IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2019-404-2810
[2022] NZHC 1621

BETWEEN	FRANCO BELGIORNO-NETTIS Plaintiff
AND	AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL First Defendant
	AUCKLAND COUNCIL Second Defendant

Hearing: On the papers

Counsel: R Enright and T Goulding for Plaintiff
V McCall for First Defendant
M C Allan for Second Defendant
C Kirman, Intervener (Kāinga Ora – Homes and Communities)
R Bartlett QC, Intervener (Emerald Group Limited)

Judgment: 8 July 2022

JUDGMENT OF WHATA J
[recall and consent orders]

This judgment was delivered by me on 8 July 2022 at 4.30 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: ……

Solicitors: Brookfields Lawyers
Crown Law Office

Introduction

[1] Franco Belgiorno-Nettis and the Auckland Council jointly apply:

(a) for recall of my judgment *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* dated 27 November 2020[1]; and

(b) consent orders to give effect to a proposed settlement of proceedings, set out at [31].

[2] Kāinga Ora supports the applications and Emerald Group Ltd (EGL) abides.[2] The Auckland Unitary Plan Independent Hearings Panel (the Panel) did not seek to be heard.[3]

[3] I have resolved to grant the applications. My reasons follow.

Background

[4] The background to the present applications is traversed in detail in two judgments of the High Court and a judgment of the Court of Appeal.[4] It is not necessary to repeat that detail here. The following is a relevant summary for the purposes of the applications now before me.

Failure to give reasons

[5] Mr Belgiorno-Nettis made various submissions on the Proposed Auckland Unitary Plan (PAUP) in respect of land comprised between "The Promenade", "Alison Ave", "Earnoch Ave" and "Hurstmere Road" (the Promenade Block) and in respect of land located adjacent to Lake Road (the Lake Road Block). He sought height controls

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1 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2020] NZHC 6. [*Belgiorno-Nettis HC 2*].

2 See joint memorandum of 1 June 2022.

3 The Attorney General was invited to make submissions if they considered it was necessary to do so. They did not make submissions.

4 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387 [*Belgiorno-Nettis HC 1*]; *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] NZCA 175 [*Belgiorno-Nettis CA*]; and *Belgiorno-Nettis HC 2* above n 1, at [65].

in these areas. The Panel delivered the Overview Report on 22 July 2016.[5] Mr Belgiorno-Nettis' submissions were largely rejected by the Panel.

[6] Mr Belgiorno-Nettis then challenged the Panel's recommendations in the High Court, claiming among other things, failure to give reasons. The High Court dismissed this challenge[6], but Mr Belgiorno-Nettis was successful before the Court of Appeal. The Court of Appeal found that:[7]

> [65] We accept the Judge's observation that it would be sufficient for the Panel to group submissions by reference to "matters" if particular features arising from submissions were stated and submissions on those topics grouped, and reasons on each topic given. Accepting this, there is still a duty to give reasons for accepting or rejecting submissions on a topic even if those submissions are grouped, and the reasons be of a summary nature. If the Judge is indicating otherwise, we respectfully disagree with him. While grouped and summarised reasons could be sufficient in the context of the particular process, some articulation of the Panel's thinking was required. A reader should understand why a decision such as the zoning and height levels for a significant block of land has been made. This can be in short form, and depending on the circumstances a few paragraphs or even a few sentences may be enough. But the "why" should be stated.

[7] The Court also said:[8]

> [76] We agree that the Overview Report sets out a general approach to zoning and height controls which would enable intensification of development in and around metropolitan and town centres and transport corridors. The reason for that approach, evident from the Overview Report, is that the Proposed Plan envisaged the need for approximately 400,000 additional dwellings in the Auckland region by 2041 to accommodate between 700,000 and 1,000,000 more residents over that period.
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> [77] We do not see these general statements as providing any sort of a reason for the acceptance or rejection of a specific submission or group of submissions when they are competing. It is no more than a statement of principle or approach. We are unable to agree with the submission that this was a reason for the rejection of Mr Belgiorno-Nettis' submission. The competing evidential positions on the Promenade and Lake Road Blocks are not mentioned at all. There is not sufficient material to be able to say why the Panel made its recommendations concerning those Blocks. It is not self-evident.
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> [78] We cannot agree with the assumption of the Judge that by making various overview statements of policy, the Panel was providing reasons for the

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5 Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council: Overview of Recommendations on the Proposed Auckland Unitary Plan* (22 July 2016).

