

Martin David Shelton - Statement

1. My full name is Martin David Shelton. I hold a Bachelor of Science with honours in civil engineering from Edinburgh University and a Master of Science in computer science from Imperial College, London.
2. I have over 30 years-experience in New Zealand - in project management, development management and property strategy. I have operated in senior leadership roles or as a consultant in both central and local government and in the private sector. Most of this work has been in Wellington.
3. In 1996 I established Shand Shelton subsequently responsible for the strengthening and redevelopment of the St James Theatre and the Harbour Board Building, now housing the Maritime Museum. Both these projects were substantively funded by Council.
4. I'm currently Development Director at Crown agency Rau Paenga. Originally formed in 2016 as Ōtākaro to deliver the Christchurch re-build Blueprint following the earthquakes. Rau Paenga now delivers major infrastructure projects nationally on behalf of other Crown agencies.
5. I am here today as a director of Panorama Property Limited (Panorama). I am one of the ultimate beneficial owners of that company.

Panorama Property's Interest

6. Panorama is a single purpose company and currently holds two ground leases from Wellington City Council (Council) for land at 1 Upland Rd;
 - A registered ground lease of 0.2840 hectares comprising;
 - 0.0974 hectares – being Lot 1 on Deposited Plan 427677; and
 - 0.1866 hectares – being Lot 1 on Deposited Plan 55960 excepting out Lot 1 on Deposited Plan 427677 (being the Carpark Land).
 - an un-registered '*Additional Premises*' ground lease of 78m² – upon which parts of the Skyline conservatory, balcony & veranda are situated, being the neighbouring lot of 0.09ha (legal described as Part Wesleyan College Reserve Town of Wellington), that forms part of the Cable Car Corridor land extending from 1 Upland Road to Lambton Quay.
7. I'll refer to the combined land leased by Panorama from Council, shown in Appendix A, as the 'Skyline Land'.
8. Panorama owns the building on the Skyline Land, generally known as The Skyline. Panorama has significantly improved and extended the Skyline which has been fully leased since 2017. Panorama also maintains and operates the open carpark on the Skyline Land.
9. The Council's proposed District Plan changes the zoning of the major part of the Skyline Land, under the registered ground lease, from Outer Residential to Open Space.
10. The Proposed District Plan review maintains a residential zoning of the land under the smaller un-

registered ground lease across part of the Cable Car Corridor lot.

11. My evidence today is in three chronological parts.

- The unusual history of the Skyline Land leading up to Panorama acquisition of the ground lease interests in late 2010.
- The subsequent relevant events that enabled Panorama to redevelop the building as it is today.
- Finally, I'll set out Panorama's concerns at the proposed rezoning as Open Space.

The Skyline History

12. In 1839 the directors of the New Zealand Company made provision for a Town Belt during the planning of Wellington. Land for a Botanic Garden was allocated to 13 acres of the Town Belt.

13. In 1869 the Botanic Garden Act was passed and management of the Garden was entrusted to a Board under the auspices of the New Zealand Institute, the forerunner of the Royal Society of New Zealand.

14. 133 years ago, in 1891 the Wellington Botanical Gardens Vesting Act dissolved the Botanic Garden Board and vested control in the Wellington City Council. The 13 acres of land vested in Council included all the Skyline Land.

15. In 1902 the Kelburn and Karori Tramway Company opened the Wellington Cable Car. Part of the land vested in Council was used to enable the Cable Car corridor and to extend Upland Road, effectively annexing the remaining (Skyline) Land from the Botanic Gardens as shown in Appendix B.

16. Three years later in 1905 the Council built the Edwardian building on the Skyline Land (Figure 1) and leased it to the Kelburn and Karori Tramway Company. The building ran as a tearooms and ticket office for the cable car.

