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6 November 2019

And - by email

Attention – Manager of Resource Consents North

**BELGIORNO-NETTIS V AUCKLAND COUNCIL – APPEAL NOT RESOLVED IN THE TAKAPUNA AREA**

1. I act for Mr Belgiorno-Nettis.
2. I have instructions to consider further challenge in relation to the Lake Road and Promenade block sites at Takapuna (as identified in the **attached** schedule) following the recent provision of reasons by the Independent Hearings Panel.
3. Accordingly, the zoning and height controls identified in the attached schedule should not be treated as being beyond challenge.

Yours faithfully



Stuart Ryan  
Barrister

- cc. Russell Bartlett QC for  
Emerald Group Limited
- cc. Matthew Allan, Brookfields for  
Auckland Council
- cc. Tim Goulding, Daniel Overton,  
Goulding

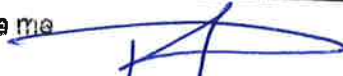
EXHIBIT NOTE

This is the annexure marked C referred

the affidavit of F Belgiorno-Nettis

sworn at Auckland on 11 November 2019

Before me



A Barrister and Solicitor of the High Court of N

"D"

EXHIBIT NOTE

This is the annexure marked D referred to in  
the affidavit of F Belgiorno-Nettis  
sworn at Auckland on 11 December 20 2019  
Before me



A Barrister and Solicitor of the High Court of New Zealand

11 November 2019

By Email: [stuart@stuartryan.co.nz](mailto:stuart@stuartryan.co.nz)

Stuart Ryan  
Barrister  
**AUCKLAND**

NAVIGATING YOUR SUCCESS

Dear Stuart

**FRANCO BELGIORNO-NETTIS**

1. We acknowledge receipt of your letter dated 6 November 2019 on behalf of the Auckland Council.
2. We note your comment in paragraph 3 of your letter that the zoning and height controls in the schedule to your letter should not be treated as being beyond challenge, as you have instructions to consider further challenge in relation to the Lake Road and Promenade Block sites at Takapuna, following the recent provision of reasons by the Independent Hearings Panel.
3. We assume that this is a reference to section 86F of the Resource Management Act 1991 (RMA), which specifies when a rule in a proposed district plan must be treated as operative.
4. Section 86F of the RMA provides that a rule in a proposed plan "must be" treated as operative if the time for making submissions or lodging appeals on the rule has expired and, relevant to the present circumstances, all appeals have either been determined, withdrawn or dismissed.
5. All appeals against the zoning and height controls identified in the schedule to your letter have now been determined.
6. The Council would be happy to consider any case law providing clear and direct support for the proposition in your letter. Otherwise however, as all appeals have now been determined, the relevant rules must be treated as operative by operation of law (as section 86F requires).

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The Council does not have any discretion or power to suspend the operation of section 86F of the RMA.

Yours faithfully  
**BROOKFIELDS**



**Matthew Allan / Lisa Wansbrough**  
Partner / Senior Associate

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