

**Before the Independent Hearings Panel  
At Wellington City Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** Hearing submissions and further submissions on the  
Proposed Wellington City District Plan

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**Right of reply of Joe Jeffries on the Airport Zone and Corrections Zone on  
behalf of Wellington City Council**

**Date: 28 March 2024**

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## **INTRODUCTION**

- 1 My full name is Joe Jeffries. I am employed as a Principal Planning Advisor in the District Plan Team at Wellington City Council.
- 2 I have prepared this Reply in respect of the matters raised in Hearing Stream 6 on the Airport and Corrections Zones.
- 3 The Airport Zone section 42A report sets out my qualifications and experience as an expert in planning.
- 4 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.

## **SCOPE OF REPLY**

- 5 This reply follows Hearing Stream 6 held between 20 and 27 February 2024. It responds to the request for comment/information from the reporting officer on several issues related to the Airport and Corrections Zones raised by the Hearings Panel in Minute 44: Stream 6 hearing Follow Up.
- 6 This reply also addresses an additional matter regarding the residential activities in the Corrections Zone where I consider further clarification is useful.

## **RESPONSE TO MINUTE 44**

### **AIRPORT ZONE**

***Can the Reporting Officer please advise if he agrees with Ms O'Sullivan that renumbered AIRPZ-S3.2 is more restrictive of activities in the South Miramar Precinct than the relevant designation? If that is the case, and if the Hearing Panel wishes to align the Plan provisions with the designation, how would the Reporting Officer suggest we might do that?***

7 I agree that there is a subtle difference between the wording of AIPRZ-S3.2 and the relevant designation which addresses activities in the Miramar South area. However, I do not agree that this difference makes AIRPZ-S3.2 materially more restrictive of activities than the designation.

8 AIPRZ-S3.2 states:

Activities in the Miramar South precinct shall be limited to:

- a. Flight catering;
- b. Rental car storage, maintenance and grooming;
- c. Freight reception, storage and transfer to/from air;
- d. Ground Service Equipment (GSE) storage; and
- e. Associated carparking, signage, service infrastructure and landscaping;

9 The designation for the Miramar South areas states:

The land to which this designation applies (“the Designated Area” or “the Site”) may be used for activities for the operation of Wellington International Airport (“the Airport”) including:

- Flight catering;
- Rental car storage, maintenance and grooming;
- Freight reception, storage and transfer to/from air;
- Ground Service Equipment (GSE) storage; and
- Associated carparking, signage, service infrastructure and landscaping.

For the avoidance of doubt Aircraft Operations, runways, traffic control structures, aircraft hangars, and Large Format Retail shall not be permitted within the Designated Area.

- 10 The designation provides a non-exhaustive list of activities which the land *may* be used for. It also provides a list of activities which “shall not be permitted within the designation area”. By contrast AIRPZ-S3.2 states that activities in the precinct “shall be limited” to those specified.
- 11 The designation purpose is therefore not identical to AIRPZ-S3.2. I generally agree with Ms O’Sullivan that:
- the purpose of the designation is therefore to provide for “activities for the operation of Wellington International Airport”, with the potential range of activities able to establish including, but not been (sic) limited to those set in the listed bullet points.
- 12 However, while I agree that the designation purpose is not explicitly exhaustive (“including” leaves the possibility that other matters are provided for) it also does not *explicitly* provide for any activities outside the specified list. Additionally, under AIRPZ-S3.2 it is possible to undertake activities outside the specified list as a Discretionary activity.
- 13 In my view AIRPZ-S3.2 is therefore generally consistent with the designation purpose, and the case has not been made to explicitly enable a wider range of activities by deleting AIRPZ-S3.2. The deletion of AIRPZ-S3.2 would have the effect of removing any limitations on the range of *Airport related* and *Non-airport* activities provided for as Restricted Discretionary activities under rules AIRPZ-R2 and AIRPZ-R3, other than the retail restrictions which apply through AIRPZ-S3.5.
- 14 Accordingly, I recommend no change of position on AIRPZ-S3.2 to that set out in the s42A report and JWS.

***What is the Reporting Officer’s view of Ms O’Sullivan’s suggestion of a change in terminology to describe the identified ‘Precincts’ as ‘Specific Control Areas’?***

- 15 I have considered a change in terminology to describe the identified ‘Precincts’ as ‘Specific Control Areas’ and I prefer to retain ‘Precincts’ to describe the Airport Zone sub areas.

