

The High Court of New Zealand
Auckland Registry

CIV-2019-404-

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

Under the Judicial Review Procedure Act 2016

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

Between **Franco Belgiorno-Nettis** of 17a Sanders Avenue, Takapuna, retired mechanical engineer
Plaintiff

And **Auckland Unitary Plan Independent Hearings Panel** a statutory body established under the Local Government (Auckland Transitional Provisions) Act 2010
First Defendant

And **Auckland Council** a statutory body established under the Local Government (Auckland Council) Act 2009 and the Local Government (Auckland Council) Amendment Act 2010
Second Defendant

Statement of Claim

Dated: 20 December 2019

Solicitors:
Daniel Overton & Goulding
33 Selwyn Street
PO Box 13-017
Onehunga
Auckland 1061
Person Acting: Tim Goulding
Telephone: 09 6222 222
Email: tim@doglaw.co.nz

Counsel:
Stuart Ryan
Barrister
Level 11, Southern Cross Building
59-67 High Street
PO Box 1296, Shortland Street
Auckland 1140
Telephone: (09) 357 0599
Email: stuart@stuartryan.co.nz

The plaintiff by his solicitor says:**1. Parties**

- 1.1 The Plaintiff resides in Sanders Avenue, Takapuna, and owns unit 5 in the Promenade Terraces at the Corner of Hurstmere Road and The Promenade, Takapuna.
- 1.2 The first defendant (the **IHP**) is the hearings panel established by the Minister for the Environment and the Minister of Conservation under s 161 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**).
- 1.3 The second defendant (the **Council**) is the unitary authority for the Auckland area established under the Local Government (Tamaki Makaurau Reorganisation) Act 2009, the Local Government (Auckland Council) Act 2009 and the LGATPA.
- 1.4 The IHP had the functions, powers and duties prescribed under the LGATPA process for the preparation, consideration and finalisation of receiving submissions, provide hearings and make recommendations to the Council for the “first combined plan for Auckland Council” under the Resource Management Act 1991, and known as the Proposed Auckland Unitary Plan (**PAUP**).
- 1.5 The Plaintiff was a submitter, and further submitter, to the PAUP including in respect of the zoning and height requirements for the Promenade and Lake Road Blocks in Takapuna as illustrated in the map herein (the **Sites**).

2. Decisions of Senior Courts

- 2.1 Following appeal and application for review by the Plaintiff in respect of the Promenade Block and the Lake Road Block (together, **the Sites**), Davison J in *Franco Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387 dismissed the Plaintiff’s appeal and application for review, and the subsequent application for leave to appeal reported at *Belgiono-Nettis v Auckland Unitary Plan Independent Hearings Panel* (2018) 20 ELRNZ 335; [2018] NZHC 459.
- 2.2 The Court of Appeal granted the application for judicial review in its decision dated 22 May 2019, reported as *Belgiono-Nettis v Auckland*

Unitary Plan Independent Hearings Panel [2019] 3 NZLR 345. The Court of Appeal directed, at [117], that the IHP be ordered to give reasons for its recommendations to the Auckland Council relating to the zoning and height requirements for the Promenade and Lake Road Blocks in Takapuna.

- 2.3 In determining relief, the Court of Appeal declined to quash or set aside the IHP recommendations relating to the Promenade and Lake Road Blocks or the Council decisions on the same but stated *inter alia* that:

[109] Balancing these factors we consider that the interests of justice can be met by the Panel being required to provide its reasons. The position can then be reassessed by the parties. **If it is considered that there is a basis for a claim, new proceedings can be filed.**

[110] We will direct the Panel in respect of the zoning and height decisions relating to the Promenade and the Lake Road Blocks, to set out the reasons which led it to recommend to the Council the zoning and height requirements for the Promenade and Lake Road Blocks. The Panel may address Mr Belgiorno-Nettis' submission specifically or may group his submission with others in responding.

(Emphasis **supplied**)

- 2.4 The Court of Appeal envisaged the appropriate Panel conferring, stating:

[106] Given the nature of this quasi-judicial process chaired as it is by a Judge of the Environment Court, the danger of new reasons being composed to support the decision does not in our view arise. The indications in the material before us are that the decision of the Panel was thorough, and that it did consider individual submissions (although no conclusion can be reached on this until reasons are given). **There is no suggestion that the appropriate Panel cannot be brought together again to report on the reasons. The Panel, consisting as it does of a judge and a number of senior professional persons, will need to confer before it summarises its reasons for reaching the two decisions.**

(Emphasis supplied)

- 2.5 The Court of Appeal formally declined the appeal, but not in relation to its merits, stating:

[113] Before us the respondents, who had submitted there was no jurisdiction to grant leave in the High

Court, did not pursue that submission and focused argument on the merits of the appeal. Therefore the jurisdiction issue (on which we express no view), was not argued. In the circumstances it is unnecessary for us to determine the issue of leave to appeal. **If there was jurisdiction and leave was granted, the considerations and decision would have been in substance the same as in relation to judicial review. For these reasons, not connected to the merits, we will dismiss the application for leave to appeal.**

- 2.6 The Supreme Court declined an application by the plaintiff for leave to appeal in relation to the issue of relief in a decision dated 10 October 2019 in *Belgiorno-Nettis v AUPH & Auckland Council* [2019] NZSC 112.

3. New reasons by IHP for the Promenade and Lake Road Blocks

- 3.1 Subsequent to the decision of the Court Of Appeal referred to in paragraph 2 above, on 14 October 2019 the Chairperson of the IHP delivered for the IHP reasons for its recommendations to the Council relating to the zoning and height requirements for the Promenade and Lake Road Blocks. The reasons were provided under headings 'strategic reasons', 'consequences of strategic reasons', and 'local reasons'.

- 3.2 In relation to the strategic reasons, the IHP stated *inter alia*:

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 82, and in particular the objectives and policies for urban growth and form in 82.2 and for a quality built environment in 82.3) 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.**

(emphasis **supplied**)

- 3.3 In relation to the consequences of strategic reasons the IHP stated *inter alia*:

Following the hierarchy of the statutory planning documents¹ 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 things, employment opportunities and commercial services are currently available and expected to increase.

[FN]¹: *Environmental Defence Society Inc v New Zealand King Salmon Ltd* [2014] NZSC 38 at [10] - [15].

(emphasis **supplied**)

- 3.4 In relation to local reasons, the IHP stated *inter alia*:

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.

...

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.

3.5 In conclusion, the reasons given for the IHP stated:

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.

(emphasis **supplied**)

3.6 No express reference was made by the IHP in the reasons dated 14 October 2019:

- a) to the area of Mixed Use Zoning for the Lake Road Block;
- b) to Mixed Housing Suburban Zone East of Lake Road;
- c) the evidence of any particular witness – if the evidence of any witness was to be preferred or to the reasons for such preference.

- 3.7 On 21 October 2019, Judge Kirkpatrick for the IHP issued further reasons, which stated:

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.

