

Auckland Council Decision

Please find enclosed:

- Auckland Council Report to Planning Committee
- Attachment 1 - IHP Recommendation
- Attachment 2 - Planning Committee resolution

Auckland Council Report to Planning Committee

Auckland Unitary Plan Independent Hearings Panel (for the Proposed Auckland Unitary Plan) recommendations for 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany

Purpose of the report | Te take mō te pūrongo

1. To seek Auckland Council's decision on the Auckland Unitary Plan Independent Hearing Panel's recommendation for 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany.

Executive summary | Whakarāpopototanga matua

2. This report seeks the decision of the Committee on behalf of Auckland Council on recommendations of the Auckland Unitary Plan Independent Hearings Panel (the Panel) for the Proposed Auckland Unitary Plan (PAUP). The Panel recommendation relates to a submission on the PAUP (as notified on 30 September 2013) by North Eastern Investment Limited and Heritage Land Limited (NEIL).
3. The Panel recommendations to Auckland Council are that:
 - No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany (the Site); and
 - Height variation control (HVC) of 22m apply to the Site.
4. Staff recommend that the Committee make a decision under s148(1)(a) of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) to accept the Panel's recommendations.
5. Following the decision of the Committee a 20-working day appeal period applies under the LGATPA. Provided that there are no appeals during that time period, a further report will be brought to the Committee so that the Council will be able to complete the statutory process for making the provisions operative.
6. This is the last remaining unresolved matter from the entire PAUP process.

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Recommendation/s | Ngā tūtohunga

That the Policy, Planning and Development Committee:

- a. receive / whiwhi the Report to Auckland Council – Rehearing of Albany 5: Precinct and Height Variation Control – for: North Eastern Investment Limited and Heritage Land Limited (NEIL) - 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany, dated 17 March 2026
- b. accept / whakaae the within-scope recommendation of the Independent Hearings Panel under s148(1)(a) of the Local Government (Auckland Transitional Provisions) Act 2010 that:
 - i. No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany (the Site); and
 - ii. A height variation control (HVC) of 22m apply to the Site.

- c. request / tono staff to publicly notify the Council's decision on the Independent Hearings Panel's recommendation by 16 April 2026 in accordance with s148 of the Local Government (Auckland Transitional Provisions) Act 2010.

Context | Horopaki

7. The PAUP was notified for submissions on 30 September 2013. NEIL lodged a submission on the PAUP that sought:
 - a. a precinct over 56 Fairview Avenue, 129 Oteha Valley Road, and 135 Ōtehā Valley Road enabling greater height and amending the rules and policies that apply to work in and around the Waikahikatea Stream (Albany 5 Precinct); and
 - b. Terrace Housing and Apartment Buildings zoning over the majority of 56 Fairview Avenue, and all of 131 and 135 Ōtehā Valley Road.
 - c. Business Mixed Use zoning over a portion of 56 Fairview Avenue and all of 129 Ōtehā Valley Road.
8. The NEIL submission sought building heights as follows:
 - a. Sub-precinct A – 27 metres
 - b. Sub-precinct B – 23 metres
 - c. Sub-precinct C – 34 metres.
9. The Panel hearings on submissions on the PAUP were completed in May 2016, and the Panel's recommendations were received by council in July 2016. Council was required to accept or reject the Panel's recommendations, and to notify its decisions in response to the Panel's recommendations in August 2016. The Panel recommendations and the Council decision in 2016 did not provide for a precinct for the Site. NEIL brought Environment Court, High Court appeal and judicial review proceedings challenging the Council's decision.
10. NEIL's application for judicial review was declined by the High Court. The High Court's decision was then appealed to the Court of Appeal. In 2018 the Court of Appeal set aside the Panel recommendations and council decision not to adopt the Albany 5 Precinct (*North Eastern Investments Limited and Heritage Land Limited v Auckland Council* NZCA 629). The Court of Appeal also set aside the Panel recommendations and Council decision not to zone the land within the proposed Albany 5 Sub-Precinct B as Business — Mixed Use.
11. The Court of Appeal directed the Panel to make new recommendations under s144 of the LGATPA. Since the Court of Appeal's decision, the zoning of the Site has been agreed between the Council and NEIL, and is referred to in the Panel recommendation. At the new hearing in July 2025 the Panel considered:
 - whether the Precinct over the Site should be included in the AUP and, if so, what precinct provisions are appropriate; and
 - whether additional height should be enabled on the Site via the Height Variation Controls (HVCs) sought by NEIL.
12. Expert witness conferencing occurred following the hearing. The Panel hearing closed on 17 December 2025, and the Panel's recommendation dated 17 March 2026 were provided to the Council on 18 March 2026. The Panel's recommendation provides:
 - No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany (the Site); and
 - A height variation control (HVC) of 22m apply to the Site.

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13. The Panel did not find that a precinct for the site was appropriate. The Council did not support a precinct but did support a height variation control of 22 metres for buildings on the site. The Panel recommended a height variation control based on the council's position. The Council is now required to decide to accept or reject the Panel's recommendation.
14. When making decisions on the Panel recommendation:
 - a. the council is not required to consult any person or consider submissions or other evidence from any person; and
 - b. the council must not consider any submission or other evidence unless it was made available to the Panel before the Panel made the recommendation that is the subject of the council's decision
15. If the Panel recommendation is accepted, and the council's decision is not appealed to the High Court, the council will be able to make the Auckland Unitary Plan operative in full. Staff recommend that the Committee make a decision under s148(1)(a) of the LGATPA to accept the Panel's recommendation.

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Analysis and advice | Tātaritanga me ngā tohutohu

16. The Panel's Recommendation report was provided to the Council on 18 March 2026 and is attached to this report. The recommendation is that:
 - a. No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany
 - b. A height variation control of 22 metres apply to the site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany.
17. Staff have considered the Panel recommendations in light of the council's expert witness evidence for the hearings and the Council's position in legal submissions. Staff recommend that the Panel recommendation is accepted.

Climate impact statement

18. There are no issues of significance for greenhouse gas emissions arising from the Council decision on the Panel recommendation. It is noted however that the subject land areas will assist in achieving a compact built environment as sought under the Auckland Regional Policy Statement chapter of the AUP, and in this way assist in meeting Te Tāruke-ā-Tāwhiri, Auckland's Climate Action Plan.

Council group impacts and views

19. The council group including Auckland Transport and Watercare Services Ltd contributed to the development of the PAUP. AT and Watercare did not express any specific concerns with the NEIL submission. However, the council did engage a transport planning expert (supported by AT) to assist with the legal proceedings.

Options

20. There are two options available. One option is to accept the Panel's recommendations; the other option is to reject the recommendations.
21. To accept the Panel's recommendations will lead to resource management outcomes supported by the Council's expert witnesses, enabling increased development opportunities for the Site, while appropriately managing any adverse impacts. This option is recommended.

Financial implications

22. The costs of publicly notifying the decision are covered by the normal operating budget of the Planning and Resource Consents Department.

Risks and mitigations

23. If the Panel's recommendation is accepted by the Council, any appeal is limited to an appeal to the High Court on a point of law. If the Panel recommendation is rejected by the Council, the Council's decision could be:
 - a. appealed to the Environment Court; or
 - b. appealed to the High Court on a point of law.

Māori impact statement

24. Iwi/Māori did not join the various Court proceedings that have taken place in respect of the Site since the Council made its decisions on the PAUP in 2016. However, it is noted that the Council's position has consistently been to protect the environment on this site (including the stream running through the land) by continuing to oppose the precinct provisions proposed by NEIL. Protection of the stream will also be achieved by applying the provisions of Chapter E3 of the AUP and the National Policy Statement for Freshwater Management 2020.

