

Auckland Council Decision

Please find enclosed:

- Auckland Council Report to Planning Committee
- Attachment 1 – Proposed Zoning map
- Attachment 2 - IHP Recommendation
- Attachment 3 - Planning Committee resolution

Auckland Council Report to Planning Committee

Make a decision on Auckland Unitary Plan provisions for land in Albany

File No.: CP2022/08123

Te take mō te pūrongo

Purpose of the report

1. To make a decision to accept the recommendation of the Independent Hearings Panel (**IHP**) that land in Albany shown in **Attachment 1** (being a portion of 56 Fairview Avenue, Fairview Heights and all of 129 Oteha Valley Road, Fairview Heights) (the **Land**) is rezoned Business – Mixed Use Zone (**BMU**).

Whakarāpopototanga matua

Executive summary

2. The IHP has recommended to Auckland Council that the Land should be rezoned BMU. The Planning Committee should make a decision under s148(1)(a) of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) to accept the IHP's recommendation to rezone the Land BMU. Following the decision of the planning committee, and the 20 working day appeal period in s158(6) of the LGATPA, a further report will be brought to the Planning Committee so that the Council will be able to complete the statutory process for making the zoning of the Land operative under clause 20 of Schedule 1 of the Resource Management Act 1991 (**RMA**). The Council will then be able to include the Land in the Council's intensification planning instrument (**IPI**), to be notified on or before 20 August 2022, which will incorporate the medium density residential standards (**MDRS**) into all relevant residential zones and give effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2020 (**NPS-UD**), as set out in Schedule 3B of the RMA.

Ngā tūtohunga

Recommendation/s

That the Planning Committee:

- a) Make a decision under s148(1)(a) of the LGATPA to accept the within-scope recommendation of the IHP to rezone land in Albany shown in **Attachment 1** (being a portion of 56 Fairview Avenue, Fairview Heights and all of 129 Oteha Valley Road, Fairview Heights) to Business – Mixed Use Zone (**BMU**).

Horopaki

Context

3. The zoning of the Land was the subject of a submission by NEIL on the Proposed Auckland Unitary Plan (**PAUP**) seeking:
 - a) a precinct over 56 Fairview Avenue, 129 Oteha Valley Road, and 135 Oteha Valley Road enabling greater height and amending the rules and policies that apply to work in and around the Waikahikatea Sream (**Albany 5 Precinct**); and
 - b) Terrace Housing and Apartment Buildings zoning over the majority of 56 Fairview Avenue, and all of 131 and 135 Oteha Valley Road.
 - c) BMU zoning over a portion of 56 Fairview Avenue and all of 129 Oteha Valley Road.
4. In 2016 the IHP rejected the submission as it related to 3(a) and (c) above and recommended that:

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.

5. NEIL filed an Environment Court appeal, a High Court appeal, and an application for judicial review in the High Court challenging (on procedural grounds) the recommendations made by the IHP and the Council's subsequent decision. The Environment Court appeal is currently on hold. NEIL was unsuccessful in the High Court and its application for judicial review was declined – [84] in [2018] NZHC 916. The High Court's decision was appealed by NEIL to the Court of Appeal. The Court of Appeal directed that:¹

[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.

6. The rehearing by the IHP has been delayed by various procedural challenges.
7. On 23 June 2022, NEIL and the Council jointly requested a new recommendation from the IHP in relation to the extent of the BMU zoning on the Land. The IHP issued a new recommendation to Auckland Council on 28 June 2022 that recommends that the Land in Albany should be rezoned BMU. It is noted that the recommendation is within the scope of the NEIL submission on the PAUP.
8. The Council will continue to oppose the relief sought by NEIL relating to the adoption of the Albany 5 Precinct.