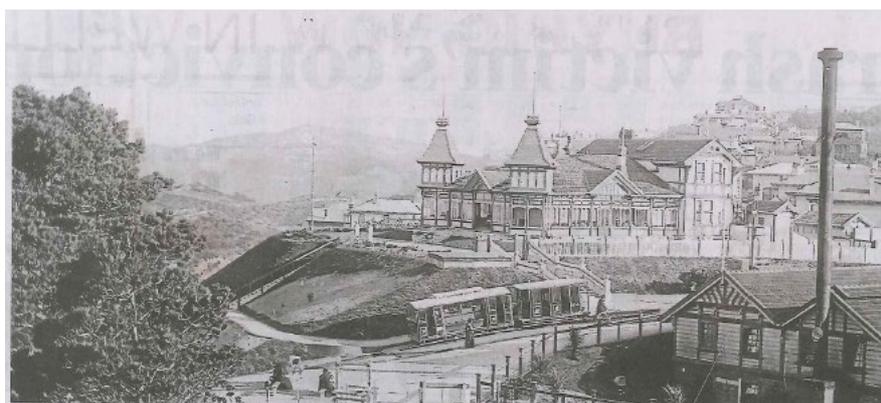


Figure 1 - Kelburn and Karori Tramway Company tearooms and ticket office

17. In 1946 the Council bought out the Tramway company after a long legal wrangle.

18. Almost sixty years later in 1964, Parliament enacted The Reserves and Other Lands Disposal Act 1964. Section 14 (Appendix C) listed 4,646m² of land, including the Skyline Land.

19. The 1964 Act authorised Wellington City Council to lease all or any part of the land, notwithstanding the provisions of the Wellington Botanic Gardens Vesting Act 1891 ... or any other Act or rule of law

relating to the leasing of land... upon such terms and conditions as it sees fit:

authorised to lease, let, or licence all or any part of the land described in the said subsection (3) or any buildings or parts of buildings or installations or parts thereof erected thereon or to be erected upon such terms as the Corporation may think fit: Be it therefore enacted as follows:

(1)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.

20. 25 years later, in December 1979 the Planning Tribunal granted Terawhiti Licensing Trust consent for a tavern on the Skyline Land.
21. The Greater Kelburn Progressive Association appealed the decision on the grounds that Council had no right to lease the land for that purpose. The Planning Tribunal stated a case for the opinion of the High Court.
22. On 26 September 1980 Justice Davison ruled “*the 1964 Act empowers the Council to lease land for any purpose without restriction upon such terms and conditions as the Council thinks fit*”.

CONCLUSION

In the result, I have arrived at the clear opinion that s 14(1) of the 1964 Act empowers the Council to lease land for any purposes without restriction upon such terms and conditions as the Council thinks fit. The Council is not limited to leasing for Reserve purposes. Section 14(1) was a special statutory provision designed to give the Council the fullest rights to lease this particular piece of land which has buildings erected upon it. It is severed from the Botanic Garden Reserve by the cable car and is a distinct part of the original Reserve.

In my view, the Council is empowered by s 14(1) to lease that land in the widest terms on the basis that in so doing it has to be unfettered by leasing restrictions otherwise applicable to Reserves.

23. In 1982 the Tearooms building was destroyed by two separate suspicious fires, in March and April.
24. In May 1982 Council’s own solicitor Mr. Rama provided an opinion on the appropriate zoning of the Skyline Land pursuant to the Town & Country Planning Act 1977.

It has been ruled that Section 14(1) of the Reserves and Other Land Disposals Act 1964 had not been repealed by the subsequent coming into force of the Reserves Act 1977.

Thus, although the land has the status of Reserve, it does not settle, because of Section 14(1) of the 1964 Act, the uses to which the site can be put. Further, it also gives rise to the issue of the eventual use of the site having to comply with the Town Plan.

What the Council is doing here is simply giving the site a zone and there is no provision in the Reserves Act 1977 prohibiting that. Yes, certainly on the merit of the case, it can be argued that as the land has the status of a reserve, then that status should be recognised in some way on the face of the Town Plan. This can be done as suggested by Councillor Brough, ie similar to the way in which the Council is proposing to deal with the Band Rotunda site, or it could be done by a policy statement in the Scheme Statement, or it could be done by listing the use of Reserve as being one of the permitted uses of the site.

