

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Interim Guidance Text for Topics 029 and 030 Special Character and Pre-1944 15 July 2015

This interim guidance is provided for topics 029 and 030 Special Character and Pre-1944. The district level sections of the Proposed Auckland Unitary Plan that this guidance relates to are listed in Appendix 1 to this guidance. Appendix 1 also lists the related Interim Guidance already released by the Panel.

The purpose of this guidance is to inform all parties of the Panel's interim position and to guide their preparations for topic 079 Special Character and Pre-1944 Mapping.

This interim guidance is prepared as a result of having read the submissions and having heard evidence and legal submissions from submitters (including Auckland Council).

The absence of guidance on any particular issue is not intended to indicate that the Panel has no view on that issue or that it is unimportant.

This interim guidance is not a recommendation within the meaning of section 144 of the Local Government (Auckland Transitional Provisions) Act 2010. It is not binding on submitters (including the Council) or on the Panel.

The Panel does not invite any further evidence in relation to this topic and will not enter into debate on this interim guidance. However submitters and their representatives are welcome to raise any questions and seek clarification of this interim guidance.

EXECUTIVE SUMMARY

SPECIAL CHARACTER

1. The Panel is not convinced by the arguments put forward by the Council and some submitters in topic 010 RPS Heritage and Special Character and topic 029 Special Character that special character (or historic character as the Council is seeking to call it) is "historic heritage" requiring protection as a matter of national importance.
2. The Panel considers that if the Council wishes to change the basis for controls on the use and development of a number of residential areas from special character to historic character (i.e. a change in the policy basis from s7(c) and (f) of the RMA to s6(f) of the RMA) then it should proceed by a plan change with a robust s32 analysis of the relative benefits and costs of such a change and enabling public participation through the schedule 1 RMA process.

PRE – 1944 DEMOLITION CONTROL OVERLAY

3. The Panel considers that there is a lack of robust s32 analysis and evidence to justify the inclusion of the Pre-1944 Building Demolition Control Overlay in the Plan.

4. If the Council wishes to pursue the Pre-1944 Demolition Control Overlay this should be done through a plan change process. Such a plan change should include the necessary mapping and provision / text work and a robust s32 analysis to justify the plan change. This should also include a review of the implications of such a protection mechanism against the Plan's urban growth provisions, and the basis on which any such control is founded in terms of s6 and s7 of the RMA

INTERIM GUIDANCE

SPECIAL CHARACTER

Scope for change

5. The Proposed Auckland Unitary Plan as notified identified and proposed provisions for "special character areas". In B.4.2 Special Character the Introduction states "...*In special character areas the maintenance and enhancement of the amenity values and quality of the environment*" These are s7 matters under the RMA.
6. Throughout the hearing process, at both Regional Policy Statement (RPS) and district plan level, the Council has proposed to change "special character" to "historic character" and stated that this is based on s6(f) – the protection of historic heritage as a matter of national importance. The Council acknowledged that this is a significant philosophical shift.
7. Submitters and the Panel questioned whether there is scope in submissions to make such a change.
8. The Council provided an analysis of the scope matter in its closing statement. It considers that the submissions from the Civic Trust, The Character Coalition, Remuera Heritage, Heritage New Zealand Pouhere Taonga, Devonport Heritage and Mr Gary Russell provide the necessary scope.
9. For present purposes the Panel assumes that there is scope and proceeds on this basis to consider the merits of a change from "special character" to "historic character" and the implications of this.

The range of heritage and character matters

10. The Panel agrees that there is a range of "heritage" and "character" matters that are addressed by the provisions in the Proposed Auckland Unitary Plan. While different aspects of the range may overlap in particular circumstances, it is still essential to understand the separate bases for them in order to identify appropriate objectives and policies for each aspect.
11. The highest level of protection of historic heritage and control of land use is for "historic heritage". These are the scheduled items and some associated surrounds and areas in the Proposed Auckland Unitary Plan. The protection of historic heritage from inappropriate subdivision, use and development is required to be recognised and provided for as a matter of national importance. At a somewhat lower level in the range is "special character", to which particular regard needs to be had to the maintenance and enhancement of amenity values and the quality of the environment.