Local impacts and local board views | Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

25. There are no local impacts of significance arising from the Panel's recommendation. There will be positive effects for the owners of land at 56 Fairview Avenue and 129 and 135 Ōteihā Valley Road, Albany where the 22m height variation controls are to apply. The Upper Harbour Local Board views were considered in the preparation of the PAUP between 2013 and 2016. The Local Board did not express any specific views about the NEIL Site or submission.

Next steps | Ngā koringa ā-muri

26. The Council must issue its decision by 16 April 2026. There is then a 20 working day period for appeals. If there are no appeals there will be a further report to Committee seeking a direction to make the provisions that apply to the NEIL Site operative. As previously noted, this would enable the AUP to become fully operative.

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Attachments | Ngā tāpirihanga

- A. A - IHP Report to AC Topic 082b Albany 5 Precinct Recommendation Report March 2026

Signatories | Ngā kaihaina

| | |
|-------------|---|
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**Attachment 1 - IHP
Recommendation**

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council – Rehearing of Albany 5:
Precinct and Height Variation Control – for:**

**North Eastern Investment Limited and Heritage Land
Limited (NEIL) - 56 Fairview Avenue and 129 and 135 Ōtehā
Valley Road, Albany**

Dated 17 March 2026

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Recommendation Overview

1. The recommendation from the Independent Hearing Panel (IHP) is that:
 - No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōteihā Valley Road, Albany (the Site); and
 - A height variation control (HVC) of 22m apply to the Site.
2. In making this recommendation we find that a precinct could be appropriate for the Site given: its location within a walkable catchment of Albany Centre (Metropolitan Zone) and the Northern Busway Albany Station; it is one of a few larger undeveloped greenfield sites with a live urban zoning; and it potentially could better give effect to the National Policy Statement for Urban Development (NPS-UD) and the Regional Policy Statement (RPS) than does general zoning.
3. However, we are not convinced the Precinct and its provisions provided by NEIL (post expert conferencing following the hearing) are appropriate; nor are we convinced they would give effect to the relevant statutory requirements.
4. We are satisfied that the HVC providing for building heights of 22m for the Site will give effect to Policy 3 of the NPS-UD as it will provide for buildings of at least 6 storeys within a walkable catchment.
5. We set out our reasons for this recommendation below.

Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA)

6. This report is prepared in accordance with the LGATPA. Section 144 (8) and (9) of that Act states:

(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.

7. In respect of section 144 (9) (b), the National Policy Statement on Urban Development (NPS-UD)¹ and the withdrawal of PC 78 and the notification of PC 120 are, in particular, other matters that are relevant to this case. We address these further below.

Introduction/Background

8. This recommendation from the IHP is in relation to a submission lodged by North Eastern Investments Limited and Heritage Land Limited (NEIL) and received by Auckland Council (Council) on the then Proposed Auckland Unitary Plan (PAUP) (Submission #857). It relates to NEIL's site at 56 Fairview Avenue and 129 and 135 Ōteihā Valley Road, Albany (the Site).
9. It is well known to the parties that the IHP issued its recommendation on NEIL's submission relating to the PAUP provisions (requested zoning and a precinct) to Auckland Council (22 July 2016), declining its zoning and precinct request.
10. NEIL's submission sought Business Mixed Use Zone (BMU) zoning on the land fronting Ōteihā Valley Road and Residential - Terrace Housing and Apartment Buildings Zone (THAB) on the balance of its Site. The zoning of the land in the notified PAUP was predominantly Mixed Housing Urban Zone and in a small part, Mixed Housing Suburban Zone. NEIL also sought a precinct; the purpose of which was to establish a policy and rule framework for the Site that recognised its potential for a master planned and integrated, intensive residential development to a higher intensity and height than that set as the benchmark for the mixed-use development fronting Ōteihā Valley Road.
11. The proposed precinct sought the inclusion of three sub-precincts to provide for differing building heights as follows:
 - i. Sub-precinct A: 27m. This is the major, more elevated part of the site fronting Fairview Avenue;
 - ii. Sub-precinct B: 23m. This is the Mixed-Use area along Ōteihā Valley Road; and
 - iii. Sub-precinct C: 34m or 60m through the Residential - Terrace Housing and Apartment Buildings Zone. This is the southernmost and lowest area of the site.

¹ Which was not in place at the time the IHP made its 2016 recommendations to the Council on NEIL's submission.

12. The following was set out in the IHP's recommendation report:²

The Panel having regard to the submissions, the evidence and sections 32 and 32AA of the Resource Management Act 1991, recommends that the Albany 5 Precinct not be adopted. The rezoning of the land within the proposed precinct to Residential - Terrace Housing and Apartment Buildings Zone is considered the most appropriate way to enable the development of the proposed precinct site and to give effect to the regional policy statement and achieve the purpose of the Resource Management Act 1991.

13. Auckland Council accepted the IHP's recommendation and issued its decision accordingly (19 August 2016).
14. NEIL brought Environment Court, High Court appeal and judicial review proceedings challenging the Council's decision on recommendations made by the IHP in 2016 in relation to the PAUP provisions that apply to NEIL's site.
15. NEIL's application for judicial review was declined by the High Court.³ The High Court decision records that NEIL initially filed an appeal on a question of law as well, but the parties agreed that the issues for determination were all contained in the amended statement of claim filed in the judicial review proceedings.⁴ The High Court's decision was appealed to the Court of Appeal. In its decision the Court of Appeal directed:⁵

[74] The Panel's recommendations dated 22 July 2016 (provided in its Report to Auckland Council July 2016, Changes to Rural Urban Boundary, Rezoning and Precincts, Annexure 4 Precincts North, at page 158), and the subsequent Council decision dated 19 August 2016 to accept those recommendations, are both set aside, insofar as they relate to:

- (a) the Council's decision not to adopt the Albany 5 Precinct; and*
- (b) the Council's decision not to zone the land within the proposed Albany 5 Sub-Precinct B as Business — Mixed Use.*

[75] The Panel is directed to make new recommendations under s 144 of the LGATPA in respect of the matters set out in paragraphs [74(a)–(b)], following a process that addresses the errors identified by this judgment.

16. Since the Court of Appeal's decision, the zoning of the Site has been agreed between the Council and NEIL. On 28 June 2022 the IHP made a recommendation to the Council regarding the extent of the BMU that applied to 129 Ōteihā Valley Road and 56 Fairview Avenue. The Council accepted that recommendation on 30 June 2022. NEIL withdrew its Environment Court appeal on 4 July 2022.

² Report to Auckland Council - Hearing topics 016, 017 Changes to the Rural Urban Boundary; 080, 081 Rezoning and precincts - Annexure 4, Precincts North, July 2016, section 4 - Panel recommendations and reasons.

³ *North Eastern Investments Limited v Auckland Council* [2018] NZHC 916.

⁴ *North Eastern Investments Limited v Auckland Council* [2018] NZHC 916 at footnote 2.

⁵ *North Eastern Investments Limited v Auckland Council* [2018] NZCA 629.