In the end, whatever method one uses, or the type of zone brought down, the result is that Council has thereby to that degree limited the uses for which it can lease the site under Section 14(1) of the 1964 Act.

In conclusion, the zoning of the site does not alter the status of the land and the Council, by zoning the site, is not seeking to do this. The uses it specifies in the zone are not ultra vires the Reserves Act 1977 because of Section 14(1) of the Reserves and Other Land Disposals Act 1964.

25. On 12 April 1984 the Council leased the Skyline Land to Skyline Restaurant Ltd for *"a licensed restaurant and/or B.Y.O. restaurant, tearooms and may use the building for such shops as the said Zone permits"*.
26. The lease commencement date was 18 January 1984 for up to 60 years to 2044.
27. Under Clause 27 of the lease *"if at the expiration of the 60 year period.... The Council proposes to grant a new lease of the premises it shall first offer it to the Lessee upon the same terms as are contained in this lease"*.

27. If at the expiration of the 60 year period referred to in Clause 2 hereof, the Council proposes to grant a new lease of the premises, it shall first offer it ^{to} the Lessee upon the same terms as are contained in this Lease (except for this present clause), provided that the rental for the first five years thereof shall be fixed in accordance with this Lease, but such rental shall not be less than that fixed for the last 5 years of this Lease.

28. Panorama is the current lessee under this now registered, modified and recently renewed ground lease.
29. In 1984, the new Skyline Building, designed by Sir Ian Athfield, opened operating as the Skyline Restaurant.
30. In 1985, District Scheme Change 147 formally amended the Wellington City District Scheme and applied a 'Tourist A – Skyline Special Development Zone' zone to the Skyline Land.

31. In 1987, the Skyline Restaurant closed after only three years trading. In 1988, the business went into receivership.
32. The Skyline building remained closed until 1991 when it reopened and was operated as a function centre by Dawn Hesketh and Gillian Fuller for the next ten years.
33. In 1994 the notified Proposed District Plan pursuant to the Resource Management Act 1991 identified the Skyline Land as 'Outer Residential' zone.
34. In 1994, Council embarked on an exercise of bulk vesting extensive parcels of Council land, parks and Town Belt lands as Public Reserve under the Reserves Act.
35. On 31 Oct 1994 The Skyline Land was vested as 'Local Purposes Reserve – Public Gardens' by Gazette notice under the Reserves Act 1977.
36. Before taking over the leases in 2011, I ascertained that the vesting of the land as Public Reserve did not impact the ROLD Act, that still enabled the Council to lease on any terms that it saw fit.
37. In 2000 the Proposed District Plan became operative formally zoning the Skyline Land as 'Outer Residential'.
38. In March 2001, Skyline Limited took over the renewed Skyline ground leases and operated the Skyline as a function centre and wedding venue. Skyline Limited traded inconsistently.
39. The Council's 2002 Combined Reserves Management Plan, including Wellington Botanic Gardens, referred to the Skyline for the first time.

Cable Car Terminus / Skyline Restaurant Area

This area is also closely related to the Wellington Botanic Garden and, as with the Observatory Reserve, the open space areas are maintained by Council staff. The area includes:

- the Cable Car terminus, shop and public toilets;
- the historic Winding House, circa 1900-01;
- the Skyline Restaurant and car park;
- the open spaces around these buildings.

Council is currently rationalising the legal boundaries in the area to clarify responsibilities and lease arrangements, with the intention of adding most of the open space and the Winding House to the Wellington Botanic Garden. A cable car museum has been developed in the Winding House with restored former winding machinery and old cable cars on display.

40. In 2008 Skyline Limited approach Council offering to surrender its ground lease on the carpark area in return for a reduced ground rent. Council agreed, subdividing the carpark area and formally amending the registered ground lease on 18 January 2009 to remove the carpark from the ground lease.
41. Despite reduced ground rent Skyline Limited continued to trade very poorly and in early 2010 it instructed agents to market its business and ground lease interests.