- 3.8 The reasons for the IHP dated 14 October 2019 and dated 21 October 2019 (together referred to as "**the new reasons**") were signed "*For the Panel*" by Judge Kirkpatrick as "*Chairperson, Auckland Unitary Plan Independent Hearings Panel*".
- 3.9 The new reasons did not mention a large number of additional submissions also supporting the MHU in the area bound by Hurstmere Road, The Promenade, Alison Ave and Earnoch Ave in Takapuna.¹

¹ Margaret Honeyman (2759), Michelle Toulson (FS 2663), Promenade Terraces Committee (FS 2421), Ronald Batty (6559), Friends of Takapuna Beach Reserve (6550), Lynnette Roycroft (FS 919), Frank Spurway (1744/FS 3755), James Cranfield (FS 1792), Andrew Crean (FS 1032), Sandra Hiskens (FS 1187), Debra and Daryl Spinetto (FS 1438), No Ham and Ok Hyun Park (FS 1447), Eric Faesekloet (FS 1801), Gordon Bennett (FS 1859), Jean Bennett (FS 1863), Robyn Fairly (FS 2211), Caroline Iles (FS 3291), Murray Rutherford (FS 885), Susan Jackson (1866 and FS 1143), Reginald Scarfe (FS 2096), Rachel Osborne (5733 and FS 1094), Jared Jackson (FS 1139), Jonathon Vodanovich (FS 3047), Michael Selak (FS 2686), Susan Spurway (1747), Nicholas Hatch (FS 2917), Body Corporate 405582 (FS 2936), John Vodanovich (FS 3118), Paul and Tracy McNamara (FS 1234), Peter and Jeanette Ogias (FS 1824), Claire Selak (FS 2692) and Evelyn Uhe (FS 765).

3.10 The new reasons did not mention the submissions and/or evidence of the Tindall Foundation or Auckland 2040 Inc in relation to the Lake Road Block.

4. Proposed Auckland Unitary Plan - Process

4.1 Part 4 of the LGATPA provided for the PAUP to be prepared in accordance with that part of the LGATPA and, to the extent provided for in that part, the Resource Management Act 1991 (**RMA**).

4.2 Prior to the provision of the new reasons, the process undertaken in relation to the PAUP is generally described in a Statement of Agreed Facts dated 22 May 2017, the terms of which are relied on as if set out *in extenso* herein.

4.3 The PAUP adopted the familiar method of zoning as the primary method of land use regulation. The planning maps with the PAUP identified zones regulating use and development of specific sites.

4.4 The PAUP applied a mix of residential and business zones for Takapuna that enabled a range of development intensities including:

- a) Metropolitan Centre Zone (**MCZ**)
- b) Mixed Use Zone (**MUZ**)
- c) Terraced Housing and Apartment Buildings Zone (**THAB**)
- d) Mixed Housing Urban Zone (**MHU**)
- e) Mixed Housing Suburban Zone (**MHS**)
- f) Single House Zone (**SHZ**)

4.5 The additional zone height controls (**AZHCs**) applied to sites (or groups of properties) to vary the zone height limit of the zone (almost invariably to increase height) and were identified in the online GIS viewer planning maps.

4.6 The PAUP has precinct provisions. These precincts are locality based (as identified in the maps to the GIS viewer) and modify the zone controls for particular localities.

4.7 Following public notification by the Council, and following the making of submissions, and further submissions to the PAUP, issues raised by submitters were categorised by the Council and the IHP into hearing

topics numbered 001 to 081, and including:

- a) Topics related to the regional policy statement (RPS Topics);
- b) Topics 051-054 (Business Zone Topics);
- c) Topics 059 – 063 (Residential Zone Topics);
- d) Topic 078 (Additional Height Control);
- e) Topics 016, 017 (Rural Urban Boundary);
- f) Topics 080 (Rezoning and precincts (General)); and
- g) Topic 081 (Rezoning and precincts (Geographic areas)).

4.8 Hearings on submissions were held before the IHP in respect of each hearing topic between September 2014 and May 2016, in particular:

- a) Hearings on the RPS topics occurred between October 2014 and April 2015;
- b) Hearings on Topics 059 to 063 (Residential Zones) occurred on 14-28 October 2015;
- c) Hearings on Topic 078 (Additional Height Controls) occurred on 29-30 October 2015;
- d) Hearings on various dates occurred between January 2016 and 30 April 2016 in relation to:
 - i) Topic 080 Rezoning and precincts (General) and
 - ii) Topic 081 Rezoning and precincts (Geographic areas);
 - iii) Topics 016, 017 (Rural Urban Boundary)

(together referred to as the “**site-specific topics**”)

4.9 When the IHP was formed in December 2013 it comprised eight Panel members, being Environment Judge Kirkpatrick, Desmond Morrison, Greg Hill, Janet Crawford, John Kirikiri, Paula Hunter, Peter Fuller and Stuart Shepherd.

4.10 Three additional members were appointed to join the IHP in December 2015, being Alan Watson, David Hill and Les Simmons (the **additional**

IHP members).

- 4.11 The additional IHP members did not hear evidence at hearings sessions held prior to their appointment in December 2015, in particular the additional IHP members did not hear hearings sessions held in relation to:
- a) The RPS topics;
 - b) Topics 051 to 054 (Business topics);
 - c) Topics 059 to 063 (Residential Zones);
 - d) Topic 078 (Additional Height Controls).
- 4.12 Hearings on Topic 081 occurred before two divisions of the IHP (“red” or North; and “blue” or South) which sat over 56 hearing days (28 days each). The IHP was empowered to sit in smaller quorums by the 2015 amendment to the LGATPA.²
- 4.13 Prior to hearings on Topic 081 submitters raised concerns with the IHP about the fairness of its proposed approach to hearing the site-specific topics as:
- a) the full panel would hear the evidence presented by Auckland Council while almost all other submitters in relation to site-specific topics would only be heard by a smaller number of panel members; and
 - b) recommendations to the Council would be made by the full panel, when only some of the panel members have actually heard the evidence and are in a position to reach conclusions on these matters.
- 4.14 The IHP’s response included the statement that:

The panel has agreed the best practice approaches to apply to decision-making on the RUB, rezoning and precincts, and advised to all submitters in the notification for the site specific hearings.

Smaller panels will report back to the full panel on a weekly basis with any issues arising from the application of these approaches, or specific instances where the smaller panel seeks to depart from the agreed approach, or on any other evidence it considers should be brought to the attention of the full panel.

² Local Government (Auckland Transitional Provisions) Amendment Act 2015

Fridays have generally been kept free of hearings to allow the full panel to convene and hear from the smaller panels. Any issues requiring discussion by the full panel will be documented and discussed to reach agreement by the full panel.

- 4.15 Prior to hearings, the IHP issued guidance notes to submitters in advance of directions for evidence exchange and hearings. The IHP's Interim Guidance on Best Practice Approaches to Re-zoning noted the relevance of site characteristics stating:

The purpose of this guidance is to help parties prepare for the hearings on these topics by informing them of the Panel's interim position on best practice approaches to changing the RUB, rezoning and precincts.

Parties should ensure that any evidence provided for the hearings on these topics clearly and succinctly addresses the matters set out below.

BEST PRACTICE APPROACHES FOR RE-ZONING

1.1 The change is consistent with the objectives and policies of the proposed zone 1. This applies to both the type of zone and the zone boundary.

