

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

AND

IN THE MATTER **Intensification Planning Instruments (IPI) - Plan Change 78 to the Auckland Unitary Plan – Operative in Part (AUP-OP)**

HEARING DIRECTION (20 JUNE 2023) FROM THE INDEPENDENT HEARING PANEL

THE HEARING FOR TOPIC 009R: AIRCRAFT NOISE OVERLAY

1. In accordance with Resource Management Act 1991 (RMA) - Part 6 Clause 96 of the First Schedule and sections 34 and 34A, the Auckland Council (the Council) has appointed an Independent Hearing Panel (IHP). The IHP has been delegated to hear submissions and make recommendations to the Council on the IPI plan changes and decisions on the non IPI plan changes.
2. The IHP has received and reviewed the Joint Memorandum regarding the Hearing for Topic 009R: Aircraft Noise Overlay¹. The Directions sought were set out at section 6 of the Joint Memorandum.
3. It is the IHP's decision that: - given the potential issues associated with zoning², ensuring an efficient hearing process; and the principle of integrated planning decisions', that the hearing of the entire Topic 009R be deferred and all heard together. The IHP will establish a new hearing schedule once the outcome of the Council's variations is known.
4. Any enquiries regarding this Direction, or related matters, should be directed to the Senior Hearing Advisor, Mr Sam Otter by email at npsudhearings@aucklandcouncil.govt.nz



Greg Hill Chairperson

20 June 2023

¹ Dated 13 June 2023

² There is the potential for change due to the Council's variations on the Auckland Light Rail Corridor and its natural hazard response, as well as the other matters of the Flat Bush precinct

BEFORE THE INDEPENDENT HEARINGS PANEL

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

AND

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

**JOINT MEMORANDUM REGARDING THE HEARING FOR TOPIC 009R:
AIRCRAFT NOISE OVERLAY**

Dated: 13 June 2023

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BROOKFIELDS
LAWYERS

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 This joint memorandum is filed in response to the direction of the Independent Hearings Panel (**IHP**) dated 19 May 2023, which identified various PC78 topics as proceeding to hearing in 2023, including Hearing Topic 009R: Aircraft Noise Overlay (**Topic 009R**). Topic 009R has subsequently been allocated hearing time on 15 and 16 August 2023.¹

1.2 Topic 009R was the subject of a mediation on 13 April 2023. Discussions at mediation were very much focused on Auckland International Airport, and sections 771(e) and 770(e) of the Act relating to nationally significant infrastructure. For convenience, a copy of the mediation agreement accompanies this memorandum.

1.3 Since the IHP's direction, counsel for the Auckland Council have liaised further with those submitters who actively participated in the Topic 009R mediation concerning the scope of the impending hearing, namely:

- Auckland International Airport Limited (**AIAL**);
- Board of Airline Representatives New Zealand (**BARNZ**);
- Kāinga Ora;
- Waka Kotahi; and
- Fletcher Residential Limited.

1.4 In the course of discussions, Waka Kotahi advised that it no longer wishes to be heard in relation to its submission or attend any hearing.²

1.5 The Council, AIAL, BARNZ, Kāinga Ora and Fletcher are together referred to as "**the Parties**" in this memorandum.

1.6 Discussions have encompassed the following matters:

¹ <https://www.aucklandcouncil.govt.nz/have-your-say/hearings/types-of-hearings/npsud-independent-hearings/NPSUDSchedule/npsud-schedule-of-hearings-2023-05-30.pdf>

² Email from Louise Espin (Dentons) on behalf of Waka Kotahi dated 30 May 2023.

- (a) Whether the following matters should be included or excluded from the scope of the Topic 009R hearing:
 - (i) The designation-related aspects of the qualifying matters in the Aircraft Noise Overlay (Chapter D24);
 - (ii) The Flat Bush Precinct-related matters specified in section 3 below; and
 - (iii) Zoning-related matters.
- (b) Kāinga Ora’s suggestion that the IHP may wish to reconsider whether Topic 009R should proceed to hearing at this time.

1.7 This memorandum outlines the outcome of discussions on each matter (sections 2 to 5 below) and sets out directions sought jointly by the Parties from the IHP (section 6).

2. DESIGNATION-RELATED ASPECTS OF D24 OVERLAY

2.1 The Aircraft Noise Overlay includes some qualifying matter provisions identified in terms of sections 77I(g) and 77O(g) of the Act relating to designations. Previously, while all Topic 009 A – I Qualifying Matters were proceeding to a single joint hearing in June 2023, the Council’s intention had been to address the (largely uncontentious) designation-related aspects of the Aircraft Noise Overlay through its planning evidence for Topic 009Q.

