

IN THE COURT OF APPEAL OF NEW ZEALAND

CA /2017

BETWEEN

FRANCO BELGIORNO-NETTIS

Appellant

AND

**AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL**

First Respondent

AND

AUCKLAND COUNCIL

Second Respondent

NOTICE OF APPEAL

30 October 2017

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NOTICE OF APPEAL

Franco Belgiorno-Nettis, the appellant in the proceeding identified above, gives notice of appeal to the Court of Appeal against the decision of the High Court in *Franco Belgiorno-Nettis v Auckland Council* [2017] NZHC 2387 delivered by Davison J on 29 September 2017 (“**Judgment**”), namely the Court’s reasoning, findings and conclusions concerning the adequacy of reasons provided by the Auckland Unitary Plan Independent Hearings Panel (“**IHP**”) in relation to zoning and additional zone height control related submissions to the Proposed Auckland Unitary Plan as they relate to specific sites, the Promenade and Lake Road blocks identified on the map attached (**the sites**).

GROUNDINGS

The specific grounds of appeal are the following questions of law:

Grouping of submissions

1. Did the Court err in finding it lawful and adequate for the IHP to provide reasons for accepting or rejecting submissions on the sites by grouping them together with all zoning and additional height control related matters across the Auckland Region, and addressing them at a broad and high level, in circumstances where the submissions and evidence on the sites raised site-specific considerations?¹

Inferred reasons

2. Did the Court err in finding that, while the IHP did not specifically address the submissions of the appellant, adequate reasons in relation to the acceptance or rejection of the appellant's submissions could be inferred from:
 - a) IHP reports regarding the precinct provisions at Takapuna on which the appellant did not submit and where the sites are not located within the Takapuna precinct provisions;²
 - b) The recommended maps for zoning and additional height controls which constitute the IHP’s conclusions.³

¹ Judgment paragraphs [110]-[114]; [130]

² Judgment paragraphs [121]-[123]

³ Judgment paragraphs [124], [126]

3. Did the Court err in failing to address how a submitter's right of appeal to the High Court on questions of law are to be rendered effective and meaningful by the provision of high level⁴ and inferred⁵ reasons for accepting or rejecting submissions?

Natural justice

4. Did the Court err in finding that the nature and extent of the statutory obligation for the IHP to give reasons in recommending to Council whether to accept or reject submissions also defines the nature and extent of the common law obligation as regards the observance of the requirement of natural justice?⁶
5. Did the Court err in finding that it was impossible for the IHP to respond with site-specific reasons given the timeframes prescribed by the Local Government (Auckland Transitional Provisions) Act 2010⁷ ("LGATPA") in circumstances where the LGATPA provided for the IHP to request additional time for the provision of its recommendations⁸, and to provide its recommendations to the Council in a more than one report.⁹
6. Did the Court err in finding that the requirements of natural justice were not breached in relation to the rezoning submissions in circumstances where:
 - a) the IHP's best practice guidelines for the rezoning topic identified the relevance of site-specific considerations;
 - b) the procedures adopted before the IHP involved hearings before a split panel for the rezoning topic for identified sub areas (including Takapuna) with submissions that were contested identified by site or groups of sites;
 - c) no reasons were provided that addressed the submissions and evidence heard over the hearing days in respect of the sites.
7. Did the Court err in finding that the requirements of natural justice were not breached in relation to the additional height control submissions in circumstances where:

⁴ Judgment paragraph [114]

⁵ Judgment paragraph [121]-[123]

⁶ Judgement paragraph [133]

⁷ Judgment paragraph [116]

⁸ S 147 LGATPA

⁹ S 144 LGATPA

- a) submissions on additional zone height control were assigned to a Topic 078;
 - b) the parties and issues report issued by the IHP for Topic 078 acknowledged site-specific issues;
 - c) hearings of submissions on Topic 078 occurred and recommendations were made by the IHP;
 - d) no topic report or express reasons were provided on Topic 078.
8. In the light of the answers to the foregoing questions, did the Court err in finding that the reasons provided by the IHP for the acceptance or rejection of the appellant's submissions were adequate to satisfy statutory and natural justice requirements in respect of the sites?¹⁰

RELIEF SOUGHT

9. The judgment that the appellant seeks from the Court of Appeal in respect of the sites is:
- a) That the questions of law 1-8 are answered in the affirmative;
 - b) That the recommendations of the IHP and decisions of the Council in respect of the sites are quashed; or
 - c) That the matter is remitted to the High Court and/or to the Council for reconsideration in light of the findings of this honourable Court;
 - d) Any other relief the Court sees fit.
10. Mr Belgiorno-Nettis is not legally aided.

Dated 30 October 2017



S J Ryan
Counsel for the appellant

¹⁰ Judgment paragraph [117; 121-124, 129]

To: The Registrar of the Court of Appeal of New Zealand
And to: The Registrar of the High Court at Auckland
And to: The Respondents

This document is filed by Timothy John Goulding, solicitor for the appellant, of the firm Daniel Overton Goulding, Onehunga, whose address for service is at 33 Selwyn Street, Onehunga, 1061.

