

**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**)

**MEDIATION AGREEMENT IN RELATION TO:**

Hearing Topic 009Q Qualifying Matters (A-I) - Designations

<b>Mediation held on</b>	9 May 2023
<b>Venue</b>	Online
<b>Time</b>	9.30am – 12.45pm
<b>Independent facilitator</b>	Richard Blakey
<b>Secretariat staff</b>	Wayne Siu

**1. Attendance**

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

**2. Background**

2.1 The parties attended mediation on 9 May 2023.

2.2 A number of issues were resolved between the parties at mediation.

2.3 Other issues remain live between the parties and require further discussion between the parties, at expert conferencing and/or at hearings.

**3. Authority to participate in mediation**

3.1 The mediator confirmed with the submitters or their representatives that they have full authority to participate in the mediation sessions and where necessary can reach agreement on the matters being mediated for and on behalf of the submitters / further submitters that they represent.

3.2 Submitters and further submitters were reminded that they must follow their submissions and cannot act outside the scope of their submissions.

#### 4. Matters considered at Mediation - agenda and outcomes

##### 4.1. Issues relating to qualifying matters

4.1.1. Retention or deletion of Chapter K Designations (and associated designation schedules) as a qualifying matter.

**Summary of issue:** *whether to retain or delete Chapter K Designations in the AUP, as notified in PC78, (and associated designation schedules) as a qualifying matter*

**Auckland Council position:**

Support submissions which seek retention of designations as a qualifying matter.

**Parties' relief sought in submission**

**North Eastern Investments Limited** requests deletion of the designation which affects its property at 56 Fairview Avenue (submission point 836.2) and designations on any land parcel in the Auckland region (submission point 836.3).

**Kāinga Ora** requests the retention of Chapter K Designations as notified in PC78 (submission point 873.82).

**Angela Joy Goodwin** requests the deletion of designations as a qualifying matter (submission point 1401.15), and if designations are not removed as a qualifying matter, 'clarify the provisions that Designation X the airspace designation is not included' (submission point 1401.16). The submission then references the HANA and MANA, with activities managed by the provision of D24 Aircraft Noise. (Topic 009R – Aircraft Noise).

**Aedifice Property Group** requests the qualifying matter relating to designations is deleted (submission point 1962.15).

**Additional parties that support Chapter K Designations as a qualifying matter – Auckland International Airport, KiwiRail, Radio New Zealand and NZDF**

**Parties' positions**

**North Eastern Investments Limited, Angela Joy Goodwin, Aedifice Property Group, and Radio New Zealand** did not attend this mediation session.

**Auckland Council, Kainga ora, Auckland International Airport, KiwiRail, NZDF and Channel Terminal Services:** Support retaining designations as a qualifying matter.

**Auckland International Airport, Kainga Ora and Auckland Council** will address relief relating to the Auckland International

Airport Limited MANA and HANA in its evidence for Topic 009R Qualifying Matters (A-I) Aircraft Noise.

**Conclusion – matters agreed / disagreed:**

**The parties agree with the retention of designations as a qualifying matter.**

**The parties do not agree with the deletion of designations as a qualifying matter nor the alternative relief sought by Ms. Goodwin (noting the parties' positions, there will be separate evidence on the AIAL HANA and MANA matter).**

4.1.2. The application of the designation qualifying matter in relation to the Minister of Education's designations.

**Summary of issue:**

*whether to amend Chapter K Designations, as notified in PC78, to provide for the exemption in sections 77M(5) and (6) in relation to the Minister of Education's designations on land which is within, or adjoining land that is, a relevant residential zone.*

**Auckland Council position:**

Support changes to Chapter K Designations to clarify that the Minister of Education's designations is exempted.

**Parties' relief sought in submissions**

**Ministry of Education Te Tāhuhu o Te Mātauranga** requests that Council confirm that 'the purported qualifying matter (designations) does not apply to Minister of Education designations, such that in the absence of any other qualifying matters applying to Schools, section 77M(6) can immediately be relied upon by the Ministry (submission point 892.1).

