

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

CIV-2019-404-2810

BETWEEN

FRANCO BELGIORNO-NETTIS

Plaintiff

AND

**AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL**

First Defendant

AND

AUCKLAND COUNCIL

Second Defendant

**Joint memorandum of counsel as to the first case management
conference**

Dated: 11th February 2020

Next Event: 13 February 2020, 9:00am (case
management conference)

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May it Please the Court:

Application for judicial review

1. The plaintiff commenced these judicial review proceedings by statement of claim and notice of proceedings dated 20 December 2019 naming the Auckland Unitary Plan Independent Hearings Panel (“**Panel**”) and Auckland Council as first and second defendants. The proceedings were served on the first and second defendants on 23 December 2019.
2. The plaintiff subsequently filed an application for interim orders dated 7 February 2020.
3. The proceedings relate to the reasons given by the Panel for its recommendations on the Auckland Unitary Plan, and subsequent decisions of the Auckland Council in relation to the zoning and height controls for two property blocks in the Takapuna area, referred to as the Lake Road Block and the Promenade Block (together “**the Sites**”).
4. The application follows decisions by the senior courts, including of Davison J¹, the Court of Appeal in *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] 3 NZLR 345, and decision dated 10 October 2019 of the Supreme Court declining leave to appeal in relation to the relief in *Belgiorno-Nettis v AUPiHP & Auckland Council* [2019] NZSC 112.
5. The Court of Appeal directed that the Panel provide reasons for its recommendations to the second defendant Council relating to the zoning and height requirements for Sites. The Court contemplated (at [109]) that fresh proceedings may be commenced by the plaintiff following the provision of new reasons by the Panel.

¹ *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387 (appeal and application for review), and *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* (2018) 20 ELRNZ 335; [2018] NZHC 459 (application for leave to appeal).

Categorisation of the proceeding for the purposes of rule 14.3

6. It is agreed the proceedings are a 2B proceeding.

Directions as to Service of Proceedings

7. Service has been effected upon the first defendant (the Panel) and on the second defendant (the Council).
8. Copies of the proceedings have been provided to the intervenor parties represented in the Court of Appeal proceedings (Housing New Zealand and Emerald Group Ltd).
9. Directions from the Court as to service on other parties potentially affected by the proceedings are sought.
10. As between the second defendant and the plaintiff it is agreed the parties potentially affected by the proceedings include the owners/occupiers of properties in the Lake Road Block and Promenade Block that are the subject of these proceedings. The postal addresses for these persons (173 in number, which includes some duplication between owners and occupiers) have been identified in information supplied by Auckland Council from its rating database.
11. In the earlier proceedings Whata J made a direction that the Council give notice of appeals against the Auckland Unitary Plan by loading notice of the appeals on its website. The Council maintains a website identifying appeals and judicial review proceedings in relation to the Auckland Unitary Plan. It agrees to a similar approach here, but modified to give notice by post of the proceedings to landowners and occupiers of properties within the Sites.
12. The plaintiff and the second defendant jointly seek the following directions from the Court as to service:
 - a. The second defendant (Auckland Council) is directed to give public notice of the plaintiff's proceedings (statement of claim, application for interim orders, affidavit in support) and the Court's directions via its website relating to judicial review applications concerning the

Auckland Unitary Plan². PDF versions of the plaintiff's proceedings and the Court's directions are to be uploaded to the website; and

- b. The plaintiff is to bring notice of the proceedings to the attention of owners and occupiers of properties within the Sites, in accordance with the rating database of the second defendant, and the draft letter attached as **Schedule 1** to this memorandum.

13. The second defendant Council has identified two applicants with live applications for resource consent, and proposes that persons who have 'live' applications for resource consent before the Council be served with the interim order proceedings on a *Pickwick* basis and have the opportunity to be heard in relation to the proposed interim orders.

