

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 009R Qualifying Matters A-I – Aircraft Noise

Mediation held on	13/04/2023
Venue	Online
Time	9.30am – 1:34pm
Independent facilitator	Mark Farnsworth
Secretariat staff	Beth Maynard

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 13 April 2023.

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

2.3 Other issues remain live between the parties and are likely to require hearing time.

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.

3.3 All participants agree that the record of positions stated below is a brief overview and not a comprehensive record of all positions. Parties reserve the right to raise additional matters in their evidence and legal submissions in hearing.

3. Matters considered at conferencing - agenda and outcomes

3.1. Issues relating to qualifying matters

3.1.1. Retention of D24 Aircraft Noise Overlay (generally) as a QM

Summary of issue: Whether to retain or delete the Aircraft Noise Overlay D24 as a QM.

Auckland Council position:

AC supports submission point seeking retention of D24 as QM, and opposes submission points generally seeking its deletion (and notes relevant submitters not attending mediation).

QM generally justifiable in terms of ss 771 and 770 – see below for further detail in context of Auckland Airport, which is the focus of submissions.

Other parties' positions:

Auckland International Airport Ltd (AIAL) and Board of Airline Representatives New Zealand (BARNZ) support Auckland Council's position.

Kāinga Ora does not support retention of the Aircraft Noise Overlay D24, except in respect of the HANA.

Conclusion – matters agreed / disagreed:

All participating parties agreed that the HANA should be retained as a qualifying matter.

3.1.2. Retention of MANA as a QM

Summary of issue: Whether to retain or delete MANA as a QM.

Auckland Council position:

AC opposes submission points seeking the deletion of the MANA as a QM.

The RMA expressly provides for matters required for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure as QMs (e.g. s 771(e) RMA).

Auckland Airport is nationally significant infrastructure is defined in the NPS-UD and a key component of NZ transport infrastructure and trade network. QM is assessed as necessary to ensure safe and efficient operation. Protects Auckland Airport from reverse sensitivity effects and addresses adverse effects of aircraft noise on residential and other ASANs.

AC agrees with AIAL that MANA controls are important to ensure well-functioning urban environments are achieved by providing appropriate living environments for residents, as well as protecting the Airport from reverse sensitivity effects.

The impact of the QM on Policy 3 and the MDRS development potential is considered low as it applies to a small percentage of Auckland's urban environment.

Other parties' positions:

AIAL supports Auckland Council's position. Notes that reverse sensitivity effects impact on the efficiency of the operation of Auckland Airport.

States that with regard to the changes in approach necessitated by the NPS-UD, this cannot be to the extent that we no longer worry about reverse sensitivity effects, aircraft noise.

States a fundamental difference of opinion with the position of Kāinga Ora; not good, responsible, or modern planning to accept (for example) differing outdoor amenity for those living within the MANA.

Notes the effects of noise on people. In the MANA 55-65% of people will be highly annoyed by this level of noise. Inappropriate to implement planning regimes which expose communities to high levels of aircraft noise, which give rise to reverse sensitivity effects.

Notes that for acoustic treatment to be effective windows and doors must be closed, mechanical ventilation used; important in considering amenity.

Notes that MANA provisions are not conservative in comparison to other examples (Ardmore Airport, Christchurch); restrictions are already comparatively lenient.

BARNZ supports AIAL and Auckland Council's position.

Kāinga Ora does not accept that inhibiting development in the MANA is required for the safe and efficient operation of Auckland International Airport. Objectives and policies of the overlay do not protect expansion of the AIA.

States that an unduly conservative approach in management of assets is contrary to the NPS-UD. Appropriate considerations of costs and benefits have to be provided and these have not been provided for the MANA.

Question of conservative approach to strategic asset. Notes qualifying matters originate in 2015 Productivity Commission report which found that inadequate cost-benefit analyses applied by councils. Imposing a high level of rigour in analysis for restrictive planning.

States that, even if the MANA does meet the standard required to be applied as a qualifying matter, requirements are that density is restricted only to the extent necessary to accommodate that qualifying matter. Evidence not sufficient to justify MANA provisions which restrict development in key areas, i.e. Manukau Metropolitan Centre.

With intensified living, residents use outdoor space differently and Amenity expectations are different.

Requests AC answer why it provided no evaluation of options for removing the MANA but retaining HANA.

Fletcher Residential Fletcher Residential generally agreed with arguments put forward by Kāinga Ora.

Accept that effects of aircraft noise need to be managed in the MANA, but does not support downzoning as a method for managing these effects. Support retention of MANA overlay.