6 *Belgiorno-Nettis HC 1,* above n 4, at [134]–[135].

7 *Belgiorno-Nettis CA*, above n 4, at [65].

8 At [76]–[78].

> acceptance or rejection of submissions or groups of submissions. The Panel did explain in the Overview Report that site-specific topics were included in its re-zoning and precincts reports. There were reasons given for Precinct recommendations. They were reasons given directly relating to specific zoning areas or maximum heights or groups of or individual submissions. But there were no reasons either grouped or otherwise, that could explain the Promenade Block and Lake Road Block decisions.
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> (footnotes omitted)

[8] In terms of relief, the Court declined to quash or set aside the Panel's recommendations but directed the Panel — in respect of the zoning and height decisions relating to the Promenade Block and the Lake Road Block — to set out the reasons which led to its recommendations. The Court said that, when responding, the Panel could address Mr Belgiorno-Nettis' submission specifically or could group his submission with others.[9] It also said that the Panel, consisting as it does of a Judge and a number of senior professional persons, would need to confer before it summarised its reasons for reaching the two decisions.[10]

Mr Belgiorno-Nettis returns to the High Court

[9] On 14 October 2019, the Chairperson of the Panel, Judge David Kirkpatrick, delivered the Panel's reasons for its recommendations to the Council relating to the zoning and height requirements for the Promenade Block and the Lake Road Block. On 21 October 2019, Judge Kirkpatrick issued further reasons in response to an apparent oversight.

[10] Mr Belgiorno-Nettis then applied for judicial review to the High Court to test the adequacy of those reasons. The relevant issues were:[11]

> (a) **Issue one:** Did the Panel err in law in finding that prior strategic decision-making meant the submissions running counter to the intensification strategy in the Regional Policy Statement (RPS) necessitated the rejection of individual submissions, including the submissions and further submissions of the plaintiff? A subsidiary question is:
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> (i) Did the obligation to give effect to the RPS necessitate rejection of the submissions and further submissions of the plaintiff?

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9 *Belgiorno-Nettis CA*, above n 4, at [110].
10 At [106].
11 *Belgiorno-Nettis HC 2,* above n 1, at [55].

(b) **Issue two:** Did the Panel make a mistake of fact by holding that the submissions and further submissions of the plaintiff ran counter to the intensification strategy in the RPS?

(c) **Issue three:** By stating that it considered and weighed the evidence, did the Panel err in law and not provide reasons by reference to the common law and s 144(a) of the LGATPA for rejecting or accepting the zoning and additional height submissions by failing to identify which lay or expert evidence was preferred?

(d) **Issue four:** Do the new reasons fail to have regard to relevant mandatory considerations, as to the effect of the height and zoning regime on the environment, including the environment as it exists?

(e) **Issue five:** Did the appropriate Panel confer as directed by the Court of Appeal in all the circumstances? A subsidiary question is:

(i) Whether there is an error of law or breach of natural justice in that it is not evidence that the North Panel, who heard the site-specific submissions and evidence of the plaintiff, accurately reported to the whole Panel, and when the North Panel did not hear all the evidence.

[11] The review was dismissed by me.[12] For present purposes it is necessary only to refer to my findings in respect of Issues 3 and 5. I addressed Issue 3 as follows:[13]

> [74] The third issue corresponds to Mr Belgiorno-Nettis' claim that the Panel failed to give adequate reasons for dismissing his case. It is said that the Panel has failed to address the problems identified by the Court of Appeal, namely, how the submissions and the evidence worked to achieve the result is still left unstated and the reader is still left to speculate. Counsel further submit that the requirement to give a basic explanation of why evidence was rejected is required by the common law, and is consistent with the requirements of s 22(1) of the Local Government Official Information and Meetings Act 1987 which requires a written statement of reasons, including the findings on the material issues of fact; a reference to the information on which the findings were based, and the reasons for the decision or recommendation.
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> [75] More specifically, it is submitted that the Panel does not:
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> (a) refer to or explain why certain expert evidence is preferred over other evidence;
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> (b) engage with Mr Belgiorno-Nettis' submissions and the evidence, including as they relate to alternative opportunities;
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> (c) identify whether The Promenade Terraces represented a feasible opportunity for intensification;

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12 *Belgiorno-Nettis HC 2,* above n 1, at [120].

