

I hereby give notice that an ordinary meeting of the Planning Committee will be held on:

**Date:** Thursday, 4 August 2022  
**Time:** 10.00am  
**Meeting Room:** Reception Lounge  
**Venue:** Auckland Town Hall  
301-305 Queen Street  
Auckland

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## **Kōmiti Whakarite Mahere / Planning Committee**

### **OPEN ADDENDUM AGENDA**

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#### **MEMBERSHIP**

<b>Chairperson</b>	Cr Chris Darby	
<b>Deputy Chairperson</b>	Cr Josephine Bartley	
<b>Members</b>	Cr Dr Cathy Casey	Cr Richard Hills
	Deputy Mayor Cr Bill Cashmore	Cr Tracy Mulholland
	Cr Fa'anana Efeso Collins	Cr Daniel Newman, JP
	Cr Pippa Coom	Cr Greg Sayers
	Cr Linda Cooper, JP	Cr Desley Simpson, JP
	Cr Angela Dalton	Cr Sharon Stewart, QSM
	Cr Alf Filipaina, MNZM	Cr Wayne Walker
	Cr Christine Fletcher, QSO	Cr John Watson
	Mayor Hon Phil Goff, CNZM, JP	IMSB Member Karen Wilson
	IMSB Member Hon Tau Henare	Cr Paul Young
	Cr Shane Henderson	

(Quorum 11 members)

**Kalinda Iswar**  
**Kaitohutohu Mana Whakahaere Matua / Senior**  
**Governance Advisor**  
**3 August 2022**

Contact Telephone: 021 723 228  
Email: [kalinda.iswar@aucklandcouncil.govt.nz](mailto:kalinda.iswar@aucklandcouncil.govt.nz)  
Website: [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)



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## Auckland Unitary Plan – making operative provisions for land in Albany

File No.: CP2022/10659

Item 13

### Te take mō te pūrongo Purpose of the report

1. To make operative the zoning of land located at 56 Fairview Avenue, 129 Oteha Valley Road, 131 Oteha Valley Road, and 135 Oteha Valley Road, Albany in the Auckland Unitary Plan (AUP).

### Whakarāpopototanga matua Executive summary

2. At its 30 June 2022 meeting the Planning Committee resolved to accept the Independent Hearings Panel's (IHP) recommendation to rezone a portion of land at 56 Fairview Avenue and all of 129 Oteha Valley Road to Business-Mixed Use zone.
3. The decision of the Planning Committee was notified for appeal for 20 working days with appeals closing on 1 August 2022.
4. No appeals were received by 1 August 2022. The Planning Committee can therefore direct staff to make the zoning of the land operative under clause 20 of Schedule 1 of the Resource Management Act 1991 (RMA). Refer to Attachment A.
5. In addition, the Planning Committee can direct staff to make the zoning of the land operative under clause 20 with regard to: (a) the remainder of the land at 56 Fairview Avenue; (b) 131 Oteha Valley Road; and (c) 135 Oteha Valley Road, as NEIL has withdrawn its Environment Court appeal in relation to the zonings of the properties.
6. Once the zonings are operative, the Council will then be able to include the properties at 56 Fairview Avenue, 129 Oteha Valley Road, 131 Oteha Valley Road, and 135 Oteha Valley Road, Albany 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 to give effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2020 (NPS UD) - updated May 2022.

### Ngā tūtohunga Recommendation/s

That the Planning Committee:

- a) request staff to complete the necessary statutory processes to publicly notify the date on which the zoning of the sites at 56 Fairview Avenue, 129 Oteha Valley Road, 131 Oteha Valley Road, and 135 Oteha Valley Road, Albany (described fully in the agenda report) are to become operative as soon as possible, in accordance with Schedule 1 of the Resource Management Act 1991.

## Horopaki Context

7. The zoning of the Land was the subject of a submission by NEIL on the Proposed Auckland Unitary Plan (**PAUP**), when it was notified in 2013, 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) Business Mixed Use zoning over a portion of 56 Fairview Avenue and all of 129 Oteha Valley Road.
8. 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.
9. 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. 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:<sup>1</sup>

[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.
10. The rehearing by the IHP has been delayed by various procedural challenges.
11. 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 recommending that the land in Albany should be rezoned BMU. This was within the scope of the NEIL submission on the PAUP.
12. The Council will continue to oppose the relief sought by NEIL relating to the adoption of the Albany 5 Precinct.

<sup>1</sup> *North Eastern Investments Limited v Auckland Council* [2018] NZCA 629.

## Tātaritanga me ngā tohutohu Analysis and advice

13. At its 30 June meeting, the Planning Committee resolved to accept the IHP's recommendation. 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, there was a 20 working day appeal period which closed on 1 August. No appeals were received, and the land is now "deemed operative" so the Council can now complete the statutory process to make the 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

14. There are no issues of significance for greenhouse gas emissions arising from the recommendation. 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

15. 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

16. There are no local impacts of significance arising from the 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

17. There are no issues of significance for Māori arising from the decision recommended. The Council's position has consistently been to protect 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.