1.2 The overall impact of the rezoning is consistent with the Regional Policy Statement 2.

1.3 Economic costs and benefits are considered.

1.4 Changes should take into account the issues debated in recent plan changes.

1.5 Changes to zone boundaries are consistent with the maps in the plan that show Auckland-wide rules and overlays or constraints (e.g. hazards).

1.6 Changes should take into account features of the site (e.g. where it is, what the land is like, what it is used for and what is already built there).

1.7 Zone boundary changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, stormwater, roads).

1.8 There is adequate separation between incompatible land uses (e.g. houses should not be next to heavy industry).

1.9 Zone boundaries need to be clearly defensible e.g. follow roads where possible or other boundaries consistent with the purpose of the zone.

1.10 Zone boundaries should follow property boundaries.

1.11 Generally no "spot zoning" (i.e. a single site zoned on its own).

1.12 Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

1.13 Roads are not zoned.

- 4.16 The IHP issued its recommendations in July 2016 in a series of reports coinciding with hearing topics, and providing an Overview Report.
- 4.17 The IHP's recommendations in relation to the site-specific topics were contained in a report titled "*Report to Auckland Council - Changes to the Rural Urban Boundary, rezoning and precincts - Hearing topics 016, 017 Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas)*" dated July 2016 (the **Re-zoning and Precincts Report**).
- 4.18 The Re-zoning and Precincts Report:
- a) stated that it was the topic report dealing with site-specific topics;
 - b) referred to the Overview Report concerning the overall approach to intensification, followed by discussion of general principles regarding: issues of capacity, constraints, residential zoning, business zoning, and countryside living;
 - c) in relation to Precincts, included 6 annexures relating to recommendations on specific Precincts, and the reasons for these. The reasons provided by the IHP framed the issues by reference to the position by Auckland Council, and identified the evidence of witnesses whose evidence was preferred, and the documents relied on.
 - d) described its approach to providing reasons (and come in with other topic reports) as:

This report covers all of the submissions in the Submission Points Pathways report (SPP) for these topics. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, **while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.**

Because the Panel has grouped matters rather than addressed individual submission points, submitters need to read this report to understand the Panel's approach and how this has been applied, then read the relevant sections in the annexures to this report and refer to the maps in the GIS viewer which forms part of the Panel's recommendation and report to Auckland Council.

(emphasis **supplied**)

- 4.19 The same (or similar) expression in relation to ‘grouping’ of individual submissions and points was taken by the IHP and other topic reports when making recommendations to the Council. It is self-evident that the IHP’s approach to grouping all submission points allocated to a particular topic report meant that in general the IHP did not provide reasons in relation to any individual submission (hereafter **“the IHP’s approach to grouping”**)
- 4.20 As they related to the Sites the decisions by Auckland Council accepted the recommendations made by the IHP by decisions dated on or about 19 August 2016 without modification.
- 4.21 Following decisions by the Council on recommendations by the IHP, the Council gave public notice that the PAUP should become operative in part on 15 November 2016, under section 160 of Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) and clause 20 of Schedule 1 of the Resource Management Act 1991 (RMA).
- 4.22 As at 20 December 2019 the Council has not held out as operative those provisions of the PAUP which relate to height and zoning provisions of the Sites. As a consequence, no bar exists against challenging the height and zoning provisions of the PAUP as they relate to the Sites by way of judicial review under s 83 RMA, which provides:

83 Procedural requirements deemed to be observed

A policy statement or plan that is held out by a local authority as being operative shall be deemed to have been prepared and approved in accordance with Schedule 1 and shall not be challenged except by an application for an enforcement order under section 316(3).

5. Submissions of the Plaintiff

- 5.1 Mr Belgiorino-Nettis’ primary and further submission points as they relate to Takapuna sought relief (as more particularly set out in the Agreed Statement of Facts at paras 8-13) in relation:
- a) “The Promenade Block” (properties bound by The Promenade, Alison Avenue, Earnoch Avenue, Hurstmere Road)
 - i) replace THAB Zone as notified (with additional height of up to 20.5 m) with MHU zone;

- ii) opposition to submission by Emerald Group Limited
- b) Lake Road Block:
 - i) Mixed Use Zone on the west side of Lake Road from Bracken Avenue to Easement Road - remove the additional height control, and limit height to 16.5 m;
 - ii) MUZ and additional height controls on eastern side of Lake Road between Blomfield Spa and Esmonde Road – notified of 24.5m, oppose and rezone to maximum height of 3 stories;

5.2 In the submission in relation to the Promenade Block the Plaintiff Identified that:

“there are many other parts of Takapuna central where these expensive apartments can be built without ruining the land behind them”

5.3 The plaintiff also made further submissions:

- a) opposing the submission of Emerald Group Limited in relation to the Promenade Block, and
- b) supporting a submission seeking retention of MHS east of Lake Road between Blomfield Spa, Sanders Avenue, Park Avenue, and the Coast – an opposing MHU zoning.
- c) supporting the submission of Auckland 2040 Inc (#1473), seeking:
 - i) a more balanced approach between growth and community expectations;
 - ii) a freeze on THAB zoning in Takapuna and that all THAB zoned land be zoned Mixed Housing Suburban (MHS) pending a full precinct urban design study.
- d) supporting the submission by Barry’s Point Road Owners Collective to provide for apartment development within a MUZ environment adjacent to the Northern Busway.

5.4 At the hearings before the IHP in relation to the site-specific topics the

plaintiff:

- a) did not oppose intensification within the Auckland region or generally, and
- b) expressly did not oppose THAB zone west of Lake Road at Takapuna
- c) identified opportunities for further intensification around Takapuna, in particular:
 - i) in evidence for residential hearing topics 059/060/062/063 the plaintiff 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 his evidence on this topic the plaintiff 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)

- ii) In the 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), the plaintiff 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 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)

- iii) In evidence filed for topic 081 in relation to the Promenade Block the plaintiff 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)

5.5 Barry's Point Road, and Fred Thomas Drive are located between the land zoned THAB at Takapuna and the Northern Motorway and are closer in proximity to the Northern Busway than the land at the Promenade or the Lake Road blocks. The Council decision accepted the IHP recommendations that the majority of land in Barry's Point Road, and Fred Thomas Drive be zoned MUZ, but did not provide for any additional height controls.

6. Relevant considerations for zoning and additional height controls in PAUP

6.1 The relevant statutory considerations of the merits of the spatial application of zones and additional height controls in the PAUP are contained in section 30, 31, 32, 63 to 68 and 72 to 76 of the RMA as incorporated by Part 4 of the LGATPA.

6.2 In relation to the hearing of the site-specific topics, in particular of Topic 080 Rezoning and Precincts (General) and Topic 081 Rezoning and Precincts (Geographical Areas) the Council planning witness, Mr John Duguid, by a statement of evidence dated 3 December 2015 described the relevant statutory considerations, such that the proposed zoning of the land and land use planning controls must:

- a) Accord with and assist the Council in carrying out its functions so as to meet the requirements of Part 2 of the RMA: s 74(1)(b) of the RMA;
- b) Have regard to the actual and potential effects of activities on the environment: s 76(3) of the RMA;
- c) Give effect to the proposed Regional Policy Statement (RPS) in the PAUP: s 75(3)(c) of the RMA and ss 121(1) and 145(1)(f)(i) of the LGATPA;
- d) Have regard to the management plans and strategies under other acts including the Auckland Plan (to the extent that they have a bearing on the resource management issues in the

region): s 74(2)(b)(i) of the RMA and s 145(2) of the LGATPA;

- e) Comply with other statutes in the Auckland region, including the Hauraki Gulf Marine Park Act 2000; and give effect to any National Policy Statement and the New Zealand Coastal Policy Statement (NZCPS): s 75 RMA.