13 At [74]–[75].

(d) identify or address the conflicts on the Council case for The Promenade Block;

(e) refer to or explain why the evidence of Mr Belgiorno-Nettis and Ms Ogden-Cook is rejected;

(f) refer to evidence on the Lake Road Block, including the evidence on behalf of the Auckland 2040; and

(g) refer to the evidence heard before the Panels other than the North Panel.

(footnotes omitted)

[12] I noted that the Panel's reasons do not contain a detailed discussion of individual submissions or supporting evidence.[14] But I did not consider the omission to describe the evidence or to explain which evidence was preferred, reveals a reviewable and/or material error.[15] In particular I said:[16]

> [78] … Firstly, the Panel confirms that the North Panel heard the submissions and evidence on the zoning, precinct and heights of buildings in Takapuna, including the submissions and evidence presented by Mr Belgiorno-Nettis. There is no reason to doubt the truthfulness or accuracy of this statement. It also noted other relevant submissions considered included those seeking to rezone the Promenade Block in Takapuna from THAB to MHU or to otherwise reduce the development levels of that Block. It notes also that a submission seeking to retain the development potential was received from Emerald.

[13] I also considered that the reasons for preferring the case to retain the development potential of the Promenade are clearly explained.[17] I found that "it is clear from the reasons given that the Panel has rejected, in part, Mr Belgiorno-Nettis and Ms Ogden-Cork's views about the different mix of controls, for example Ms Ogden's-Cork's evidence" in support of a particular planning outcome.[18] I found that the reasons provided clearly addressed key matters and I expressed confidence that the Panel would have taken into account relevant submissions and evidence and it can be assumed that the Panel "had regard to the major urban form issues" raised by them.[19]

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14 *Belgiorno-Nettis HC 2,* above n 1, at [76].
15 At [78].
16 At [78].
17 See [81]–[85].
18 At [86].
19 At [93]–[94].

[14] Turning to Issue five, I noted the following:[20]

> [107] Issue five corresponds to the following pleading:
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> 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.
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> Particulars:
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> (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;
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> (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 and the Lake Road Block did not hear and listen to the evidence concerning the prior strategic recommendations for the RPS;
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> (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.
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> (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;
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> (e) Holding that the prior decision-making on the RPS strategic direction necessarily led to the rejection of individual submissions without this policy or approach being disclosed to submitters was in breach of the rules of natural justice.
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> [108] Counsel for Mr Belgiorno-Nettis submits that the Panel does not identify or explain how it conferred on his submissions. In particular, Counsel submit the Panel does not explain:
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> (a) how, if at all, the evidence and submissions provided at the hearings before the North Panel (comprised of only three Panel members), informed the deliberations of the Full Panel; or
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> (b) how the evidence and submissions heard by the South Panel informed the deliberations of the Full Panel.
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> [109] However, during the hearing, Counsel for Mr Belgiorno-Nettis withdrew the claims in relation to [107] (a) and (b) above, and conceded that any allegation that Judge Kirkpatrick signed the new reasons for the Panel unilaterally was withdrawn. Counsel maintains, however, that the pleaded errors [107] (c)-(e) are still engaged.

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20 *Belgiorno-Nettis HC 2,* above n 1, at [107]–[112].

[110] Central to this claim is the following passage of the judgment of the Court of Appeal:

> [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.*
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> (emphasis added)

[111] Counsel for Mr Belgiorno-Nettis submits that the reasons provided do not demonstrate that the appropriate Panel conferred. It is further submitted that the Panel's new reasons indicate that the Panel was "unwilling to shift from the idea of making broad policy decisions about intensification", with the implication that they automatically flowed down to decisions at an individual property or area level. It is also said that the Panel did not engage with the key points made by Mr Belgiorno-Nettis, reinforcing the view that due consideration was never given to them.

[112] It is further submitted that in the absence of any transparent record of who conferred, Mr Belgiorno-Nettis cannot be sure that his submissions were in fact considered individually or in the round. This is then said to engage the type of breach of natural justice identified by the Privy Council in *Jeffs v Nevil Zealand Dairy Production Marketing Board.* In that case, the decision-making Board delegated responsibility to a Committee to receive the evidence and to report to the Board. In so doing, the Privy Council held that, by not hearing the evidence directly, it breached its duty to act judicially.