## Ngā ritenga ā-pūtea Financial implications

18. 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

19. 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

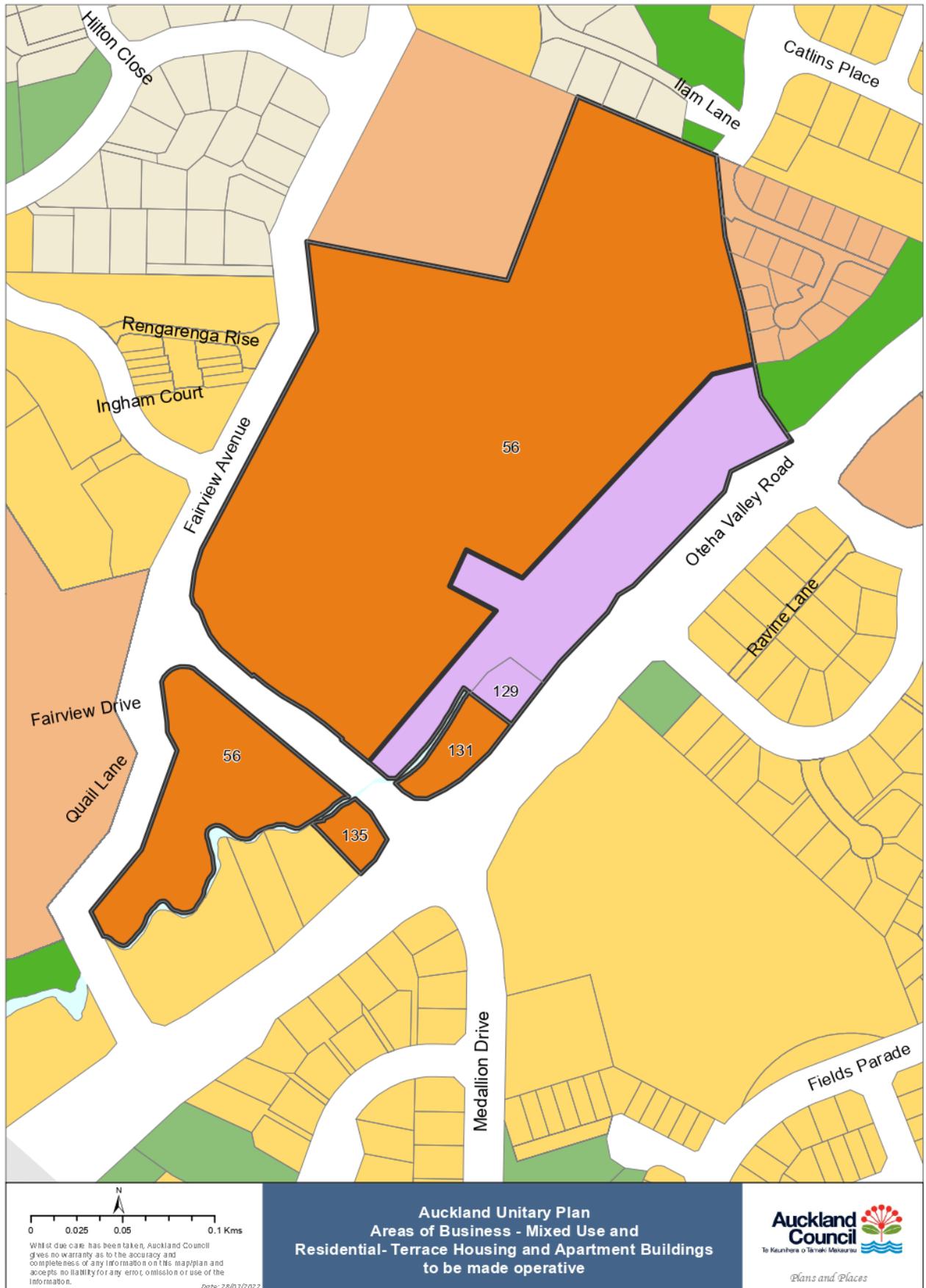
20. The 20 working day period for appeals to the High Court on points of law against the Council's decision to accept the IHP's recommendation under section 158(6) of the LGATPA has now expired. Council officers now seek that the zonings for the Land, the remainder of 56 Fairview Avenue, and 131 and 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

No.	Title	Page
A 	Auckland Unitary Plan - areas to be made operative in Albany	9

## Ngā kaihaina Signatories

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



Item 13

Attachment A



## Exclusion of the Public: Local Government Official Information and Meetings Act 1987

That the **Planning Committee**

a) exclude the public from the following part(s) of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

### C1 Auckland Unitary Plan - Private Plan Change 67 - next steps

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege.  In particular, the report contains legal advice.	s48(1)(a)  The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

### C2 Auckland Unitary Plan - Private Plan Change 51 - next steps

Reason for passing this resolution in relation to each matter	Particular interest(s) protected (where applicable)	Ground(s) under section 48(1) for the passing of this resolution
The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege.  In particular, the report contains legal advice.	s48(1)(a)  The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.