6.3 The proposed RPS does not have a sole objective of intensification. While the RPS seeks to achieve a quality compact city where urban growth is primarily focused within the metropolitan area and concentrated around designed centres, in addition to the various urban growth and development objectives the proposed RPS also contained objectives and policies which recognise for the protection and enhancement of other values including amenity values and that recreational needs of people and communities and met through the provision of a range of quality open spaces and recreation facilities. The proposed RPS is relied on as if set out *in extenso* herein.

6.4 Application of the relevant statutory considerations to particular locations required consideration in conjunction with evaluation of the context of a particular site or area. Relevant contextual factors may include:

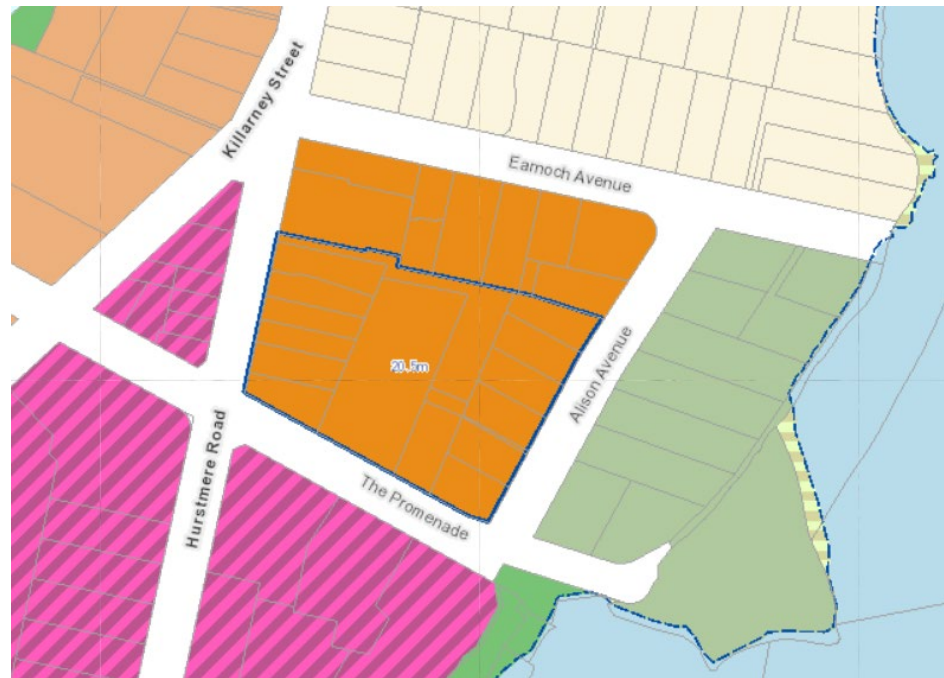
- a) What is already built there, including the layout of existing built development, streets, and the location of public open space;
- b) Topography, ground conditions, instability or natural hazards;
- c) Accessibility to public transport and infrastructure constraints.

6.5 Controls over the bulk and location and height of buildings are the primary method in the PAUP of controlling potential adverse effects in relation to shading, and dominance of a building.

6.6 Applications for resource consent in the THAB or MUZ zone that comply with bulk, location and height requirements are commonly processed and determined by the Council on a non-notified basis without opportunity for public or neighbour participation; or if limited notified, with no appeal rights to the Environment Court.

7. Evidence on the Promenade Block

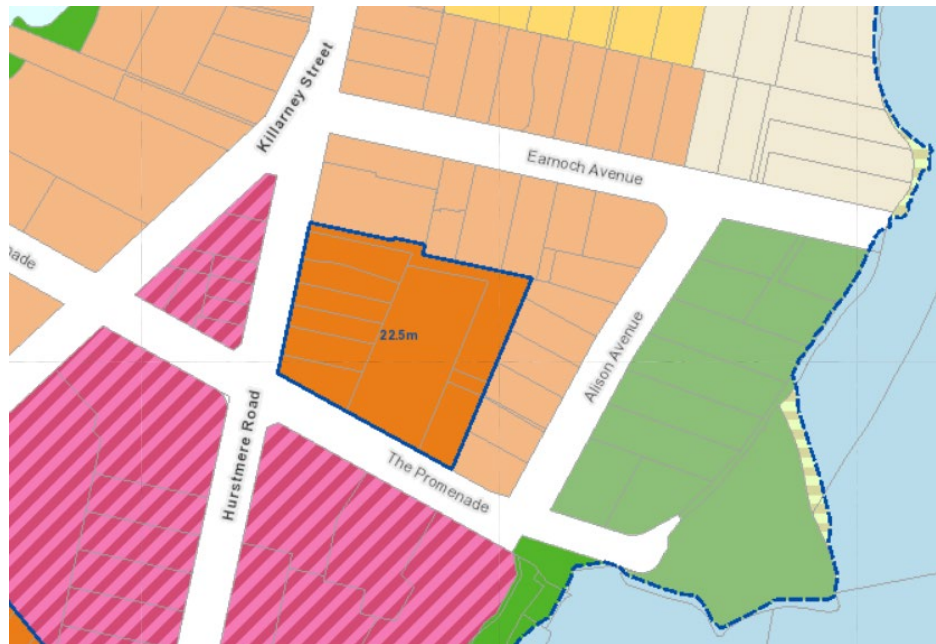
- 7.1 The PAUP as notified proposed a THAB zoning for all the Promenade Block zone with (in the online planning maps) a 20.5m AZHC extending over the southern part of the Promenade Block, from Hurstmere Road to Alison Avenue, but not along Earnoch, Avenue as shown on the map below:



- 7.2 The IHP heard evidence specifically in relation to the Promenade Block at hearing sessions held in relation to:
- Topics 059-060, 062-063 (Residential Zones):
 - Topic 078 (additional height control):
 - Topic 080-Rezoning and Precincts (General):
 - Topic 081-Rezoning and Precincts (geographical areas/site-specific):
- 7.3 The evidence heard by the IHP in relation to the relevant hearing topics, the witness, and the party calling the witness, and the Panel Members present who heard the evidence and officiated and identified hearing sessions in relation to the Promenade Block are identified in **schedule 2**. The evidence heard by the IHP in relation to the Promenade Block included contested evidence in relation to:
- the THAB zone;