Waka Kotahi support PC78 as notified in general in regard to this issue, and support the retention of MANA overlay.

Agree that if MANA is a QM, it can only restrict density to the extent required to accommodate QM.

Conclusion – matters agreed / disagreed:

The matter was not agreed upon and will proceed to hearing.

3.2. Issues relating to provisions of Chapter D24

3.2.1. Wording of D24.1 – overlay description

Summary of issue:

Submission points seek the following changes:

“This overlay has been identified as a qualifying matter in accordance with sections 77I(e) and (g) and 77O(e) and (g) of the RMA.

The provisions of this overlay take precedence over the provisions of the underlying zone ~~and/or precinct with respect to subdivision and location of activities sensitive to aircraft noise~~”.

Auckland Council position:

Partly support submission point.

<p>AC supports the amendment of the first sentence to more accurately describe those parts of the overlay that are QMs. Precise wording to be confirmed.</p> <p>Final sentence is unnecessary: interplay between the overlay and other AUP provisions is addressed elsewhere (Chapter C and preamble to D24.4).</p>
<p>Other parties' positions:</p> <p>AIAL and BARNZ support clarity in drafting subject to Auckland Council's comments above.</p> <p>Kāinga Ora holds a general position that plans should not contain in text reference to RMA sections which establish QMs.</p> <p>Disagrees with reference to MANA and the reference to Section 771(e)</p> <p>Agrees that second sentence is unnecessary as this is addressed elsewhere.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will proceed to hearing.</u></p>

3.2.2. Wording of Policy D24.3(3)(b)

<p>Summary of issue: Whether to amend policy as follows:</p> <p>(a) CivilPlan/Grey seek to remove “restrictions on the numbers of people to be accommodated through zoning and density mechanisms”.</p> <p>(b) AIAL/BARNZ seek to include reference to "reduced building heights" as a method to address effects.</p>
<p>Auckland Council position:</p> <p>AC reserves position on scope (PC78 didn't seek to amend any policies).</p> <p>With regard to (a), AC disagrees with proposed deletion. This aspect of policy remains key to intent of provisions.</p> <p>With regard to (b), AC disagrees with proposed addition. D24 overlay provisions do not include building height standards.</p>
<p>Other parties' positions:</p> <p>AIAL accepts deletion of reference to reduced building heights subject to broader relief sought on zoning and overlays. For completeness notes that it concurs with BARNZ' reasoning.</p> <p>BARNZ reserves its position and notes that its agreement is contingent on underlying zoning.</p>

<p>In agreement with Council that proposed deletion in relation to (a) is inappropriate, but not clause (b).</p> <p>Kāinga Ora agrees with Council's position in regard to (b).</p> <p>Waka Kotahi agrees with Council's position in regard to (b).</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will proceed to hearing.</u></p>

3.2.3. Activity Table D24.4.3

3.2.3.1. deletion of the 1 dwelling per 400m² density rule in the MANA; or

<p>Summary of issue: Whether to delete the 1 dwelling per 400m² density rule in the MANA.</p>
<p>Auckland Council position:</p> <p>AC disagrees with deletion.</p> <p>This density control was considered through the PAUP hearing process. There was recognition of the need to limit the numbers of people exposed to high levels of aircraft noise in the external environment, and to ensure AKL is protected from reverse sensitivity effects of increased numbers of people subject to aircraft noise seeking to constrain the Airport's current or future activities.</p> <p>Acoustic treatment of the internal environment of ASANs only part of picture: does not address all the effects of aircraft noise (e.g. external amenity) and subsequent reverse sensitivity effects. Combined approach needed, including applying a density restriction.</p>
<p>Other parties' positions:</p> <p>AIAL + BARNZ agree with Council's position.</p> <p>Note that the standard is present in AUP.</p> <p>Kāinga Ora disagrees with Council's position. States that it is helpful to have the origin of density standard in Manukau Legacy Plan acknowledged by Council.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will proceed to hearing.</u></p>

3.2.3.2. retention of Activity Table as notified

<p>Summary of issue: Submission points seek the retention of activity table D24.4.3 as notified.</p>
<p>AC position:</p> <p>AC supports these submission points.</p>
<p>Other parties' positions:</p> <p>AIAL + BARNZ support these submission points.</p> <p>Kāinga Ora agrees with respect to HANA but not MANA and notes that its seeks changes to Activity Table D24.4.3. as laid out in its submission.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will proceed to hearing.</u></p>

