

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of Intensification Planning Instrument Proposed
Plan Change 78: Intensification (**PC78**) to the
Auckland Unitary Plan Operative in Part (**AUP**)

JOINT WITNESS STATEMENT IN RELATION TO:

Hearing Topic 011 + 014K Qualifying Matters – Special Character - Special Character
Business - all subtopics + Height - transitions/height next to SCAB

Expert conferencing held on	03/05/2023
Venue	Online
Independent facilitator	Marlene Oliver
Secretariat planner	Beth Maynard

1. Attendance

1.1. The list of participants is included in the schedule at the end of this Statement.

2. Basis of attendance and Environment Court Practice Note 2023

2.1. All participants agree to the following:

- a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- c) They will make themselves available to appear before the Independent Hearing Panel;
- d) This statement is to be filed with the Independent Hearing Panel and posted on the Council's website.

3. Matters considered at conferencing – agenda and outcomes

3.1. Topic 011 – Special Character as a qualifying matter

3.1.1. The following comments were recorded in the JWS on SCAR (20/04/2023) and are endorsed at this SCAB expert conference.

“Can the Special Character Areas Overlay as notified in PC78 be a qualifying matter?”

***The experts** agree that a Special Character Areas Overlay can be a qualifying matter, provided that it meets the requirements in NPS-UD subpart 6, 3.32(1)(h).*

***The experts** consider that the Special Character Areas Overlay can be a QM and areas and provisions can be changed subject to PC78 submissions and evidence.”*

3.1.2. Should the Special Character Areas - Business Overlay be a qualifying matter?

Tania Richmond, Lisa Mein, Carolyn O’Neil, Megan Walker, Robin Byron and **Graeme Burgess** consider that the SCAB-O is also an appropriate planning response to the NPS-UD Objectives and Policy 3 in order to maintain and enhance identified special character values, as it relates to a modification in part of the Height Variation Control in the underlying zone where applicable.

Matthew Lindenberg and **Colin Hardacre** consider that the Special Character Areas Business Overlay as notified in PC78 does not meet the requirements of NPS-UD subpart 6, 3.32(1)(h), as it refers to 3.33(3), which requires an evaluation of “...an appropriate range of options ...”. They consider that the Section 32 reports do not satisfy this requirement.

Veronica Cassin and **Colin Hardacre** consider that the Special Character Areas Business Overlay as notified in PC78 does not meet the requirements of NPS-UD subpart 6, 3.32(1)(h), as it refers to 3.33(3)(a).

3.2. Topic 011 - Chapter D18 Special Character Areas Overlay – Business provisions

The experts note that the SCAB overlay does not contain specific standards to manage height or density. The degree to which identified values of SCAB locations impact upon height / density is addressed separately from the overlay, via the use of

Height Variation Controls applicable to underlying zones and is therefore not addressed through this conferencing session.

The experts also note that there are policies in the underlying zone provisions that link the management of special character values to the Height Variation Control. Similar policies are to be found in other relevant underlying business zones (e.g. Mixed Use Zone, Town Centre Zone, Local Centre Zone and Neighbourhood Centre Zone).

Should amendments be made to Chapter D18 Special Character Areas Overlay – Business provisions?

3.2.1. Table D18.4.2 Activity Table (proposed amendment in PC78):

(3) The rules and standards in the Special Character Areas Overlay – Business are in addition to the rules and standards of the underlying business zone.

(5) Identified character defining buildings and identified character supporting buildings are shown in either the Property Summary in the planning maps or the Special Character Area Map in Schedule 15 Special Character Schedule, Statements and Maps.

Lisa Mein considers that the above clauses (3) and (5) are necessary to explain the relationship with the underlying zoning and how to identify character defining and character supporting buildings. (There were no experts present for the following submissions which sought that these clauses be deleted: 949.15, 1066.26, 1543.30, 1585.34)

3.2.2. Demolition under Table D18.4.2 Activity table – Special Character Areas Overlay – Business in the Auckland Unitary Plan – Operative in Part and PC78 as notified is a restricted discretionary activity and discretionary activity.

Waka Kotahi (2049.26) seeks amendments to the demolition rules. **Evan Keating** (expert for Waka Kotahi) was not present to discuss this matter.

Lisa Mein does not support Waka Kotahi's proposed changes to the demolition provisions as outlined in their submission.

3.3. Topic 14K Height transitions/height next to Special Character Business

Note: Nick Pollard clarified that PC78 as notified does not apply any provisions relating to SCAB outside of the SCAB overlay, except for the assessment matters introduced to THAB and MHU that require a design response at the interface with SCAB.