- b) the AZHC;
 - c) the existing built environment (consistent with the IHP's Interim Guidance on Best Practice Approaches to Re-zoning);
 - d) the effect of higher buildings on amenity values of adjacent sites.
- 7.4 On about 26 January 2016, Auckland Council filed a joint statement of evidence from Council planners Mr Patience and Ms Ip dated 26 January 2016 which addressed evidence throughout the Auckland region in relation to Topic 081 Rezoning and Precincts (Geographical areas - rezoning only).
- 7.5 On about 24 February 2016, the Governing Body of Auckland Council voted to withdraw identified evidence of its own witnesses including the joint statement of evidence dated 26 January 2016 from Mr Patience and Ms Ip.
- 7.6 The joint statement of evidence of Mr Patience and Ms Ip was later produced to the IHP in response to witness summonses served by Housing New Zealand Corporation (HNZ) dated 16 March 2016 concerning the hearing of submissions on Topic 081
- 7.7 On 16 May 2016, solicitors for Auckland Council filed Closing Remarks on behalf of the Council in relation to Topic 081 Rezoning and Precincts (Geographical areas - rezoning only). In relation to the submissions of the Body Corporate for the Promenade Terraces and the Plaintiff and similar submitters, the Council by its solicitors:
- a) (now) supported the evidence of Mr Patience and Ms Ip dated 26 January 2016 and
 - b) Stated it no longer supported additional height control over the Promenade Block, and that "the Council proposes to delete the AZHC over the Promenade Block" (at 16.7, and 16.15) with reference to earlier evidence of Mr Roberts (at 16.18).
 - c) The closing remarks of the Council contained (at attachment G) a list of mapping changes, but which changes did not include any reference to the removal of the additional height control for the Promenade Block.

- 7.8 The Panel Recommendations and Council decisions in relation to the Promenade Block are shown on the map below:



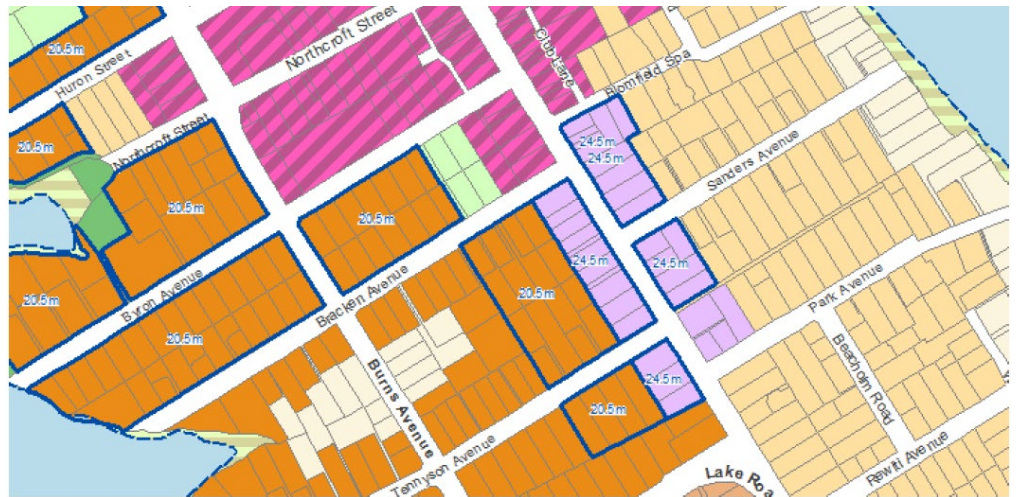
- 7.9 On 19 August 2016 the Auckland Council made decisions on the IHP recommendations for the Promenade Block without the benefit of any reasons from the IHP on submissions in relation to the Promenade Block.

8. Evidence on Lake Road Block

- 8.1 The issues raised in evidence called by or relied on by the Plaintiff in relation to the sites adjacent to Lake Road included:

- a) the zoning of land zoned as Business - Mixed Use Zone (**MUZ**) on both the eastern and the western sides of Lake Road, located south of the Metropolitan Centre Zone;
- b) the application of the Additional Zone Height Controls (**AZHCs**) to the MUZ-zoned land on the eastern and the western sides of Lake Road; and
- c) the zoning of residential land east of the MUZ-zoned land on Lake Road.

- 8.2 The PAUP as notified identified the zones and height control for the Lake Road Block as shown on the Map below:



8.3 The IHP heard evidence specifically in relation to the Lake Road Block at hearing sessions held in relation to:

- a) Topic 051 to 054 (Business Topics) in particular in relation to the land zoned MUZ on the east and the west side of Lake Road
- b) Topics 059-060, 062-063 (Residential Zones):
- c) Topic 078 (additional height control):
- d) Topic 080-Rezoning and Precincts (General):
- e) Topic 081-Rezoning and Precincts (geographical areas/site-specific):

8.4 The evidence heard by the IHP in relation to the relevant hearing topics, the witness, and the party calling the witness, and the Panel Members present who heard the evidence and officiated and identified hearing sessions in relation to the Lake Road Lock are identified in **schedule 3**.

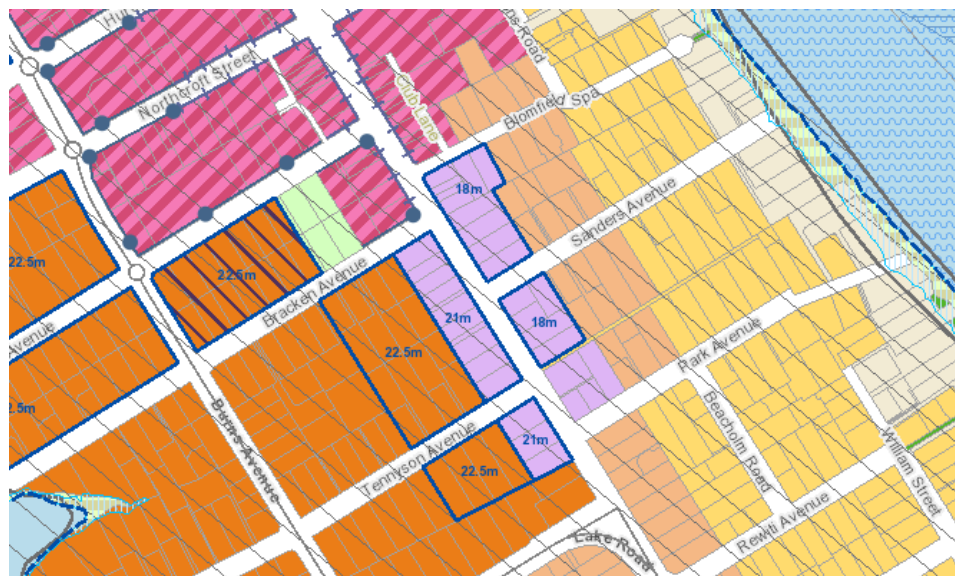
8.5 The evidence heard by the IHP in relation to the Lake Road Block included contested evidence in relation to:

- a) the MUZ on the eastern side of Lake Road,
- b) the application of AZHC to the MUZ land on both the western and eastern side of Lake Road;
- c) the zoning of the residential land to the east of Lake Road.

8.6 The Panel recommendation (and the Council decision) was to:

- a) Retain MUZ on both eastern and western sides of Lake Road;
- b) Decrease the height of the AZHC applying to the land zoned MUZ to the west of Lake Road from 24.5m to 21 m;
- c) Decrease the height of the AZHC applying to the land zoned MUZ to the east of Lake Road from 24.5 m to 18m;
- d) Rezone part of the MHS to the east of the MUZ zone on Lake Road to MHU; and
- e) Increase the height of the AZHC for the THAB land to the west of the MUZ land on Lake Road from 20.5m to 22.5m).

