Date: Tuesday 12 November 2019
Time: 9.30am
Meeting Room: Reception Lounge
Venue: Auckland Town Hall
301 Queen Street
Auckland

Tira Kāwana / Governing Body

OPEN ATTACHMENTS

ADDITIONAL ATTACHMENTS UNDER SEPARATE COVER

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TABLE OF CONTENTS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Summary of Governing Body information memoranda and briefings - 12 November 2019</td>
<td></td>
</tr>
<tr>
<td>A.</td>
<td>Auckland Unitary Plan appeals update – Court of Appeal decision – Franco Belgiorno-Nettis</td>
<td>3</td>
</tr>
<tr>
<td>B.</td>
<td>AUPIHP Recommendations – The Promenade and Lake Road Blocks Takapuna - Erratum</td>
<td>61</td>
</tr>
<tr>
<td>C.</td>
<td>Region wide stormwater network discharge consent</td>
<td>63</td>
</tr>
<tr>
<td>D.</td>
<td>Draft Golf Investment Plan</td>
<td>67</td>
</tr>
</tbody>
</table>

Note: The attachments contained within this document are for consideration and should not be construed as Council policy unless and until adopted. Should Councillors require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
Memorandum

To: Mayor-elect and Councillors-elect

From: Corina Faesenkloet – Principal Solicitor

Copy to: John Duguid – General Manager Plans and Places

Date: 16 October 2019

Subject: Auckland Unitary Plan appeals update – Court of Appeal decision - Franco Belgiorno-Nettis

1. As you will likely be aware, there are very few appeals remaining on the Auckland Council’s decisions on the Independent Hearings Panel (IHP) recommendations on the Auckland Unitary Plan.

2. Proceedings commenced by Franco Belgiorno-Nettis in the High Court, involving both a judicial review and an appeal on questions of law concerning the IHP’s recommendations and Council’s decisions on the Auckland Unitary Plan relating to two blocks of land in Takapuna, are now at an end, as set out below.

3. The judicial review proceeding and the High Court appeal were the subject of a High Court decision [2017] NZHC 2387, dated 29 September 2017. The decision dismissed the application for judicial review and the High Court appeal.

4. Franco Belgiorno-Nettis appealed the High Court decision to the Court of Appeal. The result of the Court of Appeal decision (Franco Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel and Auckland Council [2019] NZCA 175, dated 22 May 2019) was:

   a. The appeal against the refusal to grant judicial review was allowed.
   b. The application for judicial review was granted.
   c. The application for leave to appeal was declined.
   d. The IHP was ordered to give reasons for its recommendations to the Auckland Council relating to the zoning and height requirements for the two blocks of land in Takapuna in question (referred to as the Promenade and Lake Road Blocks).

5. A copy of the Court of Appeal decision is attached. Relevantly, the Court of Appeal considered at paragraphs [90], [100] and [101]:

   [90] We conclude that while broad policies governing the Panel’s decision making process can be discerned from the Overview and the particular reports, there are no reasons given for the recommendations made for the Promenade and Lake Road Blocks.
[100] We emphasise that our conclusion only applies to the submission of Mr Belgiorno-Nettis on the Promenade and Lake Road Blocks. These are the only relevant areas that have been the subject of argument. In some areas of decision-making, submissions were grouped or even dealt with individually, and reasons were given. The precincts are an example of this. But not in this case. We add that we see no distinction in relation to the need to give reasons between submissions where there was or was not a hearing.

[101] It follows that there has been a reviewable error by the Panel, and we allow the appeal and we uphold the essential ground upon which the application for judicial review was based, that there was a failure to give reasons. A failure to give reasons, given the express statutory provisions that we have referred to requiring reasons to be given, must be seen as an error of law. For reasons that we have set out it can also be seen as procedural unfairness.

6. The Court of Appeal decision did not quash the IHP recommendations and Council decisions and order reconsideration, as Mr Belgiorno-Nettis had sought. Instead, as noted, it directed the IHP to give reasons for its recommendations in relation to the zoning and height requirements for the Promenade and Lake Road Blocks. Relevantly, the Court of Appeal concluded:

[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.

7. Franco Belgiorno-Nettis applied for leave to appeal the Court of Appeal decision to the Supreme Court. His application for leave to appeal sought to overturn the Court of Appeal’s decision to direct the IHP to provide reasons, rather than quash the recommendations / decisions and order reconsideration.

8. On Thursday, 10 October 2019, the Supreme Court issued a decision that dismissed the application by Franco Belgiorno-Nettis [(2019) NZSC 112]. A copy of the Supreme Court decision is attached.

9. As a result of that Supreme Court decision, the Court of Appeal decision stands.

10. The IHP has reconvened to give reasons for its recommendations. These reasons were issued by the IHP on 14 October 2019, following the Supreme Court’s decision to dismiss Mr Belgiorno-Nettis’s application for leave to appeal dated 10 October 2019. A copy of the IHP reasons is attached.

11. Given that there are no new recommendations from the IHP, there are no recommendations for the Council to consider and to make decisions on (under s148, Local Government (Auckland Transitional Provisions) Act 2010).
12. The relevant zoning and height provisions relating to the two blocks of land in Takapuna, that had been the subject of the proceedings by Franco Belgiorno-Nettis, must now as a matter of law be treated as operative under section 86F of the Resource Management Act 1991.
IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA645/2017
CA184/2018
[2019] NZCA 175

BETWEEN

FRANCO BELGIORNO-NETTIS
Appellant

AND

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL
First Respondent

AUCKLAND COUNCIL
Second Respondent

Hearing: 11 and 12 February 2019 (further submissions on 22 February 2019)

Court: Asher, Brown and Williams JJ

Counsel: S J Ryan and R H Ashton for Appellant
No appearance for First Respondent
M C Allan for Second Respondent
C E Kirman and A K Devine for Housing New Zealand
Corporation as Intervener
R E Bartlett QC for Emerald Group Limited as Intervener

Judgment: 22 May 2019 at 2.30 pm

JUDGMENT OF THE COURT

A The appeal against the refusal to grant judicial review is allowed.
B The application for judicial review is granted.
C The application for leave to appeal is declined.
D The Auckland Unitary Plan Independent Hearings Panel is 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.

E The respondents are to pay one set of costs for a standard application on a band A basis with usual disbursements. We certify for two counsel.

F The High Court costs orders in favour of the respondents and the Housing New Zealand Corporation are quashed.

G The High Court is to make the appropriate order for costs in the High Court in the light of this judgment.

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REASONS OF THE COURT

(Given by Asher J)

Table of Contents

<table>
<thead>
<tr>
<th>Para No</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
</tr>
<tr>
<td>5</td>
<td>The Combined Unitary Plan</td>
</tr>
<tr>
<td>11</td>
<td>The Panel</td>
</tr>
<tr>
<td>15</td>
<td>Background to this appeal</td>
</tr>
<tr>
<td>15</td>
<td>The Proposed Plan</td>
</tr>
<tr>
<td>17</td>
<td>Creation of the Panel</td>
</tr>
<tr>
<td>20</td>
<td>Submissions</td>
</tr>
<tr>
<td>27</td>
<td>Hearings</td>
</tr>
<tr>
<td>31</td>
<td>The Panel recommendations</td>
</tr>
<tr>
<td></td>
<td>(i) General</td>
</tr>
<tr>
<td>31</td>
<td>(ii) The Promenade Block</td>
</tr>
<tr>
<td>35</td>
<td>(iii) The Lake Road Block</td>
</tr>
<tr>
<td>40</td>
<td>The High Court judgment</td>
</tr>
<tr>
<td>44</td>
<td>The issue</td>
</tr>
<tr>
<td>46</td>
<td>The obligation to give reasons</td>
</tr>
<tr>
<td>66</td>
<td>What reasons were given?</td>
</tr>
<tr>
<td>91</td>
<td>The impracticality argument</td>
</tr>
<tr>
<td>102</td>
<td>Relief</td>
</tr>
<tr>
<td>111</td>
<td>Jurisdiction to grant leave to appeal to this Court?</td>
</tr>
<tr>
<td>114</td>
<td>Result</td>
</tr>
<tr>
<td>118</td>
<td>Costs</td>
</tr>
</tbody>
</table>
Introduction

[1] This appeal concerns the Auckland Unitary Plan. The appellant, Franco Belgiorno-Nettis, challenges recommendations by the first respondent, the Auckland Unitary Plan Independent Hearings Panel (the Panel) to the second respondent, the Auckland Council (the Council), and the Council’s decision based on those recommendations. He submits that neither body gave reasons or adequate reasons for the recommendations and the decision. His submissions and those of other parties focused on the Panel’s recommendations, which in relation to the issue relevant to this appeal were adopted by the Council. The lawfulness of the Council’s decision therefore rests on the Panel’s recommendations.

[2] Mr Belgiorno-Nettis seeks relief by way of an order quashing or setting aside the Panel’s zoning and building height recommendations as they relate to certain parts of the Takapuna area, and an order remitting those matters back to the Council for a rehearing and reconsideration of submissions.

[3] This appeal comes to us through two routes. First it comes as an appeal against a refusal by Davison J to grant judicial review of the recommendation and decisions in question.\(^1\) Second it comes as an application for leave to appeal the determination of a point of law of the High Court, and if leave is granted the determination of that point of law in the appellant’s favour. Davison J determined this point in a separate judgment, dismissing the application for leave to appeal.\(^2\) An issue arises whether there is jurisdiction to hear the appeal on the point of law, which we refer to at the end of this judgment.

[4] There was a statement of agreed facts filed in the High Court which agreed various background matters, some of which we include in this judgment. The Panel took no steps in the proceeding and abided the decision of the Court, and the Council with the interveners took the burden of responding to the appeal.

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The Combined (Unitary) Plan

[5] The Auckland Council was established on 1 November 2010 by the Local Government (Auckland Council) Act 2009. Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (the Transitional Provisions Act) was added in 2013, and set out the process for the preparation, consideration and finalisation of a “first combined plan for Auckland Council”. Section 3(2)(d) provided that the Act’s purpose was to provide “a process for the development of the first combined planning document for Auckland Council under the Resource Management Act 1991”. This document has become known as “the Unitary Plan” and we will adopt that name.

[6] The Unitary Plan was not simply a consolidation of the existing District Plans of the old pre-amalgamation cities and districts. It also brought together the land use planning functions under the Resource Management Act 1991 (the RMA) controlled by District and City Councils and the coastal, river and lake beds, water use and contaminant discharge powers vested in Regional Councils. This made Auckland City a Unitary Authority.

[7] The Unitary Plan process involved five steps. The first stage of the process involved the preparation and notification of the Proposed Unitary Plan. The second stage involved a process of receiving and processing submissions. Then the Panel was to be established to carry out the third stage. At the third stage, the Panel was to consider the submissions on the content of the Proposed Unitary Plan as notified. The Panel was required to make recommendations no later than “50 working days before the expiry of 3 years from the date on which the Council has notified the proposed plan”. In the fourth stage the Council was to make decisions

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6 Local Government Act 2002, s 3(1)
8 Section 161.
9 Section 128(1).
10 Section 146.
considering those recommendations within a further 20 working days.\textsuperscript{11} The fifth stage was the appeal phase.

\[8\] Clearly prompt decision-making was important. The Hon Amy Adams MP, stated in the first reading:\textsuperscript{12}

I am concerned that under existing law Auckland Council estimates that its first Unitary Plan could take up to 10 years to become operative. No one benefits from long, drawn-out, and expensive processes, during which time Auckland’s development stagnates in a cloud of uncertainty. Auckland’s economy is too important to New Zealand for us to wait up to a decade for the plan to be implemented. Auckland represents some of our most pressing housing affordability issues, and the council needs to be able to make changes to address this issue without long delays.

\[9\] The Council was responsible for stages 1, 2 and 4. The expectation was that under the new process the Unitary Plan would become operative within three years from notification, instead of the six to 10 years likely under the first schedule process of the RMA. This was reflected in the provisions of the Act. There is provision in s 147 of the Transitional Provisions Act for an extension.

\[10\] Apart from the timeframes and the more limited appeal rights, the structure of the Unitary Plan process was not greatly different from the process set out in the first schedule of the RMA. The process was for the preparation of a draft, the giving of notice, the receiving of submissions, provision for hearings, and a decision. However, the decision of the Panel was a recommendatory decision, and the ultimate decision was for the Council.

The Panel

\[11\] Section 115(1)(g) of the Transitional Provisions Act describes the Panel as “specialist”. Under s 161 the Minister for the Environment and Minister of Conservation were to appoint a chairperson and three to 10 other members. The Panel members were required collectively to “have knowledge of, and expertise in relation to” the RMA; district and regional plans and policy statements prepared under the Act; Tikanga Māori (as applied in Tāmaki Makaurau); the Auckland region, the people and

\[\text{\textsuperscript{11}}\] Section 115(1)(k)

\[\text{\textsuperscript{12}}\] (11 December 2012) 686 NZPD 7331.
mana whenua groups of Auckland; and the management of legal proceedings. Ultimately 11 members were appointed, consisting of an Environment Court Judge as Chair and senior lawyers, planners, independent hearings commissioners, and other experts in local government and economics. There was a team of support staff including a Hearings Team that over the period employed eight people (not all at once) and a Planning Team of fourteen planners (again not all at the same time). As well there were various support persons and consultants.

[12] Section 164 of the Transitional Provisions Act set out the Panel’s functions:

164 Functions of Hearings Panel

The Hearings Panel has the following functions and powers for the purposes of holding a Hearing into the submissions on the proposed plan and any variation permitted by section 124(4):

(a) to hold hearing sessions; and

(b) for the purposes of paragraph (a),—

(i) to hold or authorise the holding of pre-hearing session meetings, conferences of experts, and alternative dispute resolution processes; and

(ii) to commission reports; and

(iii) to hear any objections made in accordance with section 154; and

(c) to make recommendations to the Auckland Council on the proposed plan and any variation; and

(d) except as expressly provided by this Part, to regulate its own proceedings in the manner it thinks fit; and

(e) to carry out or exercise any other functions or powers conferred by this Part or that are incidental and related to, or consequential upon, any of its functions and powers under this Part.

[13] Following the hearing of submissions the Panel was obliged to make recommendations to the Council under s 144(4) of the Transitional Provisions Act. Section 144(4)–(6) provides:

Attachments
Scope of recommendations

(4) The Hearings Panel must make recommendations on any provision included in the proposed plan under clause 4(5) or (6) of Schedule 1 of the RMA (which relates to designations and heritage orders), as applied by section 123.

(5) However, the Hearings Panel—

(a) is not limited to making recommendations only within the scope of the submissions made on the proposed plan; and

(b) may make recommendations on any other matters relating to the proposed plan identified by the Panel or any other person during the Hearing.

(6) The Hearings Panel must not make a recommendation on any existing designations or heritage orders that are included in the proposed plan without modification and on which no submissions are received.

The section set out other important requirements for the Panel’s process which we traverse later.

[14] The Panel was to remain in existence “until it has completed the performance or exercise of its functions and powers”. This included the completion of “any appeals in relation to the Hearing that are filed in any court”.

Background to this appeal

The Proposed Plan

[15] The Proposed Auckland Unitary Plan (the Proposed Plan) was publicly notified for submissions on 30 September 2013. A report evaluating the Proposed Plan was published at the same time as the Proposed Plan, in accordance with s 32 of the RMA. The report included sections dealing with, among other topics, urban form and land supply, residential zones, business zones, including the Metropolitan Centre and Mixed Use zones, and building heights. The submission period closed on 28 February 2014.

[16] In the Proposed Plan the zoning and height limits in relation to the Promenade Block and the Lake Road Block facilitated further residential intensification.

13 Transitional Provisions Act, s 166
In relation to the Promenade Block it proposed Terrace Housing and Apartment Buildings (THAB) zoning, the most intense zoning form in this area. The Proposed Plan also contained an additional specific height control of 20.5 metres in relation to that Block. In relation to the Lake Road Block the Proposed Plan zoned properties fronting Lake Road as Mixed Use business zoning with properties on the western side behind the Mixed Use zone, zoned THAB.

Creation of the Panel

[17] Following the enactment of the Transitional Provisions Act, the Panel was appointed by the Minister for the Environment and the Minister of Conservation. The Panel’s task was massive and unprecedented in New Zealand. It involved making detailed recommendations for the whole of the Auckland area, easily the largest metropolitan area of New Zealand.

[18] A separate Panel was set up to deal with the North Shore and Rodney districts, known as the North Panel. The matters that the Panels were to consider were divided into various topic headings which were given numbers. Of the 80 odd topics, those of relevance to this appeal were Topic 013: Urban Growth, Topic 078: Additional Height Controls and Topics 080 and 081: Re-zoning and Precincts.

[19] The statement of agreed facts recorded that the Council received 9,400 primary submissions. 93,600 primary submission points were identified by the Council and summarised in the Summary of Decisions Requested Report (SDR Report). The SDR report was published on 11 June 2014 (followed by an Errata report on 15 August 2014). The period for lodging further submissions in support or opposition closed on 22 July 2014. The Council received 3,800 further submissions. The further submissions contained 1,400,000 submission points in support of or opposition to the primary submission points. The Council received over 20,000 re-zoning requests in relation to more than 80,000 properties.

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14 Transitional Provisions Act, s 115(1)(g).
Submissions

[20] Mr Belgiojorno-Nettis was one of thousands of persons who made submissions to the Panel. His submissions principally related to the proposed zoning and building height controls on properties located in Takapuna, but he also made submissions regarding zoning in Devonport and Grey Lynn. This appeal relates only to two aspects of his submissions and the recommendations and Council decision on those two issues. The first aspect was the zoning and height limits of a block of predominantly residential land in Takapuna which we will refer to as the “Promenade Block”. The second aspect was the zoning and height limits of another block of land in a different part of Takapuna known as the “Lake Road Block”. The factual submissions before us focused on the Promenade Block.

[21] In accordance with the timetable set by the Panel, Mr Belgiojorno-Nettis provided submission points regarding the Promenade and Lake Road Blocks. Mr Belgiojorno-Nettis’ primary submission included the following relief relevant to Takapuna:

Zoning

(a) remove the Metropolitan Centre (MC) zone from the west side of Lake Road from Bracken Avenue to Byron Avenue;

(b) remove the THAB zone on the properties bounded by the Promenade, Alison Avenue, Earnoch Avenue and Hurstmere Road (the Promenade Block), and replace that zone with the Mixed Housing Urban (MHU) zone;

Additional Zone Height Control

(c) remove the Additional Zone Height Control (Additional Height Control) from the Mixed Urban zoned properties on the west side of Lake Road in Takapuna from Bracken Avenue to Esmonde Road; and
(d) alter the Additional Height Control for the Mixed Urban zoned properties on the east side of Lake Road in Takapuna from Blomfield Spa to Park Avenue to a maximum height of three stories.

[22] Mr Belgiorno-Nettis supported 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. He opposed the THAB zoning for the Promenade Block and any Additional Height Control for that land. In relation to the Lake Road Block, he supported a MHU zoning. He relied also on the evidence of an expert planner, Ms Ogden-Cork, and filed a statement by her setting out in detail why that should be so. There were a considerable number of other submissions in opposition to the proposed THAB zoning for the Promenade Block.