Panorama Involvement

42. In mid-2010 I approached the agent expressing an interest. I also approached the Council property department to understand more about the ground lease and any restrictions of the underlying reserve

status.

43. Ultimately I chose not to proceed due to the ground lease tenure, reserve status, the poor condition of the vacant building, and the excessive price sought by the vendors.
44. By this time however Skyline Limited was in serious ground-rent arrears, had ceased trading and was close to insolvent.
45. Shortly after, I was contacted by the Council property department. They were concerned that Skyline Limited was close to insolvency, an event that would trigger a termination of the Skyline ground leases.
46. I subsequently learned from Council that it was concerned that if the ground leases were terminated due to Skyline Limited's pending insolvency, Council would be unable to grant new commercial leases on the Skyline land or buildings due to the Local Purposes Reserve status.
47. Council property staff strongly encouraged me to re-engage with Skyline Limited and negotiate to purchase its ground lease interests, before receivers were appointed and the ground leases terminated.
48. Through Panorama, I negotiated and on 12 November 2010 contracted with Skyline Limited to acquire its assets and ground lease interests, subject to Council formally agreeing to modify the ground leases.
49. Importantly, given the intermittent trading history and now vacant Skyline building, I had concerns about potential future limitations on Panorama's use due to the now Outer Residential zoning under the Operative District Plan. The contract was therefore conditional on Council issuing a Certificate of Existing Use satisfactory to Panorama.
50. On 22 December 2010 Council issued Panorama a Certificate of Existing Use (Appendix D) confirming the building and activity "licensed restaurant/café, function centre and kiosk" were lawfully established.
51. On 22 December 2010 Panorama and Council executed a 'Pre-Assignment Agreement' that:
 - Required Council to amend the ground lease to:
 - return the carpark land to the registered ground lease
 - extend the permitted use to "use the Building or Land for any use for which a valid resource consent has been granted."
 - required "Council officers to recommend to Councillors that the Council will publicly notify, if required, a proposed revocation of the Reserve Status"
 - required "Council Officers to engage in consultation.... Regarding the potential to remove the Skyline Land.. from the Wellington Botanic Gardens Vesting Act".
52. On 18 January 2011 the Skyline ground leases were formally assigned from Skyline Limited to Panorama.

53. In early 2011, Council's then manager of Parks and Reserves Mike Oates confided that Council had mistakenly included the Skyline Land in the 1994 bulk vesting process, despite its many years of commercial use and long-term commercial ground leases being in conflict with a Local Purposes Reserve.
54. In early 2011 I worked with Sir Ian Athfield, to prepare concepts to redevelop the building into a boutique 24 rooms five-star eco-hotel aligned to the Botanical Gardens. We jointly presented to the Mayor and Councillors in 2011.
55. Councillors rejected the proposal and Council subsequently amended the ground lease to explicitly exclude hotel use as a permitted activity.
56. On 22 December 2011, a year after the 'Pre-Assignment Agreement' was executed with Council, the Skyline ground leases were finally amended by Council in accordance with that agreement.

Panorama's re-development journey

57. Panorama granted a management agreement to Wilson Parking in 2012 for the management of the carpark for both casual paid visitor parking, and longer term paid parking.
58. In 2013 I relied on the ROLD Act to create a temporary residential apartment in which I lived with my family until 2015.
59. Panorama has progressively improved and leased the building to tenants. They are the CableTop Café, Frangifert Perfumery and the Kelburn, Northland Medical Centre and associated pharmacy. A resource Consent (Appendix E) was issued for the Medical Centre on 23 September 2016.
60. The building has been fully leased to the existing tenants since mid-2017.
61. In 2023, in response to housing pressure in Wellington and the drive for inner city intensification, I approached Wellington City Council to explore a potential joint opportunity to build a number of town houses along the edge of the Skyline carpark.
62. In exploring this concept, I became aware of the Proposed District Plan review and the proposed rezoning of the Skyline Land to Open Space.