17. The remaining issues for determination, and the subject of this recommendation report, are:
- (a) whether the Albany 5 Precinct over the Site should be included in the AUP and, if so, what precinct provisions are appropriate; and
 - (b) whether additional height should be enabled on the Site via the HVCs sought by NEIL.
18. As directed by the Court of Appeal (to make new recommendations), and the reconsideration process as agreed by the parties⁶, a re-hearing of these matters was held on the 16 and 17 July 2025 by a sub-Panel of the IHP (Panel).⁷ The Panel comprised Mr Greg Hill (chair), Mr Peter Fuller, Mr David Hill, and Mr Alan Watson. The process followed to enable the IHP to consider and subsequently adopt the Panel's recommendations is addressed separately below.
19. We set out in some detail the context, process and material that was before the Panel below. However, prior to this we have set out the primary positions of the Council and NEIL, noting that while the primary positions of the parties did not change through the hearings process, the proposed precinct provisions and HVC sought by NEIL substantially changed. Auckland Council's position on height also changed through the hearing process. We discuss these changes in some detail below.
20. Our recommendation is in relation to the proposed precinct and HVC provided to us from NEIL's legal counsel⁸, following expert conferencing between the Council's and NEIL's planners.⁹

The Parties' Positions

21. As set out in the Council's legal submissions, the Council's primary position on the outstanding issues was that¹⁰:
- (a) *the Albany 5 Precinct should not be included in the AUP. The PAUP's provisions relating to the Terrace Housing and Apartment Buildings (THAB) and BMU zones, together with the relevant Auckland-wide provisions, provide an appropriate framework for the assessment of future resource consent applications to develop the Site;*
 - (b) *if, notwithstanding the Council's position outlined in (a) above, the Panel considers a precinct to be appropriate, the Albany 5 Precinct attached to Mr Thomas' evidence should be amended in the manner set out in Mr Scott's supplementary evidence of 7 July 2025;*

⁶ Which has addressed the errors identified by the Court of Appeal's judgment.

⁷ As were many of the rezoning and precinct related submissions to the PAUP.

⁸ Memorandum for submitters in response to panel memorandum dated 14 November 2025 dated 26 November 2025.

⁹ Joint Witness Statement dated 11 November 2025.

¹⁰ Council's legal submissions at paragraph 1.5 – a -c.

(c) NEIL's proposed HVCs (allowing either 7 storeys or 10 storeys) should not be incorporated into the AUP. The building height controls in the THAB and BMU zones¹¹, including as they are proposed to be modified by Plan Change 78: Intensification (PC78), are appropriate. Any exceedance of these height limits should require consideration by a consent authority.

22. The Council filed a memorandum after the hearing was adjourned regarding the Council's 'position' on height within the precinct (should a precinct be recommended, noting this did not alter the Council's primary position set out above). That memorandum stated:¹²

Hearing Commissioner G Hill asked for an indication of whether the Council supports a 21m height limit on NEIL's site at 56 Fairview Avenue and 129 and 135 Ōteahā Valley Road, Albany (Site). Informed by the advice given to the Panel by Ms Skidmore and Mr Scott that a 21m building height limit is now appropriate, and reflecting the position taken in the notified version of PC78 which identifies the Site as being within a walkable catchment, the Council confirms that it can support a 21m Height Variation Control. This would displace the otherwise applicable height limits of 16m and 18m within the THAB and BMU zones respectively.

23. The Council filed its "Reply Legal Submissions" on the 16 December 2025. We address these in more detail below, but in terms of its final position the Council set out¹³:

The Council is willing to accept an HVC that provides for building heights of 22m for the Site, and considers that such an HVC will give effect to Policy 3 of the NPS-UD as it will provide for building heights of at least 6 storeys within a walkable catchment.

24. As set out in the NEIL's legal submissions¹⁴:

The Submitters (Submission #857) request that the IHP approve the precinct version titled "Proposed Precinct 5".

25. NEIL, as part of the reasoning for its relief, also sought the following findings of fact and law by the Panel¹⁵:

(a) *The Site is within 800m of the Metropolitan Zone and Northern Busway Albany Station (measured between the edges of the sites) and is within the walkable catchment of both, as per the NPS UD.*

(b) *The requirement to achieve a well-functioning urban environment under Policy 1 NPSUD supports intensive development of the Site beyond that enabled by the THAB and BMU zoning, which should be identified in the*

¹¹ 16m in the THAB zone, and 18m in the BMU zone.

¹² Memorandum of counsel on behalf of Auckland Council 17 July 2025 at paragraph 2.

¹³ Council's Reply Legal Submissions at paragraph 27.

¹⁴ NEIL's legal submissions dated 10 July 2025 at paragraph 4.

¹⁵ NEIL's legal submissions dated 10 July 2025 at paragraph 7.

*AUP to implement NPS UD clause 3.31(1) subpart 6 Subpart 6 –
“Intensification in tier 1 urban environments” and Policy 3(c).*

26. NEIL maintained its position that a Precinct (and its provisions) as finally sought (and attached to Mr Maassen’s legal memorandum following expert conferencing between the Council’s and NEIL’s planners¹⁶) be included in the AUP-OP for the Site. In that memorandum, Mr Maassen stated¹⁷:

Accordingly, the Submitters seek the attached amended precinct provisions agreed to by Mr Thomas at the attached conferencing, and the attached precinct plan(s), which now reflect the height provision anticipated by Plan Change 120. In these provisions:

- a) The additional height proposed by the precinct provisions, as now formulated, best reflects the Council’s and the Applicant’s current views and hence is most consistent with a forward-looking approach.*
- b) The precinct provisions continue to provide specific guidance on appropriate urban design development that integrates the components.*

The Hearing Process

27. Prior to, and following the re-hearing the Panel issued the following Minute, Memorandum and Directions¹⁸.

- **Minute** to the parties¹⁹ - directing the date by which the parties were to file their statements of evidence;
- **Direction** to the parties regarding expert evidence²⁰ - directing (following the minute above) the relevant experts to liaise with each other prior to NEIL’s expert evidence being filed; the purpose being so the experts could discuss and record in a Joint Witness Statement (JWS)²¹ areas where there was agreement on matters, and/or the areas of disagreement²².
- **Direction** to the parties regarding supplementary expert evidence from the Council and legal submissions²³ - enabling the Council’s experts to file supplementary evidence on the 2025 Precinct provisions proposed by NEIL which were filed after the closing date for the filing of Council’s expert evidence. It also sought the filing of legal submissions before the hearing.
- **Direction** to the parties (post hearing) regarding – the further development of a proposed Albany 5 Precinct....; and expert conferencing²⁴. NEIL’s

¹⁶ Memorandum for submitters in response to panel memorandum dated 26 November 2025.

¹⁷ Ibid, at paragraph 8.

¹⁸ These are available at [aupihp website](#)

¹⁹ Dated 24 February 2025.

²⁰ Dated 1 April 2025.

²¹ To be filed along with the NEIL evidence on or before 30 April 2025.

²² Noting that the Direction said that Depending on the content of any JWS, the IHP will determine if it will direct formal expert conferencing of the experts.

²³ Dated 23 June 2025.

²⁴ Dated 21 July 2025.

experts²⁵ were directed to further develop the proposed Precinct that was presented to the Panel at the hearing. The Panel, in the Direction, raised a number of issues with the Precinct provisions, setting some key matters to be addressed, being:

- Any Precinct must give effect to the operative ‘higher order’ statutory planning documents. This includes the NPS-UD, the National Policy Statement for Freshwater Management 2020 and the AUP’s Regional Policy Statement;
- How a “co-ordinated masterplanning within the precinct” - as set out in objective 2 (as agreed by the parties’ experts) - is to be achieved within the precinct rule framework. This aspect needs to be explained in any JWS, or statement from NEIL.
- The appropriate drafting of objectives (outcomes) and policies (to achieve the objectives);
- Whether the precinct relies upon an “integrated residential development” for the purpose of any Restricted Discretionary matters of discretion and, if not, what matter of discretion is proposed;
- Appropriate (and likely more detailed) rule framework if reliance is to be placed on any of the provisions currently in Plan Change 78 (as opposed to reliance on those in the AUP);
- Whether a more detailed Precinct Plan is required showing the key site and precinct features/characteristics (such as the Waikahikatea Stream and its margins), and relevant elements of any masterplan.

We note that in that same Direction the Council’s experts²⁶ were directed to consider any revised Precinct provisions along with any necessary explanation of any recommended revisions. Expert conferencing was also directed; setting out that parties had agreed that its experts would participate in expert conferencing and that it was desirable that the session(s) be facilitated by an independent facilitator²⁷. Ms Marlene Oliver was appointed as the independent facilitator.