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

- (a) Posted to the solicitor at PO Box 13017, Onehunga, 1643; or
- (b) Emailed to the solicitor at: tim@doglaw.co.nz

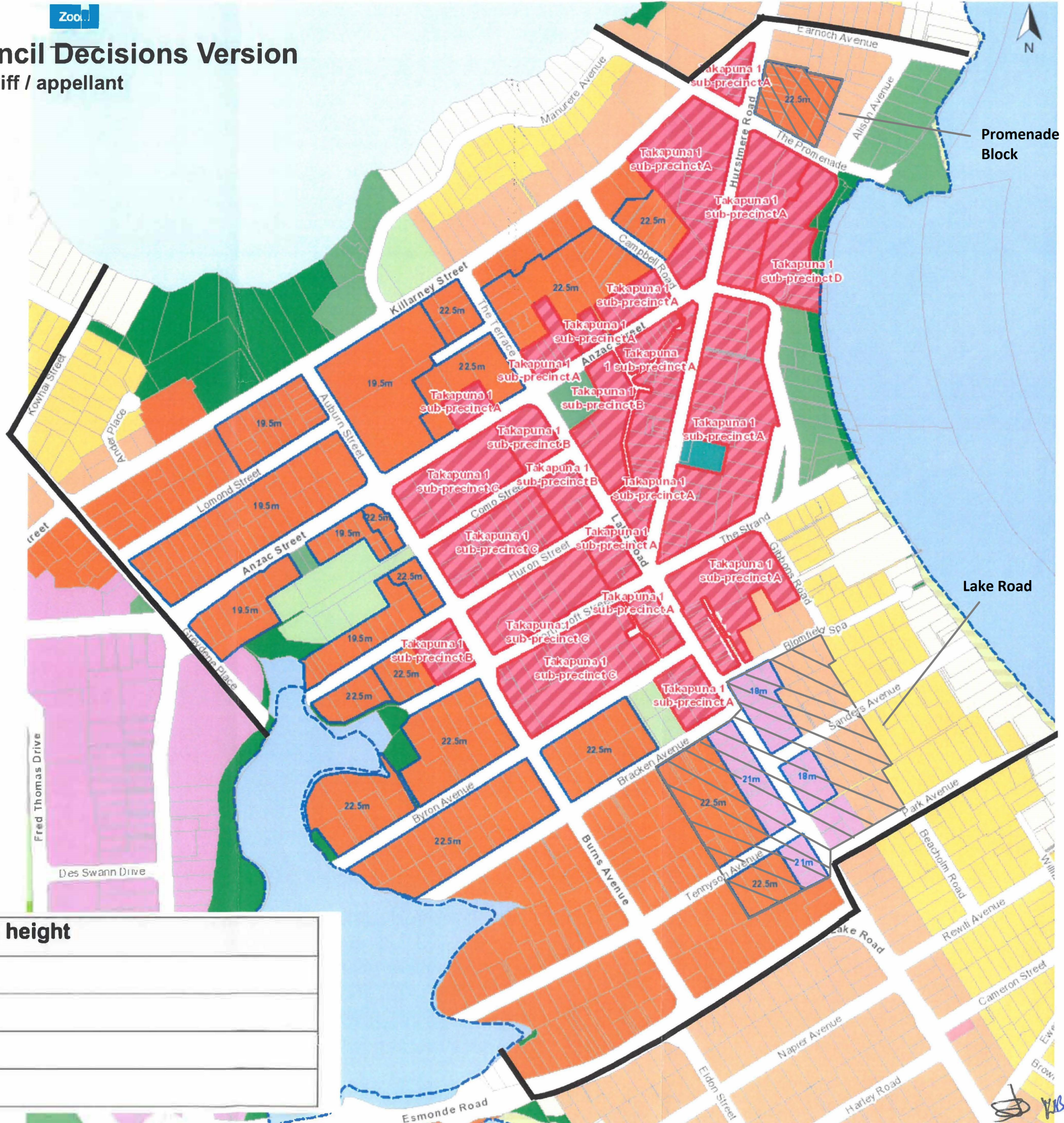
Map of the sites

Annotated Map of Takapuna Area - Council Decisions Version

Thick black line shows Takapuna Area depicted by plaintiff / appellant

Residential		Single House
		Mixed Housing Urban
		Mixed Housing Suburban
		Terrace Housing and Apartment Buildings
		Large Lot
Business		Neighbourhood Centre
		Local Centre
		Town Centre
		Metropolitan Centre
		City Centre
		Mixed Use
		General Business
		Business Park
		Light Industry
Public Open Space		Public Open Space - Conservation
		Public Open Space - Informal Recreation
		Public Open Space - Sport and Active Recreation
		Public Open Space - Community
		Public Open Space - Civic Spaces

	Precincts & Sub-Precincts
	Additional Height Controls



Takapuna 1 precinct heights
(NB: There is/was no HVC in Takapuna 1)

Sub-precinct	Maximum height
Sub-precinct A	24.5m
Sub-precinct B	36.5m
Sub-precinct C	Unlimited
Sub-precinct D	12.5m

Promenade Block

Lake Road