Proposed District Plan Change

63. I contacted the Council property team to express my concern. They arranged for me to meet a planner, Mr. Tom Chi, who was then a part of the Council's district plan team. Mr Chi advised me that the proposed Open Space zoning as notified was a mistake and would need to be rectified in a catch-all variation as to errors.
64. Mr Chi later contacted me to revoke that advice and confirm that the notified Open Space Zone was deliberate and that Council would be staying with it (Appendix F).
65. I continued to lobby the Council property team, writing formally Mr Lestyn Burk, Manager Property and Capital Projects (Appendix G) , to object to the proposed new zoning without success.

66. On 15 August 2022, Panorama lodged an initial submission on the Proposed District Plan.
67. On 30 November 2022, Panorama lodged a further submission on submissions on the proposed zoning.
68. In January this year, the Skyline leases were renewed for a further term of 20 years expiring on 17th of January 2044.

In Closing

69. I acknowledge that this narrative is long-winded but make no apology for that because I believe that it is imperative to demonstrate the on-going determination of Council to achieve commercial returns from the commercial use of the site for the last 120 years.
70. My concern if the proposed Open Space zoning remains is that Panorama becomes totally reliant on its existing use rights to continue to lease and operate the Skyline and that if there is extended lapse in existing use, the building becomes effectively inoperable for the reasons set out by Mr Lewandowski. There may also be issues in relation to any future change in use or intensification of existing use e.g. expansion of the medical centre.
71. Panorama has been through a decade long challenge transforming the Skyline - from an empty rundown building to a busy destination serving the Kelburn and Northland communities, wider City residents and domestic and international visitors.
72. It has been 120 years since the Skyline Land was effectively annexed from the Wellington Botanical Gardens by the transfer of Botanic Gardens land to the Kelburn and Karori Tramway and the extension of Upland Road in 1902. The isolated Skyline land and Tearooms were leased by Council to the Kelburn and Karori Tramway Company for commercial purposes and one way or another those commercial activities have continued to this day.
73. For 120 years the Skyline land has almost continuously been commercially leased to private enterprises. with Council now committed to another 20 years. In that time, Wellington ratepayers have had little public use of the site nor have they borne any cost of its maintenance.
74. I rely on the opinion of Mr Lewandowski as to the somewhat obvious contradiction of the proposed Open Space zone with the relevant RMA provisions. As a layman, it seems completely at odds with the Council's collaboration in the historic, present and future use of the site.
75. Thank you for your consideration of my statement. The lease documentation is not annexed but can be provided if the Panel requires it.

Martin Shelton

A handwritten signature in blue ink that reads "Martin Shelton". The signature is written in a cursive, slightly slanted style.

Director, Panorama Property Ltd - 5 March 2024

Appendix A – The Skyline Land

Additional Premises Lease Skyline (part Conservatory, Balcony and Veranda) shown yellow and blue on right