8.7 The Panel Recommendations and Council decisions are shown on the map below:



8.8 On 19 August 2016 the Auckland Council made decisions on the IHP recommendations for the Promenade Block without the benefit of any reasons on submissions in relation to the Lake Road Block.

9. Grounds for relief

9.1 The plaintiff repeats the allegations above and says:

Error of law - statutory framework

9.2 The new reasons made an error of law by holding that submissions which raised “concerns about intensification and building height in Takapuna at a general strategic or growth management level” and “prior

strategic recommendations for the regional policy statement” necessarily resulted in the rejection of individual submissions.

Particulars-error of law:

- a) the IHP erred by stating that prior decision-making at the regional policy statement level or submissions which raised general concerns about intensification and building height in Takapuna would necessitate the rejection of individual submissions of the plaintiff (or others) in relation to the Sites, which would negate material relevant considerations.

Error of law - mistake of fact

- 9.3 The IHP made a mistake of fact which materially influenced the new reasons by mischaracterising the plaintiff’s position, namely in holding that *“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”* and that *“prior strategic recommendations for the regional policy statement necessarily resulted in the recommendation of rejection of individual submissions [of the plaintiff and others] which ran counter to that strategy”*.

Particulars-Mistake of Fact

- a) On their proper interpretation, the submissions and evidence of the Plaintiff did not ‘run counter to that [RPS] strategy’ as the plaintiff:
 - i) identified realistic opportunities for greater intensification in Takapuna.
 - ii) Sought outcomes consistent with material relevant considerations in the RMA, to provide for:
 - the enhancement and maintenance of amenity values,
 - recognition of open space and recreation facilities, and

- the appropriateness of subdivision, use and development in the coastal environment, and
- the avoidance, remedying or mitigation of adverse effects to the environment

(hereafter, “**the misdescription of the plaintiff’s position**”)

Error of Law-Inadequate Reasons

9.4 The new reasons of the IHP, being consequential on the IHP’s approach to grouping was in error and inadequate in contravention of s144 LGATPA and/or the common law.

Particulars:

- a) the new reasons stated fail to state the evidence or expert evidence relied on.
- b) The new reasons were not made with reference to any particular evidence.
- c) The reasons omit to state reasons for preferring one witness or expert over another.
- d) The competing evidential positions are not mentioned at all.

Breach of the rules of natural justice

9.5 The new reasons breach natural justice on the ground that the persons giving the decision on the new reasons had not listened to and heard the evidence or all of the evidence provided or relied on by the plaintiff.

Particulars:

- a) Those members of the IHP who heard and listened to the evidence concerning the prior strategic recommendations for the RPS topics did not hear and listen to all of the evidence provided or relied on by the plaintiff;
- b) A majority of the panel members of the Red or North Panel (comprising Des Morrison (Chair), Les Simmons, and Alan

Watson) who actually heard and listened to the evidence and expert evidence of the plaintiff (and other submitters) in relation to the Promenade Block did not hear and listen to the evidence concerning the prior strategic recommendations for the RPS;

- c) The new reasons do not indicate any process by which the appropriate members of the IHP who heard and listened to the evidence in relation to the Sites actually conferred and provided the new reasons as directed by the Court of Appeal.
- d) As a consequence of the misdescription of the plaintiff's position, it is not apparent that the members of the IHP who actually heard and listened to the evidence and expert evidence of the plaintiff accurately reported the position of the plaintiff to members of the IHP who made decisions;

Error of law – failure to have regard to relevant considerations

- 9.6 The new reasons of the IHP fail or omit to have regard to relevant considerations of what is actually built or the environment as it exists.

Particulars: Promenade Block:

- a) the existing development, known as the Promenade Terraces, is located to the west of the Emerald Inn site, approximately 9m in height, and of recent construction and an individual ownership, and as such does not present a realistic opportunity for intensification.
- b) the THAB zone with additional height control of 22.5 m will be higher than the existing built form of adjacent buildings, such that no transition is achieved to adjacent residential zones.
- c) The Emerald Inn site becomes an effect a “spot zone”, higher than adjoining or adjacent buildings, contrary to the IHP's Best Practice Guidance to Rezoning
- d) The actual and potential adverse effects of shading effects of buildings at 22.5m on the:
 - i) existing built environment of The Promenade Terraces to the west;

- ii) the recreation reserve/open space zoned land located within the coastal environment to the east of the Emerald Inn site.
- iii) The existing built environment zoned MHU to the east;

Particulars: Lake Road

- e) The actual and potential adverse effects of shading effects of buildings in the MUZ with additional height on the:
 - i) existing built environment to the east;

Particulars: Promenade Block & Lake Road Block:

- f) The IHP stated that it was “relying on the general development controls in the [THAB or MUZ] zone that have particular regard to protecting the residential amenity of neighbouring areas”. However, in doing so, it failed to consider that:
 - i) the general development controls do not take account of topography of adjacent land; and
 - ii) the effects of taller build elements are primarily regulated in the PAUP through the bulk, location and height requirements for the relevant zone in the AUP.
- g) By allowing the relief sought by the plaintiff, any shortfall in any intensification target sought by the IHP could logically be addressed by providing for additional height and capacity elsewhere.

Error of law - came to a conclusion without evidence or one to which it could not reasonably have come to on the evidence

- 9.7 In the new reasons in relation to the additional height control for The Promenade Block the IHP came to a conclusion without evidence or one to which it could not reasonably have come to on the evidence.

Particulars-Promenade Block:

- a) Auckland Council in closing on Topic 081 supported the removal of the additional height control entirely such that at the

conclusion of the hearing sessions there was no expert evidence relied on by any party appearing before the IHP in relation to the additional height control of 22.5 m for The Promenade Block.

Error of Law-Auckland Council

9.8 The lawfulness of the Council's decisions as they relate to the Sites rests on the validity of the IHP's recommendations to the Council, including in relation to the new reasons.

9.9 By reason of the errors of law in paragraphs 9 above, the Council's decisions as they relate to the Sites are flawed, and are in error.