- **Direction** to the parties (post hearing) regarding – revised provisions of a proposed Albany 5 Precinct, and expert conferencing²⁸. This was in relation to the timing of the expert conferencing session given the (un)availability of the witnesses.
- **Memorandum** to the parties (post expert conferencing held on the 11 November 2025) regarding – NEIL’s ‘position’ with respect to the proposed

²⁵ Urban design, architecture, and planning.

²⁶ Urban design/landscape, and planning.

²⁷ Noting that the Council’s experts maintained their professional opinions that a Precinct was unnecessary; but agreed to review the provisions and attend expert conferencing to assist the Panel should it recommend a Precinct for the Site.

²⁸ Dated 8 August 2025.

Albany 5 Precinct ...in light of the withdrawal of plan change 78 (PC 78) and the notification of plan change 120 (PC 120)²⁹. This Memorandum was issued as the JWS from the expert conferencing addressed the withdrawal of PC 78 and the notification of PC 120. Given that PC 120 (as notified) provides for a greater height (34.5 m) over much (but not all) of NEIL's site and proposed precinct than in the AUP (Operative in part), PC 78 (now withdrawn) and as requested by NEIL over a significant part of the proposed precinct, the Panel invited NEIL's legal counsel to confirm if NEIL continues to seek the precinct it has sought prior to the notification of PC 120.

- **Direction** to the parties (post hearing) regarding – the Council to provide written closing Reply submissions regarding a proposed Albany 5 Precinct³⁰. This set out that it was the Panel's preliminary view that the hearing does not need to be reconvened, and in accordance with the Panel's earlier Direction, we invited the Council to provide any written closing Reply submissions by the 16 December 2025.
- **Direction** to the parties (post hearing) – closing the hearing³¹.

Material before the Panel

28. The Panel was provided with extensive material from both the Council and NEIL in relation to the re-hearing of this matter. This included, among other things, all of the evidence and affidavits provided by the parties to the earlier PAUP hearings, the expert evidence and legal submissions to this hearing, and a range of relevant court decisions.
29. All of this material was considered in making our recommendations.

Expert conferencing

30. The Panel directed expert conferencing (as indicated in the section above).
31. Prior to the hearing there were two self-facilitated expert conferencing sessions. We received the following JWS's in response to those sessions:
 - Joint Witness Statement of Transport Experts – dated 28 April 2025; and
 - Joint Witness Statement of planning, urban design, architect, and landscape architect experts, dated 10 July 2025
32. Post the hearing a facilitated expert conferencing session was held with the Council's and NEIL's planning experts. We received the JWS and a marked-up version of the Precinct provisions on the 11 November 2025.
33. We address the JWSs later in this recommendation report.

²⁹ Dated 11 November 2025.

³⁰ Dated 3 December 2025.

³¹ Dated 17 December 2025.

Hearing

34. The re-hearing of NEIL's submission (to establish a precinct over the Site) was heard on the 16 and 17 July 2025. Cross examination requests were made from NEIL and the Council. Both parties requested to cross examine all of the respective witnesses. The cross-examination requests were granted by the Panel.
35. The Hearing was closed on the 17 December 2025. The time delay between the hearing and its closing was due to: the post hearing expert conferencing session³²; NEIL's closing response and its final proposed Precinct; and for the Council to file its Reply Legal Submissions³³.

The Experts and their Opinions

36. NEIL provided expert evidence from the following experts:
 - Professor Gordon Holden – urban design;
 - Amanda Coats – architect, urban planning;
 - Brett Harries – transport;
 - Paul Thomas – planning.
37. The Council provided expert evidence from the following experts:
 - Rebecca Skidmore – urban design, landscape architect;
 - Ian Clark – transport;
 - Robert Scott – planning.

Transport

38. With respect to transport matters, we find that there are no transport matters that would preclude a precinct as was proposed by NEIL at the beginning of the hearing (i.e. the precinct provisions, and the development capacity it would enable, and which Mr Harries' and Mr Clark's evidence was based on). We address this briefly below.
39. Mr Harries and Mr Clark both filed expert evidence in relation to the precinct sought by NEIL. They also produced a Joint Witness Statement of Transport Experts³⁴. It is self-explanatory. Mr Clark's sole remaining concern related to the effects of increased development and consequential congestion on the reliability and travel times of public transport. Mr Harries describes this in the JWS as an indiscernible effect that could be addressed, if necessary, at the resource consent stage.
40. We are satisfied that there are no transport related matters that would suggest the precinct as proposed by NEIL³⁵ (i.e. the enabled development capacity) would not be appropriate.
41. Notwithstanding the above, we record we had no expert transport evidence before us in relation to the development capacity enabled by the precinct provisions

³² Due to witness availability, it took some time to agree a date suitable for all parties.

³³ Received on the 16 December 2025.

³⁴ Dated 28 April 2025.

³⁵ The version dated 10 July 2025.

subsequently and now sought by NEIL (dated 26 November 2025) – notably the 34.5 m limit sought to be provided across the entire site.

Urban design, landscape and planning

42. The primary area of difference lies in the respective opinions of the experts on urban design, landscape and planning, particularly regarding the identification of additional height capacity.
43. Ms Skidmore and Mr Scott’s expert opinions were that the existing THAB zoning provisions, with their tailored urban design considerations, provide an appropriate discretionary framework to assess up to seven storeys on the Site. It was their view that in terms of s32 of the RMA this results in a more appropriate outcome than the Precinct.
44. The Submitter’s experts on the other hand, presented opinions that the proposed Precinct provides “*supplementary and effective place-based policy direction to achieve a high-functioning urban environment under Policy 1 NPS UD, considering the Site’s attributes, and it is more appropriate than relying solely on the generic THAB provisions.*”³⁶
45. We have considered all of the expert evidence before us, including the JWSs. For the reasons that follow (in the subsequent sections) we find that the precinct as now proposed by NEIL is not the most appropriate in terms of section 32 of the RMA.

The Precinct and its Provisions

Overview

46. As set out in the Recommendation Overview above, the Panel was not opposed per se to a precinct over the Site. We agree with NEIL (as set out in the legal submissions) that the Site’s context and characteristics make the site a suitable ‘candidate’ for a precinct to recognise the Site’s characteristics. These include its proximity to the Metropolitan Zone and Northern Busway Albany Station and that all or most of the Site is within the walkable catchment of both of those; and that it is a relatively large undeveloped greenfield site within an urban context. For these reasons we also accept that a Precinct, which enabled greater development capacity than the ‘standard’ AUP-OP zonings could give effect to the NPS-UD (notably objectives 1 and 3 and policies 1 and 3) and the RPS (notably those in B2. Tāhuhu whakaruruhau ā-taone - Urban growth and form).
47. In this regard we considered the IHP’s Interim Guidance “Best Practice Approach to Precincts”³⁷. Auckland Council submitted that the “*Interim Guidance can properly be considered within the enquiry under section 32 of the Resource Management Act 1991 (RMA) as to what plan provisions are the most appropriate. There is no basis*

³⁶ NEIL’s legal submissions, dated 10 July 2025 at paragraph 37.

³⁷ Dated 31 July 2015.