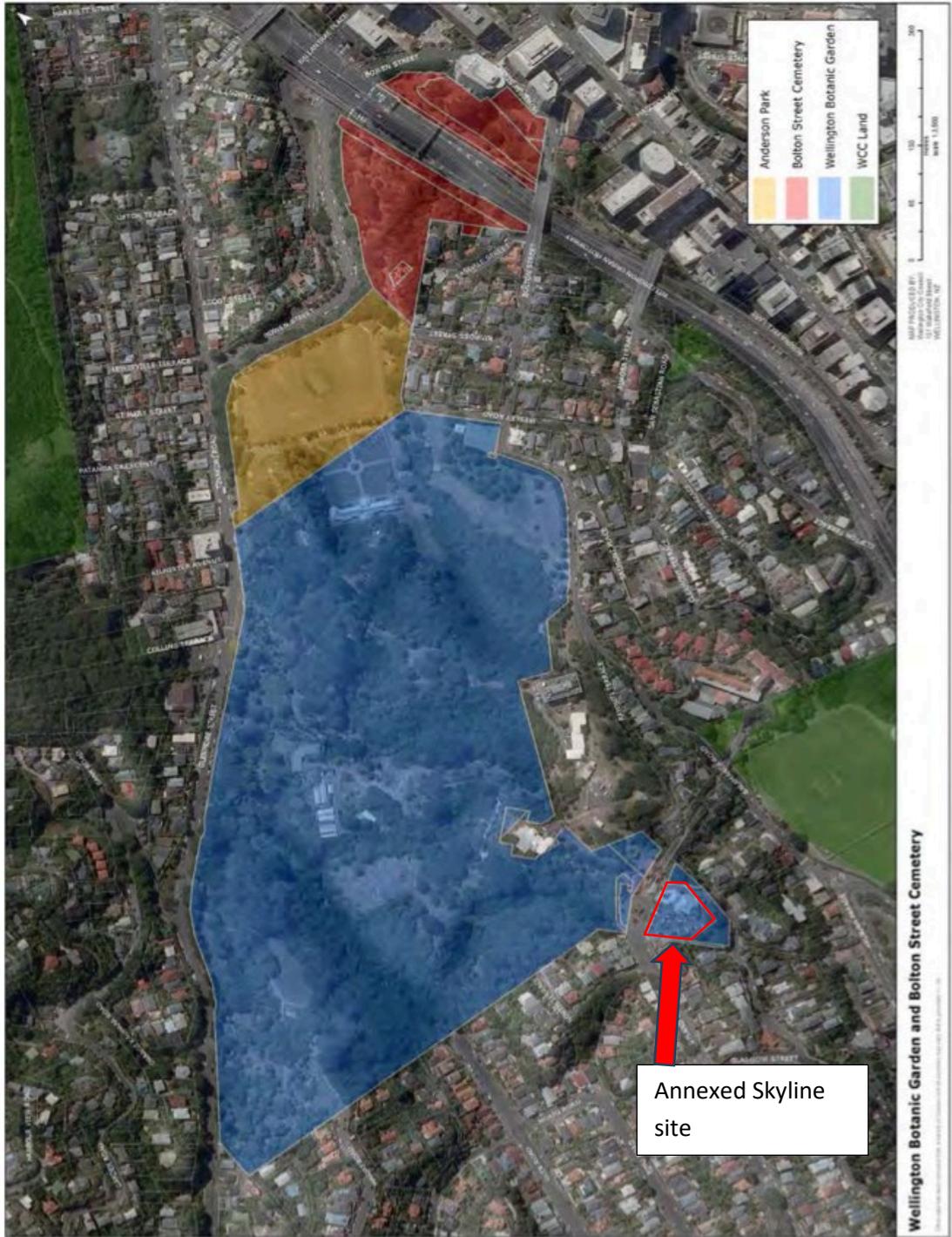


	<p>Property boundaries Land Information NZ Licence WN0853547/2 CROWN COPYRIGHT RESERVED. Accuracy in urban areas: +/- 1m, Accuracy in rural areas: +/- 30m. Topographic data: Wellington City Council WCC copyright reserved Accuracy: +/- 30cm.</p>	<p>Any contours displayed are only approximate and must not be used for detailed engineering design. Colour Orthophotography 1:500 flown 2004 or 2009 owned by Wellington City Council. Other data has been compiled from a variety of sources and its accuracy may vary.</p>	<p>10 metres</p>
<p>www.Wellington.govt.nz</p>			

Appendix B – Wellington Botanic Gardens Land

112 | BOTANIC GARDENS OF WELLINGTON MANAGEMENT PLAN 2014

Figure 7: Wellington Botanic Garden, Anderson Park and Bolton Street Cemetery boundaries



Reserves and Other Lands Disposal Act 1964

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14 Authorising the Wellington City Council to lease certain land