**Parties' positions:**

**Auckland Council:** Proposes to insert the following text to Chapter K Designations (inserted above section 1.1 and in the schedule of designations for the Minister of Education):

Works undertaken under a Minister of Education designation in a relevant residential zone; or where the designation adjoins a relevant residential zone, may rely on the zone provisions of the relevant residential zone, where those provisions incorporate the density standards in Part 2 of Schedule 3A of the Resource Management Act 1991, if those provisions are more lenient than conditions included in the designation. This exemption will only apply to works undertaken under a Minister of Education designation where there are no other qualifying matters applicable.

**Ministry of Education Te Tāhuhu o Te Mātauranga:** Agree with the Council's proposed text (although the Ministry notes the last sentence may create implications where a spatially limited qualifying

matter might have an undue impact, acknowledging this concern is limited by its' relief sought).

**Conclusion – matters agreed / disagreed:**

**The parties agree in principle with the proposed additions to Chapter K Designations and schedule of designations for the Minister of Education.**

4.1.3. Amendments to the provisions in Chapter A Introduction and Chapter K Designations

**Summary of issue:**

*whether to amend Chapter A Introduction and/or Chapter K Designations in the AUP, as notified in PC78.*

**Auckland Council position:**

Support some clarification around which designations qualify as a qualifying matter. This is generally taken as those in a relevant residential zone and non-residential urban zones e.g. Policy 3 and MDRS areas. The Council will provide specific text in its' evidence.

**Parties' relief sought in submissions**

*Transpower New Zealand Limited requests amendments to Chapter A Introduction (submission point 940.4) and Chapter K Designations (submission point 940.44). The amendments are related to the reference to 'Some designations in the urban environment are qualifying matters'. The relief sought requests the deletion of 'some'.*

*Deborah Chambers requests that designations are reviewed with the requiring authorities and be amended where these do not align with policies and purpose of the NPS-UD (submission point 1643.5).*

**Parties' positions:**

**Transpower and Deborah Chambers** did not attend this mediation session.

**Auckland Council:** Support some clarification around which designations qualify as a qualifying matter. This is generally taken as those in a relevant residential zone and non-residential urban zones e.g. Policy 3 and MDRS areas. The Council will provide specific text in its' evidence.

The Council does not support the submission of Deborah Chambers as there are alternative review processes for designations under Schedule 1 of the Resource Management Act and the National Planning Standards. It also does not support the deletion of 'some' in the text of Chapter K 'Some designations in the urban environment are qualifying matters'.

**Auckland International Airport and Channel Terminal Services:** disagrees that designations need to be reviewed as sought in the submission of Deborah Chambers.

**Conclusion – matters agreed / disagreed:**

**The parties agree that designations do not need to be reviewed to be aligned with the NPS-UD.**

**4.2. Other issues**

4.2.1. Submission 1071 Channel Terminal Services Limited additionally allocated submission and relief sought.

**Summary of issue:**

*Channel Terminal Services Limited has requested that its submission be additionally allocated to Topic 009Q. Channel Terminal Services Limited seeks the application of MDRS/Policy 3 through amendments to zoning of properties as notified in Plan Change 78 and the inclusion of a 40m buffer either side of the nominal centreline of the high-pressure fuel Marsden Point to Auckland Pipeline.*

*The submission has also been allocated to other hearing topics:*

- *Topic 001G Plan Making and Procedural – Plan Interpretation (Chapter A and Chapter C)*
- *Topic 001H Plan Making and Procedural – General*
- *Topic 002 Medium Residential Standard (MDRS) Response*
- *Topic 008 Urban Environment*
- *Topic 009N Qualifying Matters A-I Emergency Management Area – Hazardous facilities: Wiri Terminal and Wiri LPG Depot*

*The Channel Terminal Services Limited submission potentially raises scope issues and issues as to which topic(s) the submission is best addressed in.*

**Parties' relief sought in submissions**

**Channel Terminal Services Limited** – *Channel Terminal Services Limited is requesting that intensification/upzoning and MDRS proposed by the plan change is not applied to any property within 40 metres of the nominal centreline of the high-pressure fuel Marsden Point to Auckland Pipeline which runs from the Wiri Oil Terminal. This 80m corridor aligns with the Emergency Management Area control currently provided for in the AUP [Refer to maps 1, 2 and 3 appended to the submission for pipeline location and corridor from the centreline].*