*for the submission by NEIL that any consideration of the Interim Guidance would be an error of law.*³⁸

48. It is our finding that the *Interim Guidance* has some relevance, but that it is only a “guidance” document, put in place before any of the significant number of AUP precincts were actually recommended and adopted, and taking a ‘forward looking approach’, we acknowledge its 2015 date which clearly predates the NPS-UD. Also, we accept that a significant number of precincts have been added to the PAUP since it was made operative in part. Given the above, and reasons we have set out why a precinct could be appropriate, it is our view that the *Interim Guidance* is not particularly determinative to the re-hearing of the case.
49. However, notwithstanding the above, and for the reasons that follow, we do not find that the proposed Precinct is the most appropriate in s32 terms given its final drafting. This is despite the Panel providing, through directions, a process to enable the further development of a Precinct and HVC (i.e. the Panel’s directions addressing a number of the outstanding issues in the precinct³⁹, and expert conferencing between the experts, notably the later conferencing session between the planners).
50. We also observe that the final Precinct provisions provided to us from NEIL following the latest round of expert conferencing were significantly different to that which was presented to us at the hearing. This, for the reasons set out below, further adds to our concern that the precinct as drafted is not appropriate.
51. We next address a number of the Precinct objectives and policies, setting out our findings as to why they are not appropriate; then address height (noting height in relation to Sub Precinct C is addressed in the Precinct provisions), the weight to be given to PC 120’s proposed HVC over the site ; and then specific matters addressing the modification of the Waikahikatea Stream, esplanade reserve provisions in relation to the Waikahikatea Stream, and natural hazards and flooding (PC120).

Precinct Objectives and Policies

Comprehensively planned and masterplanning.

52. As we set out earlier, at the hearing and in our subsequent Direction⁴⁰, we raised a number of issues with the Precinct provisions. One of the key matters we sought to be addressed was how co-ordinated masterplanning within the Precinct, as set out in objective 2 (and as agreed by the parties’ experts), was to be achieved within the Precinct’s Restricted Discretionary Activity (RDA) rule framework.
53. NEIL (and Mr Thomas in particular) sought that the Precinct achieve a “*comprehensively planned high-density apartment and Mixed-use development*” and to “*ensure co-ordinated masterplanning within the precinct*”⁴¹. As we understood Mr Thomas’ responses to our questions this was an important rationale for the Precinct given NEIL’s position that the site is strategically located, one of the last undeveloped

³⁸ The Council’s Reply Legal Submissions at paragraph 5.

³⁹ Dated 21 July 2025.

⁴⁰ Ibid.

⁴¹ Objectives 1 and 2 of the Precinct presented at the hearing.

large urban greenfield sites with a 'live' urban zoning, and it was in a single ownership.⁴²

54. In relation to this, Mr Thomas set out in his Supplementary Statement of Evidence and Supplementary Statement of Rebuttal:⁴³

Alongside this are the Precinct policies which provide the more nuanced approach to the development of this land. These policies stress the importance of a comprehensive approach to development with increased building height in return for functional open space and, if provided, underground parking.

55. In the same statement Mr Thomas stated:⁴⁴

However, more importantly the proposed Precinct requires a comprehensive form of development with more open space and, where provided, underground parking which is balanced against higher buildings in specified parts of the site. Without the Precinct policy requirements [of a comprehensive approach], a more generic form of 6 floor apartment development which could be pursued in a more piece meal ad hoc nature based on the required 50% site coverage and fail to put in place a comprehensive and integrated design for the site. (Underlining is our emphasis).

56. Having co-ordinated masterplanning and a comprehensively planned high-density apartment and Mixed-use development were important 'concepts' in terms of the Panel's view on the appropriateness of a Precinct. In the absence of any master plan, or detailed structure plan, the Panel was keen to understand how these outcomes would be achieved within the proposed planning framework (Precinct) now put forward by NEIL.

57. However, these concepts (comprehensive approach and masterplanning) had been deleted from the latest precinct provisions provided by NEIL (26 November 2025). We did not receive any explanation in the JWS⁴⁵ or from Mr Maassen's memorandum⁴⁶ why these concepts, and the related objectives, had been removed from the Precinct⁴⁷.

58. In relation to other objectives and policies, we set out in the 21 July 2025 Direction⁴⁸, under the heading Further development of the Precinct, some key matters that needed to be addressed including:⁴⁹

- *The appropriate drafting of objectives (outcomes) and policies (to achieve the objectives);*

⁴² The relevant excerpts from the precinct are attached as Appendix 1.

⁴³ Evidence dated 8 May 2025 at paragraph 12.

⁴⁴ Ibid at paragraph 57.

⁴⁵ Dated 17 November 2025.

⁴⁶ Dated 26 November 2025.

⁴⁷ See Appendix 1.

⁴⁸ Direction to the Parties (Post Hearing) Regarding – The Further Development of a Proposed Albany 5 Precinct for the... 'Site'; And Expert Conferencing.

⁴⁹ Ibid paragraph 3, fourth bullet point.

59. Having reviewed the objectives and policies of the Precinct provided by NEIL, we are not satisfied many of them are appropriately drafted despite our Direction and the opportunities provided to NEIL (Mr Thomas) to address this. We provide some examples below⁵⁰.

Precinct Wide Objectives [dp]

- (1) *The precinct is intended to provide for high-density apartments and business mixed-use activities that incorporate good urban design principles, such that it contributes to a well-functioning urban environment within the precinct and in its interface with the surrounding environment, guided by the Albany 5 Precinct Plan.* (underlining is our emphasis)
60. This objective 'replaces' the two objectives that were in the earlier version of the Precinct (see Appendix 1) which related to the comprehensively planned high-density apartment and Mixed-Use development and co-ordinated masterplanning. We do not think the "intentional" objective proposed achieves anything more than could be achieved in terms of the underlying zoning, and is insufficient in terms of a justification for a Precinct.
61. Furthermore, the now proposed objective is not a clear 'outcome' statement but one of 'intent' ("intended to provide").
- (2) *Enhancement of ecological functioning and amenity of the Waikahikatea Stream and its tributaries throughout the precinct and realigning the Business Mixed Use reach to accommodate a Business Mixed-Use development and enhanced enjoyment of these features through a publicly accessible walkway*
62. We address this objective below in relation to the wider provisions relating to the Waikahikatea Stream, but we do not support the Precinct including provisions regarding the realignment of the stream. In summary, we had no expert ecological or hydrological evidence in terms of any realignment, and find in s32 terms it is more appropriate to rely on the Chapter E (E3 Lakes, rivers, streams and wetlands) provisions of the AUP-OP should an Applicant seek to realign the stream (noting we are making no finding or judgment on the merits of "realigning the Business Mixed Use reach to accommodate a Business Mixed-Use development and enhanced enjoyment of these features through a publicly accessible walkway).

1558.3 Precinct Wide Policies [dp]

- (1) *Identify the key components of the precinct as sub-precincts and enable their intensive development for housing and commercial uses, in part by utilising differing building height limits, while ensuring high-quality urban design and good connections within the entire precinct that respond appropriately to the natural features of the precinct, including landforms and water bodies.*
63. We address this further below, but note there are now no different building height limits in the Precinct given the request to apply a height control of 34.5m across the entire site.

⁵⁰ This is not an exhaustive list, but intended to highlight a range of concerns the Panel had with the objectives and policies.

(2) *To use “storeys” in the height variation control with metres (m) on the basis that the floor levels and terrain may mean that the height measured in metres is too low to achieve the number of storeys. Storeys are therefore to be the primary height control.*

64. We do not consider this is a policy, but a method. It does not ‘add to’ an assessment of how the objective is to be achieved.

(3) *Development proposals are designed with particular regard to the precinct objectives by ensuring that the Albany 5 precinct provisions guide development, and urban design principles are applied in a manner that does not compromise those objectives.*

65. In the absence of clearly directive objectives, other than reprising NPS-UD policy 1 in the objective, such a policy adds little, if anything, to the evaluation of any development proposal. Moreover, it also only requires “*particular regard to the precinct objectives*”, and in a way that urban design principles do not “*compromise those objectives*”.