Tātaritanga me ngā tohutohu Analysis and advice

9. The direction requested of the Planning Committee, to make a decision under s148(1)(a) of the LGATPA to accept the recommendation of the IHP to rezone the Land to BMU is consistent with the agreement reached between NEIL and Council. It would not be appropriate in the circumstances to reject the recommendation of the IHP which would be the alternative decision. In reaching its decision, Council is not required to consult any person or consider submissions or other evidence from any person and must not consider any submission or other evidence, unless it was made available to the IHP before it made the recommendation (s148(2)).
10. The IHP did not identify the recommendation as being outside the scope of a submission. Therefore, any appeal is limited to an appeal to the High Court on a point of law under s158(6) of the LGATPA. Following the decision of the Planning Committee, and the 20 working day appeal period in the s158(6) of the LGATPA, a further report will be brought to the Planning Committee so that the Council will be able to complete the statutory process to make the

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

zoning of the Land operative under clause 20 of Schedule 1 of the RMA. The Council will then be able to include the Land in the Council's IPI.

Tauākī whakaaweawe āhuarangi

Climate impact statement

11. There are no issues of significance for greenhouse gas emissions arising from the procedural direction recommended. It is noted however that the subject land areas will assist in achieving a compact built environment as sought under the AUP(OP) Regional Policy Statement and in this way assist in meeting Te Tāruke-ā-Tāwhiri, Auckland's Climate Action Plan

Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera

Council group impacts and views

12. The views of the wider Council group are not relevant to the decision. An agreement was reached with NEIL, and the parties jointly requested the IHP make a recommendation to rezone the Land BMU.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe

Local impacts and local board views

13. There are no local impacts of significance arising from the procedural direction recommended and Local Board views are not relevant at this stage in the plan making process. There will be positive impacts for the owners of land directly affected. This in turn will make the impact of the IPI plan change process clearer for the Land as of the notification of the IPI in August 2022.

Tauākī whakaaweawe Māori

Māori impact statement

14. There are no issues of significance for Māori arising from the decision recommended.

Ngā ritenga ā-pūtea

Financial implications

15. The costs of publicly notifying the decision are covered by the normal operating budget of the Plans and Places Department. They are not significant and cannot be recovered from any other party in this case.

Ngā raru tūpono me ngā whakamaurutanga

Risks and mitigations

16. There are cost implications for both the Council and the relevant landowners of the Land if the zoning is not made operative under clause 20 of the RMA prior to 20 August 2022, the date by which the Council is required to have notified its IPI plan change. If the Land cannot be included in the IPI at the time of notification, it may be 18+ months until Council is able to give effect to the NPS-UD in respect of the Land.

Ngā koringa ā-muri

Next steps

17. The Council delegations register provides for staff to carry out the necessary statutory steps to notify the decision under s148(4) of the LGATPA. The 20 working day period for appeals to the High Court on points of law against the Council's decision to accept the IHP's recommendation under section 158(6) of the LGATPA must then be allowed to run its course. After the expiry of the appeal period, Council officers will then bring a further report to the Planning Committee at its 4 August 2022 meeting that seeks that the zonings for the Land, the remainder of 56 Fairview Avenue, and 131 and 135 Oteha Valley Road be made operative

under clause 20, of Schedule 1, and that these sites be included in the IPI that is to be notified on 18 August 2022.

