

**BEFORE INDEPENDENT HEARING COMMISSIONERS AT
WELLINGTON**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER the hearing of submissions on the
Proposed Wellington City District Plan

**STATEMENT OF EVIDENCE OF MACIEJ WIKTOR LEWANDOWSKI ON BEHALF
OF PANORAMA PROPERTY LIMITED (SUBMITTER 10)**

**HEARING STREAM 7 – RURAL AND OPEN SPACE, DISTRICT WIDE MATTERS
AND SPECIAL PURPOSE ZONES**

19 MARCH 2024

PLANNING

1. INTRODUCTION

1.1 My name is Maciej (Mitch) Wiktor Lewandowski. I am a Resource Management Consultant and Director of Building Block Planning Ltd, a Wellington based planning and resource management consultancy. I have held my current role since April 2022.

Qualifications and Experience

1.2 I hold a Bachelor of Resource Studies from Lincoln University, a Master of Resource and Environmental Planning from Massey University, and a Post Graduate Diploma in Management from Massey University. I am a Full

Member of the New Zealand Planning Institute and accredited resource management commissioner.

1.3 I have 22 years' professional experience. In my current role I assist a range of private and public sector clients across a range of resource management matters.

1.4 Prior to my current role I was employed by Urban Perspectives Limited as a Resource Management Consultant for a period of 3 years. Prior to that role, I was employed by the Wellington City Council for a period of 5 years, as Principal Advisor Planning within the Council's District Plan team.

Code of conduct

1.5 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. SCOPE OF EVIDENCE

2.1 The submission from Panorama Property Ltd ("**PPL**") to the Proposed District Plan ("**PDP**") concerns the proposed zoning of 1 Upland Road, Kelburn ("**the Site**"), also known as The Skyline site.

2.2 PPL opposed the proposed Open Space zoning ("**OSZ**") applied to the Site, and considered that a Mixed Use zoning ("**MUZ**"), or other comparable zoning, was the most appropriate zoning for the Site.

2.3 My evidence:

- (a) Provides a description of the Site;
- (b) Summarises relevant background context relating to the Site;
- (c) Considers the relevant statutory framework, including the section 32 evaluation for the OSZ relevant to the Site;
- (d) Considers the response to the PPL submission through the section 42A report;
- (e) Evaluates the most appropriate zoning for the Site; and

(f) Provides a conclusion.

2.4 In preparing this evidence I have considered and reviewed:

(a) The PPL submission and further submission;

(b) The Council's section 32 evaluation for the OSZ;

(c) The Council's section 42A report;

(d) The Botanical Gardens Management Plan 2014; and

(e) The evidence of Martin Shelton on behalf of PPL.

Scope of zoning change sought

2.5 I note that the existing building on the Site crosses the boundary to the neighbouring site where the Cable Cable terminus is located. Given that the submission concerned the impact of the proposed OSZ zoning on use of the building, it is in my view important to not only amend the zoning of the Site, but also the area where the building extends to the neighbouring site. The lease area over this neighbouring site would provide for an appropriate zoning boundary.

3. STATUTORY ENVIRONMENT

3.1 When preparing a District Plan, the Council must do so (inter alia) in accordance with its functions under section 31¹, the provisions of Part 2² and its obligation to prepare and have particular regard to a section 32 evaluation³.

3.2 The Council's functions under section 31 include the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district⁴.

3.3 Zoning is a method by which the integrated management of effects can be achieved, and the most appropriate or optimal zoning for the Site is therefore a significant consideration in achieving the sustainable management purpose of the Act. The objectives through which the purpose of the Act is to be achieved stem from the zoning that is ultimately applied.

¹ Section 74(1)(a) Resource Management Act 1991.

² Section 74(1)(b) Resource Management Act 1991.

³ Sections 74(1)(d) and (e) Resource Management Act 1991.

⁴ Section 31(1)(a) Resource Management Act 1991.