3.3. Zoning related issues

3.3.1. Zoning of land within the HANA – LDRZ or THAB / MHU

<p>Summary of issue: The appropriate residential zoning of sites in HANA – THAB/MHU (as notified), MHU (as sought by KO), or LDRZ as sought by AIAL/BARNZ?</p>
<p>Auckland Council position:</p> <p>AC change in position from notified provisions.</p> <p>AC agrees with AIAL/BARNZ that, for 214 sites which PC78 proposes to rezone from SHZ to MHU or THAB, zoning should be LDRZ as shown on attached plan at Schedule 1.;</p> <p>Agree that MHU or THAB suggests intensification can occur, when the overlay prohibits it. LDRZ a more appropriate low-density zoning response, better reflecting the effect of the overlay. Avoids potential confusion arising from notified upzoning.</p>
<p>Other parties' positions:</p> <p>AIAL + BARNZ agree with Auckland Council's position.</p> <p>Kāinga Ora opposes the LDRZ, but reserves its position on appropriate zoning as this is tied up with walkable catchments and extents which will be addressed through later alternative dispute resolution sessions.</p> <p>Waka Kotahi opposes the LDRZ but reserves its position on appropriate zoning.</p>
<p>Conclusion – matters agreed / disagreed:</p>

The matter was not agreed upon and will proceed to hearing.

3.3.2. Zoning of land within the MANA – LDRZ or THAB / MHU

Summary of issue: The appropriate residential zoning of sites in MANA: THAB/MHU (as notified) or LDRZ as sought by AIAL/BARNZ?

Auckland Council position:

AC change in position from notified provisions.

AC partially supports AIAL/BARNZ submission points to the extent that it considers THAB zoning of 781 sites in MANA is inappropriate from planning and aircraft noise effects perspective. Supports **MHU** for those sites instead as shown on attached plan at Schedule 1.;; does not support LDRZ.

AC agrees with AIAL/BARNZ that THAB promotes outcomes inconsistent with intent of D24 provisions to limit overall number of people subject to aircraft noise because of potential adverse health and amenity effects for residents, and potential reverse sensitivity effects.

THAB is inconsistent with 1 dwelling per 400m² density and encourages unrealistic expectations / signals appropriateness of applications seeking density far in excess of that density. MHU is more aligned.

MHU (rather than THAB) is consistent with approach applied to the National Grid Corridor Overlay, which addresses similar effects (reverse sensitivity/human health effects).

Other parties' positions:

AIAL continues to seek the relief in its submission that all MANA be zoned LDRZ. MHU is a higher density than what AIAL considers appropriate.

BARNZ supports AIAL's positions; considers that same principle applies as with the HANA with regard to avoiding confusion from notified zoning.

Kāinga Ora has not changed its position. Does not agree with Council's position and does not support LDRZ, and prefers management of effects through overlay.

Fletcher Residential does not support downzoning in the MANA; states that overlay already manages density and supports management of effects through overlay.

Waka Kotahi does not support downzoning in the MANA; states that overlay already manages density and supports management of effects through overlay.

Conclusion – matters agreed / disagreed:

The matter was not agreed upon and will proceed to hearing.

3.4. Site-specific issues

3.4.1. Apply the Flat Bush density exceptions to 219 Portage Road, Papatoetoe and nearby area

Summary of issue: Submission point seeks to apply the density exceptions in I412 Flat Bush Precinct Plan (sub-precinct D and sub-precinct E) to 219 Portage Road, Papatoetoe and the area nearby.

Auckland Council position:

Submitter not attending mediation.

AC does not support the proposed change – akin to ‘spot zoning’.

Majority of Flat Bush Precinct within MANA has max density of 1:400m² – exception is two small master planned subprecincts with THAB.

Site is not in Flat Bush Precinct and is not zoned THAB.

Other parties' positions:

AIAL and **BARNZ** support Council's position.

Kāinga Ora has no further submissions on particular specific zoning requests. Reserves its position on final zoning outcome based on walkable catchment expert conferencing and further relevant processes.

Conclusion – matters agreed / disagreed:

The matter was not agreed upon and will proceed to hearing.

3.4.2. Removal of D24 overlay and Appendix 19 from 8 Freyberg Ave, Papatoetoe

Summary of issue: Submission point seeks to remove D24 Aircraft Noise overlay and Appendix 19 from 8 Freyberg Avenue, Papatoetoe.

Auckland Council position:

Submitter not attending mediation.

AC does not support the proposed change – akin to ‘spot zoning’.