- 16 The national planning standards describes the function of ‘Precincts’ in District Plans as:
- A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s).*
- 17 The National Planning Standards also states that “precincts that apply to only one zone must be located within the relevant zone chapter or section.”
- 18 The National Planning Standards describes the function of ‘Specific controls’ as:
- A specific control spatially identifies where a site or area has provisions that are different from other spatial layers or district-wide provisions that apply to that site or area (for example where verandah requirements apply, or where a different maximum height on a particular site applies).
- 19 The PDP repeats the above descriptions of ‘Precincts’ and Specific controls’ in the ‘Relationships Between Spatial Layers’ section of Part 1.
- 20 Other than the descriptions above, the National Planning Standards do not prescribe or limit the use of ‘Precincts’ in District Plans. Notably, there is nothing in the National Planning Standards that requires every precinct in a District Plan to include objectives and policies. The Precinct mechanism can therefore be used to modify the zone to any extent necessary. Accordingly, I consider that the approach to the use of Precincts in the Airport Zone of the PDP is consistent with the National Planning Standards.
- 21 In my view the use of Precincts in the Airport Zone is also consistent with the general approach to the use of Precincts in the PDP as set out in Part 1 of the PDP.

22 I also consider that ‘Precincts’ more appropriately applies to the Airport Zone sub-areas and provides greater clarity and concision as a handle than ‘Specific Control Areas’. In my view the ‘Specific Control Areas’ are intended to modify a single provision, not a package of provisions in an identified area like the Airport Zone Precincts. For example, the Specific Control mechanism is used in the PDP to apply active frontage provisions to specific spatially identified areas.

*Can the Reporting Officer please comment on the additional changes Ms O’Sullivan suggested in her revised Chapter provisions that were not the subject of conferencing;*

23 Ms O’Sullivan has recommended additional amendments to the following provisions that were not the subject of conferencing<sup>1</sup>:

Introduction  
AIRPZ-O2  
AIRPZ-O5  
AIRPZ-P5  
AIRPZ-R2  
AIRPZ-R4  
AIRPZ-S2

24 I support Ms O’Sullivan’s recommended amendments to the AIRPZ-P5, AIRPZ-R1, AIRPZ-R2, AIRPZ-R4, and AIRPZ-S2.

25 I support most of Ms O’Sullivan’s recommended amendments to the introduction, with some minor exceptions that I do not consider improve clarity.

26 I agree with the reasoning provided by Ms O’Sullivan for these amendments to the introduction, AIRPZ-P5, AIRPZ-R2, AIRPZ-R4, and AIRPZ-S2. I consider that these amendments improve clarity, improve accuracy, and remove superfluous wording and irrelevant cross references.

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<sup>1</sup> Kirsty O’Sullivan, Written Response to Panel Minute 44, 13 March 2024.

- 27 For clarity I note the following:
- 27.1 the additional amendments to AIRPZ-R2 remove references to AIRPZ-S3 in relation to the Terminal Precinct as that standard is not relevant to that precinct.
- 27.2 the additional amendments to the matters of control and discretion in AIRPZ-R4 remove references to aspects of construction effects that are addressed by other parts of the plan and instead relies on “construction activity” as an umbrella term.
- 27.3 the additional amendments to AIRPZ-S2 remove the wording “a roof height greater than...” from the height standard for buildings and structures as some structures may not have a roof. This change improves the clarity of the standard but does not otherwise change the outcome of built form.
- 28 I support the intent of Ms O’Sullivan’s recommended amendments to AIPRZ-O2, and AIPRZ-O5, and the reasoning provided, however I have recommended slightly different wording to that put forward by Ms O’Sullivan. I consider that my recommended wording provides greater clarity. In particular, in AIRPZ-O5 I prefer to refer to “uptake of low-carbon land transport options” rather than “low-carbon transport operations” as the latter does not accurately describe active transport modes.
- 29 I have also recommended an additional change to AIRPZ-R3 to make Non-airport activities a Discretionary activity in the Airside precinct rather than Restricted Discretionary as they would be under the JWS version. This returns the activity status for Non-airport activities in the Airside precinct to that in the notified PDP. In my view a Restricted Discretionary activity for Non-airport activities would be inappropriate in the Airside precinct and would be inconsistent with the Discretionary status for Airport related activities under AIRPZ-R2. I note that this

amendment is a departure from the JWS, and I am not aware of Ms O'Sullivan's view on it.

- 30 My full set of tracked changed recommended amendments to the Airport Zone are set out in Appendix 1.