Nick Pollard noted that there may be circumstances where in the operative AUP the HVC has been imposed to restrict height adjoining the SCAB overlay to implement Policy 14 of the Centre Zones (refer to list of zones in item 3.2) – these provisions remain unchanged. Some further research would be required to clarify the background to the HVC and related provisions.

3.3.1. **General discussion:** Should the plan change address interfacing issues between the Special Character Overlay – Business and THAB, MHU, Town Centre Zone, Local Centre Zone, Neighbourhood Centre Zone and Mixed Use Zone?

Graeme Burgess considers that there should be some controls imposed on areas adjoining and adjacent to the SCAB overlay to support and recognise the special character values within the overlay.

Rebecca Sanders, Rachelle Hui, Paul Arnesen and Veronica Cassin do not support additional controls being applied on areas outside of the SCAB overlay as the areas where the SCAB applies are those where there is an emphasis on enabling increased heights and densities under Policy 3 of the NPS-UD. Additional controls managing these interface issues could effectively be extending the qualifying matter and would need to be sufficiently evaluated in terms of section 32 and the additional requirements set out in Section 77R.

3.3.2. **Specific matters:** There were no planning experts for the submitters listed under the following subsections of the agenda. Therefore these specific matters were not discussed in this expert conferencing session.

3.3.2.1. Could standard D18.6.1.2 Height in relation to boundary (HIRB) be applied to all sites adjoining the Special Character Overlay – Business? (1996.9, 2021.27)

3.3.2.2. Could additional standards controlling built form be applied to sites in the vicinity of the Special Character Overlay – Business? (1996.9)

3.3.2.3. Could height transitions be applied to properties adjoining the Special Character Overlay – Business to achieve an appropriate interface? (976.17, 1264.2, 2032.5)

3.3.2.4. Should intensification be constrained adjacent / adjoining to or in the vicinity of the SCA overlays? (117.4, 1345.3, 1742.4, 1894.3, 1998.5, 2305.18)

3.4. Topic 011 – Add or extend beyond operative AUP maps Special Character Areas Overlay – Business

All experts agree that an extension beyond the operative AUP maps relates to scope which is a legal issue. Parties who wish to add or extend SCAB areas beyond the operative 2016 AUP-OIP maps need to satisfy the relevant tests as summarised below. This will be relevant when expert conferencing addresses area and site specific requests.

3.4.1. To add or extend an area beyond the 2016 AUP-OIP maps a section 32 evaluation report must also address sections 77P, 77Q and 77R of the RMA.

3.4.2. The onus is on the submitter seeking to add a new property or area or extend an existing area beyond the 2016 AUP-OIP maps to provide sufficiently comprehensive information to address the requirements of the RMA.

Specific matters: There were no planning experts for submitters requesting specific additions. Therefore these specific matters were not discussed in this expert conferencing session.

3.5. Topic 011 – Reinstate or add back operative Special Character Areas Overlay – Business and remove property or area from Special Character Areas Overlay – Business

Carolyn O’Neil clarified that the methodology used for the SCAB was different to that used for the SCAR. In the SCAB there was no score assigned to individual sites, the assessment was qualitative rather than quantitative. Where whole sites are vacant or used for carparks, for example, they are recorded in the survey as “not applicable” and are not described as character-supporting or character-defining. These sites are however subject to chapter D18 provisions for new buildings.

3.5.1. Should the spatial extent of the Special Character Areas Overlay be amended to reinstate (add) or to remove properties or areas from it? The following site specific submissions are addressed below or will be discussed under item 3.6.

3.5.1.1. Devonport (Devonport Heritage #937) –

To be considered under item 3.6 below.

3.5.1.2. Ponsonby Road (Samson Corporation Limited and Sterling Nominees Limited #1765)

To be considered under item 3.6 below.

3.5.1.3. 3, 5 and 7 Margaret Street (Charles H Levin #504) –

To be considered under item 3.6 below.

3.5.1.4. 2 Crummer Road (McGregor Bailey Holdings #968) –

These submissions support the overlay as notified.

Tania Richmond, Carolyn O’Neill, Paul Arnesen and Rachelle Hui consider that no further discussion is required in this expert conference, noting further submitters were not represented.

3.5.1.5. 13 and 17 Maidstone Street (Stonemaid #1173, Youthline #1680) -

These submissions support the overlay as notified.