10. Relief Sought

10.1 The plaintiff seeks:

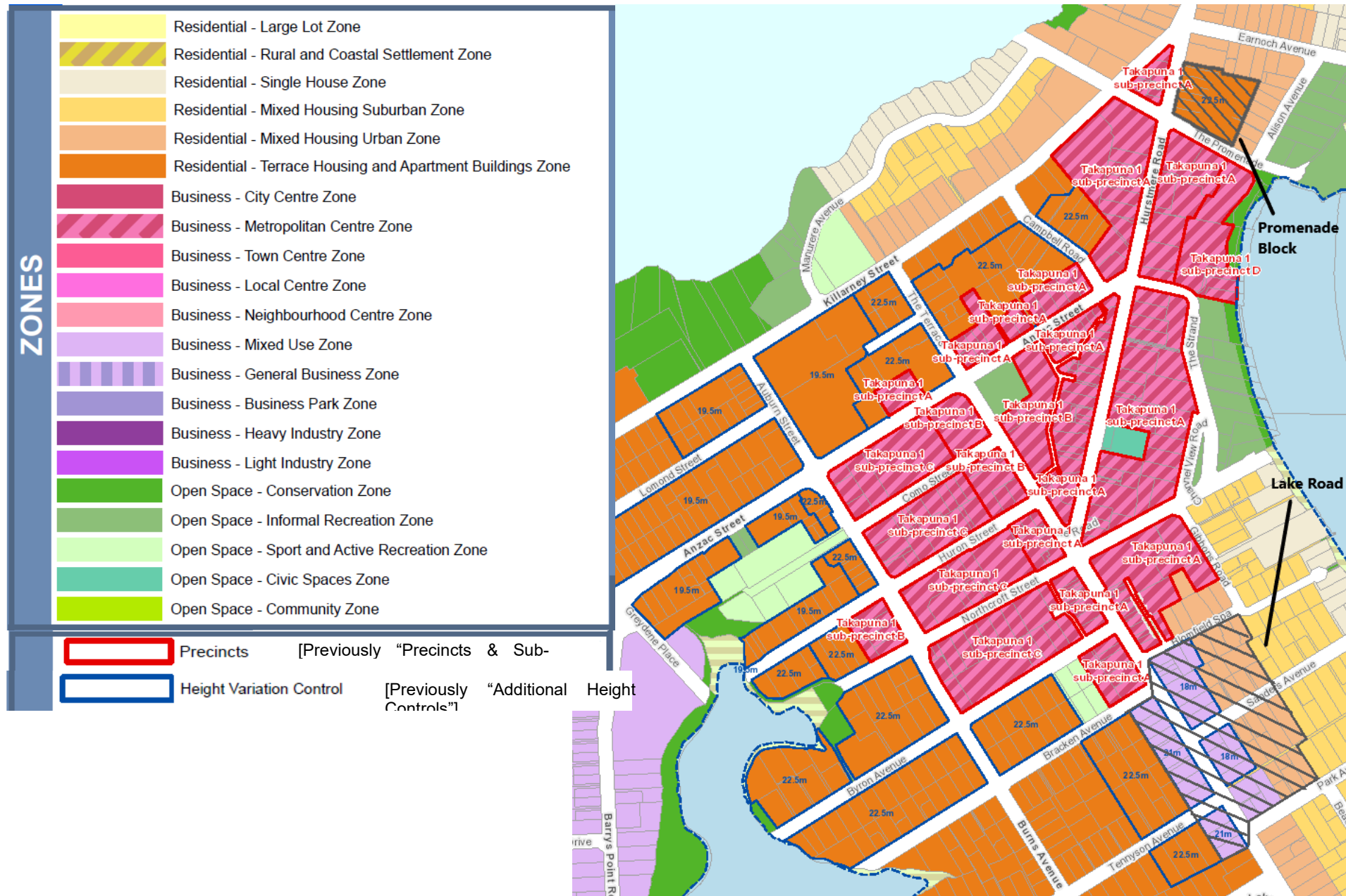
- a) This application for review is allowed;
- b) an order quashing or setting aside the IHP recommendations and the Council's zoning and additional height control decisions as they relate to the Lake Road Block.
- c) An order quashing or setting aside the IHP recommendations and the Council's zoning and additional height control decisions as they relate to the THAB zoned land in the Promenade Block.
- d) Such further and/or alternative orders as the Court thinks fit;
- e) Costs.

This document is filed by Timothy Goulding, solicitor for the plaintiff, of the firm of Daniel Overton & Goulding. The address for service of the plaintiff is at the offices of Daniel Overton & Goulding, 33 Selwyn Street, Onehunga, Auckland.

Documents for service on the plaintiff may be left at that address for service or may be:

1. Posted to Tim Goulding, Daniel Overton & Goulding, PO Box 13-017 Onehunga, Auckland 1643.
2. E-mailed to the solicitor at tim@doglaw.co.nz

Schedule 1 – Promenade Block and Lake Road Block



Schedule 2

Panel members who heard evidence – Promenade Block					
Doc	Date	Submitter	Evidence by	Recommendations	Panel members
059-060, 062-063 Residential Zones, Activities and Controls					
1.	14/10/2015	Auckland Council (5716, FS 3652)	Nick Roberts	<p>Proposed to increase to 22.5m the Additional Zone Height Control stating this <i>“provides a transition in height from the adjacent Metropolitan Centre (24.5m) to the surrounding residential areas (THAB) and public open space”</i></p> <p>In rebuttal evidence dated 6 October 2015 stated “Based on the currently proposed zonings, I consider that the additional height control is appropriate for the Emerald Inn site. Should the sites be rezoned as part of Topic 081, then the appropriate height for the site may need to be reconsidered”.</p>	<ol style="list-style-type: none"> 1. Judge D Kirkpatrick (Chairperson) 2. Peter Fuller 3. Greg Hill 4. Paula Hunter 5. John Kirikiri 6. Des Morrison 7. Stuart Shepherd 8. Jan Crawford
2.	22/10/2015	Franco Belgiorno-Nettis (1667, FS 507)	Franco Belgiorno-Nettis	<p>Support MHU Oppose THAB Oppose AZHC</p>	<ol style="list-style-type: none"> 1. Judge D Kirkpatrick (Chairperson) 2. Peter Fuller 3. Greg Hill 4. Paula Hunter 5. John Kirikiri 6. Des Morrison 7. Stuart Shepherd 8. Jan Crawford
078 Additional Height Control					

3.	30/10/2015	Franco Belgiorno-Nettis (1667, FS 507)	Franco Belgiorno-Nettis	Support MHU Oppose AZHC	1. Jan Crawford (Chairperson) 2. Peter Fuller 3. Jon Kirikiri 4. Paula Hunter
080 Rezoning and Precincts (General)					
4.	15/02/2016	Auckland Council (5716, FS 3652)	John Duguid	Overarching approach by Council to zoning (not property/site specific)	Full Panel: 1. Judge D Kirkpatrick (Chairperson) 2. Peter Fuller 3. David Hill 4. Greg Hill 5. Paula Hunter 6. John Kirikiri 7. Des Morrison 8. Stuart Shepherd 9. Les Simmons 10. Alan Watson 11. Jan Crawford
5.	23/02/2016	Housing New Zealand Corporation (839, FS 3338)	Amelia Linzey and Mathew Lindenberg	Capacity modelling. Subsequently filed on 6 May 2016 with the IHP a set of maps which identified a zoning pattern across the Region based on the application of HNZC's zoning principles. Identified Promenade Block as THAB, no AZHC	Blue Panel: 1. Des Morrison (Chairperson) 2. David Hill 3. Jan Crawford 4. Greg Hill
081 Rezoning and Precincts (Geographical areas/Site-specific)					
6.	10/3/2016	Housing New Zealand Corporation (839, FS 3338)	Amelia Linzey and Mathew Lindenberg -	joint statement of evidence dated 19 February 2016 for Topic 081 (Rezoning and Precincts)	South Panel: 1. John Kirikiri (Chairperson) 2. Stuart Shepherd 3. David Hill
7.	16/3/2016	Auckland	Council planners	joint statement of evidence dated 26 January 2016 for Topic 081	