Ngā tāpirihanga

Attachments

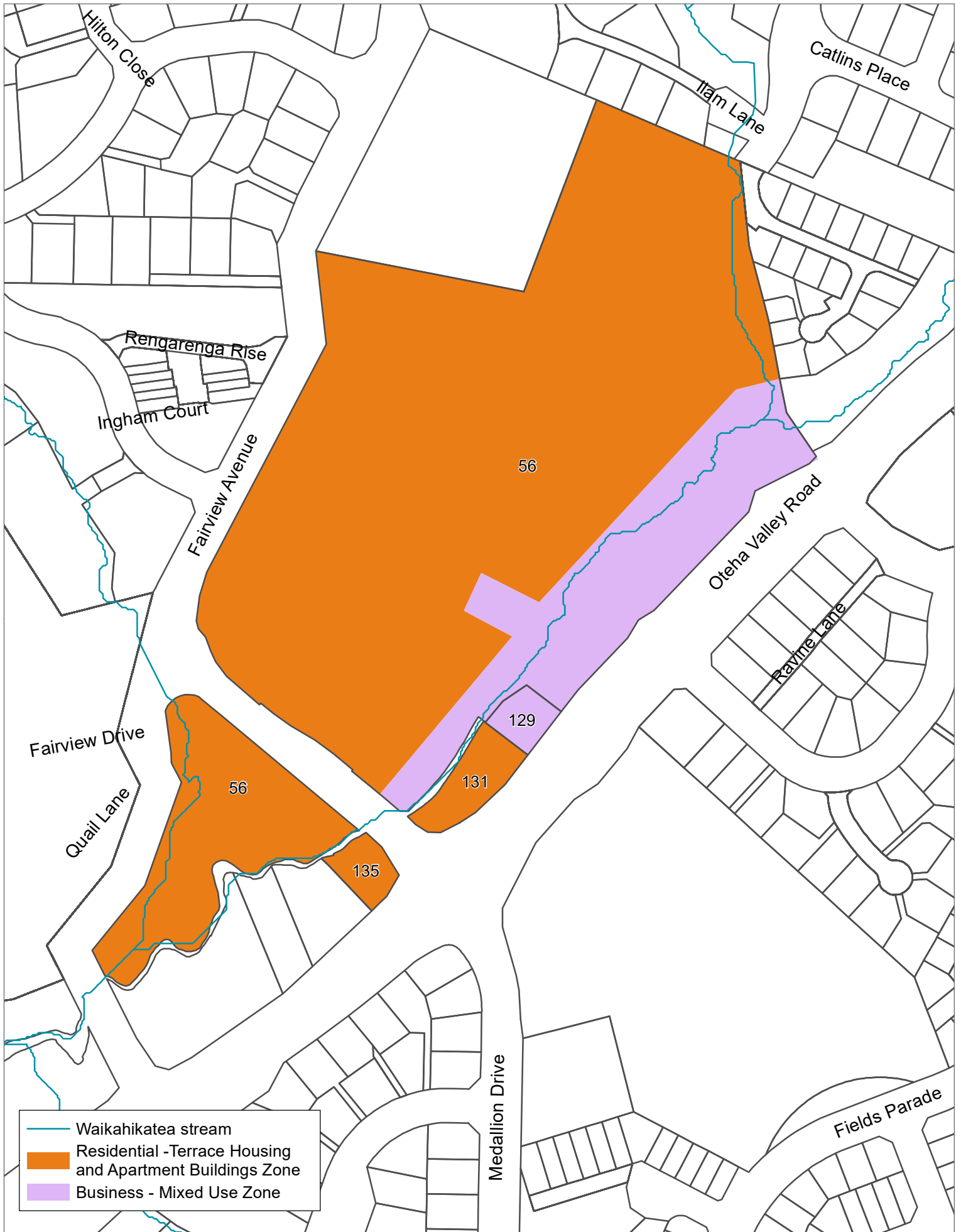
1. Map showing the land in Albany that is the subject of the IHP’s recommendation that it be rezoned BMU, being a portion of 56 Fairview Avenue, Fairview Heights and all of 129 Oteha Valley Road, Fairview Heights.
2. Copy of the IHP’s recommendation to Auckland Council to rezone land in Albany shown in Attachment 1 (being a portion of 56 Fairview Avenue, Fairview Heights and all of 129 Oteha Valley Road, Fairview Heights) to Business – Mixed Use Zone, dated 28 June 2022.

Ngā kaihaina

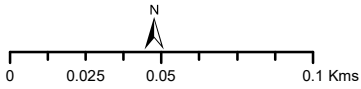
Signatories

Authors	Warren Maclennan – Manager Planning – Regional, North, West & Islands
Authorisers	John Duguid - General Manager - Plans and Places Megan Tyler - Chief of Strategy

**Attachment 1 – Proposed Zoning
map**



- Waikahikatea stream
- Residential - Terrace Housing and Apartment Buildings Zone
- Business - Mixed Use Zone



Whilst due care has been taken, Auckland Council gives no warranty as to the accuracy and completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