Tania Richmond, Carolyn O’Neill, Paul Arnesen and Rachelle Hui consider that no further discussion is required in this expert conference, noting further submitters were not represented.

3.5.1.6. 584 Great North Road, Grey Lynn (BA Trustees Ltd #1671) –

Colin Hardacre confirmed that the submission seeks removal of this property from the SCAB overlay. **Tania Richmond** and **Carolyn O’Neil** consider that the property should remain in the SCAB overlay as it is an area-based control which seeks to manage the special character values of a whole area rather than just individual properties. The removal of individual sites within an area has generally been avoided. The experts agreed to discuss this property and the survey methodology further under item 3.6 below, however, at this time no agreement has been reached to resolve this submission.

3.5.1.7. Upper Symonds Street (Oyster Management Limited #902) –

Tania Richmond advised that there is a mapping error which shows the operative AUP SCAB overlay in PC78 (as notified) rather than the intended amended extent (reduced area) as shown in the preliminary response viewer for NPS-UD and MDRS (released April 2022) – refer to Attachment 1 showing intended amended extent (yellow line). This will be explained further in evidence. The amended extent excludes the Oyster Management Limited property at 161-181 Grafton Road.

Tania Richmond, Carolyn O’Neil and Rebecca Sanders support the amended extent.

Robin Byron is of the view that Heritage New Zealand Pouhere Taonga will likely oppose the amended extent. HNZPT will be reviewing the details in relation to their general submission.

Rebecca Sanders noted in response to Robin Byron’s position that it would be helpful to understand the spatial focus of HNZPT’s submission, noting that the Oyster site is non-contributing, is on the edge of the operative extent, and that St. David’s Church is scheduled within the AUP.

3.5.1.8. Newmarket (Scentre (New Zealand) Limited # 2226) –

Craig McGarr supports the extent of the SCAB overlay as notified in PC78 for Newmarket.

Tania Richmond and **Carolyn O’Neil** confirm that they support the extent of the SCAB overlay as notified in PC78 for Newmarket.

Robin Byron confirms agreement with the extent of the SCAB overlay as notified in PC78 for Newmarket.

3.5.1.9. Helensville Central, West Lynn, Parnell, Grey Lynn, Howick (submissions received seeking to reinstate or remove the entire area or specific sites)

No experts present for the submitters.

3.5.1.10. Mt Eden Village, Ellerslie, Lower Hinemoa Street, West Lynn, Ōtāhuhu (specific submissions not received seeking to reinstate or remove the entire area or specific sites)

No experts present for the submitters.

3.6. Topic 011 – Special Character Areas Overlay – Business - Change character defining or character supporting buildings

3.6.1. It was agreed at expert conferencing on 03/05/2023 that the relief sought by following submitters is to be addressed initially by offline discussions between experts for the Council and for the submitters. As the outcomes of these discussions can be scheduled for later expert conferencing, similar to the process being followed for the site-specific submissions relating to SCAR. **Tania Richmond** will be the initial point of contact for these discussions.

Note that the list below includes submitters whose experts have confirmed they are attending expert conferencing, rather than the full list of submitters seeking to remove properties or areas from the overlay or to amend character defining or character supporting buildings.

Samson Corporation Limited and Sterling Nominees Limited #1765

- 505-519 Great North Road, Grey Lynn

- 113-119 Parnell Road, Parnell
- 273 Ponsonby Road, Ponsonby
- 267-271A Ponsonby Road
- 210-212 Ponsonby Road
- 107 Symonds Street, Newton
- 167 Symonds Street, Newton
- 207-209 Symonds Street, Newton
- 401B Richmond Road, Grey Lynn
- 433 Richmond Road, West Lynn
- 1C Francis Street, West Lynn