4. THE SITE

- 4.1 The Site at 1 Upland Road has an area of 2841m² and contains an existing commercial building and carpark. The Site is shown as Attachment 1.
- 4.2 As relevant to the Reserves and Other Lands Disposal Act 1964, discussed further in the evidence of Mr Shelton, the Site formed part of a larger block of land, for a total area of 4645m² as follows:

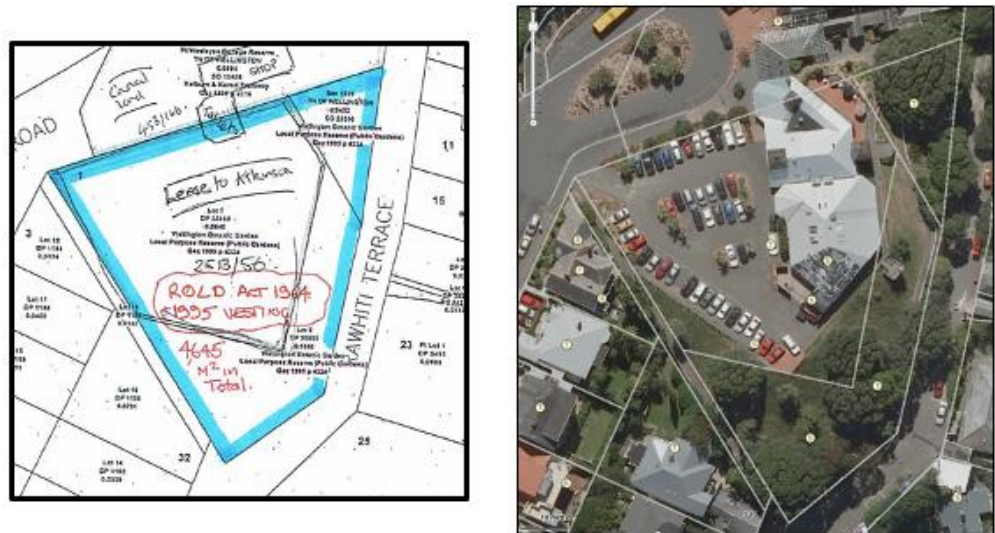


Figure 1. The Site as identified in the Reserves and Other Lands Disposal Act 1964.

- 4.3 The evidence of Mr Shelton provides a more detailed background to the Site, and PPL's involvement in it. By way of summary:
- (a) PPL maintains a ground lease over the Site until 2044;
 - (b) The lease contemplates a further 40 year extension to be firstly offered to the current lessee, if at the completion of the current lease the Council decides to continue leasing the land. This could see the Site being leased for commercial purposes until 2084;
 - (c) The Site has been leased since 1904, with the Reserves and Other Lands Disposal Act 1964 confirming the unfettered ability for the Council to lease the Site for commercial purposes, other than for Botanic Gardens use;
 - (d) The Site is currently occupied by a medical centre, pharmacy, perfumery, café/restaurant, viewing platforms and a car parking area at the frontage which is managed by a carpark operator;
 - (e) PPL was granted an Existing Use Certificate pursuant to section 139A of the Act on 22 December 2010. The certificate confirmed

that the use of the site for a function centre, licensed restaurant/café and kiosk benefitted from existing use rights;

- (f) PPL was granted resource consent on 23 September 2016 for the establishment of a medical centre and pharmacy as a non-residential activity within the Outer Residential Zone of the Operative District Plan (“ODP”); and
- (g) The Site has in the past carried a specific zoning reflective of its use. In 1984 the Site as zoned ‘Tourist A – Skyline Special Development Zone’.

Operative District Plan

- 4.4 Under the ODP, the Site is zoned Outer Residential Zone as shown in Figure 2 below, as well as Attachment 2.



Figure 2. The Site showing Outer Residential zoning from the ODP.

- 4.5 No other notations apply to the Site. Notably, the site immediately to the north (the Cable Car terminus) is also zoned Outer Residential Zone. The area surrounding the Site is zoned Open Space B, while the Botanical Gardens carry an Open Space C zoning.

5. PROPOSED DISTRICT PLAN

Zoning

- 5.1 The PDP proposed to zone the Site as Open Space Zone. This is shown in Figure 3 and as Attachment 3.