[23] As is the case under the RMA, the Council was entitled to make submissions and call evidence on the Proposed Plan.\(^\text{15}\) The Council engaged fully in stages two and three as was its right, in the matters at issue in this appeal, the Council filed evidence by (among other witnesses) Mr Nicholas Roberts, an independent town planning expert. In his evidence-in-chief he ultimately proposed that for part of the Promenade Block there should be an Additional Height Control of 22.5m for the Promenade Block which was higher than that in the proposed plan. He also proposed such an increase in the THAB zone in specific locations adjacent to centres.

[24] Later in the process the Council filed further evidence including a joint statement of evidence from two Council planners, Ewen Patience and Emily Ip. They did not support the proposed zoning or Mr Roberts’ recommendations for the two areas, save for the retention of THAB over part of the Promenade Block. They proposed twozonings 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 ultimately recommended the removal of the Additional Height Control from the Promenade Block. This meant that the Promenade Block in its south-western part would be THAB, but the north-eastern parts facing Earnoch Avenue and

\(^{15}\) Transitional Provisions Act, s 123(2) provides that the Auckland Council must initially prepare the Auckland combined plan in accordance with clauses 1 to 8A of Schedule 1 of the RMA. Clause 6(2) of Schedule 1 of the RMA provides that the local authority in its own area may make a submission.
Alison Avenue would be zoned MHU and would be in a L-shape configuration around the THAB area.

[25] The Housing New Zealand Corporation (the Corporation) filed submissions in relation to the region as a whole following the Corporation’s wish to provide for more intensive development in Auckland to respond to population growth. As they related to the Promenade Block, the Corporation maps proposed THAB for all the Promenade Block without proposing any Additional Height Controls, and THAB extending further out again towards Milford. There were other submissions including that of Emerald Group Ltd which owned land in the Promenade Block, that supported proposed zonings of greater density and height.

[26] Mr Belgiorno-Nettis’ primary submission points and further submission points regarding zonings in Takapuna were allocated initially to Topic 81, and later reallocated to Topic 81(c). Mr Belgiorno-Nettis’ submission points in relation to Additional Height Controls in the Takapuna area were allocated as follows:

(a) His primary submission points relating to land zoned Mixed Use on the east and west sides of Lake Road were allocated to the business zone topics.

(b) His further submission points responding to the submissions of another submitter and relating to the Additional Height Control on the Promenade Block were allocated to Topic 078.

Hearings

[27] A prehearing meeting was held for Topic 078, following which the Panel released a Pre-Hearing Meeting Report which recorded:

The Panel acknowledges linkages between Topic 078 and the residential and business zone topics. Accordingly, the Panel considers it appropriate that evidence submitted in Topic 078 can discuss other relevant provisions which put the relief sought in context.

...
[The] Council has already submitted evidence in topics 051-054 which addresses its position on the Additional Zone Height Control. This evidence discusses all of the sites submitted on in Topic 078. Parties are encouraged to review this evidence…

[28] A similar statement was included in the Parties and Issues Report issued by the Panel prior to the hearing of Topic 078 and in a memorandum filed on behalf of the Council.

[29] Mr Belgiorno-Nettis filed evidence and appeared at hearings on Topics 078 and 081. The North Panel heard submissions on Topic 081 centre by centre and so heard the Takapuna height and zoning submissions together. Mr Belgiorno-Nettis made submissions to the North Panel during the Takapuna hearing on 28 April 2016 in which he presented detailed evidence regarding both business and residential zonings and height controls applicable in the Takapuna area.

[30] In addition to submissions on zoning, the Panel heard submissions on specific proposed Takapuna and Milford precincts. Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions.16

The Panel recommendations

(i) General

[31] The Panel process proceeded and was completed, and the Panel presented its Overview Report on 22 July 2016.17 In the foreword to the report the Panel noted that following notification of the Proposed Plan on 30 September 2013 the Panel had received the Proposed Plan together with over 13,000 submissions. The Panel stated that having conducted an extensive hearing process, by May 2016 it had considered over 10,000 items of evidence presented during 249 sitting days involving 70 hearing topics, with in excess of 4000 appearances by submitters before the Panel.

16 Auckland Council Auckland Unitary Plan Operative (15 November 2016) at 7
[32] In the Overview Report the Panel gave a general description of how it went about its task. It stated:18

Because of the scale and range of matters raised in submissions, the Panel chose to structure the hearing according to topics based on the way the Council grouped submission points in its Summary of Decisions Requested and Further Submissions Report. This resulted in approximately 80 hearing topics, though as the hearing progressed some topics were combined and heard together and some were superseded. The approach was generally to deal with topics moving from the general to the specific. Topics dealing with the regional policy statement were heard first, by the full Panel. Topics concerned with the core text of the regional coastal and district Plan were then heard, in many cases by four or five Panel members. After the core topics had all been heard, the Panel then heard submissions on zoning and precinct issues affecting specific sites and the location of the Rural Urban Boundary. These hearing sessions were usually conducted by three or four Panel members.

[33] One of the most important issues confronting the Panel was how to accommodate, through land use planning policies and rules, the projected population growth for Auckland. The Panel heard and accepted expert estimates of long-term housing demand of an additional 400,000 dwellings by 2041. The Panel recommended intensification around “centres and corridors” to assist in meeting that demand. It recommended that most of the additional housing capacity be located on or near main road corridors and railway stations.

[34] The most intensive residential zones of Residential THAB zone and Residential MHU zone are clustered around centres, transport nodes and along transport corridors, while the lower intensity zones of Residential MHIS zone, Residential Large Lot zone, are generally, located at a greater distance from these places.19

(ii) The Promenade Block

[35] Ultimately the recommendation made by the Panel did not follow exactly any of these specific recommendations. It divided the Promenade Block into two zones as proposed by Mr Patience and Ms Ip (THAB and MHU), but incorporated the 22.5m Additional Height Control (proposed by Mr Roberts for a part of the Block) over the proposed THAB portion of the Block. There was no Additional Height Control

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18 At 57.
19 At 23.
for the L-shaped MHU portion. The Panel also recommended applying the MHU zone as proposed by Mr Patience and Ms Ip.

[36] The Council issued its decision on the Panel’s recommendations within the required time. On the issues relevant to this appeal, the Panel’s recommendations were accepted.

[37] Mr Belgiorno-Nettis did not therefore succeed in his submissions aimed at limiting the density and height in the areas, although the Council also did not get what it sought.

(iii) The Lake Road Block

[38] The history of conflicting submissions in relation to the Lake Road Block is more complex than that for the Promenade Block and we will not set it out in detail. As with the Promenade Block, the evidence featured recommendations from the Council officers, Mr Patience and Ms Ip, which varied from the original evidence provided by the Council, and the evidence from another Council officer and consultant planner, together with other interested persons including Mr Belgiorno-Nettis. The Lake Road Block was an area of land positioned on both the eastern and western sides of Lake Road and Takapuna. Like the Promenade Block it was in the outskirts of the existing central business zone of Takapuna. The Panel recommendation, and the Council decision, was to:

(a) Retain Mixed Use zone on both eastern and western sides of Lake Road (recommended by Mr Patience/Ms Ip);

(b) Decrease the height of the Additional Height Control applying to the land zoned Mixed Use to the west of Lake Road from 24.5m to 21m (as recommended by Mr Moffatt who gave evidence-in-chief for the Council);

(c) Decrease the height of the Additional Height Control applying to the land zoned Mixed Use zone to the east of Lake Road from 24.5m to 18m (as recommended by Mr Moffatt);
(d) Rezone part of the MHS to the east of the land zoned Mixed Use on Lake Road to MHU (as recommended by Mr Patience and Ms Ip); and

(e) Increase the height of the Additional Height Control for the THAB land to the west of the Mixed Use zone land on Lake Road from 20.5m to 22.5m (as recommended by Mr Roberts who also gave evidence as a consultant planner for the Council).

[39] The Council’s decision was released on 19 August 2016. Mr Belgiorno-Nettis then filed these proceedings in the High Court without delay on 16 September 2016.

The High Court judgment

[40] The Judge dealt with the merits of the judicial review application and the point of law appeal together. The Judge was right to do so, given that they both raised the same point of failure to give reasons, and because if an application for judicial review and appeal are lodged together, the High Court must try to hear the proceedings together.\(^{20}\) The Judge noted that it was not disputed before him that the Panel was required to give reasons for its recommendations and that the Council was required to give reasons when rejecting the recommendations.\(^ {21}\) As he observed, that was prescribed by the Transitional Provisions Act.

[41] The Judge referred to leading decisions relating to the duty to give reasons, and then considered “[i]n view of the purposes that reasons serve” the statutory and factual context of the reasons given.\(^ {22}\) The Judge analysed the reasons actually given and concluded that the Panel’s reasons were clearly expressed in its reports and conclusions. In his view any reasonably informed reader of the Panel’s reports in combination with the planning maps the Panel produced, would have no difficulty identifying and understanding the Panel’s reasons for its recommendations. The Judge held:

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\(^{20}\) Transitional Provisions Act, s 159(3).

\(^{21}\) High Court Judgment, above n 1, at [99].

\(^{22}\) At [105].
[125] ... While the Panel’s reasons for zoning and height control recommendations are set out in a number of places in its Overview Report, topic reports and maps, the reports are clearly organised by subject matter as enables a reader to locate parts of particular relevance. Given the approach of grouping the submissions, it is inevitable that individual submitters must look to the Panel’s reasons as expressed in general terms, and apply that reasoning to the zoning and height controls as appear in the Panel’s version of the planning maps, in order to determine the Panel’s reasons.

[42] The Judge concluded that neither the Panel nor the Council made any error of law in relation to their interpretation or application of the Transitional Provisions Act. The Panel was not required to address submissions in any more detail than was appropriate to explain its reasons in relation to topics within which issues and matters raised in the submissions were grouped.23 The Panel and the Council therefore had made no error of law.

[43] The Judge also dismissed the judicial review application, and found that there had been an observance of the requirements of natural justice.24 Therefore, for essentially the same reasons in respect of both the appeal on a point of law and judicial review, he dismissed both claims.

The issue

[44] The Council and other interveners did not dispute that the Panel in a general sense had a duty to give reasons. As we set out later in this judgment, we consider that that was the correct position for the respondents to take. Instead the contest before us focused on whether the Judge was right in concluding that adequate reasons were given by the Panel.

[45] The starting point must be to consider the ambit of the duty of the Panel to give reasons in all the circumstances, and then what reasons if any were in fact given by the Panel, and whether they were adequate. We consider this in the context of judicial review.

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23 At [130].
24 At [133].
The obligation to give reasons

[46] It was stated in *Lewis v Wilson & Horton Ltd* that there is no invariable rule in New Zealand, outside of specific legislation, that courts must give reasons for their decisions. However, where a body is acting in a judicial or quasi-judicial role the provision of reasons can be seen as an aspect of the principle of open justice. In that judgment three reasons for this view were discussed, which we traverse.

[47] Open justice, the ability to see and understand the court process, is critical to the maintenance of public confidence in our court system. If no reasons are given for judicial and quasi-judicial authority being exercised in a particular way, an aspect of open justice is lost. The parties cannot be sure why they won or lost and the party who lost will be left wondering about the efficacy of participating in a process where if you lose, you do not know why. The rule of law is not seen to be working. Thus in *R v Awatere* the Court declined to lay down “an inflexible rule of universal application”, but recognised that “it must always be good judicial practice to provide a reasoned decision”.

[48] As an aspect of this, the giving of reasons is important also because if reasons are not given, it is not possible to know whether there has been an error or mistake made by the decision-maker. A party is obliged to guess or infer. When a decision does not accord with submissions received it is a possible inference that this is because none of the submissions have been found to be satisfactory and the decision-maker has found its own path. However, there are always other possibilities, for instance that the decision-maker has misunderstood or overlooked a submission or perhaps acted entirely capriciously. As was stated in *Lewis v Wilson & Horton Ltd* “judicial accountability, which is maintained primarily through the requirement that justice be administered in public, is undermined.”

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25 *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [75].
24 For an example of the importance of the principle of open justice, see *Erceg v Erceg (Publication restrictions)* [2016] NZSC 135; [2017] 1 NZLR 310 at [2].
27 *R v Awatere* [1983] 1 NZLR 644 (CA) at 648-649. But see also *R v MacPherson* [1982] 1 NZLR 650 (CA) at 652; and *R v Jefferses* [1999] 3 NZLR 211 (CA).
28 *Lewis v Wilson & Horton Ltd*, above n 25, at [79].
[49] On this topic, Somers J stated in *R v MacPherson* that the Judge is under a duty to make “such findings or express such reasons or conclusions as in the particular circumstances are necessary to render the right of appeal effective”. The importance of this was summarised by Lord Donaldson MR in *R v Civil Service Appeal Board, ex parte Cunningham*.  

...the board should have given outline reasons sufficient to show to what they were directing their mind and thereby indirectly showing not whether their decision was right or wrong, which is a matter solely for them, but whether their decision was lawful. Any other conclusion would reduce the board to the status of a free-wheeling palm tree.  

[50] Finally, it is important that reasons be given, because this provides a discipline which will require a judge to formally marshal reasons. It will ensure considered decision-making. Requiring reasons is in itself is a way of forcing the observation of natural justice.  

[51] In *Lewis v Wilson & Horton Ltd* the Court recognised that on occasions reasons may be abbreviated and that, in some cases, they will be evident without express reference.  

[52] The duty to give reasons is expressly placed on the Panel by the Transitional Provisions Act. Section 144(1)–(3) requires the Panel to make recommendations to the Council on the Proposed Plan. The Panel must make recommendations on any provisions included in the Proposed Plan, but it is not limited to recommendations within the scope of the submissions made, and may make recommendations on any other matters. It can provide a number of reports, but they must include the Panel’s recommendations on the topic or topics covered by the report and identify any recommendations that are beyond the scope of the submissions made in respect of that topic. Specifically in relation to reasons s 144(7)–(10) provides:

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29 *R v MacPherson*, above n 27, at 652.  
30 *R v Civil Service Appeal Board, ex parte Cunningham* [1991] 4 All ER 310 at 319, quoted in *Lewis v Wilson & Horton Ltd*, above n 25, at [81].  
31 *Lewis v Wilson & Horton Ltd*, above n 25, at [81].  
32 Transitional Provisions Act, s 144(4)–(6).
144 Hearings Panel must make recommendations to Council on proposed plan

... 

(7) The Hearings Panel must provide its recommendations to the Council in 1 or more reports.

(8) Each report must include—

(a) the Panel’s recommendations on the topic or topics covered by the report, and identify any recommendations that are beyond the scope of the submissions made in respect of that topic or those topics; and

(b) the Panel’s decisions on the provisions and matters raised in submissions made in respect of the topic or topics covered by the report; and

(c) the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

(i) the provisions of the proposed plan to which they relate; or

(ii) the matters to which they relate.

(9) Each report may also include—

(a) matters relating to any consequential alterations necessary to the proposed plan arising from submissions; and

(b) any other matter that the Hearings Panel considers relevant to the proposed plan that arises from submissions or otherwise.

(10) To avoid doubt, the Hearings Panel is not required to make recommendations that address each submission individually.

(Emphasis added.)

[53] This section reflects the importance attached to the giving of reasons by the common law. The application of it lies at the heart of the issues to be answered in this appeal. Critically under s 144(8)(c) it provides that while the submissions may be grouped according to the provisions of the proposed plan to which they relate and the matters to which they relate, the reasons for accepting or rejecting submissions or grouped submissions “must” be included.

[54] This requirement to give reasons is similar to the scheme in the RMA, Clause 10(2) of sch 1, using the same words as the Transitional Provisions Act,
provides that a local authority “must” include reasons for accepting or rejecting the submissions, and allows grouping. There is provision made for a Review Panel in sch 1. Like the Panel in this case, a Review Panel “must” include in its report its reasons for accepting or rejecting submissions, and may group them for that purpose. 33 In all three models, that which applies here, and the two in the RMA, grouping is only an aspect of giving reasons, as is the provision permitting the Local Authority or Review Panel to not address each submission individually. 34 The obligation to give reasons can be seen as reflected in these RMA provisions.

[55] The Panel was chaired by an Environment Court Judge and had some features of a court hearing process, including notification of interested persons, electronic exchanges of relevant submissions and evidence, and limited evidence hearings. In deciding on its recommendations it had to objectively determine multiple issues which were often contentious. Its function could be fairly described as quasi-judicial.

[56] The rights of appeal are circumscribed. A submitter has a right of appeal to the Environment Court under s 156(1) of the Transitional Provisions Act in respect of a provision or matter relating to the proposed plan that the person addressed in their submission. Before this right arises, it is necessary however under s 156(1)(b) for the Council to have rejected a related recommendation of the Panel, and to have decided on an alternative solution which resulted in the provision being included in the Proposed Plan or a matter being excluded from the Proposed Plan. If the Council’s alternative solution included elements of the Panel’s recommendation, the right of appeal is limited to the effect of the differences between the alternative solution and the recommendation. 35 There is also a right of appeal if, alongside other requirements, the Panel has identified a recommendation as being beyond the scope of the submissions made on the Proposed Plan, 36 but only if the submitter “is, was, or will be” unduly prejudiced by the inclusion or exclusion.

[57] There is also a right of appeal to the High Court on a question of law, which is the course of action taken by Mr Belgiorno-Nettis in the High Court, together with

33 Resource Management Act, sch 1 cl 54(2)(a).
34 Schedule 1 cl 10(3) and cl 54(7).
35 Transitional Provisions Act, s 156(2).
36 Section 156(3).
his judicial review application. We address this later in this judgment when we determine the application for leave to appeal.

[58] In practical terms these limited appeal rights mean that the merits of a submission will be considered only once. It might be thought that this in some way indicates that reasons are less important, as factual determinations cannot be challenged save in limited circumstances so the reasons for the factual determinations do not need to be stated. It is true that this aspect of the need for reasons may apply with less force, but it is more than counteracted by the even greater need for justice to be seen to be done by the public, with the reasons for the unchallengeable decisions being apparent. Otherwise the reasons could be entirely arbitrary and no-one would know or be able to challenge recommendations or the decision by judicial review, a remedy expressly recognised as still applicable under the Transitional Provisions Act.\(^{37}\) In our view the very limited rights of appeal weigh in favour of the giving of discernible reasons, rather than against it. An unsuccessful submitter should be able to understand why the submission has failed. A submitter who cannot understand why a submission has been rejected, and who has no right of appeal against the decision is more likely to be left nursing a sense of uncertainty and unfairness.

[59] It has been a theme of the respondents’ submissions that given the process, the statements of general principle, and the results, reasons can be inferred. We deal with this specifically later, but as a general proposition excusing the giving of reasons on this basis should be done with considerable caution. Inferences drawn from the result because there is no other way to discern why the result has been reached can be wrong, and tantamount to guess work. That is why the authorities we have mentioned have placed such importance on the giving of reasons.

[60] The Panel is not a decision-making body as its task is limited to making recommendations. However, the Panel was chaired by an Environment Court Judge. It was of a multi-disciplinary character and it was made up of persons whose broad experience would make them suited for the difficult task ahead. The timeframe for the Council to accept or reject the Panel’s recommendations was extremely tight.