1558.4 Sub Precinct Objectives and Policies [dp]

Sub-Precinct A

Objective

(1) *Enable high density residential environment, consisting of apartment buildings of up to ten storeys that minimizes surface car parking provision, a multimodal bridge connection to sub-precinct B and pedestrian connections to sub-precinct C, the Waikahikatea Stream walkway and beyond.*

66. The objective (“Enable”) is written as a policy, and not an objective.

Policies

Development will achieve the following

(2) *A community open space and community centre of up to three storeys if provided.*

(4) *Where parking is to be provided it will be predominantly basement car parking.*

(6) *Attractive open spaces, landscaped areas and potentially activated rooftops.*

67. The underlined terms, in our view, provide no certainty to any proposal or its assessment in terms of achieving “*good urban design principles, such that it contributes to a well-functioning urban environment*” in Objective 1 of the Precinct Wide Objectives.

Sub Precinct Objectives and Policies for Sub Precinct C include:

68. In relation to Sub precinct C, a 40m height limit was sought in the earlier version of the Precinct. This height is no longer being sought in the final precinct proposed by NEIL. The Sub Precinct Objectives and Policy for Sub precinct C in the final precinct proposed by NEIL include:

Objective

- (1) *Provision for a distinctive apartment buildings of up to ten-storeys, pedestrian connectivity to sub-precincts A and B and the Waikahikatea Stream walkway and beyond*

Policies

Development will achieve the following:

- (3) *A landmark building between the water bodies, well separated from other buildings.*

69. While the 40m height limit requested in the earlier precinct may have provided for a “*landmark building*”(distinctive apartment buildings of up to ten-storeys⁵¹), this is unlikely to occur if the height limit now sought is 34.5 across the entire precinct (ie there will unlikely be a ‘land mark’ building given the uniform height across the Precinct).⁵²
70. We also note that in the earlier precinct plan, Sub precinct C was 10 storeys (40m) and for sub-precinct A and B was 7 storeys (29m). We were advised by NEIL’s experts that this was to enable 4m floor to ceiling heights. In the later precinct version 10 storeys (34.5 m) is sought over the entire precinct, presumably acknowledging that 3.45 floor to ceiling heights are now acceptable.
71. With respect to the 10 storey and 40m height limit, we received no landscape evidence from NEIL regarding the appropriateness of this height and what, if any, adverse landscape and visual amenity effects may occur. Ms Skidmore⁵³ opined:⁵⁴

It is fair to say that the established character of the wider environment is generally suburban and dominated by single and two-storey dwellings. The main exception to this is the Fairview Lifestyle Village (accessed off Fairview Avenue opposite the Site) with the main building having a large footprint and extending to four storeys. There is also some more recent residential development in the immediate vicinity of the Site that extends to three storey.

In terms of an assessment of urban design, landscape and visual effects matters, I do not consider the Precinct provisions proposed by NEIL provide additional site-specific direction to ensure development achieves good amenity, both on-site and in relation to the surrounding context, and integrates well with the wider environment.

⁵¹ See paragraph 73 which addresses one or more buildings.

⁵² We note scope is also an issue with the 40m height limit given the submission lodged to the PAUP.

⁵³ Ms Skidmore was the only qualified and experienced landscape architect that appeared and presented expert evidence.

⁵⁴ Ms Skidmore’s Evidence- in-Chief - 10 July 2020 at paragraphs 5.2 and 5.3.

72. Mr Scott opined:⁵⁵

In my view, the additional heights of up to 9 to 10 storeys sought in the precinct would be at odds, if not contrary, to the stated purpose of the zone to enable development that is in keeping with the areas planned urban built character of predominantly five, six or seven storey buildings in identified areas (Objective H6.2(2)).

73. We further note that there are no rules in Sub Precinct C re *landmark building* to ensure this outcome. We also note, as per the JWS and comments in the precinct, both planners accepted *distinctive apartment buildings as plural* (i.e. more than one apartment building in the objective), but the policy appears to limit it to one.

74. We do not consider that there is sufficient analysis before us to be persuaded that it would be appropriate for building heights of up to 40 m in Sub precinct C, nor the overall 34.5m NEIL is now seeking, based on the notified PC120 for the majority of the Site; and note this height is beyond the scope of the NEIL submission on the PAUP⁵⁶. In this respect there may be/have been affected persons that would have lodged further submissions on the NEIL submission if building heights of greater than that proposed in NEIL's submission on the PAUP are pursued.

75. We also find, given the now proposed height of 34.5m, that the objectives and policies relating to Sub Precinct C cannot be relied upon to achieve the specified outcomes. In essence Sub Precinct C appears somewhat redundant.

76. For the record the Panel notes that it turned its mind to the question as to whether some relatively minor editing would resolve our concerns. We concluded, for the reason explained above, and in light of the opportunities provided to improve the drafting as indicated in paragraph 49, that such amendments were neither practicable nor appropriate.

Height

77. Additional height was a key issue for NEIL as set out by its legal counsel, and addressed by its experts. For context we set out the building heights sought by NEIL in its submission on the PAUP, which were:

- Sub-precinct A – 27 metres;
- Sub-precinct B – 23 metres; and
- Sub-precinct C – 34 metres.

78. We note that the heights sought in the Precinct provided at the hearing, and the version subsequent to the hearing, go beyond those sought in NEIL's submission.

79. While we may make recommendations that are beyond the scope of submissions made on the PAUP⁵⁷ as set out in the Council's Reply Submissions, *"the Panel has not regarded itself "as having an unlimited power to make out of scope*

⁵⁵ Mr Scott's Evidence- in-Chief – 10 July 2020 at Paragraph 50 – ref to the towers.

⁵⁶ We address "scope" further below.

⁵⁷ Local Government (Auckland Transitional Provisions) Act 2010, section 144(5).

recommendations”⁵⁸. In particular, the Panel’s direction of 14 January 2016 recorded that it “must be persuaded that it would be appropriate for the matter to be the subject of an out of scope submission”⁵⁹. We address the height and that beyond what was originally requested by NEIL below.

80. Mr Maassen submitted: ⁶⁰

*A key issue is the extent to which it is appropriate to identify **additional height capacity** in the AUP, which is the single most significant bulk and location control on density, for land that can make a significant contribution to a well-functioning urban environment under Clause 2.2 Policy 1 of NPS UD (May 2022). The Submitters say it is essential. On the other hand, AC says the THAB (and BMU) provisions and consideration of ‘context’ through discretions, including consideration against surrounding patterns of development, are a key determinant of appropriateness. The Submitters respond that the THAB and BMU provisions do not implement NPS UD (May 2022), which directs identification in key locations, and the ‘context’ concept AC relies upon – and captured in Ms Skidmore’s evidence - is not well-aligned with the considerations making up a well-functioning urban environment in the NPS UD and is even antagonistic to that national direction.*

81. In the precinct presented at the hearing NEIL sought the following heights:

- Sub precincts A and B (THAB and BMU) - **29m, (7 Storey)**;
- Sub precincts C (THAB) - **40 m, (10 Storey)**.

82. As we have set out earlier, the Council’s position at the hearing and supported by its expert on height was:

- **21m** - based on PC 78 (now withdrawn)

83. The precinct presented post the hearing by NEIL (26 November 2025) seeks a **34.5m** height across the entire precinct. This is the height limit set out in PC 120 applying to some of the Site. PC 120 has not applied the 34.5m height across the entire precinct. The northern part of the Site zoned THAB is shown outside of the identified walkable catchment and has the ‘standard’ 22m height applied to it.

84. We address the extent to which weight should be placed on PC 120 below, noting we received no evidence on the implications and effects of this changed height other than in the JWS⁶¹. It stated⁶²:

3.3 ALBANY 5 PRECINCT – EXPERTS’ POSITIONS

In RS’s [Robert Scott] view PC120 proposes a 34.5 metre height limit which equates to 10 storeys across the majority of the NEIL land which in his view is

⁵⁸ 18 February 2016 minute of the Panel, referred to in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [44(a)].

⁵⁹ Referred to in *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [43(c)].

⁶⁰ Paragraph 10 Mr Maassen’s Legal Submissions 10 July 2025.

⁶¹ Dated 11 November 2025.