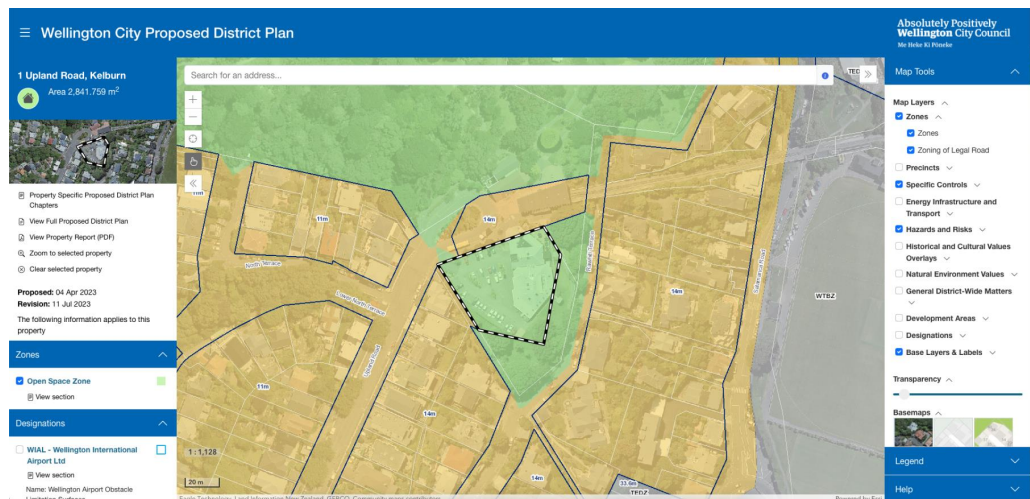


Figure 3. The Site showing Open Space zoning from the PDP.

5.2 Of interest is the proposed change to the zoning of the Site from Outer Residential Zone to OSZ, while the site to the north containing the Cable Car terminus has retained a residential zoning of Medium Density Residential Zone. This creates a ‘break’ between the zoning of the Site and that of the Botanical Gardens, with the intervening parcel being zoned Medium Density Residential Zone.

Section 32 Evaluation

5.3 I have reviewed the section 32 evaluation prepared for the OSZ, with a particular focus on zoning changes from the ODP to the PDP, and on any specific reference to the Site itself. My purpose in reviewing the section 32 evaluation was to better understand why an Open Space zoning was selected for this Site, and to understand what other options may have been considered.

5.4 I have been unable to find any specific consideration of the Site in the section 32 evaluation. I have also been unable to find any evaluation of alternatives beyond a generic evaluation of the status quo. However, even the evaluation of the status quo focussed on the ODP Open Space zone provisions, rather than the status quo in terms of the specific ODP zoning that was applicable.

5.5 This is a significant flaw in how the Site should have been evaluated, both in terms of what is the status quo zoning, but also in terms of what zoning (and therefore objectives) is the most appropriate in order to achieve the purpose of the Act. This should take into account both the current use of the Site, and the use of the Site until at least 2044 (if not longer).

5.6 It is not sufficient to assume (as it appears the Council position has) that a reserve classification necessitates an Open Space zoning. It is equally

important to consider existing land use (and its likely continuity) and any other site particulars (such as the Reserves and Other Lands Disposal Act 1964) that inform an appropriate zoning.

- 5.7 When those factors are considered, it is my view that the OSZ is not the most appropriate zoning for the Site. My view is further reinforced when the provisions of the OSZ are considered.

OSZ Provisions

- 5.8 The Introduction to the OSZ in the PDP provides the following description of the zone (inter alia);

The Open Space Zone caters for both passive and active recreational activities, with limited associated facilities buildings and structure. Open spaces within this Zone are primarily recreation reserve...

...Buildings are generally small in scale and ancillary to the recreational use, such as toilet facilities, buildings for maintenance and associated storage, small pavilions and clubrooms....

...In assessing resource consent applications required under the District Plan, the Council will have regard to the relevant reserve management plan for the area. Reserve management plans that are relevant to areas within the Open Space zone, include:

...

3. Botanic Gardens 2014.

- 5.9 Objective OSZ-O1 then sets out the purpose of the zone. The objective states:

OSZ-O1 Purpose

Open space areas are predominately used by the public for a wide range of passive and active recreation activities, and may accommodate open space community activities, in such a way that maintains, and where possible, enhances the predominant character and amenity values of the Open Space Zone, which include:

1. An open and spacious character;
2. A low level of built form and development; and
3. Buildings and structures are predominately ancillary to recreation or conservation activities.