\(^{37}\) Section 159(1)
The structure created inevitably left it for the Panel to do most of the effective decision-making, with the Council itself having a far more Olympian role. It was simply not possible for the Council to analyse all the submissions in any detail. That was the task of the Panel.

[61] The decision of *Hollander v Auckland Council* was relied on by the Council in support of its submission that adequate reasons were given. The question of reasons arose in that case as part of multiple challenges to the relevant parts of the Council’s decision on the Unitary Plan. One of the grounds was that inadequate reasons were given. It was stated by the High Court that the nature of the Council’s functions was such as to engage the legal obligations to provide reasons that are cast upon judicial and quasi-judicial bodies. However, it was held that the reasons for the Council’s decision could be discerned from the text of the relevant reports. Heath J was ultimately satisfied that the Panel had given adequate reasons to support its recommendation that the land in question be zoned mixed rural. There had been a grouping of submissions but the Judge referred to specific statements about the zoning in question in the Panel recommendations. The zoning issues were much broader in that case than in the present, and there was reference to them in the text of the decision. We do not find the case to be of assistance in the analysis that we have to undertake relating as it does to reasons for these specific zoning and height decisions.

[62] The Council also relied on the High Court decision of *Albany North Landowners v Auckland Council*. That decision concerned whether the recommendations of the Panel to the Council were within the scope of submissions made in respect of the Proposed Plan. There were issues as to whether the Panel had a duty to identify specific submissions and to deal with submissions directly rather than indirectly, amongst other issues. The question of giving reasons did not arise directly. However the giving of reasons was touched on in the course of Whata J’s

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38 *Hollander v Auckland Council* [2017] NZHC 2487.
39 At [65]–[72].
40 At [73].
41 The decision was not subjected to analysis before us, and we make no comment on whether it was rightly decided.
assessment of the Panel’s duties. He referred to s 144(8), and held in a passage relied on by the Council in this case:

[143] Approaching the issue purposively and in light of the scheme of Part 4, it is, as Mr Somerville QC submitted, unrealistic to expect the IHP to specify and then state the reasons for accepting and rejecting each submission point. As Ms Kirman helpfully noted there were approximately 93,600 submission points in respect of the PAUP. It would have been a Herculean task to list and respond to each submission with reasons, especially given the limited statutory timeframe to produce the reports (3 years). Furthermore, the listing of individual submissions and the reasons given would inevitably have involved duplication, adding little by way of transparency or utility to interested parties, provided the issues raised by the submissions are addressed by topic in the reasons given by the IHP. Accordingly I can see no proper basis for reading into s 144(8) a mandatory obligation for greater specificity than that adopted by the IHP, namely to identify groups of submissions on a topic by topic basis.

(Emphasis added.)

[63] This statement does no more than correctly apply s 144(10). The issue referred to in the quoted extract was whether there should be reasons for each submission point, rather than grouping. That is not the issue in this case. It is not suggested that reasons should be provided in relation to each submission, and indeed the emphasised clause in the quote shows an expectation that reasons will be given in the particular matter by topic. Mr Ryan’s submission for Mr Belgioioso-Nettis here is not about the grouping or non-grouping of submissions and reasons, but that there were no reasons at all.

[64] In the present case Davison J quoted the above statement from Albany North Landowners v Auckland Council, and referred to the scale of the Panel’s task. The Judge noted that the Panel, while required to include reasons, was specifically empowered to address submissions by grouping them according to the provisions of the Unitary Plan to which they related, or according to the matters they related to.

The Judge held:

[111] In this statutory context, I consider that it would be sufficient for the Panel to group submissions by reference to the issues, relief or “topics” to which the submissions were directed. There was in my view, no criteria for the grouping of submissions that would require the Panel to group submissions on the basis of their connection to a specific site, or by reference to site-specific issues.
[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.43 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.

What reasons were given?

[66] The Panel report consisted of an Overview Report and separate reports on topics. Readers were encouraged to read the Overview Report and then read individual topic reports.

[67] The Judge held:

[118] In the Overview Report the Panel clearly expressed its reasons for adopting an approach to both zoning and height controls that would enable intensification of development in and around metropolitan and town centres and transport corridors. The rationale was that such an approach would respond to the rapid population growth that has occurred in the region and which is anticipated to continue. …

[68] At the outset of the hearing we asked Mr Allan, for the Council, to identify in the recommendations the reasons that were given for the zoning and height levels of the two areas that were the subject of Mr Belgiorno-Nettis’ submissions. It is fair to say that he could not point to any articulated reasons for the acceptance or rejection of Mr Belgiorno-Nettis’ submission specifically. The submission is not mentioned in the Panel recommendations.

43 High Court Judgment, above n 1, at [112].
[69] However, as we have said, this is not necessarily a failure, if the submissions have been grouped under s 144, and reasons for accepting or rejecting them can be found in relation to grouped submissions. We accept that reasons may be abbreviated or on occasions self-evident.

[70] Mr Allan relied on various statements in the Overview Report which he submitted were “high level” reasons that amounted to adequate reasons. The Panel stated that to enable greater capacity as required it identified areas at the edges of the existing metropolis as being suitable for urbanisation, but also by allowing greater intensification of existing urban areas with a strong focus on the existing centres such as Takapuna. Mr Allan submitted that the Panel report explained clearly and consistently the need to focus intensification and growth around centres and corridors, to implement the growth strategy in the Unitary Plan and to promote a compact urban form. The Panel referred in its topic reports to having pursued a “centres and corridor strategy”. This is a consistent theme. Mr Allan submitted that these were reasons for the Panel’s rejection of Mr Belgiorno-Nettis’ submission.

[71] More specifically Mr Allan asserted that while the Panel did not provide reasons which expressly addressed the specific zoning height limits contested by Mr Belgiorno-Nettis, it was not required to do so. The reference to a “centres and corridors” approach provided clear reasoning and justification for the height provisions that were ultimately recommended. He also referred to the various documents that followed the Overview Report.

[72] We have examined the Overview Report. It is an extensive document. Counsel made reference to the Executive Summary where it is stated:\textsuperscript{44}

\begin{quote}
The recommended response to this issue is to enable greater capacity both by identifying areas at the edges of the existing metropolis which are suitable for urbanisation and by allowing greater intensification of existing urban areas with a strong focus on the existing centres. By utilising several methods for greenfield development and brownfield redevelopment, this response provides multiple ways of accommodating growth. It also protects existing values of significant areas and items of natural and historic heritage and of ecological value, the taonga held closely by Mana Whenua, volcanic viewshfts and the maunga themselves, air and water quality, the natural character of the coastal environment and the special character of many places.
\end{quote}

\textsuperscript{44} Overview Report, above n 17, at 9.
[73] It is stated that the Panel’s recommended response to this involves many elements which, implemented together, can improve the Unitary Plan’s approach to managing growth. In summary, the recommendations for managing use and development to provide for growth included:45  

i. Affirming the Auckland Plan’s development strategy of a quality compact urban form focussed on a hierarchy of business centres plus main transport nodes and corridors.  

ii. Concentrating residential intensification and employment opportunities in and around existing centres, transport nodes and corridors so as to encourage consolidation of them while:  

a. allowing for some future growth outside existing centres along transport corridors where demand is not well served by existing centres; and  

b. enabling the establishment of new centres in greenfield areas after structure planning.  

...  

[74] The Panel goes on to refer to the need to ensure capacity to meet the next seven years’ demand:46  

A reasonable estimate of residential demand over the next seven years includes a current shortfall of around 40,000 dwellings and annual demand in the order of 13,000 dwellings or 91,000 over the seven years.  

(Citations omitted.)  

[75] A Plan is attached to the Overview of the Report showing high density for the Takapuna area (amongst a number of areas) which would appear to include the Promenade and Lake Road Blocks. It is stated:47  

The spatial pattern of enabled residential capacity can also be observed from the zoning maps. The more intensive residential zones of Residential-Terrace Housing and Apartment Buildings Zone and Residential-Mixed Housing Urban Zone are clustered around centres, transport nodes and along transport corridors, while the lower intensity zones of Residential-Mixed Housing Suburban Zone, Residential-Single House Zone and Residential-Large Lot Zone are, generally, located at a greater distance from these places.  

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45 At 10  
46 At 52.  
47 At 57.
[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 to 1,000,000 more residents over that period.48

[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.

[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 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.

[79] To give a specific example, in one of the paragraphs put forward by Mr Allan as being a reason, it is stated:

6.2.3. Enabling feasible capacity for at least seven years

The Panel has recommended in the regional policy statement that the Council be required to ensure on an ongoing basis there is sufficient feasible enabled capacity to meet at least the next seven years’ demand, and that the Council undertakes periodic market studies to test the extent to which this requirement is being met. It is also appropriate that this recommended regional policy

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48 At 47.
statement requirement is used to test the sufficiency of the Panel’s recommended Unitary Plan.

A reasonable estimate of residential demand over the next seven years includes a current shortfall of around 40,000 dwellings and annual demand in the order of 13,000 dwellings or 91,000 over the seven years.

... 

6.2.4. Recommended Unitary Plan promotes centres and corridors strategy

The Panel has been careful to recommend a spatial pattern of capacity that promotes the centres and corridors strategy and a more compact urban form. This pattern is a prerequisite to the success of public transport and the efficient functioning of the city.

... 

(Citations omitted).

[80] All that can be taken from this, if Mr Belgioirn-Nettis is looking for reasons, is that these very broad principles that are outlined have in some general way been preferred to his specific submission. However as we have set out, his submission was not entirely rejected, and none of the Council recommendations were entirely accepted, and the Panel ultimately recommended densities and heights in between the extremes in the submissions. How the submissions and evidence worked to achieve this result is left unstated. It is unknown, and a reader is left to speculate about a compromise.

[81] The maps attached to the Overview Report show areas for greater density and these include the Takapuna area. There had been general references to the need to use a number of areas listed, including Takapuna, to achieve the necessary urban growth. However, there is nothing at all in the Overview Report relating to a specific Takapuna area.

[82] In relation to heights there is this statement:49

We suggest that such a bold and innovative approach within the key ‘urban’ zoned locations, which will provide for residential activities and development, would need to include:

* Moderate increases to the permitted height limits in appropriate locations (being in and around centres, and within walking distance of public transport facilities and other recreational, community, commercial and employment opportunities and facilities);

* Significant reductions in, or removal of, land use density controls (particularly in the Residential-Mixed Housing Suburban and the Residential-Mixed Housing Urban zones);

* A reduction in the currently proposed extensive suite of quantitative development controls, such that a limited number of quantitative controls are retained to address the key matters which have the potential to create adverse effects external to a site, most notably in relation to amenity effects (such as retention of building height, height in relation to boundary and yard, building coverage, impermeable surface controls for instance); with the remainder of controls which relate to potential effects internal to a site being addressed in a more flexible way through the use of design-related matters of discretion and assessment criteria; and

* A simplified yet potentially strengthened, suite of matters of discretion and assessment criteria, particularly in relation to development control infringements (in order to address concerns of neighbours in relation to amenity impacts, and provide clear guidance to processing planner to assist in their assessment), as well as design assessment. (Paragraphs 27 to 30.4).

The Panel in general agrees with the evidence presented by Housing New Zealand, as set out above. In response to Housing New Zealand’s evidence and other submitters’ evidence (addressed below) the Panel has amended the residential provisions to enable greater residential capacity. At the same time the Panel believes the amended provisions will also enable good urban design and planning outcomes. This is necessary to give effect to the regional policy statement and to have due regard to the Auckland Plan.

Other provisions have also been included to enable greater capacity and more flexibility in the supply of housing. These include the provision of minor dwellings in the Residential-Large Lot Zone, Residential-Rural and Coastal Settlement Zone and the Residential-Single House Zone. It is not necessary to have these as a class of activity in the Residential-Mixed Housing Suburban, Residential-Mixed Housing Urban and Residential-Terrace Housing and Apartment Buildings zones as these zones provide for a number of dwellings as of right. The conversion of dwellings is provided for in all zones except the Residential-Large Lot Zone, and a purpose statement has been included for this activity/rule.

[83] These comments are not site or area specific, and we are unable to see this as a statement of reasons that in any way explains the Council zoning and height decisions in relation to the Promenade and Lake Road Blocks. They are statements of principle that may guide the Panel in reaching specific decisions, but they do not
explain why individual height decisions in the face of competing submissions, were made for particular areas.

[84] There is a zoning and precincts report that the Panel prepared which explains the changes it recommended.\(^{50}\) In an annexure to the Panel’s rezoning and precincts report the Panel explained the reasons for its recommendations regarding Takapuna Precincts 1 and 2. The Panel explained that the Takapuna Precinct 1 was recommended for inclusion in the Plan as it provides for a more nuanced building and height outcome and that it considered the Precinct appropriate.\(^{51}\)

...because it provides for an urban design outcome in regard to building heights that will better maintain the amenity values of the coastal environment and the existing developments than the default heights in the underlying Business-Metropolitan Centre Zone. The precinct will provide for a graduated increase in building heights from four to five storeys on the coastal edge to unlimited heights mid-block to the west of Lake Road. The Panel relies on the modelling evidence of Mr Sills for the Council that demonstrated that the shadowing and dominance effects of the precinct heights on the coastal reserve would be acceptable.

[85] And in relation to Takapuna Precinct 2 the Panel said:\(^{52}\)

Having reviewed the evidence, the Panel finds that the precinct is no longer necessary with the changes recommended to the general provisions for the Residential-Terrace Housing and Apartment Buildings Zone and the associated Business-Metropolitan Zone, along with other Auckland-wide requirements. It agrees with those submitters [details omitted] who recognised that Takapuna is a key metropolitan centre around which intensification must follow in order to give effect to the compact quality urban form principle. Concerns regarding urban design and spatial form can and will be addressed through the relevant provisions.

[86] These statements were referred to by the Judge and he observed that the rationale for the Panel’s zoning and height control recommendations are evident and clearly expressed in these statements. We agree. In our view what these extracts serve to demonstrate is how it is possible to give general reasons for grouped submissions.

\(^{50}\) Auckland Unitary Plan Independent Hearings Panel 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 trees) (July 2016) [Rezoning and Precincts Report].

\(^{51}\) Annexure 4 at 128.

\(^{52}\) Annexure 4 at 195.
[87] No such reasons grouped or otherwise were given for the ultimate decisions as to the planning of the Promenade and Lake Road Blocks. The decision itself on the zone and heights can only be discerned from an examination of the maps that were attached to the report. It is these maps which show the ultimate recommended zoning and height controls that we have summarised earlier in this judgment. Clearly there will have been a reasoning process carried out by the Council for it to have reached this decision. However, no reasons are given as to why the Panel re-drew the maps to show the particular zonings and height restrictions. The reader is left to infer that there has been some reasoning process that presumably involved the application of the principles set out in the Overview Report. But which principles and to what extent?

[88] In the Overview Report it is stated by way of explanation of the approach to reasons:

> Given the large number of submitters (9,361 primary submitters and 3,915 further submitters) and the volume of individual submission points (nearly 100,000 primary submission points and over one million further submission points), the Panel has grouped all of the submissions. While individual submitters are not specifically referred to in the reports and recommendations, all points have nevertheless been taken into account by the Panel when making its recommendations (see section 2.2 for more detail of the Panel’s process).

[89] We have no hesitation in accepting this statement by the Panel. Indeed as we will set out, the process of considering submissions carried out by the Panel was on its face proper and thorough. However, a statement that submissions have been taken into account cannot be seen as the provision of reasons. It certainly cannot satisfy the underlying policy requirement of transparent and challengeable reasoning.

[90] We conclude that while broad policies governing the Panel’s decision making process can be discerned from the Overview and the particular reports, there are no reasons given for the recommendations made for the Promenade and Lake Road Blocks.

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55 Overview Report, above n 17, at 16.
The impracticality argument

[91] The factor underlining the High Court decision and the approach of the respondents has been the massive task faced by the Panel. The respondents strongly defended the Judge’s use of the word “impossible” to describe the scale of the task if the Panel had had to give reasons. The Judge said:

[116] That conclusion is reinforced when one considers the detailed nature of the submissions made by [Mr Belgiorno-Nettis]. The Panel was dealing with thousands of submissions, including many of a similar nature, directed at site-specific relief. The numeric volume of the submissions was such as would have made it simply impossible for the Panel to respond to even groupings of site-specific submissions and complete its task within the tight timeframe prescribed by the Act. That situation informs a purposive interpretation of Part 4 and the requirements of s 144(8). The fact that the Panel was empowered to gather submissions together by reference to provisions of the proposed plan or other matters that they related to, and thereby manage and process the volume of material included in the submissions, is in my view a significant factor indicating the legislative intent.

(Emphasis added.)

[92] We do not accept that if a task required by Parliament is extremely difficult, an unambiguous legislative direction can be ignored by a purposive interpretation. Under s 144(8) reasons “must” be given for accepting or rejecting submissions, and for the explanation we have given for the common law requirement, it is easy to see why this requirement was imposed. It is not possible to read the section as requiring anything other than the giving of those reasons. In any event, as we will now discuss, we do not accept that the giving of reasons was impossible.

[93] In defending the Judge’s approach Mr Allan pointed out that there were 20,000 re-zoning requests affecting 80,000 properties. The Panel was reporting on far more than just zoning and height matters. It was required to consider 93,600 primary submission points and 1.4 million further submission points in total.

[94] In our view the task of responding to these submissions if they were grouped was plainly not impossible. The Panel specifically said in its Overview Report that all points had been “taken into account”. What the Panel said it did is supported by

54 Commissioner of Inland Revenue v Auckland Harbour Board [2001] 3 NZLR 289 (PC) at [9].
the exhibits that have been provided. Included in those exhibits are spreadsheets which show the listing of all submissions. These show:

(a) a summary of what the submitter wanted and a submission theme;

(b) a statement as to the properties subject to the submission and their locality and zoning;

(c) a statement of the requested zone and relevant overlays, precincts and complaints;

(d) a statement of the planners’ proposed position and the reasons for that planners’ proposed position; and

(e) a statement of the zone change proposed by the planner, whether there was a GIS map change and any consequential amendments.

[95] The spreadsheet in question was given by the Council planners, Mr Patience and Ms Ip in their joint evidence report dated 26 January 2016. We attach as our Appendix A a page of Attachment C to their report, which shows, amongst other submission summaries, the submission of Mr Belgjorno-Nettis in relation to the Takapuna, Milford and Smales Farm areas. His submission on the Promenade Block is set out, together with the planners’ comments. A less detailed analysis was attached as Attachment B in relation to the Lake Road Block. We attach a copy of the relevant pages as Appendix B. In Attachment B the submissions are grouped whereas in Attachment A they are not. It can be seen that the evidence has already been sorted into topics by area, and into topics by theme.

[96] We are unable to see why a document like this could not have been adopted or adapted by the Panel, with general reasons shown as part of it. There could have been a further box or area on the spreadsheet in which the Panel expressed its reasons for its decision on the competing positions. Their expression could have been in summary form, grouping the submissions and giving general reasons. It would not have needed to refer to particular submissions. This is effectively what the Planners did in relation
to the Lake Road Block where they grouped the submissions and their summary response to the Panel. More generally it was done in relation to the Precincts. The Panel could have followed the same abbreviated process in stating its decision, with brief reasons. Of course that was not the only reasons methodology that could have been adopted. There may well be others. But it would have had the advantage of using an existing format.