⁶² At 3.3 of the JWS – Planning.

the principal justification for the precinct. RS maintains the position set out in his evidence that a precinct is not necessary for the NEIL land.

PT's [Paul Thomas] view is that the extra height proposed by Auckland Council in PC120 increases the justification for a precinct to ensure the objective and policy outcomes of the precinct are achieved in a cohesive manner and the development opportunity is not lost through piecemeal development. The precinct also secures outcomes in relation to the stream and accessibility along the stream that are not achieved otherwise.

85. For the reasons set out above (and those below), we do not support the heights sought by NEIL.

Plan Change 120 – (height)

86. During the planners' expert conferencing session, and as recorded in the JWS, the planning experts referenced and relied on the (height) provisions in the recently notified PC 120. Those provisions had not been previously addressed at the hearing by them as PC 120 was publicly notified in November 2025, after the hearing in July 2025.
87. As was explained in the Planning JWS, PC120:

- a) Retains the same zoning for the Site as shown in the AUP, namely:
- i. BMU in relation to 129 Ōteahā Valley Road and part of 56 Fairview Avenue; and
 - ii. THAB in relation to the remainder of 56 Fairview Avenue and 135 Ōteahā Valley Road⁶³;
- b) Proposes some amendments to the provisions of the BMU and THAB zones, in order to:
- i. within the THAB zone, allow for buildings up to 22m in height unless a height variation control (HVC) shown on the planning maps allows for greater height;
 - ii. within the BMU zone, allow for total building heights of 18m and 22m, depending on whether the building is within or outside a walkable catchment, unless otherwise specified in an HVC shown on the planning maps;
 - iii. incorporate additional standards and rules for dwellings to achieve high-quality built environments and climate change resilience; and

⁶³ 131 Oteha Valley Road, which is located outside of the proposed Precinct boundary, is also zoned as THAB.

c) proposes a HVC on 129 and 135 Ōteahā Valley Road and part of 56 Fairview Avenue to allow building heights of up to 34.5m.⁶⁴

88. In the JWS, Mr Scott comments that “if the PC120 height of 34.5m is confirmed” the building heights provided for within the Precinct should be amended to be consistent with PC120. However, as set out in Council’s Reply Legal Submissions, “PC120 has only just been notified for submissions, and the proposed provisions will need to be tested through the submissions and hearings process”.⁶⁵

89. The Council’s Reply Legal Submissions further stated:⁶⁶

The Council does not favour building heights of beyond 22m (and up to 30m, as recommended by Mr Scott through the Planning JWS) in the THAB zone, because such heights have not (unlike those in PC78) been the subject of submissions and expert witness conferencing.

The Council is willing to accept an HVC that provides for building heights of 22m for the Site, and considers that such an HVC will give effect to Policy 3 of the NPS-UD as it will provide for building heights of at least 6 storeys within a walkable catchment.

90. We accept the Council’s position, and agree that building heights of 22m for the Site are appropriate; and will (as an HVC) give effect to Policy 3 of the NPS-UD. However, while finding that 22m is an appropriate height, we have placed very little weight on the provisions of PC 120, and were persuaded by the Council’s position that:⁶⁷

The provisions of PC120 have been notified for submissions and are still to be tested through submissions and hearings.

The Waikahikatea Stream (modification)

91. NEIL sought provisions relating to realigning the Waikahikatea Stream (Business Mixed Use reach) to accommodate a Business Mixed-Use development and enhanced enjoyment of these features through a publicly accessible walkway as well as enhancement of ecological functioning and amenity.

92. We set out Objective 2 earlier, but repeat it again here:

Enhancement of ecological functioning and amenity of the Waikahikatea Stream and its tributaries throughout the precinct and realigning the Business Mixed Use reach to accommodate a Business Mixed-Use development and enhanced enjoyment of these features through a publicly accessible walkway

93. It was the Council’s position that it is not appropriate to ‘predetermine’ the realignment of the stream in this precinct, and that it is not appropriate to place

⁶⁴ An HVC of 34.5m is also proposed to apply to 131 Oteha Valley Road. However, that property is not included within the proposed Precinct.

⁶⁵ Council’s Reply Legal Submissions at paragraph 25.

⁶⁶ Ibid at paragraphs 26 and 27.

⁶⁷ Ibid at paragraph 22.

reliance on the resource consent enabling its modification (including that it hasn't been given effect to); and is more appropriate to rely on the relevant provisions of Chapter E (E3 Lakes, rivers, streams and wetlands). Furthermore, as set out above, we did not receive any expert ecological or hydrological evidence on the impacts/effects of realigning the stream.

94. We agree with the Council's position on this matter, and it is our view that the required evidential threshold was not reached to grant the relief sought in the precinct. We find it is more efficient and appropriate (in section 32 terms) to reply on the Chapter E provisions of the PAUP (E3 - Lakes, rivers, streams and wetlands).
95. We also note that the National Policy Statement for Freshwater Amendment and Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2025 both came into effect and force respectively on 15 January 2026.
96. Obviously, any implications of the amendments to the NPS and NES have not been considered in relation to the Precinct and its provisions relating to freshwater.

Width of the Waikahikatea Stream – and Esplanade Reserve Provisions

97. In relation to the provision of esplanade reserves, NEIL sought:

E38.7.3.2 does not apply, and

Rule: Despite any other rule in the Plan, RMA s 230 does not apply to the precinct and, therefore, no esplanade reserve or esplanade strip will be taken within the precinct upon subdivision. Nothing in this rule precludes a condition of a land use consent requiring public access over riparian margins as part of a development.

98. NEIL suggested that the proposed precinct provision I558.7.3, which states that rule E38.7.3.2 in the AUP-OP and section 230 of the RMA not apply within the proposed Albany 5 Precinct, is acceptable because the bed of the Waikahikatea Stream is less than 3m wide. We accept that if that is correct, the prerequisite in those rules for the requirement of an esplanade reserve would not be engaged.
99. The Council's position was to rely on Chapter E (E38.7.3.2) of the AUP-OP, noting that the evidence relied upon by NEIL supporting the assessments of the width of the bed of the stream (being less than 3m wide) are at least 16 years old.
100. Having considered the legal submissions and evidence before us, we agree with the Council's position on this matter. The Council's Reply Legal Submissions set out⁶⁸:

In the Council's submission that it is "premature to conclude at this stage, without any recent assessments of the width of the bed of the Waikahikatea Stream, that the bed of the stream is not 3m wide". That is not a necessary task for the Panel charged with determining the most appropriate plan provisions for the Site to undertake. An assessment of stream bed width should be undertaken at the time a subdivision consent is lodged, to determine whether esplanade reserve

⁶⁸ Council's Reply Legal Submissions at paragraph 38.

