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.

REASONS OF THE COURT

(Given by Asher J)

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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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1 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2387 [High Court Judgment].

2 *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2018] NZHC 459, (2018) 20 ELRNZ 335 [Leave Judgment].

The Combined (Unitary) Plan

[5] The Auckland Council was established on 1 November 2010 by the Local Government (Auckland Council) Act 2009.[3] Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (the Transitional Provisions Act) was added in 2013,[4] 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.[5] This made Auckland City a Unitary Authority.[6]

[7] The Unitary Plan process involved five steps. The first stage of the process involved the preparation and notification of the Proposed Unitary Plan.[7] The second stage involved a process of receiving and processing submissions. Then the Panel was to be established to carry out the third stage.[8] At the third stage, the Panel was to consider the submissions on the content of the Proposed Unitary Plan as notified.[9] 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".[10] In the fourth stage the Council was to make decisions

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3 Local Government (Auckland Council) Act 2009, ss 2 and 6.
4 Inserted by s 6 of the Local Government (Auckland Transitional Provisions) Amendment Act 2013.
5 Resource Management Act 1991, ss 9–15.
6 Local Government Act 2002, s 5(1).
7 Local Government (Auckland Transitional Provisions) Act 2010, s 127(1)(a) [Transitional Provisions Act].
8 Section 161.
9 Section 128(1).
10 Section 146.

considering those recommendations within a further 20 working days.[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:[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

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11 Section 115(1)(k).
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
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> (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:

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".[13] 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.

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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.[14] 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 Belgiorno-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 Belgiorno-Nettis provided submission points regarding the Promenade and Lake Road Blocks. Mr Belgiorno-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.[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 two zonings 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

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[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.

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16 Auckland Council *Auckland Unitary Plan Operative* (15 November 2016) at 7.

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

[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 MHS 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 23.
19 At 57.

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 "[h]aving regard to 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.[25] 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.[26] 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".[27]

[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* "[j]udicial accountability, which is maintained primarily through the requirement that justice be administered in public, is undermined."[28]

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25 *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [75].

26 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* [1982] 1 NZLR 644 (CA) at 648–649. But see also *R v MacPherson* [1982] 1 NZLR 650 (CA) at 652; and *R v Jefferies* [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".[29] The importance of this was summarised by Lord Donaldson MR in *R v Civil Service Appeal Board, ex parte Cunningham*:[30]

> … 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.[31]

[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.[32] 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 McPherson*, 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

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33 Resource Management Act, sch 1 cl 54(2)(a).
34 Schedule 1 cls 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.

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[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.[38] 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.[39] 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.[40] 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.[41]

[62] The Council also relied on the High Court decision of *Albany North Landowners v Auckland Council*.[42] 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.
42 *Albany North Landowners v Auckland Council* [2017] NZHC 138.

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 Belgiorno-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.

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[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:[44]

> 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 viewshafts and the maunga themselves, air and water quality, the natural character of the coastal environment and the special character of many places.

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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

[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 Belgiorno-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:

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[49] Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council: Hearing Topics 059–063 Residential Zones* (July 2016) at 12.

- 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 provided 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.

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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 Areas)* (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:[53]

> 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 submissions and points may not be expressly 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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53 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 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.[54] 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

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[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 Belgiorno-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.[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).[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.

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55 High Court Judgment, above n 1, at [114].
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.[57] 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. …

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[57] This was also the conclusion reached in *North Eastern Investments Ltd v Auckland Council* [2018] NZCA 629 at [69].

[58] *Marshall Cordner & Co v Canterbury Clerical Workers Union* [1986] 2 NZLR 431 (CA) at 434.

[105] 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]

[106] Given the nature of this quasi-judicial process chaired as it is by a Judge of the Environment Court, the danger of new reasons being composed to support the decision does not in our view arise. The indications in the material before us are that the decision of the Panel was thorough, and that it did consider individual submissions (although no conclusion can be reached on this until reasons are given). There is no suggestion that the appropriate Panel cannot be brought together again to report on the reasons. The Panel, consisting as it does of a judge and a number of senior professional persons, will need to confer before it summarises its reasons for reaching the two decisions.

[107] 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.

60 *Clark v Wellington Rent Appeal Board* [1975] 2 NZLR 24 (SC) at 32 and *Minister of Conservation v Tasman District Council* HC Nelson CIV-2003-485-1072, 9 December 2003 at [117].

61 Harry Woolf and others *De Smith's Judicial Review* (8th ed, Sweet & Maxwell, London, 2018) at [7-115].

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 Belgiorno-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.[63]

[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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63 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

Appendix A[64]

TAKAPUNA, MILFORD AND SMALES FARM
Attachment C: Zoning Analysis and Position for each Submission Point
Notes: The black text in the "summary" column of this Attachment is as notified. Occasional amendments have been made in red to take account of any re-notified SDR points and also for clarity where necessary.