(footnotes omitted)

[15] In rejecting these claims, I noted that the "Hearings Panel" is a statutorily defined body responsible for the making of recommendations. I also explained the process followed in these terms:[21]

> [114] As can be seen, the Hearings Panel refers to the body responsible for making the recommendations, while a hearing may be comprised of some (but no less than 2) or all of the members of the Hearings Panel. The scheme therefore contemplates that the members present at the hearing will report to the Hearings Panel, and that the Hearings Panel will then make its recommendations. That is what in fact transpired here. The Panel resolved to adopt a split panel process which was explained in its Hearing Procedure for Site Specific Topics. As noted the "North Panel" heard submissions and evidence in relation to topic 81. That process is not subject to challenge in this case. Furthermore, on the face of the reasons, the North Panel reported to the Hearings Panel and that Panel has provided its reasons for its recommendations in relation to the Promenade and Lake Road Blocks.

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21 *Belgiorno-Nettis HC 2,* above n 1, at [114].

[16] I then found:[22]

> [115] … I reject any submission that the Panel was not properly assembled and/or for that purpose, did not reach a decision based on all of the information available to the Panel members. The answer lies in the first paragraph of the reasons, which is repeated here for ease of reference:
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> > 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.
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> …
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> [117] I also see nothing in the point that the reasons refer only to the North Panel when addressing "Local Reasons". As noted, unlike *Jeffs,* no issue of improper delegation or failure to hear the evidence has been raised or arises.
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> [118] Furthermore, it can be assumed from the face of the reasons that they are the product of the combined inputs of the members of the Hearings Panel, including Panel members who heard the more generalised evidence relating to urban form and in light of the evidence placed before the North Panel. Moreover, the critical importance of the reasons is to understand and to be sure that 'the Panel' satisfactorily addressed the key issues in light of the submissions and evidence. … I am satisfied that the full Panel has done just that.

[17] Overall, I held:[23]

> [120] I am satisfied that the Panel gave due and careful consideration to the matters raised by Mr Belgiorno-Nettis and that the conclusions reached by the Panel in respect of both the Promenade and Lake Road Blocks were available to it. No error of law or substantive unfairness arises. The application for review is therefore dismissed.

Appeal to the Court of Appeal

[18] On 23 December 2020, Mr Belgiorno-Nettis filed an appeal against my decision to the Court of Appeal. A hearing was set down for 6 April 2022 but was adjourned because of new information that has come to light since my decision.

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22 *Belgiorno-Nettis HC 2,* above n 1, at [115], [117]–[118].
23 At [120].

New information

[19] In support of his appeal, Mr Belgiorno-Nettis made a request to Crown Law for a report from the Panel about its process of conferring. He stated that the new reasons provided by the Panel did not disclose any process by which the Panel's members reconvened, if it was the "full" Panel or a Panel of "appropriate" members, and how they conferred.

[20] Mr Belgiorno-Nettis was supplied with a report from Judge Kirkpatrick to the Court of Appeal dated 17 February 2022 (the Report). Crown Law also disclosed email correspondence between members of the Panel between 27 May 2019 and 21 October 2019. The correspondence is over 700 pages.

[21] In respect of the Report, Judge Kirkpatrick says "[t]he process was done by e-mail correspondence. By 2019 members of the Panel were engaged in a range of other things and convening a meeting of all of us would have been at least very difficult."

[22] Judge Kirkpatrick also said:

> By way of summary, reviewing the e-mails reminds me that on 27 May 2019 I advised all the members of the Panel of the task that the Court of Appeal had set us. I then went through an iterative process with all of them to draft our reasons. Some members, having been on the division of the Panel that heard the submission, were more involved than others. All members, however, had been involved in the final evaluation and decision for the purposes of preparing our recommendations to the Auckland Council and were accordingly involved in finalising these reasons.

Problems identified

[23] The parties jointly submit that newly released emails cast doubt on the assumption recorded in my judgment that the Panel members had considered the relevant evidence and submissions. They submit:

(a) The Panel rejected engaging with the evidence on the basis that the Panel members were not confident that they could recall what the North Panel thought of "every piece of evidence";

(b) There is nothing to indicate that the evidence was considered by the Panel when formulating its reasons in response to the direction of the Court of Appeal in 2019 and it appears that some if not all the Panel members chose not consider the evidence prior to formulating reasons, to avoid any risk of constructing reasons for the Panel's recommendations after the fact.