	[No appearance]	Council (In response to witness summonses served by Housing New Zealand Corporation)	Emily Ip Ewan Patience	(rezoning and precincts) filed with the IHP in response to witness summonses, by statement dated 16 March 2016 Proposed two zonings for the Promenade Block, being MHU and THAB, together with the re-zoning of land north of Earnoch Avenue from Single House Zone to MHU. They Recommended as a consequential change the removal of the AZHC from the Promenade entire Block.	
8.	28/04/2016	Franco Belgiorno-Nettis (1667, FS 507) & Body Corporate 312977 (FS 1441)	Tracy Ogden-Cork: Franco Belgiorno-Nettis Support MHU Oppose THAB Oppose AZHC	Franco Belgiorno-Nettis <ul style="list-style-type: none"> • Support MHU • Oppose THAB • Oppose AZHC <p>Tracy Ogden-Cork: urban design witness called by the Plaintiff and the Body Corporate of the Promenade Terraces with 70-page brief of evidence dated January 2016, and including shading diagrams and context analysis including existing built environment. Filed with the IHP after the evidence of Mr Patience and Ms Ip. This evidence recommended MHU for the entire Promenade Block, and the removal of the additional height control. In relation to the evidence of Mr Patience and Ms Ip, Ms Ogden-Cork stated:</p> <p><i>10. In Council's proposed new zoning layout, as illustrated in Attachment J – Revised Zoning Map, parts of the block fronting Earnoch Avenue and Alison Ave are to be zoned MHU. The remainder of the site is to stay THAB zone, but without the application of the previously applied Additional Building Height Overlay, which it is understood is to be removed as a consequential change to the evidence of Mr Patience. This is also in line with the explanation given by Mr Roberts in the hearing on the residential zone provisions where it was stated that the application of the additional height would be addressed in conjunction with the site-specific zoning.</i></p>	North Panel: 1. Des Morrison (Chairperson) 2. Les Simmons 3. Alan Watson

				<p><i>11. I consider council's proposed changes to be a significant improvement to the notified proposal with respect to minimising shading effects and to better fit with the coastal context, existing built form, unique character of the area, and the overall height and development strategy for the Takapuna Business Zones. In my opinion it also better aligns with the overarching objectives and policies of the PAUP in particular those within B2.2 that emphasise the importance of 'sense of place' in relation to ensuring intensification occurs in a planned manner, respectful of existing environments and landscape values.</i></p> <p><i>12. However, in my opinion the whole of The Promenade Block should have a Mixed Housing Urban (MHU) zoning to ensure continuity in scale and character in keeping with the context of the area, and to provide better amenity protection for sites within the block that are unlikely to be subject to redevelopment. In particular as the maximum height in the THAB zone (for areas not subject to and additional height overlay) is now proposed by council to be increased from 14.5m to 16m.</i></p>	
9.			<p>The Panel also received statements of evidence supporting MHU from nearby residents including:</p> <ul style="list-style-type: none"> • Sheryl Collard, • David Lane, • Alison Sherning, • John Morton, • Barbara Scarfe, • Michael Gladding, • Richard Toulson • James Young 		

Schedule 3

Panel members who heard evidence – Lake Road Block					
Doc	Date	Submitter	Evidence by	Recommendations	Panel members
051-054 Business Zones, Activities and Controls					
1.	07/09/2015	Auckland Council (5716, FS 3652)	Ross Moffatt	Reduce AZHC over MUZ from 24.5m to: a) 18m on eastern side of Lake Rd b) 21m on western side of Lake Rd Retain MUZ adjoining Lake Rd.	1. Judge D Kirkpatrick (Chairperson) 2. Jan Crawford 3. Peter Fuller 4. Stuart Shepherd
2.	09/09/2015	Franco Belgiorno-Nettis (1667, FS 507)	Franco Belgiorno-Nettis	Delete AZHC from MUZ Lake Rd.	1. Judge D Kirkpatrick (Chairperson) 2. Jan Crawford 3. Peter Fuller 4. Stuart Shepherd
078 Additional Height Control					
3.	29/10/2015	Auckland Council (5716)	Ross Moffatt and Nick Roberts	Reduce AZHC over MUZ from 24.5m to: a) 18m on eastern side of Lake Rd b) 21m on western side of Lake Rd	1. Jan Crawford (Chairperson) 2. Peter Fuller 3. John Kirikiri 4. Paula Hunter
4.	30/10/2015	Franco Belgiorno-Nettis (1667, FS 507)	Franco Belgiorno-Nettis	Delete AZHC on eastern and western side of Lake Rd. Implement a maximum height of five storeys on western side and three storeys on eastern side of Lake Rd.	1. Jan Crawford (Chairperson) 2. Peter Fuller 3. John Kirikiri 4. Paula Hunter
059 objectives and policies / 060 Residential activities / 062 Residential development controls / 063 Residential controls and assessment					

5.	14/10/2015	Auckland Council (5716, FS 3652)	Nick Roberts	Increase AZHC to THAB zones west of the MUZ from 20.5m to 22.m	<ol style="list-style-type: none"> 1. Judge D Kirkpatrick (Chairperson) 2. Jan Crawford 3. Peter Fuller 4. Greg Hill 5. Paula Hunter 6. John Kirikiri 7. Des Morrison 8. Stuart Shepherd
081 Rezoning and Precincts (Geographical Areas)					
6.	18/03/2016	Auckland Council (In response to witness summonses served by Housing New Zealand Corporation)	Emily Ip and Ewen Patience	<p>Rezone part of the area east of Lake Rd from MHS to MHU.</p> <p>Retain MHS to area east of Lake Rd closer to the coast.</p>	[No hearing]
7.	24/03/2016	Auckland 2040 Incorporated	Richard Brabant, Richard Burton, Brian Putt, Stephen Matthews	<p>Rezone the MUZ on the eastern side of Lake Rd to MHU.</p> <p>Retain the MUZ on the western side of Lake Rd.</p> <p>Retain MHS zone for area east of Lake Rd.</p>	<p>South Panel:</p> <ol style="list-style-type: none"> 1. John Kirikiri (Chairperson) 2. Judge Kirkpatrick 3. David Hill 4. Stuart Shepherd 5. Greg Hill 6. Paula Hunter 7. Janet Crawford
8.	28/04/2016	<p>Franco Belgiorno-Nettis (1667, FS 507)</p> <p>Body Corporate 312977 (FS 1441)</p>	Tracy Ogden-Cork (Tracy's evidence confined to Promenade block only), Franco Belgiorno-Nettis	<p>Retain MUZ on eastern and western side of Lake Rd and extend MUZ on western side of Lake Rd to Byron Ave.</p> <p>Retain THAB zone to the west of Lake Rd MUZ.</p> <p>Delete AZHC on eastern and western side of Lake Rd.</p> <p>Implement a maximum height of five storeys on western side and three storeys on eastern side of Lake Rd.</p> <p>Direct additional intensification to the western end of Tennyson avenue</p>	<p>North Panel:</p> <ol style="list-style-type: none"> 1. Des Morrison (Chairperson) 2. Les Simmons 3. Alan Watson