Auckland Unitary Plan Independent Hearings Panel Submission Point Pathway Report					Auckland Council Evidence										
					Analysis						Planners' Position				
SUB POINT	SUBMITTER NAME	TOPIC	SUB AREA UNIT	SUMMARY	PROPERTIES SUBJECT TO SUBMISSION	SUBMISSION THEME	LOCALITY	PAUP ZONE	REQUESTED ZONE	RELEVANT OVERLAYS, PRECINCTS AND CONSTRAINTS	PLANNERS' PROPOSED POSITION	REASONS	PROPOSED ZONE CHANGE	GIS MAP CHANGE	CONSEQUENTIAL AMENDMENTS
1744-1		Takapuna, Milford and Smales Farm	N5	Rezone 5 Blomfeld Spa, Takapuna, from Mixed Use to Mixed Housing Suburban zone.	5 Blomfield Spa, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	MU	MHS	N/A	DO NOT SUPPORT CHANGE; SUPPORT RETENTION OF NOTIFIED ZONE	Do not support change from MU to MHS. The extent of the MU zone on Lake Rd recognises the existing characteristics of a range of non-residential and residential uses. The property is adjacent to the MC zone with good access to the RFN. Retention of the MU zone is the most appropriate way to achieve the objectives of the zone and gives effect to the RPS.	No change	No	No
2800-2		Takapuna, Milford and Smales Farm	N5	Rezone west side of Lake Road from Bracken Ave to Byron Ave, Takapuna from Metropolitan Centre to Mixed Use without an additional height overlay	West side of Lake Road from Bracken Avenue to Byron Avenue, Takapuna	Combined rezoning and precinct submissions	Takapuna	MC	MU	Takapuna 1 precinct	DO NOT SUPPORT CHANGE; SUPPORT RETENTION OF NOTIFIED ZONE	Do not support change from MC. 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 withe the centres strategy/hierarchy under the Auckland Plan and the RPS. The MC zone for the block recognises the long-standing operative business zone and expectation for the block's development potential. The retention of the zone gives effect to the RPS	No change	No	No
2820-17		Takapuna, Milford and Smales Farm	N5	Rezone Anzac St area between Auburn St and the Terrace, Takapuna from Terraced Housing and Apartment Building and Metropolitan Centre to Mixed Use and Metropolitan Centre	Anzac Street between Auburn Street and The Terrace, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	THAB MC	MU MC	N/A	DO NOT SUPPORT CHANGE; SUPPORT RETENTION OF NOTIFIED ZONE	Do not support change from THAB/MC to MU/MC on Anzac St between The Terrace 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 appropriate to retain 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 Taharoto Rd, to recognise the mix of commercial and residential activities occurring at these locations. A new MU zone along The Terrace may diminish the function, role and amenity of the MC zone (particularly along Hurstmere Rd) and therefore is not supported. The retention of the notified zones is the most appropriate way to achieve the objectives of the MC	No change	No	No