5.10 Policy OSZ-P1 then addresses enabled activities:

OSZ-P1 Enabled activities

Enable a wide range of recreational activities, and a limited range of other activities that are compatible with the predominant purpose, character and amenity of the Open Space Zone, while ensuring that their scale and intensity is appropriate.

5.11 Policy OSZ-P2 provides for small scale mobile commercial activities. And Policy OSZ-P3 addresses potentially compatible activities:

OSZ-P3 Potentially compatible activities

Only allow other activities to establish where it can be demonstrated that they are compatible with the purpose, character and amenity values of the Zone, having regard to whether:

1. The proposal is consistent with the relevant reserve management plan for the site;
2. The activity is compatible with or supports activities anticipated in the Zone, or will enhance the open space values, or social connection, or there is a functional need or operational need for a location at that site;
3. The activity maximises the use of existing buildings; and
4. Any reverse sensitivity effects can be appropriately managed.

5.12 Policies OSZ-P4 and OSZ-P5 relate to buildings. Policy OSZ-P4 enables buildings that are small in scale and necessary to maintain or enhance the public's ability to use and enjoy open space for recreation or conservation activities. Policy OSZ-P5 addresses potentially compatible buildings and structures:

OSZ-P5 Potentially compatible buildings and structures

Only allow other buildings and structures to establish where it can be demonstrated that they will maintain or enhance the character and amenity values of the Zone, having regard to whether:

1. The development is consistent with the relevant reserve management plan for the site;
2. The building or structure supports or is complementary to permitted activities, or there is a functional need for a location at that site;

3. The siting, design and external appearance of the buildings and structures is compatible with the open space area in which they will be located;

4. Streetscape amenity will be maintained or enhanced;

5. There are opportunities to locate or cluster buildings to minimise the loss of spaciousness;

6. The building design maximises opportunities for multi-functional recreational use;

7. Any adverse residential amenity effects will be minimised;

8. Hard surfacing is minimised, and native vegetation and visually prominent trees are retained where practicable; and

9. Public accessibility will be maintained or enhanced, including through connections to walkways, cycleways and pedestrian access points.

- 5.13 Taken together, the policy framework that is being established for the OSZ is focussed on enabling recreational activities, limiting ancillary activities, achieving a low level of built form, and ensuring buildings and structures are ancillary to the recreational or conservation activities. This intent is at odds with the established use of the Site, and with the use of the Site going forward until at least 2044.
- 5.14 The policy framework is of course carried over into the proposed rules. Of principal relevance to PPL, any other activity that is not provided for as a permitted activity requires resource consent as a discretionary activity. The listed permitted activities relate, in broad terms, to recreation and conservation activities. There is no permitted commercial use provided for, save for mobile commercial activities ancillary to permitted recreation or conservation activities.
- 5.15 The effect of that is that any new activity, or expansion of an existing activity, will in all likelihood trigger a resource consent requirement for a discretionary activity. That activity will need to be assessed against a policy framework that is at odds with the use of the Site as provided for in the lease PPL holds until at least 2044. That creates a regulatory impost on PPL in providing for the sustainable management of the Site.

6. SECTION 42A REPORT

6.1 The section 42A report summarises the outcome sought by PPL at paragraph 84. The section 42A report then provides a solitary paragraph of analysis at paragraph 127, where Mr Sirl states:

In my opinion, the status and management of the land is inconsistent with the submitter's position that the existing activity is not associated with the Botanic Gardens. I note the submitter's concern that the activity within the existing building is not consistent with the objectives and policies of the OSZ. However, as the current use of the building commenced prior to the PDP becoming operative, the activity can continue to operate and is not required to comply with the PDP OSZ provisions.

6.2 Mr Sirl in turn recommends that the relief sought by PPL is rejected, and that the OSZ of the notified PDP be confirmed.

6.3 Mr Sirl has raised the status and management of the land as being inconsistent with PPL's submission that the existing activity is not associated with the Botanic Gardens. The evidence of Mr Shelton has outlined in detail the background to the Site and its current status.