2.2 Following further discussions, the Parties propose (subject to the IHP’s approval) that those elements of the Aircraft Noise Overlay that rely on sections 77I(g) and 77O(g) – which includes the qualifying matter provisions relating to Whenuapai airbase and Ardmore airport – be included as part of the Topic 009R hearing.

2.3 For the avoidance of doubt, the Parties also note and propose the following:

- (a) While the alternative relief sought by submitter Angela Goodwin (submitter 1401) in submission point 1401.16 relating to the “airspace designation” as a qualifying matter appears to relate to AIAL Designation 1102 (concerning Obstacle Limitation), it is drafted in such a way that it also refers to the Auckland Airport High Aircraft Noise Area (**HANA**) and Moderate Aircraft Noise Area (**MANA**). While

the Parties consider that this submission point is correctly allocated to the Topic 009Q hearing, they agree that the Parties should also be permitted to address that submission point at the Topic 009R hearing to the extent that it may be interpreted as impacting on Chapter D24. This is consistent with the outcome of the Topic 009Q mediation;³

- (b) The Parties note that submission 1069 by the New Zealand Defence Force (**NZDF**) was recently additionally allocated by the IHP to Topic 009R, as it supports the identification of the aircraft noise overlay as a qualifying matter.⁴ The Parties record that NZDF's submission should accordingly also be addressed at the Topic 009R hearing in relation to that matter.

- 2.4 This memorandum has been served on Ms Goodwin and on the NZDF's representatives, Karen Baverstock and Lucy Edwards.

3. FLAT BUSH PRECINCT-RELATED MATTERS

- 3.1 Several submission points coded to Topic 009R seek to delete the I412 Flat Bush Precinct density standards that relate to the Auckland Airport MANA.⁵
- 3.2 It was agreed at mediation that this issue should be "*discussed at the mediation for Topic 020U I412 Flat Bush Precinct and/or hearing*".⁶ Consistent with this outcome at mediation, the Parties propose that the relevant submission points relating to Flat Bush Precinct are excluded from the Topic 009R hearing and addressed in subsequent ADR and/or hearing processes relating to the Flat Bush Precinct.
- 3.3 For the avoidance of doubt, the Parties consider the site-specific issue relating to a Papatoetoe property referred to at paragraph 3.4.1 of the Topic 009R mediation agreement⁷ can proceed to hearing now.

³ <https://www.aucklandcouncil.govt.nz/HearingDocuments/pc78-%20topic-009q-%20mediation-2023-05-09.pdf>.

⁴ <https://www.aucklandcouncil.govt.nz/have-your-say/hearings/types-of-hearings/npsud-independent-hearings/NPSUDAdditionaltopicallocationdecisions/npsud-topic-allocation-nzdf.pdf>.

⁵ Kāinga Ora, 873.377, A Grey, 2273.47, and K Pan, 612.3.

⁶ Topic 009R Mediation Agreement, section 3.5.

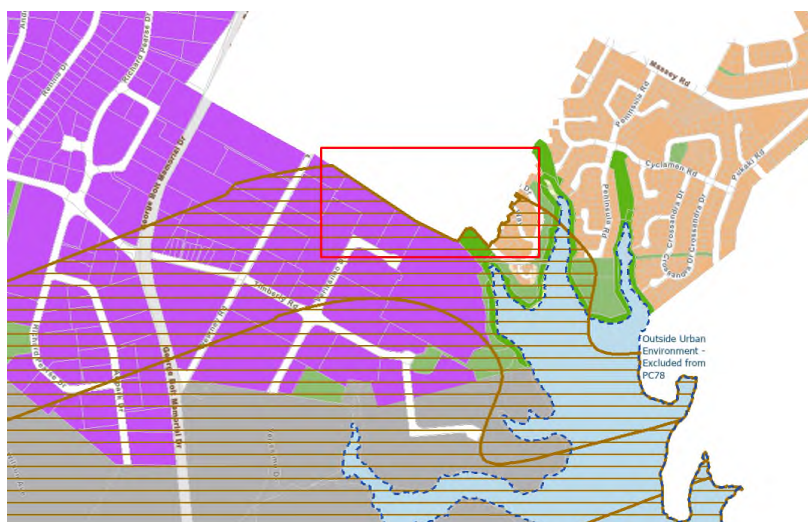
⁷ Relating to a submission point seeking to apply the density exceptions in I412 Flat Bush Precinct to a site in Papatoetoe that is not within the Flat Bush Precinct.