[97] For the same reasons, we cannot agree with the categorisation of the task of giving reasons as quite overwhelming.\textsuperscript{55} We make it plain that we do not consider that it was necessary for each submission point to be dealt with by the Panel. Grouping of submissions and general reasoning by geographic area or zoning or height could be permissible, providing the reason for the zoning or other conclusion reached by the Panel was clear. A few paragraphs, sometimes a few sentences, per issue could be sufficient.

[98] Possibly if the Council submission was accepted in preference to other submissions, a short statement to this effect, relating it back to the Overview, could have been enough. However, as it was, particularly in relation to these areas, where no particular submission is reflected in the end result, reasons have to be inferred and in the circumstances they are not sufficiently discernible to be capable of analysis and criticism. As we have set out the requirement of s 144(8) is the same as the general requirement for the consideration of preparation, changes and review of policy statements and plans under cl 10 of sch 1 of the RMA. There “must” be reasons for accepting or rejecting the submissions (allowing grouping).\textsuperscript{56} All the more so here, where the Panel is quasi-judicial and there is no general right of appeal. Reasons are not given by declaring a set of overview principles that will be applied, and then providing the decision by a zoning map or otherwise without explaining, at least on a general or grouped basis, the reasons for that decision. There was a failure to give reasons in breach of s 144(8). It was not possible for the Panel to ignore the requirement for some issues and not for others.

\textsuperscript{55} High Court Judgment, above n 1, at [114]
\textsuperscript{56} Resource Management Act, sch 1 cl 10(2)
[99] Clearly we are unable to fully comprehend or answer all the practical problems that the Panel would have faced if it had endeavoured to give reasons on group submissions. We accept the task was considerable, and would have involved a significant amount of work in summarising and collating. But we have seen enough to satisfy ourselves that it would not have been an impossible task or if managed from the outset overwhelming. After all, the Panel said that it had considered all submissions. The articulation of reasons may have involved the employment of more staff, although there was already a considerable body of expert staff. It may have involved having to ask for some more time to finish the process. What we are clear about is that the practical difficulties did not entitle the panel to ignore the legislative requirement for reasons. Parliament had turned its mind to the issue and reasons were required. The practical compromise taking account of the practical issues was that submissions could be grouped and reasons given for a decision on a particular topic. In the end the Panel did not so group them in relation to Mr Belgiorno-Nettis’ submissions, and other similar submissions. It did not give any reasons.

[100] We emphasise that our conclusion only applies to the submission of Mr Belgiorno-Nettis on the Promenade and Lake Road Blocks. These are the only relevant areas that have been the subject of argument. In some areas of decision-making, submissions were grouped or even dealt with individually, and reasons were given. The precincts are an example of this. But not in this case. We add that we see no distinction in relation to the need to give reasons between submissions where there was or was not a hearing.

[101] It follows that there has been a reviewable error by the Panel, and we allow the appeal and we uphold the essential ground upon which the application for judicial review was based, that there was a failure to give reasons. A failure to give reasons, given the express statutory provisions that we have referred to requiring reasons to be given, must be seen as an error of law. For reasons that we have set out it can also be seen as procedural unfairness.
Relief

[102] Mr Belgiorno-Nettis seeks an order quashing the Panel’s recommendations and the Council’s decisions for the particular sites and for a reconsideration. The Council submits that should the Court be minded to allow the appeal, such an order is unnecessary. Under s 166 of the Transitional Provisions Act the Panel “exists until it has completed the performance or exercise of its functions and powers in relation to the Hearing, including any appeals in relation to the Hearing that are filed in any court”. The Panel therefore remains in existence. The Council suggests that the appropriate relief should the appellant be successful is to remit the zoning and Additional Height Control provisions for the two sites in question to the Panel for further reasons to be provided. Mr Ashton for Mr Belgiorno-Nettis accepted that this was a form of relief that could be provided, but submitted that quashing the decision was the better and more practicable outcome.

[103] In assessing this question we bear in mind that there has been no allegation made of a breach of natural justice by the Panel, beyond the failure to give reasons. The material that we have traversed at some length in this decision shows a very thorough analysis of the submissions, and that hearings were conducted when required. Putting to one side the question of reasons, there is nothing that gives us cause for concern about the process undertaken. We also take into account that if there was a reconsideration of the issues by the Panel, it may be that all those interested would have to be given notice. There may have been intervening new relevant events. Any re-hearing could be a significant exercise.

[104] In Marshall Cordner & Co v Canterbury Clerical Workers Union it was stated by Cooke P: 58

If no reasons are given or apparent, or if such reasons as are given are deficient, there are various ways in which the matter can be put right on appeal, including directing the Court appealed from to reconsider. …

---

57 This was also the conclusion reached in North Eastern Investments Ltd v Auckland Council [2018] NZCA 629 at [69].
In R v. Awatere in the criminal context Woodhouse P commented that while no adequate reasons were given the court on appeal could be moved: 59

... to order a rehearing or to rehear the case itself or to make an order that proper and adequate reasons are to be supplied or even to quash the verdict outright.

Orders have been made in various High Court cases ordering a decision-maker to give reasons. 60 However, it is stated in De Smith’s Judicial Review that: 61

Usually, the remedy given in a case of breach of duty to give reasons or adequate reasons is an order quashing the unreasonable decision, rather than an order to require provision of the reasons. The former remedy is usually deemed preferable as it reflects the purpose of reasons to encourage focussed decision-making and avoids the risk of reconstruction of reasons after the decision.

(Citations omitted.)

The learned authors also observe that where the subject matter is less important than human rights, for example, the court may be more ready to accept subsequent reasons. 62

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.

Section 303(1) of the RMA provides that the High Court may on application or its own motion, make an order directing the Environment Court to lodge with

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59 R v. Awatere, above n 27, at 649
62 At [7-116].
the Registrar various things including at s 303(1)(c), a report setting out, so far as is reasonably practicable and in respect of any issue or matter the order may specify, any reasons or considerations to which the court had regard but which are not set out in its decision or report and recommendation. Although this power appears to be designed for the interlocutory context, it is an indication that Parliament has confidence in the ability of the Environment Court to give a report on its reasons. The Panel for the reasons we have discussed, is a body not far removed from the status of the Environment Court by dint of its quasi-judicial function, and the identity of its chair.

[108] The Transitional Provisions Act expressly provides, under s 166, for the Panel to remain in existence until the performance or exercise of its functions and powers are completed, including in relation to any appeals that are filed in any court. Parliament contemplated that, upon determination of an appeal, it may be necessary for the Panel to perform further work.

[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 Belgiojorno-Nettis’ submission specifically or may group his submission with others in responding.

**Jurisdiction to grant leave to appeal to this Court?**

[111] As we have set out, the appeal came to us through two routes, judicial review and an application for leave to appeal. In respect of the application for judicial review, it is stated at s 159(1) of the Transitional Provisions Act, that nothing in that part of the Act limited or affected any right of judicial review a person may have in respect of pt 4 of the Act. No issue was taken as to the existence of a right of appeal against the judicial review decision.
[112] Part 4 of the Transitional Provisions Act contains no specific provision for an appeal to the Court of Appeal of a High Court decision determining an appeal from the Panel. Davison J in his separate decision on whether leave should be granted to this Court, accepted there was jurisdiction to appeal a determination of the High Court to the Court of Appeal, but refused leave.\(^6\)

[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.

Result

[114] The appeal against the refusal to grant judicial review is allowed.

[115] The application for judicial review is granted.

[116] The application for leave to appeal is declined.

[117] The Auckland Unitary Plan Independent Hearings Panel is 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.

Costs

[118] Mr Belgiorno-Nettis, although he has not got the orders he sought, has largely succeeded on his substantive arguments. The appeal has been allowed and a report of reasons ordered. This was the respondents’ preferred option should the appellant succeed but argument on the point did not occupy much time. The Council’s general position was to seek to have the appeal dismissed.

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\(^6\) Leave Judgment, above n 2, at [44] and [62].
[119] We regard Mr Belgiorno-Nettis as the successful party. He is entitled to costs in this Court for a standard application on a band A basis and usual disbursements, certified for two counsel, and payable by the respondents. We exclude the Corporation as it played only a small part in the proceeding, and focused on relief, where it was to a degree successful, although not to the extent in all the circumstances that entitles it to costs.

[120] The cost orders made by the High Court in favour of the respondents and the Corporation are quashed. Costs are to be determined afresh in the High Court, in the light of this judgment.

[121] Dr Kirman for the Corporation submitted that even if the appeal was allowed, the costs order in her client’s favour in the High Court should stand, as in the High Court hearing the appeal still related to some land in which the Corporation had an interest, and so the Corporation was obliged to take steps. We are not sufficiently familiar with what transpired in the High Court to rule on that. So the Corporation costs order is quashed, and it is to be reconsidered by the High Court in the light of this judgment with the other costs orders.

Solicitors:
Daniel Overton & Goulding, Auckland for Appellant
Brookfields, Auckland for Second Respondent
Ellis Gould, Auckland for Housing New Zealand Corporation
MacDonald Lewis Law, Auckland for Emerald Group Limited
<table>
<thead>
<tr>
<th>LBU</th>
<th>SUBMITTER NAME</th>
<th>SUBMISSION</th>
<th>PROPERTIES SUBJECT TO SUBMISSION</th>
<th>SUBMISSION THEME</th>
<th>LOCALITY</th>
<th>PAUP ZONE</th>
<th>REQUIRED ZONE</th>
<th>RELEVANT OVERLAYS, PRECEDENTS AND CONSTRAINTS</th>
<th>PLANNERS'/POSITIONS' REASONS</th>
<th>PROPOSED ZONE CHANGE</th>
<th>GIS MAP CHANGE</th>
<th>CONSEQUENTIAL AMENDMENTS</th>
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<tbody>
<tr>
<td>748-1</td>
<td>Takapuna, Minto and Snellies Farm</td>
<td>NE</td>
<td>Reserve 5 Blomfield St, Takapuna, from Mixed Use to Mixed Housing Suburban zone</td>
<td>Central Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Expiration</td>
<td>Takapuna</td>
<td>MU</td>
<td>MSH</td>
<td>N/A</td>
<td>Do not support change from MU to MSH. The extent of the block zone on Lake Rd recognizes the existing characteristics of a range of non-residential and residential uses. The property is adjacent to the MU zone with good access to the PAN. Retention of the MU zone is the most appropriate way to achieve the objectives of the zone and gives effect to the PDS.</td>
<td>No changes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>800-2</td>
<td>Takapuna, Minto and Snellies Farm</td>
<td>NE</td>
<td>Reserve west side of Lake Rd from Biscayne Ave to Sydenham Ave, Takapuna from Metropolitan Centre to Mixed Use, with an additional height cap</td>
<td>Combined rezoning and precints amendments</td>
<td>Takapuna</td>
<td>MO</td>
<td>MU</td>
<td>Takapuna 1 precinct</td>
<td>Do not support change from MO, Takapuna is a sub-regional centre and the scale and intensity of activities provide for growth and expansion. MC has been applied to Takapuna in accordance with the Centre Strategy Plan under the Auckland Plan and the PDS. The MO zone for the block recognizes the long-standing active business and retail character for the block’s development potential. The retention of the zone gives effect to the PDS.</td>
<td>No changes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>820-7</td>
<td>Takapuna, Minto and Snellies Farm</td>
<td>NE</td>
<td>Reserve Area between Auburn St and the Tamatea, Takapuna from Tassiecd Housing and Apartment Building and Metropolitan Centre to Mixed Use and Metropolitan Centre</td>
<td>Central Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Expiration</td>
<td>Takapuna</td>
<td>THAB</td>
<td>MC</td>
<td>MU</td>
<td>N/A</td>
<td>Do not support change from THAB/MC to MUC in Anakie Street between the Tamatea and Auburn St. A school, office building and residential currently occupy this block. With the exception of the office building site which is already zoned MC, it is inappropriate to rezone the THAB zoning along other parts of this block. MU has been established on Lake Rd adjacent to the THAB and MC zones and along Tamatea Rd, to recognize the mix of commercial and residential activities occurring at these locations. A new MU zone along the Tamatea may diminish the fundable, scale and amenity of the MC zone (particularly along Harbour Rd) and therefore is not supported. The retention of the notified zones is the most appropriate way to achieve the objectives of the MC.</td>
<td>No changes</td>
<td>No</td>
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</table>

Note: All names, save that of Mr Belgiorno-Nettis have been redacted.
## Attachment A  
### Item 17

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<th>Reference Number</th>
<th>Process/Project</th>
<th>Nature</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>907-3</td>
<td>Pakepeke, Milford and Smaleys Farm</td>
<td>NE</td>
<td>Reserve the properties bounded by Promenade, Alisan Ave, Earnest Ave and Hurstville Road, Takauna, from Tenancy Housing and Apartment Building to Mixed Housing Urban.</td>
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<td></td>
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<td></td>
<td>Block bounded by Promenade, Alisan Ave, Earnest Ave and Hurstville Road, Takauna.</td>
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<td>Same as above.</td>
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<td></td>
<td>Centre/Terrace Housing Apartment Buildings, THAB, Mixed Use, Expansion/Conversion.</td>
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<td>Takauna.</td>
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<td></td>
<td>SMH, MHG, N/A.</td>
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<td></td>
<td></td>
<td></td>
<td>SUPPORT IN PARTIAL CHANGE.</td>
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<tr>
<td></td>
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<td></td>
<td>Support partial change of the block bounded by Promenade, Hurstville Rd, Earnest Ave and Alisan Ave. THAB is appropriate for properties adjacent to the MHG zone. However, taking into account the proximity of the coast and lower density residential to the north, properties on Earnest Ave and 187, 187A Hurstville Rd are better suited for MHG, providing a better transition between the THAB zone and the lower density zones to the north. This is shown on the proposed zoning map for the Takauna, Milford and Smaleys Farm topic area in Attachment C. THAB is proposed to be retained for the remainder of the block. The proposed zone change to MHG and the retention of THAB are the most appropriate ways to achieve the objectives of the MHG and THAB zones and give effect to the RPS.</td>
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<td>MHG, Yes, No.</td>
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<td>Support change from SH to MHG. There are no other environmental constraints at 1 Kowhai St. MHG is consistent with the area’s planned suburban built character. It is appropriate to allow a change from SH on the northern side of Lake View Rd (adjacent to Kowhai Ave) which is subject to the Lake Pupuke CRT. The zone change is the most appropriate way to achieve the objectives of the MHG zone and give effect to the RPS.</td>
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<td>MHG, Yes.</td>
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<td>Centre/Terrace Housing Apartment Buildings, THAB, Mixed Use, Expansion/Conversion.</td>
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<td>Takauna.</td>
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<td>SMH, MHG, N/A.</td>
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<td>DO NOT SUPPORT CHANGE: SUPPORT REMENTION OF NOTIFIED ZONE.</td>
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<td>Do not support change from MHG to SMH. The extent of the MHG zone on Lake Rd recognises the existing characteristics of a range of non-residential and residential uses. The property is adjacent to the MHG zone with good access to the RFN. Retention of the zone is the most appropriate way to achieve the objectives of the MHG zone and give effect to the RPS.</td>
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<td>No change, Yes, No.</td>
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<tr>
<td></td>
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<td></td>
<td>Centre/Terrace Housing Apartment Buildings, THAB, Mixed Use, Expansion/Conversion.</td>
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<td>Takauna.</td>
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<td>SMH (Interested), MHG, N/A.</td>
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<td>DO NOT SUPPORT CHANGE: SUPPORT ALTERNATIVE ZONE.</td>
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<td>Do not support change from THAB to SMH (Interested). For the block bounded by Promenade, Hurstville Rd, Earnest Ave and Alisan Ave. THAB is appropriate for properties adjacent to the MHG zone. However, taking into account the proximity of the coast and lower density residential to the north, the properties on Earnest Ave, Alisan Ave and 187, 187A Hurstville Rd are better suited for MHG, providing a better transition between the THAB zone and the lower density zones to the north. This is shown on the proposed zoning map for the Takauna, Milford and Smaleys Farm topic area in Attachment C. THAB is proposed to be retained for the remainder of the block.</td>
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<td>MHU, Yes.</td>
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*Attachment A*
| 43P-1 | Takapuna, Milford and Smale’s Farm | ND | Rezone properties bounded by The Promenade, Aliken Avenue, Easen Avenue and Harbourside Road, Takapuna from Terrace Housing and Apartment Buildings zone to Mixed Housing Urban. | 2C, 2D Northcote Road, 4, 6 Rangitane Avenue, Takapuna. | Combined rezoning and precept submissions | Support partial change of the block bounded by The Promenade, Hurstville Rd, Easen Ave and Aliken Ave. THAB is appropriate for properties adjacent to the NC zone. However, taking into account the proximity of the coastal and lower density residential to the north, properties on Easen Ave, Aliken Ave and 107, 107A Hurstville Rd are better suited for MU, providing a better transition between the THAB zone and the lower density zones to the north. THAB is shown on the proposed zoning map for the Takapuna, Milford and Smale’s Farm topic area in Attachment E. THAB is proposed to be retained for the remainder of the block. The proposed zone change to MU and the retention of THAB are the most appropriate ways to achieve the objectives of the MU and THAB zones and give effect to the RPS. | MU | Yes | No | Yes - AEHC (remove from entire block) |
## Appendix B