(c) The emails also reveal that the Panel could not recall the evidence that was presented at the hearings, and that it was either unable to locate any deliberative notes made at the time of the hearings (in the case of the Lake Road Block) or any deliberative notes were inconclusive and potentially inconsistent (in the case of the Promenade Block) – noting that available deliberative spreadsheets refer to both supporting the position of the Council and agreeing with submitters.

(d) While the emails do not suggest that the Panel did not consider the evidence in 2016, no reasons were given for its recommendations on the Sites at that time.

(e) Overall, in the absence of clear deliberative notes contemporaneous to the recommendations, and the lack of any engagement with the evidence (or indeed any sign that the Panel considered the evidence when giving its reasons) the parties are agreed that there is now good cause to doubt whether the Panel did consider all the relevant evidence and properly understood the competing evidential positions.

[24] I have reviewed the emails said to support the above submissions. I agree that it is an available inference from that material that some of the members did not specifically consider or engage with the evidence in support of Mr Belgiorno-Nettis' submissions. Rather, the members deferred to the members of the Panel who had considered that evidence. Furthermore, it also appears that members of the North Panel who had heard Mr Belgiorno-Nettis could not offer much assistance given the passage of time and the absence of contemporaneous notes. In the result, contrary to the assumption made by me in my judgment, I accept that some members of Panel

may not have specifically considered the evidence in support of Mr Belgiorno-Nettis' submissions when formulating their reasons.

Recall

[25] Rule 11.9 of the Rules states that a Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.[24] As the second High Court judgment has not been sealed, recall remains available to me. It is also common ground that the discovery of new facts subsequent to the judgment being given may be a special reason justifying recall.[25]

[26] In the present case, evidence about the Panel's deliberations was not available to the parties or this Court at the time of argument or the delivery of the decision. That is entirely orthodox as the written reasons of a decision should speak for themselves. It transpires, however, that the evidence now available about the Panel's deliberations suggests that, contrary to the assumption made by me in my judgment, some members of the Panel may not have considered the evidence supporting Mr Belgiorno-Nettis' submissions when formulating the reasons given by the Panel for preferring the Council's position in respect of the Promenade Block and Lake Road Block. It also suggests that the members of the North Panel most likely to have considered that evidence, could not offer much assistance to the remaining members of the Panel as to the cogency of that evidence or about the contemporaneous reasons for rejecting it at the time of the original decisions. The available contemporary record also reveals a somewhat unclear position as to what the North Panel had in fact resolved.

[27] Given this, and in the absence of any contrary argument, I am satisfied that my judgment must be recalled. While the reasons given by the Panel are, for the reasons set out in my judgment, cogent on their face and were available to the Panel on the totality of the evidence, Mr Belgiorno-Nettis' primary complaint that the Panel did not directly or adequately engage with his case has now been made out. In a context where Mr Belgiorno-Nettis has throughout this litigation sought clarity and confirmation that

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24 High Court Rules 2016, r 11.9.

25 *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49 at [32].

his submissions and evidence had been given careful consideration, a finding of reviewable procedural error must follow.

[28] In these circumstances, my judgment is recalled.

Proposed settlement

[29] The parties also agree that the present proceedings should be resolved by consent based on orders set out at [31]. It is common ground that the framework for the resolution by consent in the context of the Auckland Unitary Plan (AUP) matters is set out in *Ancona Properties Ltd.*[26] I see no reason to depart from this framework.

[30] Consent orders may be granted where:

(a) the consent orders reflect the proper resolution of issues of law raised by the appellants;

(b) the proposed amendments and the resolution of the appeals is consistent with the purpose and principles of the Resource Management Act 1991 (RMA) including in particular Part 2;

(c) approval of the proposed consent orders would also be consistent with the purpose and intent of the Local Government (Auckland Transitional Provisions) Act 2010 (the LGATPA), namely Part 4, which provides a streamlined process designed to enable the Unitary Plan to become operative within a short period of time;

(d) the orders may be granted pursuant to r 20.19 of the High Court Rules 2016, ss 300-307 of the RMA and s 158 of the LGATPA; and

(e) the consent orders are within the scope of the appeals;

(f) Subject to futility, the effect of an amendment is to reject the IHP recommendation, so a statutory right of appeal to the Environment

[26] *Ancona Properties Ltd v Auckland Council* [2017] NZHC 594.