6.4 There are two elements to Mr Sirl's position. Firstly, the status of the land appears to refer to the land being classified as reserve. While Mr Sirl is of course correct as to that status, he ignores the effect of the Reserves and Other Lands Disposal Act 1964 which provides for the commercial use of the Site, notwithstanding the reserve status of the land. As a result, he also appears to set aside the existing lease that PPL holds, for the commercial use of the Site, until at least 2044.

6.5 The second element of Mr Sirl's position is the management of the Site. Here, I believe, he is referring to the Botanic Gardens of Wellington Management Plan 2014. Having reviewed that document, the sole reference I can find to the Site is in 'Appendix 1: Land Schedules' which lists all of the land areas that are subject to the Management Plan.

6.6 There is no other specific reference to the Site that I have been able to locate and certainly no reference in the policies relating to its management. The silence of the Management Plan in respect of the Site is also a relevant factor when considering whether a proposal will be judged to be consistent with Policy OSZ-P3(1) for example. This reinforces the inappropriateness of the OSZ provisions.

6.7 In my view, Mr Sirl's position sets up a situation where the Site is left reliant on existing use rights, and the resource consent in place for the non-residential use of a medical centre⁵. Any change in activity, or in the scale of an existing activity, will be left to be considered under the provisions of the proposed OSZ. In my view the provisions of the OSZ do not recognise the existing uses of this Site, nor do they recognise the key distinction of this Site – that it has a long history of being leased by the Council for commercial purposes.

6.8 It is also important to acknowledge that the existing lease expires in 2044. At that point, the lease may be extended for another 40 year term, which could see it leased till 2084. Both of these periods represent multiple District Plan cycles. Should the Council not continue with the lease at 2044, then the Council would then be free to zone the Site (either through a whole of plan review, or a bespoke plan change) for its historic, original purpose which may result in an Open Space zoning. Such an approach would then zone the Site for its intended use, which is precisely the approach that PPL is seeking at this juncture.

7. APPROPRIATE ZONING AND SECTION 32AA EVALUATION

7.1 The PPL submission has sought that the MUZ, or an appropriate equivalent zone is implemented in place of the OSZ.

7.2 The various centre zones are derived from the centres hierarchy, contained in Objective CEKP-O2. Neighbourhood centres sit at the bottom of the hierarchy, followed by local centres, metropolitan centres and the city centre zone at the top of the hierarchy. The MUZ sits outside of this hierarchy but provides for a similar mixture of activities.

7.3 In considering the most appropriate zoning, it is useful to firstly consider the MUZ. The PDP introduction to the zone states:

The purpose of the Mixed Use Zone is to provide for a compatible mixture of residential, commercial, light industrial, recreation and/or community activities. It continues the long-standing approach of enabling a wide range of compatible activities in Wellington's suburban employment areas. The Zone covers areas where people can live, work, play, and conduct business but with fewer day-to-day conveniences than may be available in the City Centre Zone and other Centres.

⁵ Obtained under the Outer Residential zoning of the ODP.

- 7.4 By comparison, the introduction to the Neighbourhood Centre Zone (“**NCZ**”) provides the following description:

The purpose of the Neighbourhood Centre Zone is to provide for predominantly for small-scale commercial activities and community activities that service the needs of the immediate residential neighbourhood and support the role and function of other Centre Zones in the hierarchy of centres.

The Neighbourhood Centre Zone includes a range of small commercial centres across Wellington that provide a neighbourhood function in the City’s hierarchy of centres. The Neighbourhood Centre Zone is the lowest in the hierarchy due to its make-up of small spot zones for very small commercial clusters. Neighbourhood centres service the surrounding residential neighbourhood and offer small-scale convenience-based retail for day-to-day needs. These Centres tend to have easy pedestrian access for locals and have some community services and small-scale offices.

- 7.5 And lastly, the introduction to the Local Centre Zone (“**LCZ**”) provides the following description:

The purpose of the Local Centre Zone is to provide for a range commercial, community, recreation and residential activities. These centres service the needs of the surrounding residential catchment and neighbouring suburbs. Local centres support the role and function of other Centre Zones in the hierarchy of centres.