<table>
<thead>
<tr>
<th>Theme 1 – Centres/Terrace Housing and Apartment Buildings/Mixed Use Expansion/Contraction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SUBMISSION THEME</strong></td>
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</table>
| Hursthouse Rd/Earlsmarch Ave/Ailson Ave/The Promenade block | 24 submission points seek to rezone the entire block bounded by Hursthouse Rd, Earlsmarch Ave, Ailson Ave and The Promenade from THAB to SH, MHS, MHU or an unspecified zone.  
Two submission points seek to rezone 29 Earlsmarch Ave and 16 The Promenade from THAB to a lower density zone (deferred).  
One submission point seeks to retain THAB for a number of properties in this block. | Position: The 24 requests to rezone the block bounded by Hursthouse Rd, Earlsmarch Ave, Ailson Ave and The Promenade are supported in part. It is appropriate to rezone Earlsmarch Ave (south), Ailson Ave and 167, 167A Hursthouse Rd from THAB to MHU to provide a better transition to the coast and the lower density residential area to the north. THAB is proposed to be retained for the remainder of the block. The proposed changes to MHU and retention of THAB are the most appropriate ways to achieve the objectives of the MHU and THAB zones and give effect to the RPS.  
Position: Support the request to rezone 29 Earlsmarch Ave to a lower density zone for the reasons stated above. The proposed change to MHU is the most appropriate way to achieve the objectives of the MHU and THAB zones and gives effect to the RPS.  
Position: Do not support the request to rezone 16 The Promenade to a lower density zone as the property is adjacent to Takapuna Metropolitan Centre. The retention of THAB is the most appropriate way to achieve the objectives of the zone and gives effect to the RPS.  
Position: The submission point seeking to retain THAB for specific properties within the block is supported in part. For the reasons stated above, it is appropriate to rezone Earlsmarch Ave (south), Ailson Ave and 167, 167A Hursthouse Rd from THAB to MHU to provide a better transition to the coast and the lower density residential area to the north. The proposed changes to MHU and retention of THAB are the most appropriate ways to achieve the objectives of the MHU and THAB zones and give effect to the RPS. |
| Properties in the floodplain | Two submission points seek to rezone properties on Burns Ave and Northcroft St from SH and MHS to THAB.  
One submission point seeks to rezone properties on Burns Ave from SH to THAB. | Position: The three submission points are supported. Managing flooding risks on the sites on Burns Ave, Bracken Ave and Tenbyson Ave does not require maintaining a SH zone, with the exception of 6 Burns Ave. To avoid spot zoning on this site, it is appropriate to rezone all properties on Burns Ave, Bracken Ave and Tenbyson Ave from SH to THAB. The MHS properties on Northcroft St are not subject to flooding constraints and therefore can be rezoned to THAB to match the surrounding zoning. The proposed changes are the most appropriate way to achieve the objectives of the THAB zone and give effect to the RPS. |
| Extent of THAB in Takapuna | Seven submission points seek the retention of THAB for specific properties.  
One submission point seeks to retain THAB for properties bounded by Killarney St, Lake Rd, Anzac St and Campbell Rd.  
One submission point seeks to remove the THAB zone in Takapuna.  
One request to rezone all properties zoned THAB around the Takapuna Metropolitan Centre to MHU (SDR incorrect – should be MHS).  
One submission point opposes THAB at 58/1 Killarney St.  
One submission point seeks to increase the extent of | Position: The requests to retain THAB zoning for specific properties and properties bounded by Killarney St, Lake Rd, Anzac St and Campbell Rd are supported as the properties are within walking distance to the MC zone and the RPS. The retention is the most appropriate way to achieve the objectives of the THAB zone and gives effect to the RPS.  
Position: The three submission points opposing THAB and/or seeking THAB be rezoned in Takapuna are not supported as the properties are all within walking distance to the MC with  good access to public transport. The retention of THAB is the most appropriate way to achieve the objectives of the THAB zone and gives effect to the RPS.  
Position: The general request to increase the extent of THAB in Takapuna is supported in part. No additional THAB in Takapuna is proposed with the exception of rezoning those under the floodplain currently zoned as SH and MHS where managing flooding risk does not require maintenance of the SH zone. The proposed changes and retention of THAB are the most appropriate way to achieve the objectives of the THAB zone and give effect to the RPS.  
Position: The request to rezone 25, 27 and 29 Killarney St from MHS to THAB is not supported; however, a lower density alternative of MHU is supported as the zone provides a |
<table>
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<tr>
<th>SUBMISSION THEME</th>
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| THAB in Takapuna. | • One submission point seeks to rezone 25, 27 and 29 Killarney St from MHS to THAB.  
• One submission point seeks to rezone the north-facing sites south of Lake Pupuke to THAB. | transition between the THAB zone and the SH zone adjoining Lake Pupuke. The proposed change to MUH is the most appropriate way to achieve the objectives of the MUH zones and give effect to the RPS.  
• Position: The request to rezone the north-facing sites south of Lake Pupuke is not supported. However, some rezone to MHS of MHS in this area is supported. Streets around Lake Pupuke generally have greater density than the surrounding areas. An area rezoning from SH to MHS for the north-facing sites on Lake View Rd, Anders Place and Manurewa Ave is supported. Additionally, it is considered appropriate to rezone the north-western side of Killarney St from MHS to MUH to provide a buffer between THAB and MHS. SH is retained for properties adjacent to the lake edge to recognize the identified constraints (ONF and SEa). The proposed changes are the most appropriate way to achieve the objectives of the MHS and MUH zones and give effect to the RPS. |
| Lake Rd MU | • Two submission points seek to rezone 5 Blomfield Spa from MU to MHS.  
• One submission point seeks to rezone 7 Blomfield Spa from MHS to MU.  
• Two requests seek to rezone the MU zone along the eastern side of Lake Rd to MUH.  
• One request to retain the MU zone for 396 Lake Rd. | • Position: The three requests to rezone properties on Blomfield Spa and the two requests to rezone properties on Lake Rd are not supported. The current extent of the MU zone along Lake Rd and part of Blomfield Spa is appropriate due to Lake Rd being part of the RFN and the proximity of the LC zone. Retention of the MU zone is the most appropriate way to achieve the objectives of the MU zone and give effect to the RPS.  
• Position: The request to retain the MU zone at 396 Lake Rd is supported. Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and give effect to the RPS. |
| Other MU requests | • Two submission points seek to generally extend the MU zone in Takapuna.  
• One request to rezone Anzac St between Auburn St and The Terrace from THAB/MC to MUMC.  
• One request to rezone 1 to 9 Karaka St from MUH to MU.  
• One submission point seeks to retain MU for 2 Northcote Rd and 64 Tanaro Rd. | • Position: The requests to generally extend the MU zone in Takapuna are not supported as the notified extent of the MU zone in Takapuna is considered to be appropriate. The retention of the various residential zones in Takapuna is the most appropriate way to achieve the objectives of the zones and give effect to the RPS.  
• Position: The request to rezone a part of Anzac St from THAB/MC to MUMC is not supported. A new MU zone along The Terrace may negatively impact on the extending LC zone (particularly along Huntmore Rd). The retention of the notified zones is the most appropriate way to achieve the objectives of the LC and THAB zones and give effect to the RPS.  
• Position: The request to rezone 1 to 9 Karaka St is not supported as the properties are residential in nature and the current extent of the MU zone on Tanaro Rd is appropriate. Retention of MUH is the most appropriate way to achieve the objectives of the zone and gives effect to the RPS.  
• Position: The request to retain MU for 2 Northcote Rd and 64 Tanaro Rd is supported. The properties are opposite Smales Farm Business Park with good access to the RFN. Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and give effect to the RPS. |
<p>| Height limits | • One request seeks the zoning on Lake Rd to be reviewed in relation to height (infer lower heights). | • Position: The request to rezone Lake Rd is not supported. MU is the most appropriate zone along Lake Rd. The heights along Lake Rd have been addressed by the Council in the primary and rebuttal evidence of Mr Ross Moffatt with respect to Topics 651-654 (dated 26 July 2015). Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and... |</p>
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<th>SUBMISSION THEME</th>
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<tr>
<td>Theme 2 – Combined rezoning and precinct submissions</td>
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<tr>
<td>Smasles 2 precinct</td>
<td>One submission point seeks to retain the MU and MHS zones at 2C and 2D Northcote Rd and 6 Rangitira Ave.</td>
<td>Position: The request to retain the zoning at 2C and 2D Northcote Rd and 6 Rangitira Ave is supported. MU is appropriate for the sites close to the RNZ and MHS adjacent to Lake Pupuke is appropriate due to the size of the site and the precinct provisions which support comprehensive development of the site. Retention of the MU and MHS zones is the most appropriate way to achieve the relevant objectives of the precinct and objectives of the zones and gives effect to the RPS.</td>
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<td></td>
<td>One request to rezone 2D Northcote Rd from MHS to SH.</td>
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<tr>
<td>Takapuna 1 precinct</td>
<td>Sixteen submission points (site-specific and general) seek to retain the MC zone.</td>
<td>Position: The requests to retain the MC zone are supported. Takapuna is a sub-regional centre and the MC zone provides for growth and expansion of appropriate scale and intensity. The retention of the MC zone is the most appropriate way to achieve the objectives of the zone and the relevant objectives of the precinct, and gives effect to the RPS.</td>
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<td>Seven submission points (site-specific and general) seek to rezone Takapuna from MC to an unspecified zone, a residential zone or MU.</td>
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<td>One request to rezone the eastern part of 4-6 Collins St from MC to THAB.</td>
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<tr>
<td>Takapuna 2 precinct</td>
<td>Four submission points seek to rezone the Takapuna 2 precinct from THAB to various residential zones.</td>
<td>Position: The requests to rezone in the Takapuna 2 precinct are not supported. The area is within walking distance to both the MC and the RNZ. The retention of THAB as the underlying zone for Takapuna 2 is the most appropriate way to achieve the relevant objectives of the precinct and the objectives of the THAB zone, and gives effect to the RPS.</td>
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<td>Four submission points seek to retain the THAB zone for individual properties within the precinct.</td>
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<td></td>
<td>One request to rezone 8 Greytune Place from THAB to MU.</td>
<td>Position: The requests to retain THAB for the precinct are supported for the reasons outlined above. The retention of THAB as the underlying zone for Takapuna 2 is the most appropriate way to achieve the relevant objectives of the precinct and the objectives of the THAB zone, and gives effect to the RPS.</td>
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<td>Position: The submission point seeking to rezone 8 Greytune Place is supported as it is currently occupied by an office building and adjacent to a MU zone (Countdown site) with good access to the RNZ. The zone change is the most appropriate way to achieve the objectives of the MU zone and gives effect to the RPS.</td>
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IN THE SUPREME COURT OF NEW ZEALAND

I TE KÔTI MANA NUI

BETWEEN

FRANCO BELGIORNO-NETTIS
Applicant

AND

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL
First Respondent

AUCKLAND COUNCIL
Second Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: S J Ryan for Applicant
M C Allan and L M Wansbrough for Second Respondent
C E Kiman and A K Devine for Housing New Zealand
Corporation as Intervener
R E Bartlett QC for Emerald Group Limited as Intervener

Judgment: 10 October 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay costs of $2,500 to the second respondent.

REASONS

[1] The applicant seeks leave to appeal against a decision of the Court of Appeal.\(^1\) In that decision, the Court of Appeal allowed the applicant’s appeal against a High Court decision dealing with the applicant’s application for judicial review of

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\(^1\) Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel [2019] NZCA 175 (Asher, Brown and Williams JJ) [CA judgment].

FRANCO BELGIORNO-NETTIS v AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL [2019] NZSC [10 October 2019]
certain decisions of the Auckland Unitary Plan Independent Hearings Panel (the Panel) in relation to its recommendations to the Auckland Council (the Council) as to the development of the Auckland Unitary Plan and the Council’s decision that was based on those recommendations. The High Court judgment also dealt with the applicant’s appeal against aspects of the decision of the Panel.

The background to the case is fully described in the Court of Appeal judgment, but given the confined nature of the issues arising in relation to the present application, a brief and generalised summary will suffice for present purposes.

The applicant’s appeal and judicial review proceeding in the High Court focused on the contention that neither the Panel nor the Council gave reasons (or adequate reasons) for the Panel’s recommendations or the Council’s decision in relation to submissions made by the applicant. The High Court Judge found against the applicant on both the appeal and judicial review application. However, the Court of Appeal accepted that the Panel’s reasons had not met the requirement of s 144(8) of the Local Government (Auckland Transitional Provisions) Act 2010, which required the Panel’s report to include the reasons for accepting or rejecting submissions. The Court of Appeal therefore found the Panel had made a reviewable error and allowed the applicant’s appeal against the High Court decision to dismiss his judicial review application.

The Court of Appeal made it clear that its conclusion related only to the applicant’s submissions on two specific areas that were the subject of consideration.

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3 Leave for a second appeal of the Panel’s decision was declined by Paul Davison J: Belgioirno-Netis v Auckland Unitary Plan Independent Hearings Panel [2018] NZHC 459, (2018) 20 ELR NZ 335. The applicant sought leave to appeal the Panel’s decision in the Court of Appeal also.

4 CA judgment, above n.1, at [15]–[39].

5 HC judgment, above n.2, at [125]–[126], [129]–[130] and [134].

6 CA judgment, above n.1, at [98].

7 At [101]. Having found for the applicant on the judicial review aspect of the appeal, the Court of Appeal dismissed the application for leave to appeal against the High Court decision dismissing the applicant’s appeal against the Panel’s decision, at [113]. This reflected the fact that there was some issue as to whether there was jurisdiction for the Court of Appeal to hear and determine an appeal on that aspect of the High Court decision and also that the issues that would have arisen in relation to the appeal aspect of the High Court decision duplicated the issues dealt with on judicial review.
by the Panel because those were the only relevant areas that had been the subject of argument before the Court of Appeal.\(^8\)

[5] The remedy sought by the applicant in his judicial review proceedings was an order quashing the Panel’s recommendations and the Council’s decisions in relation to the two relevant areas, with a requirement that both bodies reconsider and make a fresh decision in relation to those areas. The Court of Appeal did not grant this remedy. Rather, it accepted a submission from the Council that the appropriate relief was to remit the matter to the Panel for further reasons to be provided, dealing with the applicant’s submissions in relation to the two relevant areas.\(^9\)

[6] The Court of Appeal considered the risk of reconstruction of reasons after the decision, but did not consider that this risk arose because the Panel’s process was a quasi-judicial process and the Panel was chaired by a Judge of the Environment Court.\(^10\)

[7] The applicant’s proposed appeal to this Court relates only to the Court of Appeal’s decision on remedy. He was otherwise successful in the Court of Appeal and there is no cross-appeal. The Court of Appeal’s primary finding about the requirement to give reasons would not arise for consideration by this Court.\(^11\)

[8] The applicant argues that leave should be given because the issues relating to remedy involve matters of public importance and because a substantial miscarriage of justice will occur if leave is declined.\(^12\)

[9] We do not accept that either of these grounds is made out.

[10] As to the former, we accept that the existence and extent of the discretion to decline relief to a successful plaintiff in a judicial review claim may be a matter of

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\(^6\) At [100].

\(^9\) At [109]–[110].

\(^10\) At [106].

\(^11\) The Court granted Housing New Zealand Corp and Emerald Group Ltd leave to file submissions on the leave application on the basis that costs would not be awarded for or against those parties at the leave stage.

\(^12\) Senior Courts Act 2016, s 74(2).
public importance. There may also be questions about the effect of failure to provide reasons on the decision in issue. But this case is not an appropriate one to address these questions. On relief, the Court of Appeal granted a lesser remedy than that sought by the applicant in the context of a specific statutory provision, responding to the specific facts of the case. On the failure to give reasons, as noted earlier, the nature of the requirement of a decision-maker to give reasons would not arise for determination in this case if leave were given.

[11] As to the latter, the applicant’s case that a substantial miscarriage will arise if leave is not given. He challenges the Court of Appeal’s conclusion described above at [6]. He also argues the Court did not take into account the potential difficulty for him in challenging the decisions in fresh proceedings if the reasons given by the Panel disclosed one or more errors of law and did take into account the potential impact on third parties if the challenged decisions were set aside.

[12] We think it is doubtful that these arguments have sufficient prospect of success to justify a further appeal. But, in any event, we are satisfied that the Court of Appeal decision on remedy does not involve “a sufficiently apparent error, made … by the Court of Appeal, of such a substantial character that it would be repugnant to justice to allow it to go uncorrected”.13

[13] We therefore dismiss the application for leave to appeal.

[14] The applicant must pay cost of $2,500 to the second respondent.

Solicitors:
Daniel Overtón Goulding, Auckland for Applicant
Brookfields, Auckland for Second Respondent
Ellis Gould, Auckland for Housing New Zealand Corporation
MacDonald Lewis Law, Auckland for Emerald Group Limited

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

FRANCO BELGIORNO-NETTIS

v

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

and AUCKLAND COUNCIL

Introduction

Pursuant to the order made by the Court of Appeal in its decision dated 22 May 2019 in Belgioirno-Nettis v AUHIP & Auckland Council [2019] NZCA 175 at paragraph [117], and following the decision dated 10 October 2019 of the Supreme Court in Belgioirno-Nettis v AUHIP & 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.

Strategic reasons

Takapuna is an existing metropolitan centre, as identified in the Auckland Plan and as provided for in the proposed zonings in the Auckland Unitary Plan (AUP). The Panel agreed with that identification and that proposed zoning. In particular, Takapuna’s location, existing population and level of business activity and existing transport infrastructure all make it an important centre in terms of the development strategy in the Auckland Plan for a quality compact urban form.

Looking to the future, Takapuna is reasonably close to the Northern Motorway (including the approaches to the Auckland Harbour Bridge) and the Northern Busway. Lake, Hurstmerc, Tarhoro and Esmonde Roads are busy arterial roads with provision for public transport. Takapuna is therefore likely to remain a transport focal point. It should therefore also remain a location for population and business growth in keeping with the centres and corridor strategy pursued by the Panel in its overall approach to making recommendations on submissions relating to zoning and intensity of development.

This approach of examining higher-order considerations before moving to address specific submissions about specific areas is discussed in sections 1, 4.4.4, 6.1 and 6.2 of the Panel’s overview of recommendations.

For further information
visit www.auhip.govt.nz or contact us at info@auhip.govt.nz
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 B2, and in particular the objectives and policies for urban growth and form in B2.2 and for a quality built environment in B2.3) 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 Belgioirno-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.

Consequences of strategic reasons

As observed in section 4.4.4 of the Panel’s overview:

It is somewhat ironic that the mapping exercise, which logically comes at the end of the statutory plan preparation process, is usually the first point of contact for users of the plan and the aspect of the plan that tends to generate the greatest number of submission points. While the hierarchy of the statutory planning documents indicates a top-down logic, the response of most people to planning controls is from a bottom-up perspective.

This difference in perspective may account for some misunderstanding by submitters of how the Panel approached its assessment of submissions and the making of its recommendations. 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.

Local reasons

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 Belgioioso-Nettis. Parties who were heard in relation to this area included the Council and Housing New Zealand.

Other relevant submissions considered included those seeking to rezone The Promenade block in Takapuna from Terrace House and Apartment Building zone (as notified) to Mixed Housing Urban zoning, or otherwise reduce the development levels of the block, including submissions by James H Young (947 and FS 1936), Wendy Stachnik (987), David and Lesley Lane (1194), Serena Park (1240), Rex and Christine de Lille (1287), Judith Bern (1518 and FS 517), Murray Nicholson (1570), Sheryl A Collard (1576 and FS 3253), Yvonne Diack (2237), Richard and Nancy Whitney (2255), Richard Toulson (2268), Janice Mardon (2272), Stephanie Knight (2476), Frances Helleur (2853), Muriel Wood (3050), A and R McNaughton Family Trust (3076), Anne Young (3366), Victoria McPherson (3551), Morton Bakewell Trust (3820), Dion and Marie Vela (4130), Mark Helleur (4161), Alison L Sherming (5617 and FS 3254), Norma Steel (5830), Issa Abdulahad (6991), Body Corporate 312977 (7074), John Mortimer (7340), Robert Richard Komman (FS 761), John S Morton (FS 1682), Michael P Glading (FS 1748) and Barbara A Scarfe (FS 2436). A submission seeking to retain the development potential was received from Emerald Group Ltd (3608).

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 Earmoch 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.

Conclusion

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 Belgiojono-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.

