

**BEFORE THE AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL AT AUCKLAND**

IN THE MATTER of the Resource
Management Act 1991
and the Local
Government (Auckland
Transitional Provisions)
Act 2010

AND

IN THE MATTER of Topic 082 Rehearing
of Albany 5 Precinct

RECOMMENDATION TO AUCKLAND COUNCIL

Introduction

1. The Panel has read and considered the joint memorandum of North Eastern Investments Limited (**NEIL**) and Auckland Council (the **parties**) dated 22 June 2022.
2. On 22 July 2016 the Panel made recommendations regarding the proposed Albany 5 Precinct that NEIL sought be included in the Proposed Auckland Unitary Plan. Those recommendations were set aside following a decision of the Court of Appeal, which ordered that:¹

B. 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.

C. The Panel is directed to make new recommendations under s 144 of the LGATPA in respect of the matters set out in orders B (a) and (b), following a process that addresses the error identified by this judgment.

¹ *North Eastern Investments Limited v Auckland Council* [2018] NZCA 629.

3. This recommendation give effect (in part) to the Court of Appeal's orders. The remaining matters required to be addressed as a result of the Court of Appeal's decision will be addressed in a future recommendation of the Panel.

Proposal and key issues

4. The Panel refers to the description of the Albany 5 Precinct, and NEIL's submission on the Proposed Auckland Unitary Plan, set out in its recommendation dated 22 July 2016.²
5. This recommendation addresses the underlying zoning of the land at 56 Fairview Avenue and 129 Oteha Valley Road.
6. The joint position of the parties is that a portion of 56 Fairview Avenue fronting Oteha Valley Road, and all of 129 Oteha Valley Road, should be zoned as Business – Mixed Use. The remainder of 56 Fairview Avenue will continue to be zoned Terrace Housing and Apartment Building. This proposed zoning is set out in **Appendix A**.
7. The parties agree that the zoning that they have agreed to will give effect to the regional policy statement and achieve the purpose of the Resource Management Act 1991.
8. The Panel, for the reasons set out in its recommendation dated 22 July 2016, supports the majority of the site at 56 Fairview Avenue being zoned Terrace Housing and Apartment Building. However, the Panel also supports, in light of the parties' agreed position, an area of Business – Mixed Use Zone adjacent to Oteha Valley Road.
9. The Panel agrees with the parties that an area of Business – Mixed Use Zone adjacent to Oteha Valley Road will support a form of development that has the flexibility to provide a positive interface with Oteha Valley Road, addressing some of the amenity challenges posed by the existing street environment. The Panel supports the extent of Business – Mixed Use Zone sought by parties on the basis that it is of a size that will support a feasible mixed use development.

² Auckland Unitary Plan Independent Hearings Panel 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).

Panel recommendation and reasons

10. The Panel therefore recommends to Auckland Council pursuant to section 144 of the Local Government (Auckland Transitional Provisions) Act 2010, having regard to the parties' joint position, and the matters specified in section 145 of the Local Government (Auckland Transitional Provisions) Act 2010 including sections 32 and 32AA of the Resource Management Act 1991, that:

- (a) 129 Oteha Valley Road should be zoned Business – Mixed Use; and
- (b) a portion of 56 Fairview Avenue fronting Oteha Valley Road should be zoned Business – Mixed Use, as shown on the map attached as **Appendix A** to this recommendation.

11. There is no order for costs.

DATED 28 June 2022



D A Kirkpatrick
Environment Judge
Chairperson, Auckland Unitary Plan Independent Hearings Panel

Appendix A