4. PARTICIPANTS TO JOINT WITNESS STATEMENT

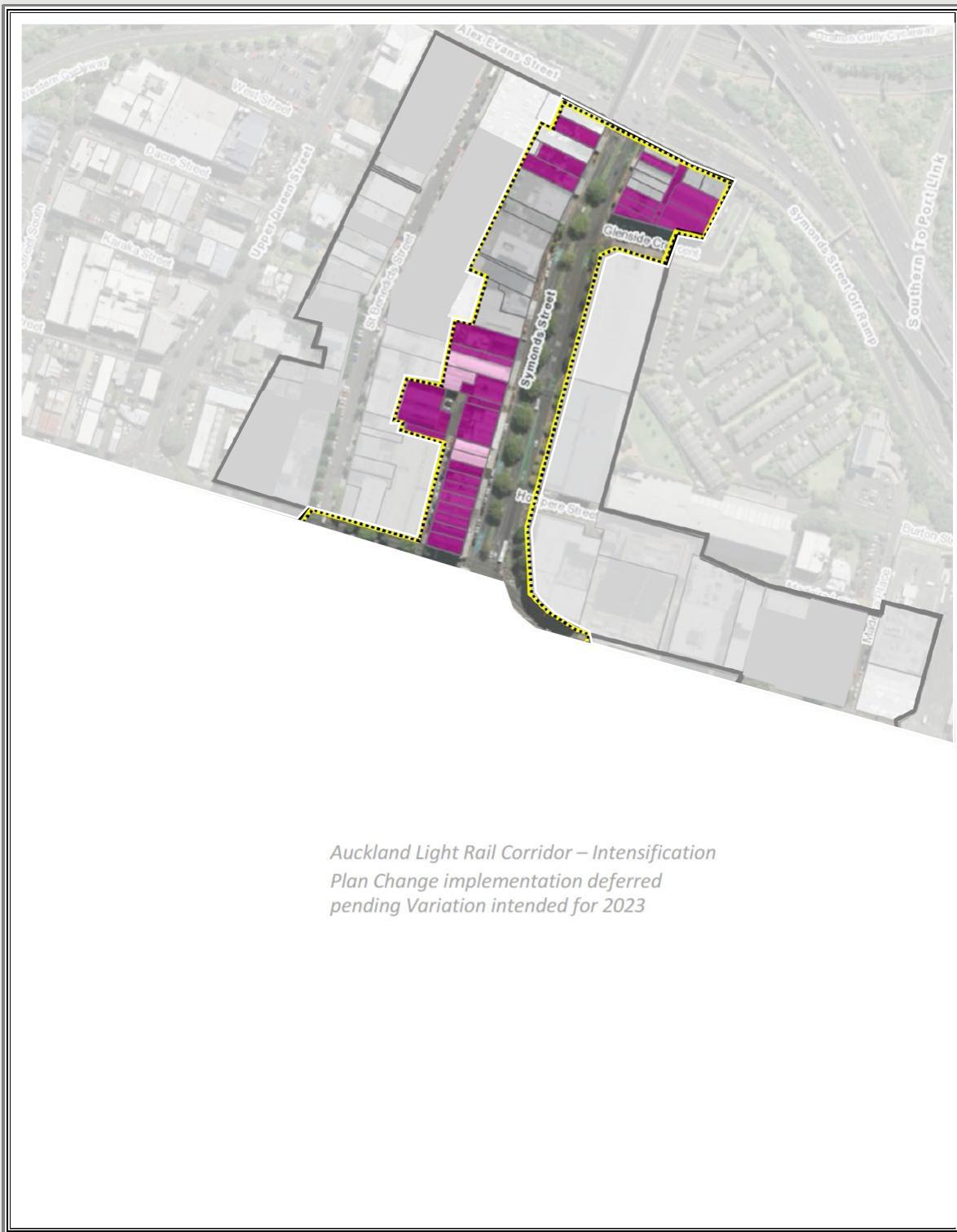
4.1. The participants to this Joint Witness Statement, as listed below, confirm that:

- a) They agree that the outcome(s) of the expert conferencing are as recorded in this statement; and
- b) They agree to the introduction of the attached information – Refer to para 3.5.1.7. above and Attachment 1; and
- c) They have read the Environment Court's Practice Note 2023 and agree to comply with it; and
- d) The matters addressed in this statement are within their area of expertise; and
- e) As this session was held online, in the interests of efficiency, it was agreed that each expert would verbally confirm their position to the Facilitator and this is recorded in the schedule below.