The Local Centre Zone is distributed across the city and will play a crucial role in accommodating and servicing the needs of the existing and forecast population growth. The Medium Density and High Density Residential Zone surrounds most local centres. These zones enable intensification due to the capacity of the area to absorb more housing with enablers of growth such as walkability, access to public transport, community facilities and services.

- 7.6 Taking into account the location and use of the Site, and considering those factors against the descriptions of the three zones, I consider that the NCZ would be the most appropriate zoning for the Site.

- 7.7 The NCZ enables a range of activities, as outlined in Policy NCZ-P2, that more accurately reflect the existing use of the Site, and potential future activities, including commercial activities. It will therefore provide for the ongoing commercial use of the Site until at least 2044, consistent with the lease. Resultingly, I consider the the NCZ is the most appropriate way to achieve the purpose of the Act in terms of section 32(1)(a).

8. CONCLUSION

- 8.1 In my view, the OSZ proposed for the Site in the PDP, and the associated provisions, are not the most appropriate way to achieve the purpose of the Act. The OSZ is unduly restrictive of existing and potential uses of the Site, which is leased for commercial purposes until at least 2044.
- 8.2 Having considered a range of potential zoning options, I consider that the NCZ is the most appropriate zoning having regard to the size and function of the Site and its existing and likely future uses.
- 8.3 The proposed NCZ zoning does not conflict with the reserve status of the Site and is able to be changed in future should the Council no longer wish to lease the Site, and to utilise it for reserve purposes.
- 8.4 On that basis, I consider that the NCZ is the most appropriate zoning for the Site in order to achieve the sustainable management purpose of the Act.



Mitch Lewandowski

5 March 2024

Attachment 1

Wellington City Proposed District Plan

Absolutely Positively Wellington City Council
Me Heke Ki Pōneke

1 Upland Road, Kelburn

Area 2,841.759 m²

- Property Specific Proposed District Plan Chapters
- View Full Proposed District Plan
- View Property Report (PDF)
- Zoom to selected property
- Clear selected property

Proposed: 04 Apr 2023
Revision: 11 Jul 2023

The following information applies to this property

Zones

- Open Space Zone
- View section

Designations

- WIAL - Wellington International Airport Ltd
- View section

Name: Wellington Airport Obstacle Limitation Surfaces

Search for an address...

Map Tools

Map Layers

- Zones
- Precincts
- Specific Controls
- Energy Infrastructure and Transport
- Hazards and Risks
- Historical and Cultural Values Overlays
- Natural Environment Values
- General District-Wide Matters
- Development Areas
- Designations
- Base Layers & Labels

Transparency

Slider control for transparency

Basemaps

- Aerials
- Grey Canvas
- Community

Legend

Legend for map layers

Help

Help for map navigation

Eagle Technology, Land Information New Zealand, GEBCO, Community maps contributors

Powered by Esri

Attachment 2 – ODP Zoning

District Plan

Wellington City Council

1 Upland Road, Kelburn
Area 2,841.759 m²

Search for an address...

Map Tools
Legend

- Heritage Area Lines
 - Heritage Areas
 - Heritage Sea Walls
- Maori Precinct Boundary
- Maori Sites
- Maori Tracks
- Karori Lighthouse
- Heritage Areas
- Heritage Objects
- Heritage Buildings
- Heritage Trees
- Old Coach Rd
- Character Area Boundary
 - Te Aro Corridor
 - Lambton Harbour Area
 - Operational Port Area
 - Port Redevelopment Area

Operative: 04 Apr 2023
Revision: 11 Jul 2023
[Change](#)

The following information applies to this property

District Plan

Outer Residential

[View section](#)

1:1,128
20 m

Map showing zoning and heritage areas around Upland Road, Kelburn. The map includes labels for North Terrace, Terrace B, and Salamanca Road. A yellow dashed line outlines a specific property area. The map is overlaid with various zoning and heritage boundaries.