***Can the Reporting Officer please provide a table of activity status based on the three types of activities in the Chapter (Airport Activities, Airport Related Activities and Non Airport Activities);***

- 31 A table of activity status based on the three types of activities in the Airport Zone is provided at Appendix 2. Note that this is a summary of the Airport Zone provisions intended to provide an overview. It may use wording that differs from the actual provisions.

***Can the Reporting Officer please comment on the appropriateness of cross reference to the 'Intent' of the Centres and Mixed Use Design Guide, given that that Intent refers only to the Centres and Mixed Use Zones, and what alternatives are available to provide guidance on design issues if the CMUDG is not suitable;***

- 32 I consider that the reference to the *intent* of the Centres and Mixed Use Design Guide (CMUDG) as included in the s42A amended version of AIRPZ-P4 is appropriate, provided an amendment is made to the design guide to provide an explicit link with the Airport Zone to remove any potential ambiguity.

- 33 I stated the following on this issue in my supplementary statement of evidence:

In my view the Centres and Mixed Use Design Guide contains generic design principles that are broad enough to appropriately apply to the Airport Zone without inappropriately constraining development to specific design solutions that do not fit the unique requirements of the Airport Zone. I therefore consider that reference to "the intent of the Centres and Mixed Use Design Guides" is appropriate.

34 I stand by the above statement that the CMUDG contains generic design principles that are broad enough to appropriately apply to the Airport Zone without inappropriately constraining development to specific design solutions that do not fit the unique requirements of the Airport Zone.

35 However, I acknowledge that the *Intent* section of the CMUDG does not provide an explicit link to the Airport Zone. To address this, I recommend inserting a reference to the Airport Zone in the Application of this Guide Section on page 1 of the CMUDG as follows:

#### **Application of this Guide**

The Centres and Mixed Use Design Guide generally applies to new development that requires a resource consent in the following zones and development areas:

- Centre Zones
- Commercial Zone
- Mixed Use Zone
- Hospital Zone
- Tertiary Education Zone
- Airport Zone
- Waterfront Zone
- Kilbirnie Bus Barns Development Area
- Linconshire Farm Development Area
- Upper Stebbings and Glenside West Development Area

36 I note that this is consistent with the approach to the design guides in the Hospital and Tertiary Education Zones. In my view these areas are analogous to the Airport Zone in being Special Purpose Zones which have unique design requirements that are distinct from the other Centres and Mixed Use Zones. However, in the cases of the Hospital, Tertiary Education, and Airport Zones it is appropriate to apply the generic design principles contained within the CMUDG without unduly constraining the specific design requirements of these areas.

- 37 The alternatives available to provide guidance on design issues without reference to the CMUDG are:
1. To rely on the reference to the New Zealand Urban Design Protocol in AIRPZ-P4 as notified; or
  2. To delete clause 2 of AIRPZ-P4 entirely and to rely on the reference to “Any landscape plan, urban design principles or statement, or integrated design management plan, prepared for an Airport precinct” contained within clause 3 of AIRPZ-P4.
- 38 As stated in the Airport Zone s42A report, I do not support retention of reference to the New Zealand Urban Design Protocol as I consider this is an inefficient means of achieving quality urban design outcomes and is inconsistent with the approach taken to addressing urban design in the wider PDP. This would require incorporation by reference of a document outside the District Plan which may be subject to change or revocation, and which WCC has no control over.
- 39 I also do not support deleting clause 2 of AIRPZ-P4 and relying on clause 3. In my view this does not provide sufficient certainty around urban design outcomes as there may not be a relevant landscape plan, urban design principles or statement, or integrated design management plan in place, or these documents which sit outside the District Plan may be changed or deleted.

***Can the Reporting Officer please confirm whether WIAL's submissions regarding the overlap between the Airport Zone and the Coastal Environment Overlay have been allocated to Stream 8;***

- 40 I can confirm that this submission point will be addressed through the coastal environment topic in hearing stream 8.