64 Note all names, save that of Mr Belgiorno-Nettis have been redacted.

												and THAB zones and gives effect to the RPS			
1667-3	Franco Belgiorno-Nettis	Takapuna, Milford and Smales Farm	N5	Rezone the properties bound by The Promenade, Alison Ave, Earnoch Ave and Hurstmere Road, Takapuna, from Terrace Housing and Apartment Building to Mixed Housing Urban.	Block bounded by The Promenade, Alison Avenue, Earnoch Avenue and Hurstmere Road, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	THAB	MHU	N/A	SUPPORT IN PART; PARTIAL CHANGE	Support partial change of the block bounded by The Promenade, Hurstmere Rd, Earnoch Ave and Alison Ave. THAB is appropriate for properties adjacent to the MC zone. However, taking into account the proximity of the coast and lower density residential to the north, properties on Earnoch Ave, Alison Ave and 187, 187A Hurstmere Rd are better suited for MHU, 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 Takapuna, Milford and Smales Farm topic area in Attachment E. THAB is proposed to be retained for the remainder of the block. The proposed zone change to MHU and the retention of THAB are the most appropriate ways to achieve the objectives of the MHU and THAB zones and gives effect to the RPS.	MHU	Yes	Yes - AZHC (remove from entire block)
2969-1		Takapuna, Milford and Smales Farm	N5	Rezone 1 Kowhai Street, Takapuna from Single House to Mixed Housing Suburban.	1 Kowhai Street, Takapuna	Mixed Housing Urban/Mixed Housing Suburban/Single House Expansion/Contraction	Takapuna	SH	MHS	N/A	SUPPORT IN FULL; CHANGE OF ZONE	Support zone change from SH to MHS. There are no site/environmental constraints at 1 Kowhai St. MHS is consistent with the area's planned suburban built character. It is appropriate to only retain SH on the northern side of Lake View Rd (adjoining Rangitira Ave) which is subject to the Lake Pupuke ONF. The zone change is the most appropriate way to achieve the objectives of the MHS zone and gives effect to the RPS.	MHS	Yes	No
3251-2		Takapuna, Milford and Smales Farm	N5	Rezone 5 Blomfield Spa, Takapuna from Mixed Use to Mixed Housing Suburban zone	5 Blomfield Spa, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	MU	MHS	N/A	DO NOT SUPPORT CHANGE; SUPPORT RETENTION OF NOTIFIED ZONE	Do not support change from MU to MHS. The extent of the MU zone on Lake Rd recognises the existing characteristics of a range of non-residential and residential uses. The property is adjacent to the MC zone with good access to the RFN. Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and gives effect to the RPS.	No change	No	No
SH (inferred) N		Takapuna, Milford and Smales Farm	N5	Rezone sites in Alison Avenue and South side of Earnoch Avenue, Takapuna, to have same zone as adjacent land, northern side of Earnoch Avenue, Brett,	Block bounded by The Promenade, Alison Avenue, Earnoch Avenue and Hurstmere Road, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	THAB	SH (inferred) N	N/A	DO NOT SUPPORT CHANGE; SUPPORT ALTERNATIVE ZONE	Do not support change from THAB to SH (inferred) for the block bounded by The Promenade, Hurstmere Rd, Earnoch Ave and Alison Ave. THAB is appropriate for properties adjacent to the MC zone. However, taking into account the proximity of the coast and lower density residential to the north, properties on Earnoch Ave, Alison Ave and 187, 187A Hurstmere Rd are better suited for MHU, 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 Takapuna, Milford and Smales Farm topic area in	MHU	Yes	Yes - AZHC (remove from entire block)

				O'Neill's, and Minehaha Avenues. *Infer Single House zone*								Attachment E. THAB is proposed to be retained for the remainder of the block. The proposed zone change to MHU and the retention of THAB are the most appropriate ways to achieve the objectives of the MHU and THAB zones and give effect to the RPS.			
2237-1		Takapuna, Milford and Smales Farm	N5	Rezone properties bounded by The Promenade, Alison Avenue, Earnoch Avenue, and Hurstmere Road Takapuna from Terrace Housing and Apartment Buildings zone to Mixed Housing Urban.	Block bounded by The Promenade, Alison Avenue, Earnoch Avenue and Hurstmere Road, Takapuna	Centres/Terrace Housing Apartment Buildings (THAB)/Mixed Use Expansion/Contraction	Takapuna	THAB	MHU	N/A	SUPPORT IN PART; PARTIAL CHANGE	Support partial change of the block bounded by The Promenade, Hurstmere Rd, Earnoch Ave and Alison Ave. THAB is appropriate for properties adjacent to the MC zone. However, taking into account the proximity of the coast and lower density residential to the north, properties on Earnoch Ave, Alison Ave and 187, 187A Hurstmere Rd are better suited for MHU, 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 Takapuna, Milford and Smales Farm topic area in Attachment E. THAB is proposed to be retained for the remainder of the block. The proposed zone change to MHU and the retention of THAB are the most appropriate ways to achieve the objectives of the MHU and THAB zones and give effect to the RPS.	MHU	Yes	Yes - AZHC (remove from entire block)
		Takapuna, Milford and Smales Farm	N5	Retain Mixed Use and Mixed Housing Suburban zones that apply to Smales Quarry, 2C and 2D Northcote Road and 4 and 6 Rangitira Avenue, Takapuna. *[RENOTIFIED WORDING]*	2C, 2D Northcote Road; 4, 6 Rangitira Avenue, Takapuna.	Combined rezoning and precinct submissions	Takapuna	MU MHS	MU MHS	Significant Ecological Area (SEA); Smales 2 precinct	SUPPORT IN FULL; RETENTION OF NOTIFIED ZONE	Support retention of MU and MHS as underlying zones for the Smales 2 precinct. MU is appropriate for sites close to Taharoto Rd (RFN) and MHS is the most appropriate underlying zone for the site adjoining Lake Pupuke. Comprehensive development is enabled by the precinct provisions. 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.	MU MHS	No	No

