

The High Court of New Zealand  
Auckland Registry

CIV-2019-404-2810

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**  
Plaintiff

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

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

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**Notice of Interlocutory Application for Interim Orders**

**Date:** 7 February 2020

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Solicitor:	Senior Counsel:	Counsel:
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To: The Registrar of the High Court at Auckland

And

To: The First and Second Defendants

**This document notifies you that -**

1. The plaintiff/applicant Franco Belgiorno-Nettis, will on 13 February 2020, or as soon thereafter as may be heard, apply to the Court for interim orders:
  - a) Prohibiting the second defendant from notifying as operative the height and zoning provisions in the Auckland Unitary Plan (operative in part) which relate to the Promenade Block and Lake Road Blocks (“**the Sites**”) under clause 20 of Schedule 1 of the Resource Management Act 1991 (RMA);
  - b) Prohibiting the second defendant from treating as operative the height and zoning provisions for the Sites in the Auckland Unitary Plan (operative in part) when performing its functions under the RMA, including when processing and assessing applications for resource consent or certificate of compliance applications.
  - c) Such further orders as the Court deems fit.
2. The orders 1(a)-(c) are sought on terms and conditions that:
  - a) The orders are to continue to have effect until:
    - i) determination of the Plaintiff’s application for judicial review in this Court, or
    - ii) unless otherwise varied on application to the Court.
3. The grounds on which each order is sought are as follows:
  - a) The orders are necessary to preserve the position of the Plaintiff, pending the determination of his application for relief by way of judicial review in this Court,

- b) If the orders are not granted, there is a real risk that the question on judicial review will be rendered nugatory,
- c) The Plaintiff has previously established error of law in prior decision-making by the First Respondent (**the Panel**), as found by the Court of Appeal in *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] 3 NZLR 345. The Court upheld the plaintiff's claim that the Panel had not complied with its statutory duty to provide adequate reasons for accepting or rejecting submissions in its recommendations on the PAUP in relation to the Sites.<sup>1</sup> The Panel's recommendations and reasons preceded the subsequent decisions of the Second Respondent, the Auckland Council (**Council**) to accept those recommendations.<sup>2</sup>
- d) While not quashing the subsequent decisions of the Council to accept the recommendations of the Panel, the Court Of Appeal accepted that the validity of the Council's decisions rested on the lawfulness of the Panel's recommendations, directed the Panel to provide reasons relating to the Sites, and contemplated at [109] new proceedings by the plaintiff following the provision of reasons by the Panel, such that "***the position can be reassessed by the parties [and] if it is considered that there is a basis for a claim, new proceedings can be filed***"  
  
(emphasis supplied).
- e) The plaintiff contends that the new reasons provided by the Panel on 14 October 2019, and again on 21 October 2019 contain new errors of law, which in combination with the prior errors, affect the validity of the decision-making by Council which relied on the Panel's recommendations.
- f) The plaintiff has a meritorious claim.
- g) The public interest lies in favour of granting the orders sought.

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<sup>1</sup> *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] NZCA 175.

<sup>2</sup> Under s 148(1) of the LGATPA.

- h) The overall justice of the situation favours the granting of the orders sought; and
  - i) Further grounds as set out in the memorandum of counsel for the Plaintiff filed in support, and the affidavit of Franco Belgiorno-Nettis, dated 11 December 2019.
4. The application is made in reliance on
- a) Section 15 of the Judicial Review Procedure Act 2016, r 30.4 of the High Court Rules 2016, *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423, *Fairmont Holdings (No 2) v Christchurch City* (1989)13 NZTPA 455.

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**Dated** this 7 February 2020



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**RB Stewart QC/ SJ Ryan**

Counsel for the Plaintiff/Applicant

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](mailto:tim@doglaw.co.nz)

**Schedule-the Sites**

### Schedule 1 – Promenade Block and Lake Road Block