***Can the Reporting Officer please provide a Section 32AA evaluation of changes to the chapter he is recommending from the notified version to the extent that that has not already been provided;***

- 41 I have recommended amendments to the following provisions through this right of reply and the joint witness statement, dated 26 February 2024, that have not previously been evaluated under section 32AA: the introduction, AIRPZ-O2, AIRPZ-O5, AIRPZ-P5, AIRPZ-R2, AIRPZ-R3, AIRPZ-R4, AIRPZ-S2, and AIRPZ-S3. A Section 32AA evaluation of these amendments is provided below. For reference, the full collated and tracked recommended amendments to the Airport Zone are set out at Appendix 1.
- 42 This Section 32AA further evaluation is high-level, corresponding to the small scale and significance of the recommended changes. The recommended changes are considered small scale and significance because they generally improve the functionality of the zone provisions without substantively changing the outcomes sought. No detailed cost or benefit analysis is considered necessary for this Section 32AA assessment, due to the low-level scale and significance of changes proposed.
- 43 In my opinion, the amendments are the most appropriate way to achieve the objectives of the Plan compared to the notified provisions. I consider that the amendments improve clarity, improve accuracy, remove superfluous wording, and remove irrelevant cross references.
- 44 Consequently, the amended provisions are more efficient and effective than the notified provisions in achieving the objectives of the Plan than the notified version of the Airport Zone. As the recommended amendments improve the functionality of the zone provisions but do not substantively change the outcomes sought, they will not have lesser or greater environmental, economic, social, and cultural effects than the notified Plan provisions as identified in the Section 32 Evaluation Report for the Airport Zone.
- 45 Additionally, I note that the recommended amendments to AIRPZ-R3 amend the activity status for non-airport activities outside the Eastside, Miramar South, and Airside Precincts to Restricted Discretionary which is consistent with the status quo of the Operative District Plan. In my view a Discretionary activity status, as proposed in the notified version

of the PDP would be overly onerous for Non-airport activities in these areas and therefore less effective and efficient than Restricted Discretionary as recommended in this right of reply and the joint witness statement.

***Can counsel for the Council please provide legal input on the question of whether, if WIAL applies for a resource consent for an activity/location the subject of designation, what if any relevance does the designation have to determination of the resource consent application;***

- 46 Counsel for the Council, Nick Whittington, has provided a response to this which is included as Appendix 3.

***Map of the Airport Zone and environs, showing the areas the subject of designation, both by WIAL and by other requiring authorities;***

- 47 I have provided a map as described above at Appendix 4.

#### **CORRECTIONS ZONE**

***Can the Reporting Officer please advise what the underlying zone of Arohata Prison is in the ODP;***

- 48 The underlying zone for the Arohata Prison in the ODP is Rural.

***Can the Reporting Officer please advise what alternative zones the Section 32 evaluation considered;***

- 49 The Section 32 evaluation for the Corrections Zone considered a single alternative to the proposed zoning: a continuation of the status quo of relying on the designation for Corrections activities with an underlying Rural Zone but no specific provisions for activities related to the prison that fall outside of the designation purpose.

***Additional matter: Residential activities in the Corrections zone;***

- 50 In my statement of supplementary evidence I recommended amending the Corrections Zone chapter to replace the references to “supported residential care activity” with “residential activities” in the introduction, CORZ-P2, CORZ-R4, and CORZ-R14.

- 51 This was in response to the Dept of Corrections submission seeking to “Remove the definition of “supported residential care activity”, and the associated provisions applying to such throughout the PDP.”
- 52 The decision of the hearing panel for hearing stream 1 recommended deletion of the definition of “supported residential care activity” as follows<sup>2</sup>:

In addressing this matter in his reply, Mr McCutcheon said that having listened to Dept of Corrections at the hearing, he considered that the definition could be removed, as the effects of supported residential care activities are not dissimilar from residential activities generally. On the same basis he recommended the removal of the definition of ‘boarding house’.

The Hearing Panel supports this recommendation. We consider that if separate provision for these activities cannot be justified on an effects basis, it is difficult to retain them, and in their absence, the need for the defined terms falls away.

- 53 During the hearing for the Corrections Zone the hearing panel Chair queried whether there was sufficient scope to replace the references to “supported residential care activity” in the Corrections Zone with “residential activities”. This was on the basis that inserting “residential activities” into the Corrections Zone would be a broadening of the activities enabled in the zone.
- 54 I do not agree that the replacement of “supported residential care activity” with “residential activities” represents a broadening of activities enabled in the Corrections zone or that this enables any

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<sup>2</sup> Para 467-468 [ihp-recommendation-report-1a.pdf \(wellington.govt.nz\)](http://ihp-recommendation-report-1a.pdf (wellington.govt.nz))

different or greater effects. I agree with Mr McCutcheon and the hearing panel for hearing stream 1 that the effects of supported residential care activities are not dissimilar from residential activities more generally, and are residential activities themselves.

