

**Before Independent Hearing Commissioners
Wellington City Council**

**I Mua Ngā Kaikōmihana Whakawā Motuhake
Te Kaunihera o Pōneke**

In the matter of **The Wellington City Proposed District
Plan**

**Legal submissions on behalf of
Wellington City Council
Hearing Stream 7**

15 March 2023



Counsel
Nick Whittington
Hawkestone Chambers
PO Box 12091, Thorndon,
Wellington 6144
+64 21 861 814
nick.whittington@hawkestone.co.nz

Legal submissions on behalf of Wellington City Council

Hearing Stream 7

1 1 Upland Road

- 1.1 These submissions address the legal framework governing the management of 1 Upland Road to assist Commissioners to determine the appropriate zoning for the site. I note that the application of other legislation affecting the lawful use of the site is a relevant consideration, but not a determinative one, applying to that issue. The issue for Commissioners is what is the most appropriate, in the sense of efficient and effective, zoning under s 32.
- 1.2 I first set out the history of legislation relating to the site. I then offer my interpretation of the legislation informing the current status of the site.

2 History of legislation relating to the site

- 2.1 Section 6 of the Wellington Botanic Garden Vesting Act 1891 (which is still in force) provides that the Botanic Garden (which included land from which 1 Upland Road derives its title) “shall at all times hereafter be kept and maintained by the [Wellington City Council] as and for the purposes of a Botanic Garden, and for no other purpose.”
- 2.2 Section 14(1) of the Reserves and Other Lands Disposal Act 1964 (also still in force) provides:
- Notwithstanding any of the provisions of the Wellington Botanic Garden Vesting Act 1891, or of the Municipal Corporations Act 1954, or any other Act or rule of law relating to the leasing, letting, or licensing of land, buildings, and installations, the Corporation may by private treaty or otherwise lease, or let, or licence all or any part of the land described in subsection (3) or any buildings or parts of buildings or installations or parts thereof erected thereon or to be erected upon such terms and conditions as the Corporation thinks fit.
- 2.3 Finally, there is the Reserves Act 1977, which generally provides for the administration of reserve land in New Zealand. Section 16 imposes on a local authority an obligation to classify all reserves under its control as one of the seven categories provided for. I understand that in 1994 the Council declared the site to be a local purpose reserve (public gardens).

2.4 As a local purpose reserve, the land may be used in accordance with any management plan in place under the Reserves Act, and in accordance with the provisions applying to local purpose reserves. This includes s 61, which authorises the Council to “do such things as it may from time to time consider necessary or desirable for the proper and beneficial management, administration, and control of the reserve and for the use of the reserve for the purpose specified in its classification”. The Council may lease the land either under the Public Bodies Leases Act 1969 or for the following purposes: community building, playcentre, kindergarten, plunket room (or other like purposes), or farming, grazing, cultivation, cropping, (or other like purposes).

3 Reconciling this legislation

3.1 Under s 5(2) of the Reserves Act, the Act’s application “to any reserve shall be read subject to any [other] Act (whether passed before or after the commencement of [the Reserves] Act)”.

3.2 In *The Terawhiti Licensing Trust v Wellington City Council*,¹ which related specifically to the site, Davison CJ identified s 5(2) and determined that the general provisions of the Reserves Act give way to s 14 of the Reserves and Other Lands Disposal Act given that it specifically applies to the site. As to s 14, the Judge concluded that “the Council can lease [the site] upon such terms and conditions as it thinks fit. There is no restriction that it can lease [the site] only for Reserve purposes upon such terms and conditions as it thinks fit. And later in the judgment he said “although the land is held by the Council as a Reserve, it is desirable that the Council should have power to lease it without restriction of having to use it only for the purposes of a Reserve.” He concluded “The Council is not limited to leasing for Reserve purposes.”

3.3 I attach a copy of the case, helpfully provided to me by Mr Gordon who acts for Panorama.

4 Conclusion

4.1 Based on this decision, I conclude that while the site is local purpose reserve, the usual limitations on use of such land under the Reserves Act

¹ *The Terawhiti Licensing Trust v Wellington City Council* HC Wellington M250/80 26 September 1980.

do not apply. The Council may choose to apply those restrictions, but I understand from Mr Shelton's evidence that there is a ground lease in place which, it seems, does not restrict the use of the land in that way, and which may continue until 2044, and possibly beyond.

Date: 15 March 2024



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Nick Whittington
Counsel for the Wellington City Council