Dated: 14 October 2019

For the Panel:

[Signature]

D A Kirkpatrick
Environment Judge
Chairperson, Auckland Unitary Plan Independent Hearings Panel
Placeholder for Attachment B

Summary of Governing Body information memoranda and briefings - 12 November 2019

AUPIHP Recommendations – The Promenade and Lake Road Blocks Takapuna - Erratum
Memorandum
30 October 2019

To: All elected members and Independent Māori Statutory Board members

Subject: Update on the Region-wide Stormwater Network Discharge Consent

From: Craig McIlroy – General Manager Healthy Waters

Contact information: Jaimie Maha – Team Leader Relationship Advisory, Infrastructure and Environmental Services (Jaimie.Maha@aucklandcouncil.govt.nz)

Purpose
1. To provide an update on the authorisation of the region-wide stormwater network discharge consent.

Summary
- The Environment Court has issued a consent order authorising the regionwide stormwater network discharge consent. This consent expires on 26 November 2052 and will replace over 116 historic stormwater discharge consents.
- The region-wide consent provides Auckland Council’s Healthy Waters department, as the consent holder, with a regionally consistent set of requirements to achieve the council’s vision of ‘a water sensitive community’. It will also deliver an improved water environment for Aucklanders.
- The consent requires the use of best practice to deliver savings, efficiency, consistency and improved environmental performance and community benefits while also supporting growth in line with the Auckland Unitary Plan. The consent’s holistic approach to managing public stormwater network assets also takes into account central government water policy and climate change considerations.
- A landmark for local authorities and the largest of its kind in New Zealand, the consent is unique in its approach to managing future stormwater diversions and discharges from the public network.

Context
2. Under the Resource Management Act 1991 and the Auckland Unitary Plan, the council is required to obtain stormwater discharge consents for the stormwater network it manages.

3. In October 2017 Auckland Council’s Healthy Waters department lodged an application for a region-wide network discharge consent. This was publicly notified in early February 2018 with submissions closing on 20 March 2018.

4. The region-wide consent is an important tool that will help the council to require developers to improve stormwater management as land use changes. Water sensitive design principles have been built into the consent, in line with the council’s plans and strategies. These principles will require developers to meet improved standards in order to connect to the stormwater network and or vest assets in council. These standards include the use of treatment devices, rain gardens, wetlands and stream protection.

5. The consent will help protect people, property and the environment and lift water quality while enabling growth targets to be achieved in alignment with Auckland’s Unitary Plan and community outcomes to be delivered.

6. This consent is the largest of its kind in New Zealand and is unique in its approach to addressing future diversion and discharge and management of stormwater effects.
7. The consent went through a Resource Management Act hearings process between November 2018 and February 2019. The consent was granted on 16 April 2019 and three appeals were subsequently lodged. The appeals were:
   - Housing New Zealand – concerned about the lawfulness of conditions, how adequate the management framework was to address stormwater effects and the impact of the consent on provision of infrastructure. This included references to how pipe capacity should be determined and funding implications.
   - Forest and Bird – did not support future urban areas being included and stated that the objectives, outcomes and management framework in the consent were inadequate to address stormwater effects and that there was not adequate consideration of the New Zealand Coastal Policy Statement.
   - Herne Bay and St Mary’s Bay Resident’s Associations – concerned with community engagement in reviews and monitoring requirements.

8. Mediation through the Environment Court with the appellants and over a dozen other interested parties was constructive and effective in reaching resolution on the consent conditions and how the consent will operate in a practical sense to improve water quality.

Discussion

9. The Environment Court authorised the consent on 30 October 2019 following extensive consultation, public hearings, appeals and mediation which clarified and improved how the consent will operate.

10. The region-wide consent creates a benchmark for how local authorities can manage public stormwater assets, as it takes a holistic approach to stormwater management that requires continuous monitoring, measuring and updating of best practice.

11. The consent is a key tool to achieving the council’s vision of a water sensitive community and provides a sound basis to meet the direction set by the Auckland Plan 2050 and the Unitary Plan as well as incorporating national policy direction on water and impacts of climate change.

12. The benefits of the consent for the development community and public include:
   - providing certainty with a regionally consistent set of performance requirements that align to the Auckland Unitary Plan and other strategic documents.
   - supporting urban growth and development for future urban areas by including future network and discharges.
   - providing a framework that enables stormwater management to be tailored to specific sites and development scenarios.
   - improving water quality through robust performance requirements for the public network.
   - reducing complexity and promote compliance with performance requirements.
   - delivering accountability, transparency and continual improvement through triennial reporting and six yearly reviews that will assess not only network performance but achievement of community outcomes too.

13. The consent applies to:
   - existing diversions and discharges of stormwater from the public stormwater network within the urban area.
   - future diversions and discharges that result from the extension of the public network to service intensification and greenfield growth.
   - new or modified diversions and discharges that result from the upgrading of the stormwater network.

14. This represents a major achievement for Healthy Waters as a department as the consent provides one set of environmental standards, defined performance requirements for different development scenarios, and clear processes to manage the effects of stormwater discharge.
15. This supports the department in targeting interventions to improve water quality and compliance efforts and report on the effectiveness of its management of the public stormwater network.

Features of the consent

16. The consent is process-based, which enables a tailored solution for stormwater management at different locations and scales. Best practice stormwater management is described at a regional level as well as performance requirements for different development scenarios.

17. Effective and efficient management of contaminant loads in stormwater will be achieved by using a predictive modelling tool (known as the Freshwater Management Tool) to estimate loads and anticipated responses to interventions supported by targeted monitoring.

18. Triennial performance reports and six-yearly consent reviews are conditions of the consent. They will draw on this modelling and monitoring data, along with asset performance and management information, to evaluate the effectiveness of stormwater management interventions and consent compliance.

19. These regular reviews also provide information and transparency on the management and performance of the stormwater network and its environmental effects for the public.

Next steps

20. More detailed information on the region-wide network discharge consent can be found at the Auckland Design Manual website: www.aucklanddesignmanual.co.nz/ndc.

21. If you have any queries relating to the network discharge consent, please contact Jaimee Maha, Team Leader Relationship Advisory, on Jaimee.Maha@aucklandcouncil.govt.nz.
Memorandum

To: His Worship the Mayor and Councillors Elect

Subject: Request for information on any golf-related plans or reports, including the golf investment plan

From: Kataraina Maki, General Manager, Community and Social Policy

31 October 2019

Purpose

1. To inform you of the release of draft versions of the golf investment plan under the Local Government Official Information and Meetings Act 1987.

Key messages

- Auckland Council received a request for information on any golf-related plans or reports, including the golf investment plan, under the Local Government Official Information and Meetings Act 1987.
- Draft versions of the golf investment plan, which is currently under development, are covered by this request.
- There are no grounds to withhold the information.
- Release of draft versions of the golf investment plan, which is not council policy, creates a low reputational risk to council. This is mitigated by informing the requestor that these are draft documents, they are incomplete and their contents are not council policy. A reactive media release has also been prepared.
- A copy of the latest draft version of the golf investment plan are provided for your information.

There is a low reputational risk associated with releasing the draft golf investment plan, but there are no grounds to withhold the information

2. Auckland Council received an information request from a member of the public for materials produced since 1 January 2018 in relation to the golf investment plan.

3. Most of the information covered by the request is publicly available. Some documents were previously released to Todd Niall. Council also proactively provided the media with cost benefit analyses including two Martin Jenkins reports.

4. Two draft versions of the golf investment plan, which is currently under development, are covered by this request. These are internal draft documents. They are incomplete and their contents are not council policy.

5. These documents have not been circulated to decision-makers. Staff were proposing to seek the views of elected officials on the draft golf investment plan in early 2020.

6. There are no grounds to withhold the information. We have been advised that these documents could only be withheld if there was a planned release scheduled within a six to eight-week timeframe.

7. The information will be released on 4 November 2019.

8. Release of draft plan creates a low reputational risk to council. This is mitigated by informing the requestor that these are draft documents, they are incomplete and their contents are not council policy. A reactive media release has also been prepared.

9. A copy of the latest draft version of the golf investment plan are provided for your information.
Golf Investment Plan 2020-2040

We want every council-owned or managed golf course to be accessible, connected to their community and environmentally sustainable.
Introduction

Auckland is growing and going through a period of rapid transformation. With more people and increased diversity there is increased demand for land, including parks and open space.

There is considerable pressure on our land to deliver a wider range of community services and outcomes. And for our investment to drive a stronger and more inclusive society.

Patterns and rates of participation in sport and recreation are changing. The time that people can allocate to sport in modern life may be limited.

Golf is both time and land intensive. Fewer people are able to spend four hours playing a round of 18 holes, but approximately 100,000 Aucklanders want to play golf.

At the same time there are some communities in Auckland that are not able to access their local park because it is currently used exclusively for golf.

The challenge for council is to adjust the way in which we deliver golf so that it maximises participation as well as ensuring that our parks benefit as many people as possible.

Council wants to see more choice with a variety of golf experiences that have widespread appeal to Aucklanders. It will be based on a network of fit-for-purpose facilities, from introductory courses through to advanced courses. We want increased pathways into the sport that target women and young people.

Council also seeks to get more value from our existing courses. This means opening parts of the land for other uses. At a minimum this will include creating walk and cycle corridors around council golf courses. There are opportunities to include other sport and recreation activities.

Increasing the contributions golf courses make to the health of our natural environment is another key objective. This means expanding habitats for native flora and fauna, improved water management and quality, and using these green spaces to offset the negative impacts of development.

Policy Objectives

Through this plan Auckland Council seeks to achieve the following policy objectives:

- increase Aucklanders participation in sport and recreation by working with our partners to provide a wider range of golf services and additional sport and recreation opportunities at all council-owned or managed golf courses
- ensure that all council-owned or managed golf courses use sustainable practices to preserve and protect the natural environment
- address growth and changing community needs through regular assessments of our golf investment and, if necessary, make changes to programmes, services and facilities to improve participation outcomes.
Governing Body
12 November 2019

Draft

Golf Investment Plan 2020-2040

Sport and recreation matters to Aucklanders

Aucklanders participate in a wide range of sport and recreation activities. This participation delivers a range of health and wellbeing benefits as well as other social and economic outcomes.

Golf is a popular sport with almost 100,000 Aucklanders playing annually, however, the participation rates for other activities are much higher.

<table>
<thead>
<tr>
<th>Sport</th>
<th>Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Walking</td>
<td>52.0%</td>
</tr>
<tr>
<td>Cycling</td>
<td>27.0%</td>
</tr>
<tr>
<td>Golf</td>
<td>8.6%</td>
</tr>
</tbody>
</table>

Why do we need to rethink golf?

There is little variety across council-owned or managed golf courses. They suit established golfers who are declining in number. There are no places for new players to get started. Other forms of golf are also becoming more popular and appeal to a wider group of people.

Auckland’s population is also growing and changing. This is leading to increased demand for, and competition over, open space.

Some Aucklanders are missing out

Not all Aucklanders have the same opportunities to play golf or to participate in sport and recreation. There is inequity across different age and ethnic groups and for people living with disabilities.

Women and young people have lower golf participation rates. Pacific and Asian residents have lower participation rates in sport and recreation.

We want every council-owned or managed golf course to be accessible, connected to their community and environmentally sustainable

Council proposes a new investment approach

This plan seeks to increase participation in golf and other sport and recreation activities.

We will increase participation through:

- a range of golf services and a network of fee-for-purpose facilities that attract and retain players
- a network of urban and rural golf courses that complement each other and the communities they serve
- better use of land, which accommodates play spaces, walking and cycling trails as well as multi-functional sport and recreation facilities.

Environmental sustainability is the other cornerstone of the plan. Golf courses have a positive impact on the environment when they enhance nature, conserve resources and provide multiple benefits to local communities. Getting better environmental outcomes from the 535 hectares of open space currently allocated to golf is a critical component of our climate action plan.

Four investment principles will shape all future decisions

Investment will be driven by the same four principles in the overarching Sports Investment Plan 2019 - 2039:

- equity - appropriate levels of investment to provide equitable outcomes for all Aucklanders
- outcome-focused - ensuring that our investment delivers tangible benefits to the community
- financial sustainability - sound financial management that allows us and our partners to operate and maintain a quality community service
- accountability - council must act in the best interests of all Aucklanders.

Planning for the future

Every golf course will be considered in the context of local needs, its ability to increase participation and environmental outcomes and its place in the network.

Lease renewals are a critical decision-point where the community, stakeholders and local boards can shape the future.

This plan sets out the decision-making framework. It will guide our investment and that of our partners.

23 October 2019 Version
## The key shifts

There are five key shifts to our investment strategy that will deliver increased benefits to more Aucklanders. These shifts focus on use of council land and new services to meet the demands of a rapidly changing population. These shifts are aligned with the Auckland Plan 2050, the Sports Investment Plan 2019-2039 and the strategic direction of our golf, sport and recreation sector partners.

<table>
<thead>
<tr>
<th>Key Shift</th>
<th>Outcomes from Auckland Council’s investment in golf</th>
<th>Why is it important?</th>
</tr>
</thead>
<tbody>
<tr>
<td>From asset-based investment in traditional golf courses and games to</td>
<td>Increased participation in golf, particularly</td>
<td>Auckland golf courses are currently traditional, mid-level golf facilities which cater to more experienced golfers. There needs to be a range of experiences to attract new golfers as well as those who are more advanced. This means creating a network of golf courses that offer a pathway to participation, regardless of experience, membership and club traditions. Strategic partnerships will be an integral part of this shift.</td>
</tr>
<tr>
<td>creating more flexible courses and memberships, options and programmes.</td>
<td>among women, young people and a wider range of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ethnicities.</td>
<td></td>
</tr>
<tr>
<td>From primarily individual benefits to achieving a broader range of</td>
<td>Increased participation in sport and recreational activities</td>
<td>Demand for recreation facilities is changing as we become more diverse culturally and our population ages. At the same time there is also more pressure on land for both housing and recreation. Golf courses are currently only accessible to those who pay to play golf. Better access to golf courses for other activities such as walking and running will deliver greater benefits to more Aucklanders.</td>
</tr>
<tr>
<td>public benefits and outcomes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>From land used exclusively for golf to multi-purpose sport and</td>
<td>A network of economically and environmentally</td>
<td>Exclusive use of large parcels of land just for golf is unsustainable and ignores the opportunity to achieve better outcomes. Council-owned courses range from 15 and 60 hectares per course with ample space to diversify its use. Working with our golf and sports sector partners we can create a geographically-spread network of multi-purpose facilities that better service our growing and changing communities.</td>
</tr>
<tr>
<td>recreation facilities.</td>
<td>sustainable, multi-purpose facilities offering a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>range of sport and recreational activities</td>
<td></td>
</tr>
<tr>
<td>From an ad hoc approach to environmental management to clearly defined</td>
<td>Sustainable environmental performance and</td>
<td>As kaitiaki guardians of these valuable assets, Auckland Council recognises its responsibility to actively promote the enhancement, ecological diversity and sustainability of all leased sites. Failure to do so will compromise the potential for environmental improvements and gradually erode the contribution these spaces can make to the environment and to our communities.</td>
</tr>
<tr>
<td>targets and indicators delivering better ecological outcomes.</td>
<td>outcomes through ecologically sound golf course</td>
<td></td>
</tr>
<tr>
<td></td>
<td>management.</td>
<td></td>
</tr>
<tr>
<td>From historical decisions of legacy councils to future-focused</td>
<td>A robust investment framework that helps</td>
<td>Rent and lease arrangements, as well as public access, vary greatly from course to course. The Golf Facilities Investment Plan creates a framework to secure financial sustainability and long-term viability of our valuable land assets. Central to this strategy are the people of Auckland and ensuring investment occurs where there is the greatest opportunity to benefit more of our community.</td>
</tr>
<tr>
<td>councils to future-focused investment for a sustainable, Auckland-wide</td>
<td>decision-makers make better use of council’s</td>
<td></td>
</tr>
<tr>
<td>network for all Aucklanders.</td>
<td>finite resources</td>
<td></td>
</tr>
</tbody>
</table>

23 October 2019 Version
More flexible courses, options and programmes

- Asset-based investment: More flexible courses, options and programmes
- Primarily private benefits: More access to council-owned and managed golf and recreational facilities
- Land used exclusively for golf: A network of financially and environmentally sustainable multi-purpose facilities offering a range of sport and recreation activities
- Environmental: Sustainable environmental performance and outcomes through ecologically sound golf course management
- Investment decisions of the Legacy councils: A clear, robust investment framework that helps decision-makers make better use of council's finite resources

Draft

Not council policy

21 October 2019 Version
How many golf courses are there?

Thirteen golf courses operate on council-owned or managed land, covering a total land area of 535 hectares. The Golf Warehouse and Driving Range on Fred Thomas Drive and Liliput Mini Golf on Tamaki Drive also operate on council land. There are 25 privately-owned golf courses across the region. These numbers are likely to change as some golf courses may not be sustainable in the long-term.

Figure 1: Golf courses in Auckland
About this document

This plan has three main parts:

Section one: Why we invest explains the reasons for developing an investment plan for golf as well as the difference it will make.

Section two: What we invest in explains what we want to achieve from investment in golf, the scope and focus of that investment and the investment principles that will guide future decisions.

Section three: How we invest explains the investment framework that will help us to achieve the outcomes set out in Section two. The investment framework presents a robust approach to investing in outcomes. Decision-makers will consider a number of critical questions before making decisions.

Definitions

Recreation:

Sport:
Section one

Why we invest

This plan will guide Auckland Council’s investment in golf over the next 20 years to respond to growth, the changing needs of Aucklanders and to deliver Auckland Plan outcomes.
1.1 Why do we invest in golf?

The benefits

Golf is a game with multiple benefits. The primary focus of this plan is to develop the health and wellbeing benefits of golf and the environmental advantages these large tracts of open space can create. Golf also contributes significantly to the social cohesion of our communities as well as generating employment opportunities and economic benefits to the region.

Social and community benefits

The purpose of local government is, in part, to promote the social and cultural well-being of communities. The Auckland Plan emphasises this and the importance of connecting the community with sport and recreation activities.1

Golf clubs must build good relationships with their local communities. Diverse groups can come together for golf and social activities and build a greater sense of community among their members and the wider community.

Research has shown New Zealand golf facilities are becoming less relevant to their surrounding communities.2 Lack of diversity in golf experiences creates a barrier to participation for various Auckland’s communities.

Golf clubs need to be responsive to their local communities and ensure they offer a variety of options to attract users to the course. This plan will provide the framework for clubs to diversify to attract more players and a more secure financial future.

Economic benefits

From an economic perspective, golf contributes approximately $54 million in annual GDP to Auckland and employs around 750 people. Over 94,000 Aucklanders play golf each year, making it the most popular adult sport by annual participation.

A potential growth area is golf tourism. Auckland is the gateway to New Zealand and visitors who play golf while they are in the region generate over $8 million in GDP annually. The opportunity to increase this will come from ensuring courses such as the seaside links at Musick and the refined urban course in Remuera continue to function well.

These courses offer different kinds of golfing experiences and have the capacity to host local and regional events that will attract visitors. High profile events attract fans and can drive up participation rates. Encouraging this strategy for council-owned and managed facilities will only improve their contribution to the region.

This plan seeks to provide the framework that will help guide this strategy, capitalise on the value that golf courses offer and deliver better outcomes for all Aucklanders.