14. The second defendant has also identified two applicants at the pre-application stage (i.e. who have approached the second defendant for pre-application discussions concerning a proposed development). One of those 'pre-app applicants' does not wish to be identified at this stage for reasons of commercial sensitivity. However, one has indicated an interest in the issues relating to interim relief. The second defendant proposes that the latter pre-app applicant also be served with the interim order proceedings on a *Pickwick* basis.

Interim Orders - Directions

15. The plaintiff seeks interim orders pursuant to section 15 of the Judicial Review Procedure Act 2016.

16. The Interlocutory Application for Interim Orders and memorandum in support has been served on the Council, and copies provided to parties previously represented in the Court of Appeal Proceedings (Housing New Zealand and Emerald Group Ltd).

17. The second defendant Council has advised that it consents to the proposed order at paragraph 1a) of the Interlocutory Application for

² <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/auckland-unitary-plan-appeals/Pages/judicial-review-applications-filed-against-decisions-on-proposed-plan.aspx>

Interim Orders, however it opposes the proposed order at paragraph 1b) relating to the processing of applications for resource consent, and the application of section 86F RMA. The second defendant will file a Notice of Opposition and affidavit shortly.

18. The plaintiff seeks to proceed on an expedited basis.
19. Hearing time is sought in relation to the hearing of the interim orders application. Counsel estimate that a ½ day fixture is required.
20. In relation to timetable directions for the interim orders application:
 - a. A direction is sought for the second defendant, Housing New Zealand, Emerald Group Limited and any interveners (including the applicants for resource consent listed at paragraphs 13 and 14) above to file and serve any written submissions not less than 2 days prior to the hearing.
 - b. A further direction is sought that any affidavit evidence from Housing New Zealand, Emerald Group Limited and any interveners also be filed and served not less than 2 days prior to the hearing.

Timetable Directions for Substantive Proceedings

21. A two-day fixture is sought, with the registrar to liaise with counsel as to availability.
22. There is some merit in 'parking' directions in relation to the substantive proceedings pending the preliminary steps in relation to service, and interim orders. However as between the defendants and the plaintiff, the following directions are agreed in relation to the substantive proceedings:
 - a. Any statements of defence by the defendants are to be filed and served by 21 February 2020;
 - b. Proposed date for filing and serving common bundle of documents by 20 March 2020;

- c. Defendants (and Intervenors) to file any evidence by 24 April 2020;
- d. Plaintiff to file and serve submissions, statement of issues, and chronology, one month prior to hearing;
- e. Defendants to file and serve submissions two weeks prior to hearing;
- f. Intervenors to file and serve submissions one week prior to hearing.

Dated 11th February 2020



R B Stewart QC / S J Ryan

Counsel for the Plaintiff



M Allan / L Wansbrough

Counsel for the Second Defendant

Schedule 1

Draft letter – plaintiff’s solicitor’s letterhead

CIV-2019-404-2810 – Judicial Review Proceedings in Relation to Lake Road Block and Promenade Block by Franco Belgiorno-Nettis

Dear [owner/occupier]

1. By directions from the High Court, owners and occupiers of the Lake Road Block and Promenade Block (as identified on the map attached to this letter) have been directed to be given notice of judicial review proceedings by Franco Belgiorno-Nettis in relation to decision-making concerning the Auckland Unitary Plan (“**AUP**”) by the Auckland Unitary Plan Independent Hearings Panel and Auckland Council in relation to two property blocks in the Takapuna area, referred to as the Lake Road Block and the Promenade Block.
2. Copies of the proceedings (statement of claim, application for interim orders, and affidavit in support) together with a copy of the Court’s directions are available on request, or can be viewed on the Auckland Council’s website concerning judicial review applications filed against Auckland Council’s decisions on the AUP at the following address:

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/auckland-unitary-plan-appeals/Pages/judicial-review-applications-filed-against-decisions-on-proposed-plan.aspx>

[Yours faithfully]

Enclosure-map