Court under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010 is activated for affected submitters.

The proposed orders

[31] The parties seek orders that:

(a) The Promenade Block be rezoned to Residential – Mixed Housing Urban (MHU);

(b) The Height Variation Control (HVC) over the Promenade Block be removed;

(c) The HVC over the area of Business – Mixed Use (MU) zone on the Western side of Lake Road be removed;

(d) A HVC be placed over the area of MU zone on the eastern side of Lake Road with a height of 13 metres (comprising 11m occupiable Building height with 2m for roof form, being three storeys);

(e) The area of MHU zoning within the Lake Road Block be rezoned to Residential – Mixed Housing Suburban (MHS);

(f) The Council notify any affected submitters of the Court's orders and of their rights of appeal under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010; and

(g) The interim relief orders granted by me on 8 February 2021 be cancelled.

[32] For the reasons largely raised by the parties in their joint submissions, I am satisfied the orders should be made, namely:

(a) the proposed orders are within the scope of the matters challenged by these proceedings;

(b) the proposed orders reflect the relief that had been sought by the Plaintiff in his submissions in respect of the Sites, and are supported by the expert evidence submitted by the Plaintiff and other submitters (for example, the evidence submitted by Auckland 2040 in respect to land within the Lake Road Block, and Ms Ogden-Cork, for the Promenade Block – this evidence is addressed in detail in my judgment at [84]–[94]);

(c) submitters who are not involved in these proceedings will not be prejudiced as a result of the orders thought because the orders will generate substantive appeal rights under s 156(1) of the LGATPA;

(d) submitters and other interested parties who do not have s 156(1) appeal rights will have the opportunity to be heard on the appropriate level of intensification for Takapuna due to the Council commencing its intensification planning instrument (IPI) process in August 2022. Therefore, the consent orders would not prejudice interested persons who did not submit on these Sites as part of the PAUP process and did not become involved in these proceedings;

(e) granting the proposed orders would be consistent with the purpose of Part 4 of the LGATPA because it would finally pave the way for Auckland Unitary Plan height and zoning provisions for the Sites to be made operative;

(f) the Council acknowledges the relief sought does not reflect the outcomes that it considered to be most appropriate for the Sites. Council intends to give effect to the NPS-UD in respect of the Sites as part of the IPI process. It considers the IPI is the more appropriate forum to consider how to give effect to these requires because it would enable integrated decision-making which is consistent with decision-making in respect of the surrounding environment; and

(g) the granting of substantive relief is not unprecedented. That factor, in light of the consensus of the parties, the length of time that has elapsed since the Panel's recommendations, the delay that has occurred in making the PAUP operative and the availability of both appeal rights as an alternative process for persons to have their say on provisions affecting the Sites, alleviate any risk of prejudice to submitters or other affected persons.

[33] For completeness, I have considered the consent orders in light of my understanding of the evidence relating to urban intensification together with the reasons given by the Panel. As I said in my judgment, it was available to the Panel to find as they did, particularly in light of the Regional Policy Statement (RPS) as it relates to intensification issues, objectives and policies.[27] But as I also noted in my judgment, the RPS does not mandate intensification at all costs and is not a pre-eminent consideration, and I am satisfied that the orders sought are sufficiently consistent with the general policy direction of the RPS as it relates to intensification.[28] Furthermore, given the full background to this case, making the orders sought to bring some finality to these proceedings is just.

[34] Therefore, I make the orders sought.

Costs

[35] The parties to the joint memorandum do not seek orders as to costs. However, Mr Belgiorno-Nettis has indicated he may seek costs against the Panel. Ms McCall, for the Panel, seeks leave to be heard in respect of any application for costs in this regard. Therefore:

(a) I reserve leave to Mr Belgiorno-Nettis to make an application for costs within 10 working days;

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27 See *Belgiorno-Nettis HC 2,* above n 1, at [32]–[41].
28 At [61].

(b) I grant leave for submissions to be filed on behalf of the Panel in the event that such costs application is made and are be filed within five working days thereafter.