- 55 It follows from this that the replacement of “supported residential care activity” in the Corrections Zone with “residential activities” does not broaden the activities or alter the effects enabled in the Corrections Zone. From a planning perspective “residential activities”, “supported residential care activities”, boarding houses and staff housing are all functionally identical. Though there may be differences between these activities in theory they are not ones that concern us from an effects-based planning perspective.
- 56 I note that the Dept of Corrections submission explicitly sought the retention of the Residential Activities definition and stated that this definition applies to supported and transitional accommodation activities, such as those provided for by Ara Poutama.
- 57 Declining to replace references to “supported residential care activity” with “residential activities” in the Corrections Zone, and instead retaining the references to “supported residential care activity” would mean that the Corrections Zone rules refer to a specific activity which is not defined in the PDP, and which does not have a well understood common meaning. This would introduce significant uncertainty in interpretation.
- 58 If the hearing panel are of a mind to retain the references to “supported residential care activity” in the Corrections Zone (against my recommendations) I would prefer to re-instate the definition for “supported residential care activity”, counter to the decisions for hearings stream 1. In my view this is a preferable outcome to the alternative of retaining references to an undefined term without a well understood common meaning.

**Joe Jeffries**

**Principal Planning Advisor**

**Wellington City Council**

**13 February 2024**

## **Appendix 2 – Airport Zone – Activity Status Table**

	<b>AIRPZ-R1 Airport Activities</b>	<b>AIRPZ-R2 Airport related activities</b>	<b>AIRPZ-R3 Non-airport activities</b>
<b>Permitted</b>	Airport activities that comply with AIRPZ-S3 and AIRPZ-S4.	Airport related activities in the Terminal Precinct.	Golf course in the East Side Precinct.
<b>Controlled</b>	Land development and construction activity in the East Side Precinct.	n/a	n/a
<b>Restricted Discretionary</b>	Airport activities that do not comply with S3 and S4.	Airport related activities in the West Side, Broadway, Miramar South, Rongotai Ridge, or South Coast precincts that comply with AIRPZ-S3 and AIRPZ-S4.	Non-airport activities in the Broadway, Rongotai Ridge, South Coast, Terminal and West Side precincts that comply with AIRPZ-S3 and AIRPZ-S4.
<b>Discretionary</b>	Airport activities that are not otherwise permitted, controlled or restricted discretionary.	<p>Airport related activities in the Airside or East Side precincts.</p> <p>Airport related activities in the West Side, Broadway, Miramar South, Rongotai Ridge, or South Coast precincts that do not comply with AIRPZ-S3 and AIRPZ-S4.</p>	<p>Non-airport activities in the Airside, Miramar South and East Side precincts.</p> <p>Non-airport activities that are not otherwise permitted, or restricted discretionary.</p>
<b>Non Complying</b>	n/a	n/a	n/a

## **Appendix 3 – Airport Zone - Right of reply of Nick Whittington**

**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**

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**Legal submissions on behalf of  
Wellington City Council  
Hearing Stream 6**

**26 March 2024**

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# **Legal submissions on behalf of Wellington City Council Hearing Stream 6**

## **1      Airport Issue**

- 1.1 I have been forwarded by Mr Jeffries a question from the Panel that has arisen in Hearing Stream 6:

Can counsel for the Council please provide legal input on the question of whether, if WIAL applies for a resource consent for an activity/location the subject of designation, what if any relevance does the designation have to determination of the resource consent application.

- 1.2 I understand that the question has been realised in relation to Mr Jeffries' recommendation to delete clause 7 of AIRPZ-P5 about measuring, reporting and pursuing decarbonisation activities.