12. For the avoidance of doubt, in identifying and providing for those two levels of protection in the PAUP one must not lose sight of the importance of providing for the range of amenity values generally and the quality of the environment overall. All of these levels form part of enabling people to provide for the several dimensions of their well-being while appropriately addressing the effects of their activities on the environment now and in the future.
13. In this way, historic heritage is different from and should not be confused with the character of the built environment, whatever qualifier is attached to “character”. The policy basis for the management regime dealing with effects on character is under s7 and not under s6.
14. On the merits of the submissions and evidence before it, the Panel is not convinced by the arguments put forward by the Council and some submitters in topic 010 RPS Heritage and Special Character and topic 029 Special Character that special character (or historic character as the Council is seeking to call it) is “historic heritage” requiring protection as a matter of national importance.
15. The reason for this is that the relevant statutory considerations under s6 versus s7 are very different. As a result, the application of them would significantly change the management regime as set out in the notified Plan.
16. Even while accepting (for present purposes) that there is scope for such a change, the Panel is concerned about the natural justice implications to those who may have chosen not to submit to the Plan as they may have been satisfied with the nature and extent of the special character areas being applied. The Panel considers that the Council’s proposal to elevate what it now calls historic character to a matter of national importance through this process is inappropriate.
17. The Panel considers that if the Council wishes to change the basis for controls on the use and development of a number of residential areas from special character to historic character (i.e. a change in the policy basis from s7(c) and (f) of the RMA to s6(f) of the RMA) then it should proceed by a plan change with a robust s32 analysis of the relative benefits and costs of such a change and enabling public participation through the schedule 1 RMA process.

Special Character Provisions

18. The Panel supports the reviewed provisions provided by a number of parties at the hearing, including the Council and Housing New Zealand, as being generally appropriate to address special character and s7 issues.

Special Character Statements

19. The Panel considers that the function of special character statements within the Plan is to describe the distinctive elements of the character of places or areas in terms of the amenity values and the quality of the environment of those places or areas, but not by seeking to protect historic heritage items.

20. The Panel considers that the revised special character statements attached to the evidence of Mr Matthews for the Council more clearly attributes and describes the special characteristics of a particular area on that basis.

Total or Substantial Demolition Rule

21. The Panel is searching for consistency in the use of “demolition” in the PAUP. At this stage the Panel wishes to review the several formulations put forward by parties in these topics and compare them to formulations/ variations/definitions/uses in other topics.

Howick Special Character Area

22. The Council sought to remove Howick from the Special Character Business Overlay and this was opposed by a number of Howick submitters. The Council acknowledged there were no submissions to do this. On the basis of this guidance, the Panel considers that Howick should remain a special character area. If the Council wishes to provide something different for Howick it would need to pursue this via a plan change to enable potential submitters in Howick to address such a proposal directly.

Additional Special Character Areas

23. The Panel does not support the inclusion of additional special character areas in the Plan at this stage. It does not consider that sufficient evidence or analysis has been provided to support such inclusions.
24. It is suggested that proponents of additional special character areas seek to work with the Council. This would be with a view to defining the character of the area and confirming if that character would fit into a future “special character” area that could be included in the Plan by way of a future plan change.

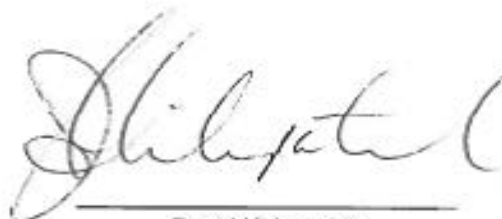
Notification

25. The Panel considers that the normal tests for notification should apply to special character area provisions. This means that applications may or may not be publicly or limited notified depending on the level and extent of their effects and the requirements of s95A-95E of the RMA.