*Channel Terminal Services Limited requests that the operative (pre-plan change) zone equivalent be reinstated where properties are proposed to be 'up-zoned' as a result of the NPS-UD within 40 metres of the centreline of the high-pressure fuel Marsden Point to Auckland Pipeline.*

**Kainga Ora:** *Response to qualifying matter should not determine zoning e.g. rely on existing planning framework around district-wide and/or overlay provisions.*

**Parties' positions:**

**Auckland Council:** *Supports the Channel Terminal Services submission to the extent of the inclusion of the Designation 6501 (relating to the petroleum pipeline) as a Qualifying Matter. The*

Council offered to meet with Channel Terminal Services separately to discuss the parts of the submission relating to planning responses outside of the designation footprint and appropriate topic allocation.

**Channel Terminal Services:** Welcomes the opportunity to meet with the Council noting this is expected to occur prior to 9 June 2023.

**Kainga Ora:** Confirmed their interest on any planning responses outside of the petroleum pipeline designation footprint.

***Conclusion – matters agreed / disagreed:***

**Auckland Council and Channel Terminal Services agree to have a without prejudice meeting to address the potential planning response outside of the designation footprint. Following the meeting, if there are proposed changes to the notified PC78 provisions, the Council will advise Kainga Ora (as a further submitter).**

**5. Participants to Mediation Agreement**

5.1. The participants to this Mediation Agreement, as listed below, confirm that:

- a) They agree that the outcome(s) of the mediation are as recorded in this agreement; and
- b) The matters addressed in this agreement are within scope of their submission; and
- c) As this session was held online, in the interests of efficiency, it was agreed that each participant would verbally confirm their position to the Facilitator, and this is recorded in the schedule below.

5.2. **Confirmed online 9 May 2023**

<b>Name of representative</b>	<b>Party</b>	<b>Representative's confirmation</b>
Chris Simmons	Channel Terminal Services Ltd	Yes
Sian Stirling	Ministry of Education	Yes
Lucy Edwards	NZDF	Yes
Mark Stripp	Kāinga Ora	Yes
Phill Reid	Auckland Council	Yes
Taylor Power	Auckland International Airport, KiwiRail	Yes

## Mediation attendance sheet

Topic 009Q: Qualifying Matters (A-I) - Designations

Date: 9 May 2023, 9.30am – 12.45pm

Mediator: Richard Blakey

Location: Online

Submission number	Submitter name	Representative at mediation	Email	Notes
870	Auckland International Airport	Greg Osborne	greg@osbornehay.co.nz	
870	Auckland International Airport	Taylor Power	taylor.power@russellmcveagh.com	
2069	KiwiRail	Taylor Power	taylor.power@russellmcveagh.com	
2069	KiwiRail	Cath Heppelthwaite	cath@eclipseplanning.co.nz	
892	Ministry of Education	Sian Stirling	Sian.Stirling@beca.com	
892	Ministry of Education	Jamie Swan	Jamie.swan@beca.com	
873	Kāinga Ora	Matthew Lindenberg	matt.lindenberg@beca.com	left at 11.00am
873	Kāinga Ora	Mark Stripp	mark.stripp@kaingaora.govt.nz	
939	Auckland Council	Jo Hart	jo.hart@aucklandcouncil.govt.nz	
939	Auckland Council	Nic Lau	nicholas.lau@aucklandcouncil.govt.nz	
939	Auckland Council	Diana Hartley	diana.hartley@dlapiper.com	
939	Auckland Council	Waldo Randall	waldo.randal@dlapiper.com	
939	Auckland Council	Eryn Shields	<a href="mailto:Eryn.shields@aucklandcouncil.govt.nz">Eryn.shields@aucklandcouncil.govt.nz</a>	
939	Auckland Council	Phill Reid	phill.reid@aucklandcouncil.govt.nz	
1071	Channel Terminal Services Ltd	Chris Simmons	chris.simmons@chancerygreen.com	
1071	Channel Terminal Services Ltd	Sarah Westoby	sarahw@4sight.co.nz	left at 11.00am
1069	NZDF	Mikayla Woods	mwoods@tonkintaylor.co.nz	
1069	NZDF	Lucy Edwards	lucy.edwards@nzdf.mil.nz	