## **2      Effect of designation**

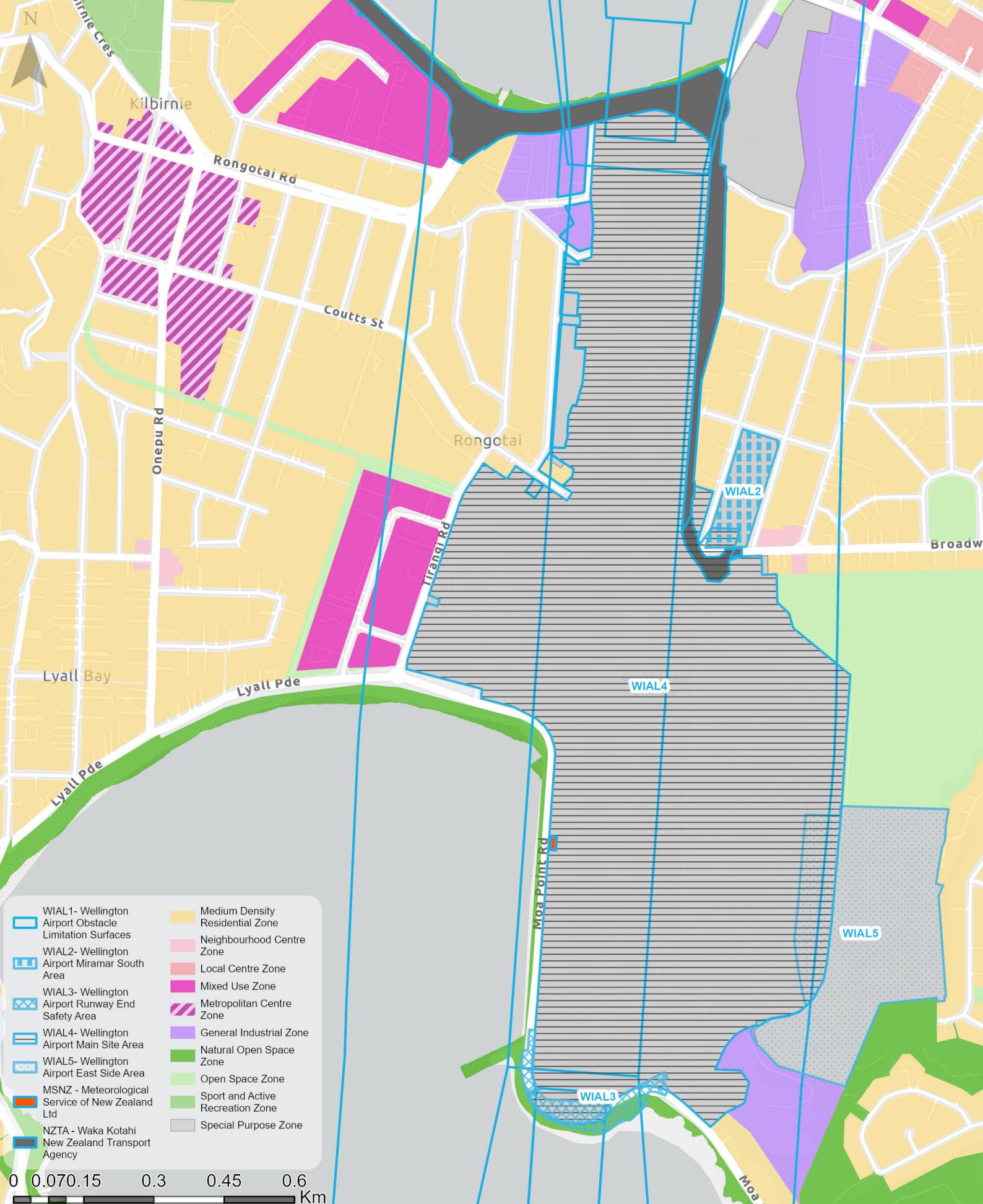
- 2.1 The effect of a designation is governed by s 176 of the RMA. It provides that s 9(3) does not apply to a project or work undertaken by a requiring authority under the designation and that the provisions of a district plan shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose.
- 2.2 As I see it, should WIAL seek a resource consent for an activity/location the subject of its designation, the designation would have little relevance to the determination of that application. If the application is for a non-airport purpose (in other words, is not covered by the designation), then the provisions of the district plan apply and if the activity is not permitted by the plan then a resource consent would be required. Regarding the issue around AIRPZ-P5, given that on this assumption the proposed activity is not airport related, there does not seem to me to be any issue with the deletion of clause 7.
- 2.3 If WIAL applied for a resource consent to carry out an activity already covered by the designation (eg, an activity having fundamentally an airport purpose) theoretically the existence of the designation could be a relevant consideration under s 104(1)(c). However, I do not consider that WIAL could purport to artificially rely on a resource consent for some

airport activities within the scope of its designation and thereby avoid reporting obligations. The relevant activities would still be covered by the designation and subject to its conditions, including decarbonisation reporting.

Date: 26 March 2024

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Nick Whittington  
Counsel for the Wellington City Council

## **Appendix 4 – Map of the Airport Zone and Designations**



## Right of Reply: Airport Zone and Designations

This map shows the Airport Zone and environs, showing the areas that are subject of designation, both by WIAL and by other requiring authorities.

Basemap credits: Eagle Technology, LINZ, StatsNZ, NIWA, Natural Earth, © OpenStreetMap contributors.

Date: 27/03/2024  
Credit: City Insights GIS Team

Absolutely Positively  
**Wellington City Council**  
Me Heke Ki Pōneke