PRE – 1944 DEMOLITION CONTROL OVERLAY

26. The Panel considers that there is a lack of robust s32 analysis and evidence to justify the inclusion of the Pre-1944 Building Demolition Control Overlay in the Plan. On the evidence, the pre-1944 buildings are not deserving of historic heritage scheduling or inclusion in a special character area. There is also no evidence to show that they are at any significant risk of demolition or relocation or that the areas where there are pre-1944 buildings are at risk of losing their character (as distinct from losing some buildings). This is reflected further in the information provided in paragraph 6.3 of the closing remarks of the Council dated 1 July 2015. The Panel is also concerned that this provision has not been assessed in the wider context of the strategy of the PAUP for a more compact and higher density city.

27. Further to the guidance above in relation to the distinction between historic heritage and special character and the basis for identifying special character areas, the Panel regards the Pre-1944 Building Demolition Control Overlay as creating an additional method to protect buildings almost as though they were scheduled or contributed to an area of special character, but without any comparable analysis. Without a rigorous policy basis to justify such a degree of control, the breadth of the overlay appears unreasonable. The absence of adequate consideration of alternatives which might better enable matters of form (through bulk and location controls) or streetscape (through yard, vehicle access or subdivision layout controls) to be controlled so as to maintain character of areas of pre-1944 buildings leaves the Panel without much basis for amendment of the proposed provisions to address their faults.
28. In light of the above, it is the Panel's view that the Pre-1944 Demolition Control Overlay is placing unnecessary constraints and burdens on landowners seeking to develop their properties. It is also an unnecessary burden on submitters preparing for hearings on topic 079 Special Character and Pre-1944 Mapping. It is inconsistent with the compact urban form strategy. Accordingly, the Panel is not convinced that there is a need to impose a consenting regime through the Pre-1944 Demolition Control Overlay provisions.
29. The Panel suggests that the Council reconsider its approach to the Pre-1944 Demolition Control Overlay and the associated planning maps in the Proposed Auckland Unitary Plan.
30. If the Council wishes to pursue the Pre-1944 Demolition Control Overlay this should be done through a plan change process. Such a plan change should include the necessary mapping and provision / text work and a robust s32 analysis to justify the plan change. This should also include a review of the implications of such a protection mechanism against the Plan's urban growth provisions, and the basis on which any such control is founded in terms of s6 and s7 of the RMA.



David Kirkpatrick
Chairperson, Hearings Panel for the
proposed Auckland Unitary Plan

Appendix 1

PAUP Sections

The interim guidance for topics 029 and 030 Special Character and Pre-1944 relates to the following sections of the Proposed Auckland Unitary Plan:

029 Special Character

E.3.1 Business and Residential Special Character Areas Overlay

J.3.1 Special Character Business

J.3.2 Special Character Residential Helensville

J.3.3 Special Character Residential Isthmus A, B and C

J.3.4 Special Character Residential North Shore

J.3.5 Special Character General

Appendix 10.1 Special Character Statements - Business

Appendix 10.2 Special Character Statements - General

Appendix 10.3 Special Character Statements - Residential - Helensville

Appendix 10.4 Special Character Statements - Residential - Isthmus

Appendix 10.5 Special Character Statements - Residential - North Shore

030 Pre-1944

E.3.2 Pre-1944 Building Demolition Control

J.3.6 Pre-1944 Building Demolition Control

No maps were part of this topic as these were reallocated to hearing topic 079 Special Character and Pre-1944 Mapping.

Other Interim Guidance

The interim guidance for topics 029 and 030 Special Character and Pre-1944 should be read in conjunction with the interim guidance on:

- *RPS General – PAUP Chapter B – Regional Policy Statement*
- *RPS Topic 012 Significant Infrastructure, Energy and Transport (section B3.2 – Significant Infrastructure and Energy);*
- *RPS topic 013 Urban growth (sections B2.1 - Providing for growth in a quality compact urban form and B2.3 - Development capacity and supply of land for urban development);*
- *RPS topic 013 Urban Growth (sections B.2.2 – A quality built environment; B.2.4 – neighbourhoods that retain affordable housing; B.2.5 Rural and coastal towns and villages; B.2.6 – Public open spaces and recreation facilities; B.2.7 Social infrastructure; and B.3.1 – Commercial and industrial growth);*
- *Regional and District Rules – PAUP Chapter G - General Provisions.*