Date: 15/06/2022

Neil Settlement Proposed Auckland Unitary Plan Zoning



Plans and Places

**Attachment 2 - IHP
Recommendation**

**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.

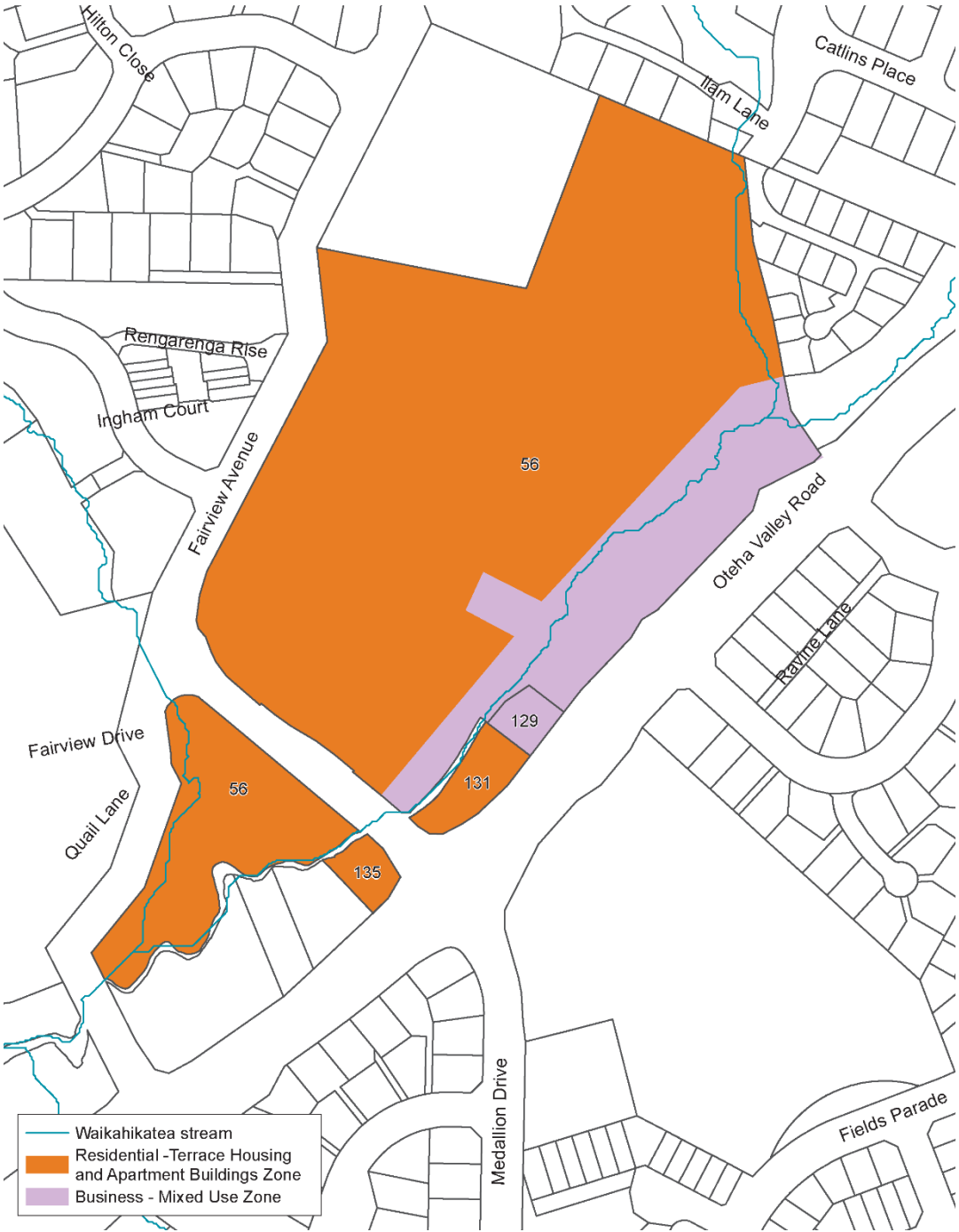
11. There is no order for costs.

DATED 28 June 2022



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

Appendix A



**Attachment 3 - Planning
Committee resolution**

16 Make a decision on Auckland Unitary Plan provisions for land in Albany

Resolution number PLA/2022/79

MOVED by Cr W Walker, seconded by Cr J Watson:

That the Planning Committee:

- a) **accept the within-scope recommendation of the Independent Hearings Panel under s148(1)(a) of the Local Government (Auckland Transitional Provisions) Act 2010 to rezone land in Albany shown in Attachment 1 (being a portion of 56 Fairview Avenue, Fairview Heights and all of 129 Oteha Valley Road, Fairview Heights) to Business – Mixed Use Zone.**

CARRIED