1 O’Connor Research, 2013
2 O’Connor Research, 2013

23 October 2019 Version
Health and wellbeing benefits

Health and fitness, enjoyment and social engagement are the main reasons people take part in sport and recreation.

The key benefits from golf are health and wellbeing from the golf course environment, physical activity and social connections.

A British Medical Journal study recently showed that golf delivers a range of positive health outcomes:

- increased longevity
- improved protection against the risk factors for cardiovascular disease
- increased health for those with disability
- improved mental wellbeing.

Studies in the US and Europe have shown that multi-purpose golf facilities can help build community relationships. They require collaboration that brings together stakeholders, investors and local authorities to jointly protect the natural and cultural environment they seek to develop.

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1. [link](http://www.worldhealth.org/zh/publications/2018/7/18/world-mental-health-reports/counselling)
2. [link](http://www.dh.gov.uk/en/InternationalResearch/InternationalHealth/HealthPromotion/HealthBenefitsOfExercise/)
3. [link](http://www.golf.org.nz/aboutgolf/golfbenefits/healthbenefits/golf Physical Activity/)
4. [link](http://www.golf.org.nz/aboutgolf/golfbenefits/healthbenefits/golf Mental Health/)
5. [link](http://www.golf.org.nz/aboutgolf/golfbenefits/healthbenefits/golf Rehabilitation/)
6. [link](http://www.golf.org.nz/aboutgolf/golfbenefits/healthbenefits/golf Social Benefits/)
7. [link](http://www.golf.org.nz/aboutgolf/golfbenefits/healthbenefits/golf Economic Benefits/)

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23 October 2019 Version
Environmental benefits

As Auckland grows we must do things differently. We have to achieve better environmental results through our decision-making and ensure the natural environment and cultural heritage is valued and cared for.

Golf courses offer protection to plant and wildlife that might otherwise be lost as our city grows. We want all council-owned and managed golf courses to implement sustainable practices that protect the natural environment.

Golf land covers large areas of green space that serve as ecological and biodiversity corridors. It also retains storm water and carbon which can help reduce temperatures in urban areas.

- Grass helps reduce maximum temperature ranges by as much as 12°C in urban environments.

- Constructed wetlands can reduce between 23-47 per cent of nitrogen and 59-79 per cent of phosphorus loads from water leaving golf courses.

- 76 per cent of New Zealand head greenkeepers would like to enhance the environmental value of their golf course (2012, SGD).

Golf courses in urban areas act as collection points for surface and run-off water, reducing flood risks during storms. In addition, woodland and vegetation throughout the courses process carbon to help slow the accumulation of greenhouse gases.

In Auckland, more than half of all council-owned or managed courses back onto reserves or areas of native bush. These courses act as green buffers, protecting neighbouring natural environments from damage such as erosion, temperature fluctuations, dust and noise pollution as well as groundwater contamination.
1.2 Te tirohanga Māori ki te ao - the Māori world view

Tatanga (human beings) inhabit the space between Rangi (Sky Father, father of all things) and Papa (Earth Mother, mother of all things). Our space was created by their children. They form the natural realm and the life-forms that inhabit them.

These elements are connected by whakapapa (genealogical lineages) that weaves through their wairua (spirit). These connections and whakapapa give rise to tāngata whenua, the people born of the land, and our experiences in the world.

Te ao Māori (the Māori world) requires us to protect and preserve all that is culturally significant for future generations. This includes our natural environment. Kaitiakitanga is the framework that guides us.

With climate change threatening our environment, golf park land can help build a healthy and connected natural environment to restore the mauri (life essence) of Tamaki Makaurau.

Māorinui Māori (Māori knowledge systems and practices) holds the key to climate change response. This community-based and collective knowledge offers insights that complement western scientific data and provide a strong foundation for community-based actions to address this pressing issue.

Aucklanders feel a strong connection to, and are kiokoki for, their local natural environment. They value and respect the mental and physical wellbeing benefits it provides. Auckland Council is committed to ensuring sustainable practices that will allow our environment to continue to flourish.

The Treaty Principles

Underpinning this philosophy are the principles of Te Tiriti o Waitangi/THe Treaty of Waitangi. As our nation’s founding document and recognises the special place of Māori in New Zealand.

Auckland Plan - Environment and Cultural Heritage Outcome

21 October 2019 Version
1.3 Strategic fit with Auckland Council’s plan

This plan will directly contribute to Focus Area 7 of the Auckland Plan 2050 ‘Participation and Belonging’ outcomes:
- Recognise the value of arts, culture, sports and recreation to quality of life.
- It is also relevant to:
  - Direction 1 – foster an inclusive Auckland where everyone belongs
  - Direction 2 – improve health and wellbeing for all Aucklanders by reducing disparities in opportunities.

The multiple benefits achieved through increased sport opportunities and participation will contribute to other Auckland Plan outcomes such as:
- Māori identity and wellbeing – by helping to advance Māori wellbeing
- homes and places – by providing public spaces that are inclusive, accessible and contribute to urban living
- opportunity and prosperity – by providing employment and business opportunities

This policy review will also contribute to Focus Area 1 and 4 of the ‘Environment and Cultural Heritage’ outcome:
- Encourage all Aucklanders to be stewards of the natural environment and to make sustainable choices
- Protect Auckland’s significant natural environments and sites of cultural heritage from further loss.

This plan sets out Auckland Council’s investment approach to golf to achieve these goals. It is a direct response to the vision ‘Aucklanders: more active, more often’ set out in the Auckland Sport and Recreation Strategic Action Plan 2014-2024.

The Parks and Open Space Strategic Action Plan (POSSAP) is designed grow and improve our network of parks and open spaces which makes a major contribution to making Auckland ‘the world’s most liveable city’. POSSAP provides the framework for how best to achieve this.

The Sports Investment Plan sets out Auckland Council’s approach to regional investment in community sport with a focus of bringing people together in both organised and casual environments. The aim is to improve the health, social and cultural outcomes for all Aucklanders.

The Golf Investment Plan will guide the council’s investment decisions in golf and inform the 10-year budget plan process (long-term plan process).
1.4 Why we need a golf investment plan

Our population is changing
Auckland is New Zealand’s fastest growing region and is projected to reach two million in 2033.

By 2043, 39 per cent of the country’s population could live in Auckland. This represents the highest expected growth rate of all local authorities in New Zealand.

With growth comes diversity and changing patterns of social and recreational activity.

In addition, our population is getting older with the over 65 age group projected to double in the next 20 years.

One of the key functions of Auckland Council is to undertake long-term planning for the provision of services and facilities to meet the demands of a changing population. The development of the Golf Investment Plan is a programmed piece of work. It is in direct response to the Auckland Sport and Recreation Strategic Action Plan.

We have a finite amount of space
Competing interests for land presents a major challenge for our city too. Auckland will become more densely populated resulting in increased land costs and fewer options to expand open space, housing and business areas.

For the sports and recreation sector, this growth means more people playing sport – which is a good thing – but increasing pressure on sports facilities.

We have a prime opportunity to better leverage our 535 hectares of open space in a structured way to benefit as many Aucklanders as possible.

The initial development of a Golf Facilities Investment Plan was in response to two directives in the former Auckland Plan (Directive 5.3 – Ensure recreation and sport facilities keep up with the needs of a growing population, and Directive 12.8 – Maintain and extend the public open space network, sporting facilities... in line with growth needs).

The development of facilities investment plans was also in response to the Auckland Sport and Recreation Strategic Action Plan (ASRASP).

Key recommendations of this plan developed by Council alongside the sport and recreation sector were to:
- develop sports code facility plans and assess opportunities to integrate facilities across codes
- review investment into asset management of council recreation facilities and club facilities located on council land
- monitor trends in participation to identify the needs of new, growing and emerging recreation and sport activities and review facility and network plans to meet these new demands.

Golf is changing
Participation in all sports, but particularly golf, is changing. People are becoming more selective in how they use their leisure time with traditional club memberships becoming less popular. This is driven by time constraints and the desire for more flexibility in how and when they participate.

As these patterns change, it puts financial pressure on golf clubs to find new ways to attract players.

Traditional 18-hole courses can cater to this trend by offering competitive prices for 9-hole rounds as well as twilight golf competitions.

Shorter forms of the game such as Speedgolf or Mini golf appeal to a different audience and the ‘Staring New at Golf’ (SNAG Golf) is a fun and easy way to learn the sport and can be played anywhere.

By investing in better coaching and participation options for beginners, clubs will be better equipped to encourage life-long participation and ensure their viability.

New Zealand Golf is an active promoter of different formats of the game to encourage new players and supports the development of more short courses and learning facilities as an essential part of the future development of the game (NZ Golf Annual Report 2017).

21 October 2019 Version
1.5 What difference will our new investment approach it make?

This page presents the logic underpinning council’s proposed investment in golf, sport and recreation and the key shifts we will make to address current challenges.

<table>
<thead>
<tr>
<th>PROBLEM OR OPPORTUNITY</th>
<th>KEY SHIFTS</th>
<th>BENEFIT</th>
<th>KEY PERFORMANCE INDICATORS</th>
<th>DATA SOURCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>20% Patterns of golf participation are changing and there are barriers to new people taking up the sport</td>
<td>Key shift 1: From asset-based investment in traditional golf courses to creating more flexible options, services and programmes</td>
<td>70% Increased golf, sport and recreation participation through a network of fit-for-purpose multi-functional facilities</td>
<td>KP 1 (participation): Increased participation, particularly among women, young people and a wider range of ethnicities</td>
<td>Golf NZ data on number of rounds and membership</td>
</tr>
<tr>
<td>30% There are increasing and competing demands for public open space from a growing and diverse population</td>
<td>Key shift 2: From primarily individual benefits to achieving a broader range of public benefits</td>
<td></td>
<td>KP 2 (delivery): A region-wide network of fit golf facilities serving Aucklanders</td>
<td>Active NZ Survey/Sport NZ data</td>
</tr>
<tr>
<td>40% Most golf courses are not financially or environmentally sustainable</td>
<td>Key shift 3: From ad hoc environmental management to clearly defined targets and indicators aimed at improving biodiversity outcomes</td>
<td></td>
<td>KP 3 (quality decisions): Use of course activities is measured and shows increase across all areas</td>
<td>Community Sport Insight Tool</td>
</tr>
<tr>
<td>10% Lack of a consistent outcome-focused approach to council investment</td>
<td>Key shift 4: From legacy council decisions to future-focused investment in a sustainable, Auckland-wide network for all Aucklanders</td>
<td>30% Improved value for money and environmental performance by using the investment framework to guide decision-making</td>
<td>KP 4 (delivery): Increased number of multi-functional facilities spread across region</td>
<td>Community Sport Insight Tool</td>
</tr>
<tr>
<td></td>
<td>Key shift 5:</td>
<td></td>
<td>KP 5 (delivery): All council golf courses achieve and maintain Golf Environmental Organisation (GEO) certification</td>
<td>GEO</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>KP 6 (quality decisions): All investment decisions guided by the investment framework</td>
<td>Golf club lease agreements and financial performance reports</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>KP 7 (quality decisions): The Cost and Benefit Model is reviewed to track benefits over time</td>
<td>Golf club lease agreements and financial performance reports</td>
</tr>
</tbody>
</table>

21 October 2019 Version
Section two

**What we invest in**

We will increase participation in golf, sport and recreation through fit-for-purpose services, programmes and facilities.

All golf courses will be expected to be environmentally sustainable.

Our investment decisions will be equitable, outcome-focused, financially sustainable and accountable.
2.1 How will we deliver improved outcomes for more Aucklanders?

Golf is a game that delivers health and wellbeing outcomes for Aucklanders and is accessible to all ages and abilities. This makes it attractive for future investment.

Increasing participation requires us to take a people-centric approach to meet the needs of our various communities.

This participation outcome directly aligns with Auckland Sport and Recreation Strategic Action Plan 2014-2024 to enable ‘more Aucklanders living physically active lives through participation in informal physical activity, recreation and sport’.

By getting everyone involved in how and what golf courses deliver they will become deeply embedded in the community with everyone benefiting from being able to use them.

Through this document Auckland Council seeks to achieve the following policy objectives:

- increasing Aucklanders participation, by delivering more and better golf services and by proving additional sport and recreation opportunities at all council-owned or managed golf courses
- ensuring that all council-owned or managed golf courses implement sustainable practices that preserve and protect the natural environment
- addressing growth and changing community needs through regular assessments of the performance of our golf investment and, if necessary, implement changes to programmes, services and facilities to maximise participation.

We will target three areas of growth to achieve this:

1. Encouraging more people to play golf by offering a range of golf formats

Golf is a game that delivers health and wellbeing outcomes for Aucklanders and is accessible to all ages and abilities. However, it can be perceived as expensive and elitist. Shorter forms such as Speed Golf or mini golf are more attractive and inexpensive options for beginners.

Our aim is to get more people playing by creating a variety of courses and options that will encourage newcomers to the sport as well as cater for more experienced players.

2. Creating other recreational options within golf courses

Our priority is to maximise the use of and return on our investment in the 535 hectares of golf land. This means that as well as getting more people playing golf, council will focus on developing other recreational options within the golf network.

At a minimum, this will include access to the surrounding green spaces for walking, running and cycling paths.

3. Developing a network of urban and rural golf courses that complement each other and the communities they serve

Evidence has shown that the multi-functional approach benefits golf courses by generating additional income, creating sustainable, environmentally-friendly courses and building better relationships with authorities, environmental groups and other sports clubs.

Council has sought input from the public and key stakeholders including local boards and our golf partners to guide this next phase of consultation. A range of methods were used to collect feedback on the initial discussion document which was then approved by the Governing Body to move on to this next stage of a draft Golf Investment Plan.
## 2.2 Key shift 1

Increasing participation in golf by making it more accessible to more people

<table>
<thead>
<tr>
<th>What's happening now?</th>
<th>The change we are making</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in golf focuses on maintaining assets and courses in their current form.</td>
<td>Auckland Council will work with its golf sector partners and potential investors to create a mix of</td>
</tr>
<tr>
<td>Almost all of Auckland’s courses are traditional 18-hole development-level courses</td>
<td>golf options that attracts new players to the game and improves the experience for more advanced</td>
</tr>
<tr>
<td>suitable for more experienced golfers. There is only one introductory-level course and</td>
<td>players.</td>
</tr>
<tr>
<td>it is on Great Barrier Island. Some courses have driving ranges, an important element for</td>
<td>This means developing a wider range of golf facilities with more introductory-level courses and</td>
</tr>
<tr>
<td>teaching and gaining confidence in playing, but most do not.</td>
<td>programmes that target specific audiences such as youth and women.</td>
</tr>
<tr>
<td>Participation by women, young people and non-Europeans remains relatively low.</td>
<td>There would also be more driving ranges and access to learning programmes, as well as more</td>
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<tr>
<td></td>
<td>advanced playing options to encourage and secure life-long participation.</td>
</tr>
<tr>
<td></td>
<td>The model provides:</td>
</tr>
<tr>
<td></td>
<td>• a network strategy for the region</td>
</tr>
<tr>
<td></td>
<td>• a planned approach to future investment in golf</td>
</tr>
<tr>
<td></td>
<td>• a clear guide for decision-makers</td>
</tr>
<tr>
<td></td>
<td>• a range of golf courses that are suitable for all levels of participation.</td>
</tr>
</tbody>
</table>

### Consultation

Feedback from the local boards, council-owned and managed golf courses, and the public all supported a shift to introduce more ways to play golf at our existing courses.

Suggestions included more flexible membership packages as well as offering simpler and shorter options for beginner golfers. Respondents also pointed out that diversification would help deliver better value for money and potentially ensure the long-term sustainability of golf clubs.

Local board, golf clubs and golf sector partners all acknowledged that golf is time-intensive and that 9-hole courses provide an interesting, more efficient alternative to the traditional 18-holes.
Creating a network of complementary golf facilities

We propose a network of multi-user facilities that provides a range of golf-related services such as coaching, driving ranges, short form play and classic golf.

It will be based on the quality and size of a facility and how best to use that to attract more people into the sport while supporting existing players. By offering a range of options we seek to create a pathway to participation for all levels of the game.

A recent study in the United States showed that off-course participation at driving ranges and indoor simulators increased by almost 10 per cent in 2018 and contributed to a four per cent increase overall for the sport. Providing appropriate beginner level courses as the next step to participation is crucial along with options such as mini golf, Foot Golf and Speed Golf.

Advanced courses such as Muriwai and Remuera would also form part of the network to cater to national events and tournaments but increasing the number of introductory courses to encourage more players into the game will be the main priority of this strategy.

<table>
<thead>
<tr>
<th>Priority</th>
<th>Facility type</th>
<th>Description</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Introductory course</td>
<td>9 or 10 hole per 3 course</td>
<td>The purpose is to familiarise new players to the game of golf by creating an inclusive atmosphere throughout the facilities that supports learning the fundamentals of golf. The introductory course will have an affiliation with a Development Course to allow new golfers to progress and be challenged appropriately as they gain experience and to help sustain participation numbers at the Development Course.</td>
</tr>
<tr>
<td>Low</td>
<td>Development courses</td>
<td>9 or 18 hole course of average difficulty</td>
<td>The purpose is to provide a high-end championship level course. National and regional competitions will be a defining feature of Advanced Courses. Advanced courses will also host an affiliation or relationship with the NZ Golf High Performance Centre. High performance Golf athletes will train both at the High Performance Centre and at Advanced Courses.</td>
</tr>
<tr>
<td>Not a priority</td>
<td>High performance training centre (HP TC)</td>
<td>Accessibility to high performance and non high performance support services</td>
<td>The purpose is to provide facilities appropriate to train New Zealand’s High Performance Golf athletes. The HP TC will provide several training facilities but does not include a full golf course for athletes to train on. Therefore, High Performance Centres will have affiliations and relationships with several Advanced Courses.</td>
</tr>
</tbody>
</table>

Footnotes:
2.3 Key shifts 2 and 3

Creating better outcomes for more Aucklanders and increasing use of our valuable land resources

<table>
<thead>
<tr>
<th>What's happening now?</th>
<th>The changes we are making</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the 13 council-owned or managed courses, approximately 535 hectares of Auckland Council land is used almost exclusively for golf. At the same time more than one third of New Zealand’s population is living in Auckland. This is projected to increase to just under 40 percent by 2043. There are competing demands for land, whether for housing, community developments or open space. This means ongoing exclusive use of large chunks of land are both impractical and financially unsustainable. There is sufficient land across council-owned and managed golf courses to safely provide golf facilities for other sport and recreation activities and enhance the offerings to Aucklanders.</td>
<td>The focus of future investment will be to capitalise on the value of the land to achieve the greatest benefits for as many Aucklanders as possible. In addition, our expensive network offers significant potential for other expansion and development opportunities with our golf and sports sector partners. This includes establishing mixed-use recreational activities such as walking and bike trails and the potential partial sale of golf land to meet future development costs. By creating a more cohesive network of courses we will offer a pathway to participation. And by enhancing the environmental quality of each course and its recreational activities, we can utilise the 50-70 per cent of natural land that would otherwise remain untapped. The investment plan will provide a decision-making framework for how this might work. Working with investment partners we can create a geographically-spread network of multi-purpose facilities that better services our growing and changing communities.</td>
</tr>
</tbody>
</table>

23 October 2019 Version
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Consultation

Local boards and the public were generally supportive of widening public access to golf courses to achieve better health and wellbeing outcomes for the community. There was strong support for incorporating other sport and recreation activities such as walking and cycling trails, orienteering, tennis courts and bowling greens as well as other forms of golf-based activities such as Foot Golf.