Eagle Technology, Land Information New Zealand, GEBCO, Community maps contributors | WCC
Powered by Esri


Attachment 3 – PDP Zoning

Wellington City Proposed District Plan

Absolutely Positively Wellington City Council
Me Heke Ki Pōneke

1 Upland Road, Kelburn

Area 2,841,759 m²



- Property Specific Proposed District Plan Chapters
- View Full Proposed District Plan
- View Property Report (PDF)
- Zoom to selected property
- Clear selected property

Proposed: 04 Apr 2023
Revision: 11 Jul 2023
The following information applies to this property

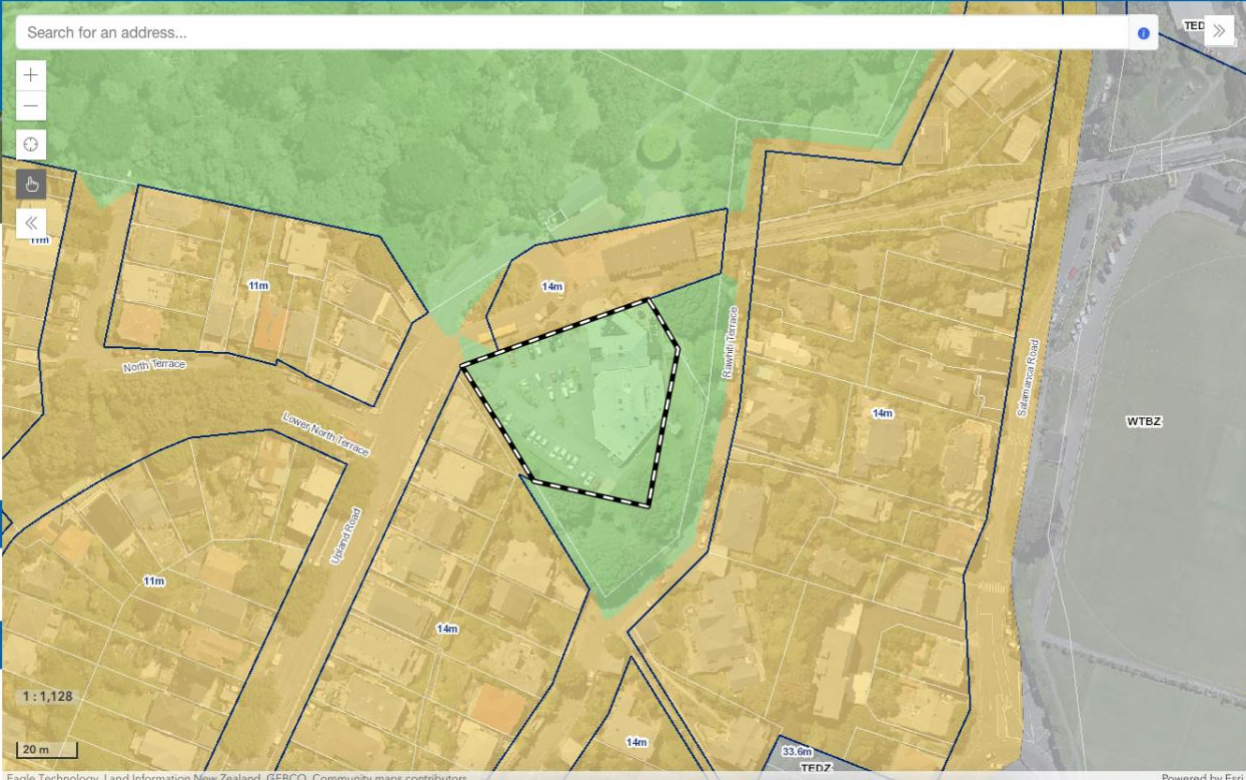
Zones

- Open Space Zone
- View section

Designations

- WIAL - Wellington International Airport Ltd
- View section
- Name: Wellington Airport Obstacle Limitation Surfaces

Search for an address... TEC




Map Tools

Map Layers

- Zones
 - Zones
 - Zoning of Legal Road
- Precincts
- Specific Controls
 - Energy Infrastructure and Transport
- Hazards and Risks
 - Historical and Cultural Values Overlays
 - Natural Environment Values
 - General District-Wide Matters
- Development Areas
- Designations
- Base Layers & Labels

Transparency

Basemaps



Legend

Help

1 : 1,128
20 m
33.0m TEDZ
Powered by Esri