Other parties' positions:

<p>AIAL + BARNZ agree with Auckland Council's position.</p> <p>Kāinga Ora has no further submissions on this issue. Reserves its position on final zoning outcome based on walkable catchment expert conferencing and further relevant processes.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will proceed to hearing.</u></p>

3.5. I412 Flat Bush Precinct

3.5.1. Density standards relating to MANA (Table I412.6.1.1.1, Table I412.6.2.1.1, I412.6.2.2(2))

<p>Summary of issue: Submission points seek to delete the I412 Flatbush Precinct density standards that relate to the MANA.</p>
<p>Auckland Council position:</p> <ul style="list-style-type: none">• Flat Bush precinct being mediated separately.• AC does not support the proposed deletions.• Provisions should be maintained for reasons given earlier.
<p>Other parties' positions:</p> <p>AIAL + BARNZ note that this issue will be mediated separately, that the issue is complex, and prefer that this discussion takes place in separate mediation.</p> <p>Kāinga Ora holds that density standards inappropriate but that matter is best discussed in precinct mediation.</p> <p>Fletcher Residential prefer that issues considered in separate mediation.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>The matter was not agreed upon and will be discussed at the mediation for Topic 020U I412 Flat Bush Precinct and/or hearing.</u></p>

3.6. Other matters

3.6.1. Retention of ANNA on planning maps

<p>Summary of issue: Whether to retain or delete the ANNA.</p>
<p>Auckland Council position:</p> <ul style="list-style-type: none">• Council agrees with BARNZ that the ANNA should be retained.

<ul style="list-style-type: none">• AC does not agree with submission by A Grey (not attending mediation) seeking deletion. In any event, deletion of ANNA is not within scope of PC78.
<p>Other parties' positions:</p> <p>BARNZ notes that it appreciates clarification from Council and agrees that any submissions relating to ANNA are outside of PC78 scope.</p> <p>Kāinga Ora supports BARNZ submission that ANNA be retained.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p>All participating parties agree that the ANNA be retained.</p>

3.6.2. Regular updating of D24 overlay and Appendix 19

<p>Summary of issue: Submission point seeks that D24 and Appendix 19 are regularly updated.</p>
<p>Auckland Council position:</p> <ul style="list-style-type: none">• Submitter not attending mediation.• Submission point is not seeking any justiciable relief and is not supported.
<p>Other parties' positions:</p> <p>AIAL supports Council's position.</p>
<p>Conclusion – matters agreed / disagreed:</p> <p><u>All participating parties agree that submission point is not seeking any justiciable relief and should not be supported.</u></p>

3.6.3. Reduction of existing effects of aircraft noise / management of any future flight paths

<p>Summary of issue: Submission point seeks to reduce the existing effects of aircraft noise and manage any future flight paths which may result in additional aircraft noise.</p>
<p>Auckland Council position:</p> <ul style="list-style-type: none">• Submitters not attending mediation.• Submission point is not seeking any justiciable relief and is not supported.

<p><i>Other parties' positions:</i></p> <p>AIAL agree with Council's position.</p>
<p><i>Conclusion – matters agreed / disagreed:</i></p> <p><u>All participating parties agree that submission point is not seeking any justiciable relief and should not be supported.</u></p>

3.7. AIAL, BARNZ, Auckland Council, Waka Kotahi and Kāinga Ora to have further offline discussion about extra capacity enabled within the MANA.

3.8. **All participating parties do not support proceeding to expert conferencing.**