While this raised some concerns about health and safety issues from other activities taking place within golf courses, international experience has shown that careful planning of multifunctional courses will address these concerns. Greater use by the wider community will ensure financial sustainability and deliver better value for money for the council and community.

Golf clubs suggested that hosting events, providing safe and food facilities could increase the social and community value of golf along with creating welcoming facilities and a more family-friendly environment.
### 2.4 Key shift 4

Capturing golf’s environmental benefits

<table>
<thead>
<tr>
<th>What’s happening now?</th>
<th>The changes we are making</th>
</tr>
</thead>
</table>
| The environmental performance of Auckland Council-owned and managed courses varies, depending on the size of the club, its membership and what resources are available. Many clubs rely on volunteers to operate. Achievement of environmental outcomes are dependent on their attitudes and awareness of environmental management. Long term, this approach is not sustainable. In addition, there is little public awareness or appreciation of environmental improvements that are made with far reaching and positive effects on the local environment. Despite this ad hoc approach, all council-owned or managed courses reached a standard of at least 50 percent in their environmental assessments. The lowest scoring site was Waitakere Golf Course which arguably has the greatest potential to be a flagship of ecological sustainability due to its natural surroundings and diversity of ecosystems. | A key strategy is for golf land to perform to its highest environmental potential. All council-owned and managed courses will be required to meet a minimum benchmark as part of their lease terms and conditions. The benchmark has been set by the internationally recognised GEO Foundation which supports golf courses around the world to improve their environmental performance. Each golf course has been audited and set an individual performance target that will raise their environmental performance. They will be required to meet the minimum benchmark and encouraged to pursue their higher individual performance target. Their ability and willingness to do so will be a factor in lease renewal decisions. This will provide much-needed structure to improve sustainability and provide clear guidelines for clubs to work to. The six factors that all clubs must manage and be aligned to are:  
- ecology  
- landscape and cultural heritage  
- energy consumption and waste reduction  
- water resource  
- climate change  
- pollution prevention |

### Consultation

Feedback showed that the public, local boards and council’s golf partners all want to improve environmental outcomes. The majority of submissions saw investment in tree planting and maintenance as critical to achieving this along with programmes to protect indigenous species, pest management and opening up waterways for birds. These initiatives require resourcing and as such there was a lot of interest in developing a plan that would guide how golf clubs should manage environmental issues. There was also strong support for council-owned or managed courses to be audited annually to support this strategy.
Governing Body
12 November 2019

Draft

Setting the benchmarks

The environmental assessment tool was designed to provide information about how a golf course can contribute to its environment through a physical assessment of the course and discussions with everyone involved in keeping it running. The GEO Foundation designed a tool specifically for Auckland's unique and abundant ecological environment.

The results revealed several positive environmental initiatives but also highlighted the variation of resources and expertise available at different courses. Many courses rely on volunteers and have fewer financial resources which increases their potential for environmental and/or economic failure.

The GEO Foundation, a global organisation focused on environmental sustainability, has defined six key areas where golf courses can make positive environmental contributions:

- Ecology – the relationship between organisms and their surrounding physical environment. By planting native vegetation and designating no-spray areas around fragile habitats we can protect and encourage native flora and fauna across the site.
- Landscape and cultural heritage – the interaction between humans and nature over the centuries. Features of archeological, historical and cultural heritage values should be protected, and any development should be sympathetic and appropriate to these elements.
- Energy consumption and waste reduction – reducing energy consumption and promoting increased environmental quality will have financial benefits, for example, reducing the scope of managed turfgrass areas will reduce energy resources, as well as fertiliser and water demands.
- Water resources – balancing the commercial expectations of the end user with a management plan that values and preserves this finite resource. Minimising unnecessary irrigation and managing overland water flows helps with rapid and uncontrolled discharge of storm water.
- Climate change – the accelerated warming of the earth caused by greenhouse gases. The design and management of golf courses needs to consider rising sea levels and increased intensification of storm events. At the same time, golf courses are critical in mitigating the ‘over-heating’ of urban and suburban environments.
- Pollution prevention – the responsibility of every golf course. All drainage systems associated with the course should offer sustainable solutions to minimise the effects of run-off and leachate. Planting and species selection are critical factors in achieving this.

Golf course environmental targets

<table>
<thead>
<tr>
<th>Course</th>
<th>Goal</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auckland</td>
<td>84%</td>
<td>64%</td>
</tr>
<tr>
<td>Chamberlain Park</td>
<td>84%</td>
<td>67%</td>
</tr>
<tr>
<td>Carls Beach</td>
<td>85%</td>
<td>62%</td>
</tr>
<tr>
<td>Great Barrier Island</td>
<td>82%</td>
<td>72%</td>
</tr>
<tr>
<td>Murral Lakes</td>
<td>91%</td>
<td>62%</td>
</tr>
<tr>
<td>Omaha Beach</td>
<td>92%</td>
<td>76%</td>
</tr>
<tr>
<td>Papakura</td>
<td>92%</td>
<td>66%</td>
</tr>
<tr>
<td>Waitakere</td>
<td>74%</td>
<td>59%</td>
</tr>
<tr>
<td>Waitakere</td>
<td>84%</td>
<td>57%</td>
</tr>
</tbody>
</table>

A minimum benchmark of 65 per cent has been set for all golf courses to achieve. The higher target will ensure each course is performing for the best environmental outcomes.

21 October 2019 Version
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How does this align with Māori outcomes and the climate action plan?
2.5 What are our investment principles?

Council investment will be guided by the same four principles in the overarching Sports Investment Plan 2019 - 2039. These are:

- equity
- outcome-focused
- financial sustainability
- accountability.

These principles signal what matters to us and will shape all future investment decisions.

**Equity**

Equity will drive investment under this plan. It is weighted to ensure that we deliver positive outcomes for all Aucklanders regardless of age, gender, ethnicity, socio-economic status or where people live.

This will help investment flow to population groups with lower participation rates and those with the greatest needs.

See the next page for more details.

**Outcome-focused**

There will be a clear ‘line of sight’ between our investment and the outcomes we seek. This is made easier by focusing on two outcomes in particular: (1) participation and (2) environmental sustainability.

We want our investment to have a discernible impact on people’s lives in terms of their physical and mental health and wellbeing. This can be achieved by increasing participation in sport, including golf, and recreation. Participation also provides other benefits, including social cohesion.

Improved environmental outcomes is a priority for council as we respond to climate change. As kaitiaki or guardians of public open space we are responsible for preserving and protecting our natural ecosystems, flora and fauna so that they can be enjoyed by future generations.

**Financial sustainability**

Investment decisions need to be financially sustainable for council and our partners.

We need to understand the whole-of-life costs necessary to deliver, operate and maintain a quality community service.

This information feeds decision-making on options.

It also informs partners of the nature of the investment they will need to make.

**Accountability**

Auckland Council is accountable to the community.

We need to consider all practical options and make decisions based on evidence and the framework in this plan.

Every dollar invested should represent value for money and deliver the most benefits to our community.

We will engage with Māori using a kaitiakitanga framework. This is important because investment in golf impacts on land, water and ecosystems across Auckland.

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21 October 2019 Version
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Equity and equality – how they work in practice

This page provides further information about what equity means in the context of golf, sport and recreation investment and how it differs from equality. Equity and equality are both strategies to ensure fairness. When applied they result in two different investment approaches.

Equity – responding to differences to deliver the same outcomes

If we seek to ensure equity, then all Aucklanders would have the same participation outcomes. This means prioritising investment to lift the participation rates of people that are not active.

We can lift golf participation rates through a range of different experiences that appeal to young people, women, families, people new to the sport and experienced golfers. Providing access for walking and cycling on council-owned and managed golf courses as well as targeted services will also increase participation.

Equality – treating everyone the same

If we seek to ensure equality, then all Aucklanders would have the same opportunities to participate. In practice this means providing reasonable access to golf, sport and recreation services to everyone across the region.

The current distribution of golf courses means that there is one within 3 minutes' drive of where most Aucklanders live. More flexible membership options and opportunities for casual players means easier access and more affordable golf.

Council seeks to provide neighbourhood parks within 400 metres of where people live in high and medium density urban areas. In low density urban areas these parks are within 600 metres.

Current inequality and inequality

There are currently different types of inequality and inequity in Auckland.

Inequitable participation rates

Women and young people have lower golf participation rates.

Inequity of access to open space

Most council-owned or managed golf courses are only open to members or people paying green fees. People living nearby may not have easy access to open space because their local park is used exclusively for golf.

Inequity across golf

Leasing arrangements, including rents vary across council-owned or managed golf courses.

Some private golf courses have also benefitted from rates remissions and postponements.

23 October 2019 Version
Section three

**How we invest**

Our new investment framework will assist decision-making and ensure the delivery of increased participation and environmental outcomes.

We will take a structured approach, supported by a bespoke cost-benefit tool and master planning involving extensive community engagement.
3.1 Key shift 5

Building a financially sustainable network of fit-for-purpose facilities

<table>
<thead>
<tr>
<th>Investment decisions of the Legacy councils</th>
<th>Key shift 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>What's happening now?</td>
<td>The changes we are making</td>
</tr>
<tr>
<td>The land on which Council-owned or managed golf courses operate were acquired by legacy councils (or the Crown) at different times and for different purposes. Most council-owned or managed golf land was acquired for recreation reserves while the land for other golf courses was acquired for infrastructure purposes such as water supply. Legacy councils entered into lease and license agreements with significant variation in terms and conditions across the region. The length of the existing lease terms varies from five to 90 years. These extended leases were intended to give golf clubs long-term security for their investments in course design and built facilities. Between 2021 and 2026 over half of the golf course leases are due to expire which gives Council the opportunity to review individual courses in the context of the wider network. There are no explicit options for renewal outlined in these lease agreements.</td>
<td>Our investment in golf facilities will move away from ad-hoc financial and lease arrangements to a standardised, transparent decision-making process that ensures our investments are secure for the long-term. The decision-making framework will have a clear process to review current investment, lease conditions and economic and environmental performance. Our goal is to achieve robust decision-making by providing clear criteria and principles for investment. This will help local boards in their decision making about the use, development and sustainability of the land. Council has a responsibility to maximise open space to achieve better outcomes for the wider community and secure a greater return on investment for these valuable land assets. Some golf courses in their current form are not sustainable so priority will be given to considering other options for this valuable open space to secure our return on investment.</td>
</tr>
</tbody>
</table>
3.2 Decision-making framework

A decision-making framework lies at the heart of this plan. There are a range of factors and information that decision-makers will need to consider before committing any further investment.

This will be done on a course-by-course basis as and when leases come up for renewal. Local boards will engage with their communities throughout this process.

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**Objective**

To maximise net benefits across:
- Health & wellbeing - access for all (including whānau)
- Social & community - access for all
- Environmental - GEO certification
- Economic - financial sustainability

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**Other factors**
- Current use, membership, course quality, location
- Optimal portfolio of courses (geographical spread, hierarchy etc.)
- Council vs Crown owned
- LGA or Reserves Act
- Community input
- Ecological value
- Storm-water function

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**Application of the framework**

The council will consider each golf course.

Local boards, the public and stakeholders will also inform decisions on the land use.

**Decision-making authority**

All council-owned or managed golf courses are located on local parks and reserves.

Local boards make decisions with about use and development of local parks.

The governing body makes decisions about the acquisition and disposal of land for parks and open spaces.
3.5 When do we expect to implement change?

Between 2021 and 2036, over half of the leases for golf courses operating on council-owned or managed land come to an end. This provides an opportunity to align our investment and implement this plan. Some golf courses may choose to work with council to implement relevant aspects of this plan much earlier.

Golf Course Lease Timeline

<table>
<thead>
<tr>
<th>Golf Course</th>
<th>Lease Date</th>
<th>Preferred option</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waitakere Golf Club</td>
<td>Dec 2028</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Chamberlain Park Golf Club</td>
<td></td>
<td></td>
<td>Currently managed by City Parks Services</td>
</tr>
<tr>
<td>Murutahi Golf Club</td>
<td>Dec 2028</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Remuera Golf Club</td>
<td>Oct 2021</td>
<td></td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Waitakere Golf Club</td>
<td></td>
<td></td>
<td>Currently operating on 12 month to month basis, pending new licence. Preferred option is considered</td>
</tr>
<tr>
<td>Waiheke Island Country Club</td>
<td>Oct 2022</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Great Barrier Golf Club</td>
<td>Aug 2022</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Omaha Beach Golf Club</td>
<td>Nov 2021</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Clarks Beach Golf Club</td>
<td>Apr 2017</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Waitakere Golf Club</td>
<td></td>
<td></td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Takapuna Golf Club</td>
<td>Feb 2017</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Golf Warehouse and Driving Range</td>
<td></td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Awana Golf Club</td>
<td>Jun 2016</td>
<td>Preferred option</td>
<td>Preferred option is considered</td>
</tr>
<tr>
<td>Waitemata Golf Club</td>
<td>Jul 2016</td>
<td></td>
<td>Preferred option is considered</td>
</tr>
</tbody>
</table>

* Golf courses on Crown-owned, council managed land.
3.5 Decision-making factors

Decisions about each of Auckland Council’s 13 golf courses will be subject to a robust, evidence-based process. Several factors will also feed into this process as decisions are made about future land use. These are:

- land status
- current lease arrangements
- open space provision in the area
- environmental value of a course
- golf course utilisation.

Land status

All golf courses on council-owned or managed land are subject to either the Reserves Act 1977 or the Local Government Act 2002. In Auckland:

- three are owned by the Crown
- five are subject to the Reserves Act 1977
- five are Council-owned courses and are subject to the Local Government Act 2002.

With Crown-owned land there are restrictions about how council can use the land. There are also restrictions within the boundaries of the Reserves Act.

For instance, any commercial activity within any of these reserves must be complementary to the enjoyment of the public using the reserve. Jui and public consultation would be required before the activity could be authorised.

There is less flexibility with land held under the Reserves Act as only activities relevant to the park's status and classification are permitted. However, council does hold powers under the Reserves Act to change the purpose of sections of these reserves to local purpose (community buildings) reserve, without requiring consent from Department of Conservation but would have to first consult with local iwi and publicly notify its intention.

It could also add recreational activities without having to change the existing classification. For example, walking tracks, tennis courts or any other recreational activity could be established but any such changes would require initial discussion with the golf clubs.

Current lease arrangements

A number of golf clubs have long-term leases with the longest expiring in 2014. Lease expiry dates determine when and how the council can repurpose and develop the land in response to other community needs.

The schedule of leases can be seen on page 10 of this document.

Open space provision

There are competing demands for open space in Auckland. The Parks and Open Space Strategic Action Plan provides the framework to focus our efforts on ensuring our parks and open spaces contribute to and enhance Auckland’s liveability.

One of its key objectives is to:

- Maintain and extend an integrated network of quality open spaces across the region that meet community needs and provide a diverse range of recreational opportunities.

Environmental value

The inherent ecological value of a golf course will play a part in determining alternative uses.

More than half of all council-owned or managed golf course back on to reserves or significant areas of native bush. These courses act as green buffers protecting the neighbouring natural environments from potential environmental damage such as soil erosion, extreme temperature fluctuations, dust and noise pollution, and ground water contamination. Golf course in urban areas also provide a valuable storm water function.

Each course will be expected to achieve GEC certification and work towards their maximum operational and environmental sustainability targets. These targets will form part of the decision-making for lease renewals.

Golf course utilisation

In their current state as single-use golf precincts, a club’s financial sustainability is dependent on membership, its ability to attract casual users and deriving other income streams such as social and community uses of the club.

By shifting from a singular strategy of investment in golf benefiting a small group of Aucklanders, to investing in multi-purpose facilities and services for all within an enhanced network of existing golf courses we are creating a robust strategy that will ensure the long term viability of clubs around the Auckland region.
### 3.6 Decision-making process

The framework provides a rigorous, disciplined approach through a series of critical questions

#### Beginning of the assessment

**Does the lease expire within next three years?**

<table>
<thead>
<tr>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work with golf clubs to encourage other uses and golf options</td>
<td>Assess results of the cost-benefit analysis</td>
</tr>
</tbody>
</table>

- **Step 1**
  - Assess demand for golf, recreation facilities and open space in the area

- **Step 2**
  - Assess alignment with the key council's plans and strategies

- **Step 3**
  - Assess type of golf facility in relation to the proposed hierarchy model (Section 2.4)

- **Step 4**
  - Consider other factors influencing future land-use decisions (Section 5.3.3) for example, environmental and financial performance

- **Step 5**
  - Consider public feedback on the future land use

- **Step 7**
  - What is the optimal option for land use based on the previous six steps?

  - Possible options for the use of golf course land:
    - Continued exclusive use for golf
    - Multifunctional use for golf and other sports/recreation
    - Park
    - Partial sale and mixed-use recreation
    - Sale for residential or commercial development

- The preferred option is identified
Draft

3.7 Methods for future investment in golf courses

The council is taking a broader approach to its investment. This will involve a wider set of considerations and tools, such as:

- improving leases to provide for mixed use of open space
- considering alternative forms of financial support to golf (for example other than leases)
- partial sale of land while retaining space for mixed-use recreation
- potentially reducing investment through leases to enable alternative investment.

What this will look like in practice

The current portfolio of golf courses is the result of decisions made prior to the amalgamation of the Auckland councils in 2010.

There are some processes that can be standardised such as rental agreements and leases however, this is dependent on a variety of factors including ownership, the operational structure (council managed versus member managed), the current state of activity at the course, and the desired changes.

The following improvements to the investment process will be considered:

- structuring leases to incentivise improvements such as environmental, membership, club use and diversity of members. For example, lease costs could be reduced as the environmental sustainability improves (or alternatively increased if sustainability score worsens).
- funding/support to improve environmental outcomes
- direct council management (as opposed to lease managed by a golf club incorporated society) might work better if the course is converted to mixed use, especially in the development and early stages.

The council will also consider a Service Level Agreement (SLA) in the lease. An SLA is mutually beneficial to both parties of the contract as the operators know exactly what is expected of them before entering the agreement and the owners know exactly what services they can expect. Should there be any disputes, the SLA clearly defines what is and is not expected.

Research of international council-owned golf facilities identified several management structures with potential for hybrids of these structures. Each management structure has its merits for different situations and this will be assessed as part of the review of the leasing agreements. For example:

- What is the council trying to achieve through this facility? Participation? Revenue?
- What is the user profile of this facility? Is it a community level facility or is it a more commercially driven facility?
- What is the extent of involvement that the council wants to have in the management and governance of the facility?
- What resources does the council have available/willing to dedicate to management of the facility?
How was the plan developed?

Development of the plan has involved a number of key steps involving research, analysis and engagement.

We have regularly checked-in with stakeholders, including New Zealand Golf and participated in the development of the golf sector plan for Auckland.\(^6\)

Figure X: Key steps in the development of the plan