*requirements are triggered. As the Court held in Whitby Coastal Estates Limited:*⁶⁹

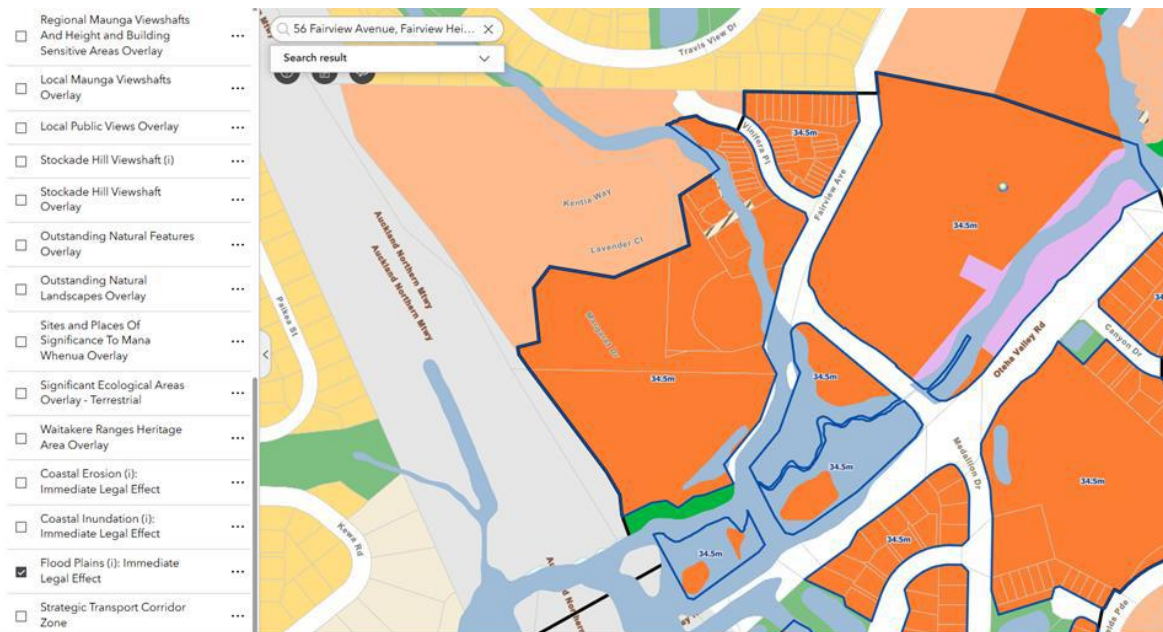
We do not have an application for resource (subdivision) consent to consider and nor do we have any indication of the site and dimensions of any proposed allotments. Accordingly, we make no finding as to whether or not any particular stretch of Duck Creek meets the threshold in s230(4) for the provision of an esplanade reserve.

101. Accordingly, we do not support the provisions as proposed by NEIL for the reasons set out above. We find that E38.7.3.2 – Urban Subdivision of the AUP-OP, is more appropriate.

Natural Hazards and Flooding

102. Plan Change 120, in addition to amendments enabling increased housing capacity, proposes amendments to the AUP's natural hazards provisions (under clause 8 of Schedule 3C of the RMA- Qualifying matters for Auckland housing planning instrument). As a result of those amendments, which have legal effect, parts of the Site are now identified as being subject to the Flood Plains qualifying matter (Flood Plain QM). The Flood Plain QM does not change the zoning of the Site, but means that the parts of the Site within the Flood Plain QM are classified as a "flood hazard area", as that term is defined in Chapter J. 36.
103. As Mr Scott explained in the Planning JWS, the amendments proposed in PC120 include amendments to Chapter E36 of the AUP to incorporate a new risk management framework for managing flood hazard risk. This framework involves identification of areas at risk of flooding and the categorisation of those areas according to risk level. The risk level then determines the rules that apply under Chapter E36.
104. The following map from PC 120 shows the Site and flood mapping:

⁶⁹ *Whitby Coastal Estates Ltd v Porirua City Council [2009] NZRMA 269 (NZEnvC) at [60]. While the approach of the Environment Court in that case to how the bed of a river is to be measured has been overturned (see Canterbury Regional Council v Dewhirst Land Co Ltd [2019] NZCA 486, [2020] 2 NZLR 10), the Court's decision in Whitby remains good authority for the proposition cited.*



105. Given the new risk management framework for managing flood hazard risk in PC 120, which has immediate legal effect, it is our view that these provisions should apply to the site; and not those proposed by Mr Thomas for the Precinct.
106. We also note that the National Policy Statement for Natural Hazards (NPS- NH) came into effect on 15 January 2026, and as set out in part 4 of that document it must be given effect to immediately. It applies to a range of natural hazards, including flooding.
107. Obviously, any implications of the NPS-NH have not been considered in relation to the Precinct and its provisions relating to natural hazards.

Recommendation

108. The recommendation from the IHP is that:
 - No precinct be placed over NEIL’s site at 56 Fairview Avenue and 129 and 135 Ōteha Valley Road, Albany (the Site);
 - A height variation control (HVC) of 22m apply to the Site.

IHP process to adopt the Panel’s recommendation report

109. The Panel heard all of the legal submissions and evidence in relation to the re-hearing of NEIL’S request for the Albany 5 Precinct. The Panel prepared this recommendation report.
110. The IHP⁷⁰ received the information/evidence that the Panel did; which included the material on the AUPIHP website in relation to the re-hearing and the Panel’s recommendation report.

⁷⁰ The IHP consisted of all of its members other than Mr Morrison who was unable to participate in this process.

111. The IHP met in-person and by remote access facility⁷¹ on 11 March 2026 to discuss the Panel's recommendation report. Having done so, the IHP unanimously resolved to adopt the report and its recommendations.

Dated: 17 March 2026

For the Independent Hearing Panel:



D A Kirkpatrick

Environment Judge

Chairperson, Auckland Unitary Plan Independent Hearings Panel

⁷¹ Ms Hunter and Mr Fuller attended via audiovisual link.

Appendix 1

ANNEXURE A: PROPOSED ALBANY 5 PRECINCT - From the Precinct dated 10 July 2025.

PREC I558. Albany 5 Precinct

1558.1 Precinct Description

The Albany 5 Precinct covers 7.225 hectares of mostly greenfield land between Ōteihā Valley Road and Fairview Avenue, east of Albany Town Centre. It consists of 56 Fairview Avenue and 129 Ōteihā Valley Road, as shown on the Albany 5 Precinct Plan. The Albany 5 Precinct is suitable for comprehensive and intensive development because it is fully serviced and is walkable to community facilities, employment, and transport infrastructure including the Albany Park and Ride facility. The purpose of the Precinct is to enable comprehensive development for intensive apartment living together with a Mixed-Use centre on Ōteihā Valley Road.

A degraded section of the Waikahikatea Stream, being a tributary of Lucas Creek, flows through the site parallel to Ōteihā Valley Road. There is potential for parts of the stream corridor, and the other tributaries within the site, to be redeveloped and improved as part of a comprehensive development to provide significant environmental and amenity benefits and effective connections to the surrounding areas. The stream in this location is not part of a Natural Stream Management Area. Nor is it part of a Significant Ecological Area. The Precinct is not affected by any regionally significant or locally significant volcanic viewshafts or any other Natural Resources, Natural Heritage, Historic Heritage, or Mana Whenua overlays. The Waikahikatea Stream and its tributaries have an applicable Macroinvertebrate layer of Urban.

Objectives 10 and 14 July 2025 version

1558.2 Objectives [dp]

- (1) To enable comprehensively planned high-density apartment and Mixed-Use development of the precinct in a way that optimises the development potential of the Precinct, given the precinct's strategic location close to public transport, community facilities, and employment centres through an integrated development following the Albany 5 Precinct Plan.
- (2) Ensure co-ordinated masterplanning within the precinct achieves good on-site amenity and maintains the amenity of surrounding properties.

(Underlining is our emphasis)

**Attachment 2 - Planning
Committee resolution**

Resolution number PPDC/2026/45

MOVED by Councillor Filipaina, seconded by Councillor Henderson:

That the Policy, Planning and Development Committee:

- a. receive / whiwhi the Report to Auckland Council – Rehearing of Albany 5: Precinct and Height Variation Control – for: North Eastern Investment Limited and Heritage Land Limited (NEIL) - 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany, dated 17 March 2026
- b. accept / whakaae the within-scope recommendation of the Independent Hearings Panel under s148(1)(a) of the Local Government (Auckland Transitional Provisions) Act 2010 that:
 - i. No precinct be placed over NEIL's site at 56 Fairview Avenue and 129 and 135 Ōtehā Valley Road, Albany (the Site); and
 - ii. A height variation control (HVC) of 22m apply to the Site.
- c. request / tono staff to publicly notify the Council's decision on the Independent Hearings Panel's recommendation by 16 April 2026 in accordance with s148 of the Local Government (Auckland Transitional Provisions) Act 2010.

CARRIED