Appendix B

1. TAKAPUNA

SUBMISSION THEME	OVERVIEW OF SUBMISSIONS	PLANNERS' POSITION
Theme 1 – Centres/Terrace Housing and Apartment Buildings/Mixed Use Expansion/Contraction	**Hurstmere Rd/Earnoch Ave/Alison Ave/The Promenade block** • 24 submission points seek to rezone the entire block bounded by Hurstmere Rd, Earnoch Ave, Alison Ave and The Promenade from THAB to SH, MHS, MHU or an unspecified zone. • Two submission points seek to rezone 2/9 Earnoch Ave and 16 The Promenade from THAB to a lower density zone (inferred). • 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 Hurstmere Rd, Earnoch Ave, Alison Ave and The Promenade are supported in part. It is appropriate to rezone Earnoch Ave (south), Alison Ave and 187, 187A Hurstmere 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 2/9 Earnoch Ave to a lower density zone for the reasons stated above. The proposed change to MHU is the most appropriate ways 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 Earnoch Ave (south), Alison Ave and 187, 187A Hurstmere 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 Tennyson 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 Tennyson 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 RFN. 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

SUBMISSION THEME	OVERVIEW OF SUBMISSIONS	PLANNERS' POSITION
	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 MHU is the most appropriate way to achieve the objectives of the MHU zones and gives effect to the RPS. • **Position:** The request to rezone the north-facing sites south of Lake Pupuke is not supported. However, some rezoning to MHS and MHU in this area is supported. Streets around Lake Pupuke generally have a lakeside character, with larger and more spacious properties therefore it is not considered appropriate to rezone to THAB around the lake. Some rezoning from SH to MHS for the north-facing sites on Lake View Rd, Anders Place and Manurere Ave is supported. Additionally, it is considered appropriate to rezone the north-western side of Killarney St from MHS to MHU to provide a buffer between THAB and MHS. SH is retained for properties adjoining the lake edge to recognise the identified constraints (ONF and SEA). The proposed changes are the most appropriate way to achieve the objectives of the MHS and MHU 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 MHU. • 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 MC zone. Retention of the MU zone is the most appropriate way to achieve the objectives of the MU zone and gives 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 gives 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 MU/MC. • One request to rezone 1 to 9 Karaka St from MHU to MU. • One submission point seeks to retain MU for 2 Northcote Rd and 64 Taharoto 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 gives effect to the RPS. • **Position:** The request to rezone a part of Anzac St from THAB/MC to MU/MC is not supported. A new MU zone along The Terrace may negatively impact on the existing MC zone (particularly along Hurstmere Rd). The retention of the notified zones is the most appropriate way to achieve the objectives of the MC and THAB zones and gives 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 Taharoto Rd is appropriate. Retention of MHU 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 Taharoto 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 gives effect to the RPS.
	Height limits • One request seeks the zoning on Lake Rd 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 051-054 (dated 28 July 2015). Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and

SUBMISSION THEME	OVERVIEW OF SUBMISSIONS	PLANNERS' POSITION
	• One request seeks to rezone 1A Karaka St and 40 Taharoto Rd from MU to a zone which permits eight storeys.	gives effect to the RPS. • **Position:** The request to rezone 1A Karaka St and 40 Taharoto Rd is not supported. The permitted height in the MU zone allows for development of an appropriate scale and intensity at this location. Retention of the zone is the most appropriate way to achieve the objectives of the MU zone and gives effect to the RPS.
Theme 2 – Combined rezoning and precinct submissions	**Smales 2 precinct** • One submission point seeks to retain the MU and MHS zones at 2C and 2D Northcote Rd and 6 Rangitira Ave. • One request to rezone 2D Northcote Rd from MHS to SH.	• **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 RFN 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. • **Position:** The request to rezone 2D Northcote Rd is not supported. MHS is the most appropriate zone for this site for the reasons outlined above. The effects of development on the lake edge are adequately addressed in the precinct provisions. Retention of MHS is the most appropriate way to achieve the relevant objectives of the precinct and objectives of the zone, and gives effect to the RPS.
	Takapuna 1 precinct • Sixteen submission points (site-specific and general) seek to retain the MC zone. • Seven submission points (site-specific and general) seek to rezone Takapuna from MC to an unspecified zone, a residential zone or MU. • One request to rezone the eastern part of 4-6 Collins St from MC to THAB.	• **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. • **Position:** The submission points seeking to rezone Takapuna from MC to another zone are not supported because it will not give effect to the RPS including the centres strategy/hierarchy. 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. • **Position:** The submission point seeking to rezone 4-6 Collins St to THAB is supported as Collins St is a dead-end street and the property is currently occupied by apartments. The zone change is the most appropriate way to achieve the objectives of the THAB zone and gives effect to the RPS.
	Takapuna 2 precinct • Four submission points seek to rezone the Takapuna 2 precinct from THAB to various residential zones. • Four submission points seek to retain the THAB zone for individual properties within the precinct. • One request to rezone 8 Greydene Place from THAB to MU.	• **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 RFN. 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. • **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. • **Position:** The submission point seeking to rezone 8 Greydene 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 RFN. The zone change is the most appropriate way to achieve the objectives of the MU zone and gives effect to the RPS.

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