4. PARTICIPANTS TO MEDIATION AGREEMENT

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

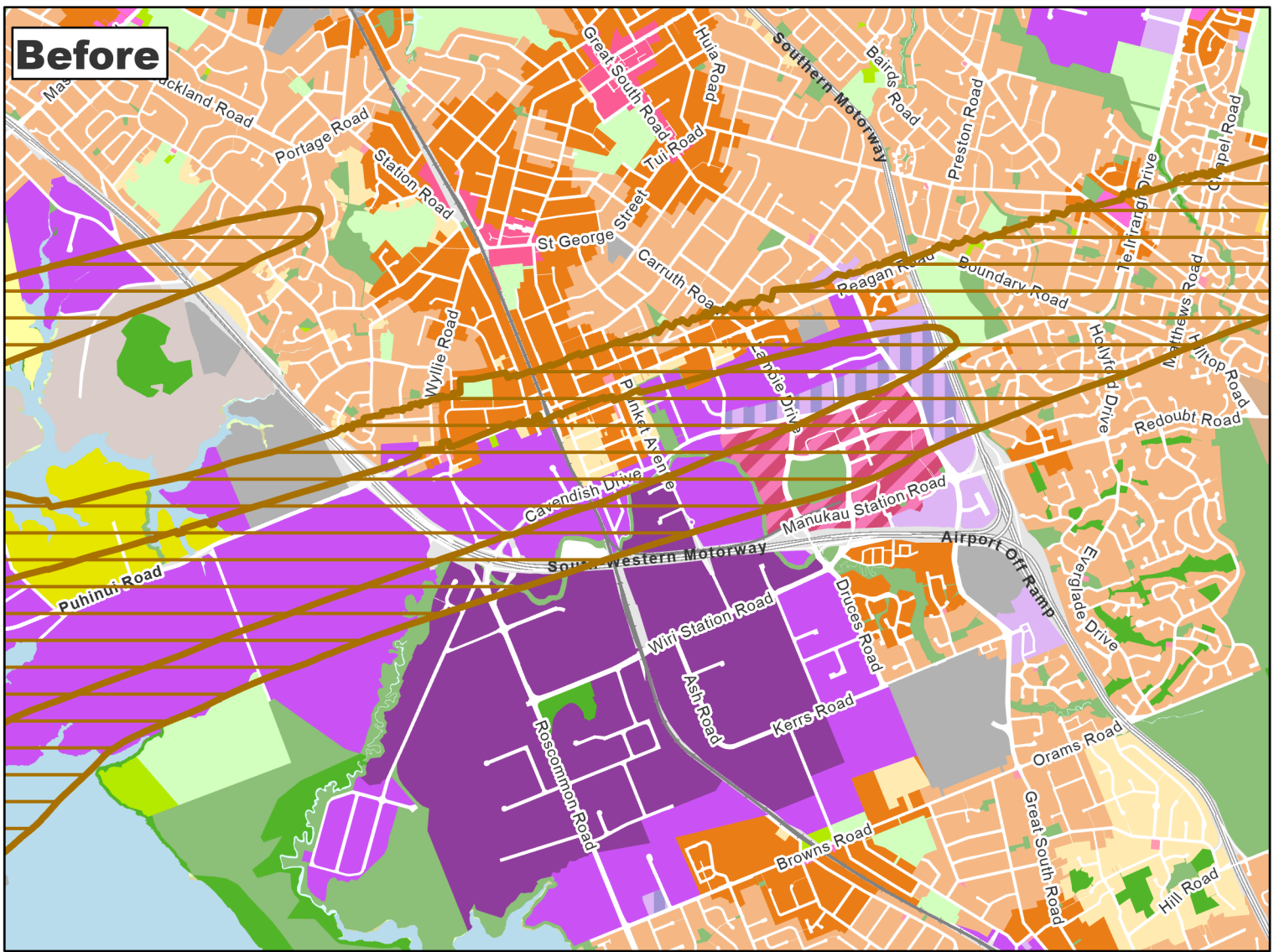
- a) They agree that the outcome(s) of the mediation are as recorded in this agreement; and
- b) They agree to the introduction of the attached information at Schedule 1; and
- c) The matters addressed in this agreement are within scope of their submission; and
- d) As this session was held online, in 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.

4.2. **Confirmed online 13/04/2023**

Name of representative	Party	Representative's confirmation (refer para 4.1)
Nicholas Lau	Auckland Council	Yes
Nigel Lloyd	Auckland Council	Yes
Matt Allan	Auckland Council	Yes
Felix Drissner-Devine	Auckland Council	Yes
Greg Osborne	Auckland International Airport	Yes, except 3.6.1.
Chris Day	Auckland International Airport	Yes, except 3.6.1.
Allison Arthur-Young	Auckland International Airport	Yes, except 3.6.1.
Andrea Marshall	Auckland International Airport	Yes, except 3.6.1.

Gillian Chappell	Board of Airline Representatives of New Zealand	Yes, except 3.6.2; 3.6.3.
Dirk Hudig	Herne Bay Residents Association	Representative attended in an observational capacity.
Rebecca Sanders	Fletcher Residential	Yes, except 3.1.1., 3.2.1., 3.2.2., 3.2.3.1., 3.2.3.2., 3.3.1., 3.4.1., 3.4.2., 3.6.1., 3.6.2., 3.6.3, and 3.7.
Brendon Liggett	Kāinga Ora	Yes, except 3.6.2; 3.6.3.
Matthew Lindenberg	Kāinga Ora	Yes, except 3.6.2; 3.6.3.
Jennifer Chivers	Kāinga Ora	Representative left early before making confirmation.
Nick Whittington	Kāinga Ora	Yes, except 3.6.2; 3.6.3.
Evan Keating	Waka Kotahi	Yes, except 3.6.2; 3.6.3.

Before



After

