

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2016-404-2323
[2017] NZHC 1350**

BETWEEN AUCKLAND UNIVERSITY OF
 TECHNOLOGY
 Appellant

AND AUCKLAND COUNCIL
 Respondent

Hearing: 16 June 2017

Counsel: A Davidson for Appellant
 M G Wakefield for Respondent
 C E Kirman for Housing New Zealand Corporation

Judgment: 16 June 2017

ORAL JUDGMENT OF WHATA J

Solicitors: Andrea Vujnovich, Auckland
 Auckland Council, Auckland
 Ellis Gould, Auckland

[1] Auckland University of Technology (AUT) owns land at 41 Centorian Drive, Windsor Park, Auckland. The proposed Auckland Unitary Plan (PAUP) as notified applied a Business – Light Industrial zoning to the site. AUT sought to have the site rezoned Business – Mixed Use. No submissions were lodged in relation to the submission. The Council, however, maintains support for the notified PAUP.

[2] The Panel's recommendation report does not specifically refer to the AUT site, but the GIS Viewer adopted by the Panel recommended a General Business zoning for the site.

[3] AUT appeals against that decision on a number of grounds, including failing to have regard to relevant considerations and unreasonableness.

[4] It transpires that the Council agrees that the IHP decision was erroneous in these respects. The other party to the appeal, Housing New Zealand Corporation (HNZ), does not oppose the relief sought but is otherwise neutral on questions of law.

Assessment

[5] I am satisfied that the Panel failed to have regard to relevant considerations and that the outcome reached was not available to the Panel on the evidence. I note, in particular, the submissions made by the Council as follows, that the Panel failed to take into account the following matters:

- (a) the evidence addressing the specific characteristics of the site;
- (b) the evidence addressing the existing and planned future of the site;
- (c) the evidence addressing the access limitations for the site and the potential amenity issues for the neighbouring residential neighbourhood;

- (d) the uncontested expert evidence presented to the Panel which identified the Mixed Housing Suburban (MHS) zone as the most appropriate zoning for the site; and
- (e) the lack of any evidence supporting the application of the General Business zone to the site.

[6] In these circumstances, a proper basis for relief has been established.

[7] In terms of the relief sought, the following is noted by the parties:

- (a) The proposed amendment is generally consistent with the Panel's approach to the rezoning, particularly in light of the Panel's recommendations for General Business and MHS zones.
- (b) The Council and HNZ support the merits of the amendment to the zoning of the site.
- (c) The consent orders sought are within the scope of the appeal.
- (d) Agreement has been reached on the resolution by all parties to the proceedings.
- (e) All relevant submitters had the opportunity to participate in the process.
- (f) The parties consider the proposed amendment is consistent with the purpose and principles of the RMA, including in particular Part 2.

[8] Given the foregoing, I am satisfied that it is appropriate to grant the relief sought on a final basis. I note, in this regard, that the appeal was relatively confined in its nature and that all affected parties had an opportunity to participate in this appeal process. The relief is also relatively confined and unobjectionable in terms of the scope of the appeal. Needless to say, it is significant that all parties agree to the outcome.

[9] Accordingly, the appeal is allowed and the relief set out in Appendix A is granted.

APPENDIX A

Amendments to GIS Viewer of Unitary Plan