4. ZONING-RELATED MATTERS

4.1 Submission points relating to the appropriate zoning of land within the Auckland Airport HANA and MANA have been allocated to Topic 009R.⁸

4.2 There are several matters of context to note in relation to zoning within the HANA and MANA:

- (a) First, there are 100 properties within the MANA that are also in the Auckland Light Rail (**ALR**) Corridor (the white-out area within the red rectangle in the image below), which is proposed to be the subject of a future variation;



- (b) Second, as the IHP is aware, the Council is undertaking natural hazard and flooding investigations work and formulating a planning response to recent weather events, which may impact on zoning; and

- (c) Third, Kāinga Ora reserved its position on the appropriate zoning of the HANA at mediation on the basis that the appropriate zoning is “tied up with walkable catchments and extents which will be addressed through later alternative dispute resolution sessions”.⁹

4.3 The positions of the Parties are recorded below in relation to whether zoning matters should be included in / addressed at the Topic 009R hearing:

⁸ For example, AIAL, 870.36 and .37, BARNZ, 1083.37 and .38, Kāinga Ora, 870.46.

⁹ Topic 009R Mediation Agreement, section 3.3.1.

- (a) AIAL and BARNZ consider that zoning matters relating to the HANA and MANA should be addressed now as part of the Topic 009R hearing, regardless of ALR / stormwater matters;
- (b) Council agrees that, if Topic 009R proceeds to hearing this year, then zoning in the HANA and MANA can be addressed as part of the Topic 009R (subject to noting, for the record, the (potential) zoning implications of the matters referred to at paragraphs 4.2(a) and (b) above);
- (c) Kāinga Ora suggests that the IHP may wish to reconsider whether Topic 009R should proceed to hearing at this time, given the matters of context referred to above (a matter addressed further below). And should the IHP decide to proceed with a hearing for Topic 009R, then Kāinga Ora considers zoning matters should not be addressed in this hearing. They are more appropriately addressed in later hearings alongside walkable catchments. Given rule C1.4 of the AUP, only the overlay needs to manage issues relating to aircraft noise; underlying zoning provisions do not. In short, the most efficient approach is to decouple zoning-related matters from the Aircraft Noise Overlay rather than decouple zoning-related matters from the scope and extent of the relevant walkable catchment(s), to which they are most directly related.

5. WHETHER TO DEFER HEARING FOR TOPIC 009R

- 5.1 In the course of discussions, Kāinga Ora expressed concern at the exclusion of zoning matters, which it considered would be inefficient and not conducive to integrated decision-making. However, given the contextual matters relating to zoning referred to at paragraph 4.2 and 4.3(c) above, Kāinga Ora requests that the IHP reconsider whether this matter should proceed to hearing at this stage.
- 5.2 AIAL and BARNZ would prefer that Topic 009R proceed to a hearing now, if the Panel is agreed that the designation and zoning matters addressed above can be heard together. If the Panel considers either of those matters must be deferred to next year, AIAL and BARNZ would prefer the entire Topic 009R is deferred rather than the matters within the Topic split up.

5.3 The Council will abide the IHP's decision on Kāinga Ora's request but confirms that it is content to proceed to hearing on Topic 009R, subject to the various matters raised in this memorandum.

6. DIRECTIONS SOUGHT

6.1 For the reasons given above, the Parties respectfully seek directions in relation to the following matters:

- (a) First, a direction that the designation-related aspects of the qualifying matters for the D24 overlay, as outlined in section 2 above, be addressed at the Topic 009R hearing;
- (b) Second, a direction that the Flat Bush Precinct-related matters referred to at section 3 above be excluded from the Topic 009R hearing;
- (c) Third, a direction as to whether or not zoning matters are to be included in / addressed at the Topic 009R hearing, taking into account the matters noted in section 4 above;
- (d) Finally, in response to Kāinga Ora's request referred to in section 5 above, and taking into account the positions of other parties, whether or not the IHP wishes to proceed with the hearing for Topic 009R at this time.

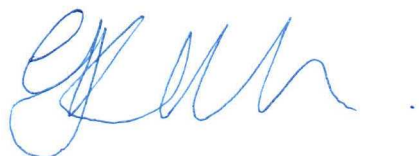
DATED the 13th day of June 2023



Matt Allan / Felix Drissner-Devine
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Allison Arthur-Young / Taylor Power
Counsel for AIAL



Gill Chappell
Counsel for BARNZ



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