4.2. **Confirmed online 03/05/2023**

Expert's name and expertise	Party	Expert's confirmation (refer para 4.1)
Carolyn O'Neil (Special Character)	Auckland Council	Yes
Colin Hardacre (Planning)	BA Trustees Ltd	Yes
Craig McGarr (Planning)	Scentre (New Zealand) Limited	Yes
Evan Keating (Planning)	Waka Kotahi	Yes, attended for item 1 – 3.1.2, and 3.6
Graeme Burgess (Heritage Architect)	Devonport Heritage / Civic Trust Auckland / Herne Bay Residents Association	Yes
Lisa Mein (Special Character)	Auckland Council	Yes, attended for items 1 – 3.2.2, and 3.6
Matthew Lindenberg (Planning)	Kāinga Ora	Yes, attended for items 1 – 3.2.2, and 3.6
Matt Riley (Urban Design)	Auckland Council	Yes, attended for items 1 – 3.3, and 3.6
Megan Walker (Special Character)	Auckland Council	Yes
Morgan Shepherd (Planning)	Samson Corp and Sterling Nominees	Yes
Nick Pollard (Planning)	Auckland Council	Yes, attended for items 1 – 3.3, and 3.6
Paul Arnesen (Planning)	Youthline / McGregor Bailey Holdings / Stonemaid Ltd	Yes
Rachelle Hui (Planning)	Youthline / McGregor Bailey Holdings / Stonemaid Ltd	Yes
Robin Byron (Heritage Architect)	Heritage New Zealand Pouhere Taonga	Yes, attended for part of item 3.4, 3.5 and the addition of her statement in 3.1.2.
Rebecca Sanders (Planning)	Foodstuffs / Oyster Management	Yes
Tania Richmond (Planning)	Auckland Council	Yes
Veronica Cassin (Heritage)	Samson Corp and Sterling Nominees	Yes

ATTACHMENT: UPPER SYMONDS STREET



AUP and notified extent (in error)
 Intended extent

Special Character Area
 Character defining buildings
 Character supporting buildings
 Non-contributing buildings
 Sites with no building or that are not visible

Expert Conference attendance sheet

Topic: 011 + 014K Qualifying Matters – Special Character - Special Character Business - all subtopics + Height - transitions/height next to SCAB

Date: 03/05/2023

Facilitator: Marlene Oliver

Location: Online

Submission number	Submitter name	Representative at mediation	Email	Notes
872	Heritage New Zealand Pouhere Taonga	Robin Byron	rbyron@heritage.org.nz	Arrived after beginning of session (see JWS for detail)
873	Kāinga Ora	Matthew Lindenberg	matt.lindenberg@beca.com	Left before end of session (see JWS for detail)
902	Oyster Management Limited	Rebecca Sanders	RebeccaS@barker.co.nz	
937	Devonport Heritage	Graeme Burgess	graeme.nz.burgess@gmail.com	
939	Auckland Council	Carolyn O'Neil	carolyn@theheritagestudio.co.nz	
939	Auckland Council	Lisa Mein	isa.mein@mudp.co.nz	Left before end of session (see JWS for detail)
939	Auckland Council	Matt Riley		Left before end of session (see JWS for detail)
939	Auckland Council	Megan Walker	megan.walker@aucklandcouncil.govt.nz	
939	Auckland Council	Nick Pollard	Nick.Pollard@boffamiskell.co.nz	Left before end of session (see JWS for detail)

Plan Change 78 Intensification

Submission number	Submitter name	Representative at mediation	Email	Notes
939	Auckland Council	Tania Richmond	tania@richmondplanning.co.nz	
941	Foodstuffs	Rebecca Sanders	RebeccaS@barker.co.nz	
968	McGregor Bailey Holdings	Paul Arnesen	pa@planningfocus.co.nz	
968	McGregor Bailey Holdings	Rachelle Hui	rh@planningfocus.co.nz	
1173	Stonemaids Ltd	Paul Arnesen	pa@planningfocus.co.nz	
1173	Stonemaids Ltd	Rachelle Hui	rh@planningfocus.co.nz	
1262	Sarah Kember	Graeme Burgess	graeme.nz.burgess@gmail.com	
1671	BA Trustees Ltd	Colin Hardacre	colin@hardacreplanning.co.nz	
1680	Youthline	Paul Arnesen	pa@planningfocus.co.nz	
1680	Youthline	Rachelle Hui	rh@planningfocus.co.nz	
1765	Samson Corp and Sterling Nominees	Morgan Shepherd	morgan@brownandcompany.co.nz	
1765	Samson Corp and Sterling Nominees	Veronica Cassin	Veronica@archifact.co.nz	
1950	Herne Bay Residents Association	Graeme Burgess	graeme.nz.burgess@gmail.com	
2049	Waka Kotahi	Evan Keating	Evan.Keating@nzta.govt.nz	Left before end of session (see JWS for detail)
2226	Scentre (New Zealand) Limited	Craig McGarr	cmcgarr@bentley.co.nz	
2286	Civic Trust Auckland	Graeme Burgess	graeme.nz.burgess@gmail.com	
FS185	Charles H Levin	Graeme Burgess	graeme.nz.burgess@gmail.com	