Whereas the land described in subsection (3) is part of the land vested in the Mayor, Councillors, and Citizens of the City of Wellington (in this section referred to as the **Corporation**) by the [Wellington Botanic Garden Vesting Act 1891](#), as a place of public recreation and enjoyment for the Inhabitants of the City of Wellington: And whereas it is desirable that the Corporation be authorised to lease, let, or licence all or any part of the land described in the said subsection (3) or any buildings or parts of buildings or installations or parts thereof erected thereon or to be erected upon such terms as the Corporation may think fit: Be it therefore enacted as follows:

- (1) 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) The District Land Registrar for the Land Registration District of Wellington is hereby authorised to deposit such plans, to accept such documents for registration, to make all such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.
- (3) The land to which this section relates is particularly described as follows:
Those portions of land in Wellington Land District, situated in the City of Wellington, containing together 1 acre and 23.66 perches, more or less, being firstly, Section 1225, Town of Wellington, (SO 25200) being part of the land in certificate of title Number C2/1321, and secondly, part Wesleyan College Reserve (part being also part of the land in DP 8530), being the portion of land in certificate of title, Volume 491, folio 240, lying to the south of Upland Road and the Kelburn and Karori Tramway.

Appendix D –Certificate of Existing Use 22 Dec 2010 - “licensed restaurant/café, function centre and kiosk”

22 December, 2010

Morrison Kent
PO Box 10035
The Terrace
Wellington 6143

Service Request No: 224045
File Reference: 1007163

Attn: Ian Gordon

Dear Ian,

CERTIFICATE of EXISTING USE, SECTION 139A OF THE RESOURCE MANAGEMENT ACT 1991

I refer to your application for a certificate of existing use for a licensed restaurant/café, function centre and kiosk at 1 Upland Road, which was lodged on 16 December 2010; our Service Request No. 224045.

The application was considered by officers acting under delegated authority on 22 December 2010. I advise that under section 139A of the Resource Management Act 1991 (the Act), a certificate of existing use is hereby issued as detailed in the attached Decision.

If you would like to discuss this application further please contact me on the number below.

Yours sincerely,



Brett Smith
(Senior) Consents Planner
Development Planning and Compliance
Property, Housing, Consents and Licensing
Wellington City Council
Phone: 801 3211
Fax: 801 3100

**Planning, Housing, Consents & Licensing
Decision Report for Existing Use Certificate**

22 December, 2010

Service Request No: 224045
File Ref: 1007163

Site Details:

Site Address:	1 Upland Road, Kelburn
Legal Description:	Lot 1 DP55960 and Pt Wesleyan College Reserve Town of Wellington (Company Lease as shown on DP427677)
Zoning:	Outer Residential
District Plan Notations:	None
Applicant:	Panorama Property Ltd
Owner:	Wellington City Council
Relevant Plans:	Plan by Athfield Architecture Ltd entitled 'SK2 Existing Skyline Plan' dated 16/12/10 and plan no. '82-30 p.20', dated 17/10/1983.

Site Description and Proposal:

The existing building is located at the end of Upland Road and adjacent to the upper terminus of the Wellington Cable Car. The existing building enjoys panoramic views over Wellington Harbour.

Existing use rights certification is sought for the use of the building at 1 Upland Road, Kelburn, as a licensed restaurant/café, function centre and kiosk.

Resource Management Act 1991 (the 'Act')

The relevant provisions of Section 139A of the Resource Management Act 1991 (the Act) states:

- (1) *A person may request the consent authority to issue a certificate that—*
- (a) *describes a use of land in a particular location; and*
 - (b) *states that the use of the land was a use of land allowed by section 10 on the date on which the authority issues the certificate; and*
 - (c) *specifies the character, intensity, and scale of the use on the date on which the authority issues the certificate.*

There are four matters that need to be addressed under the Act before existing use rights for this proposal under section 10 of the Act can be established:

- *Whether the use was lawfully established before the rule became operative or the proposed plan was notified (s10(1)(a)(i) of the Act); and*
- *The use must be not have been discontinued for a period greater than one year (s10(2) of the Act).*
- *Whether the alteration to the building increases the degree to which the building fails to comply with any rule in the district plan (s10(3) of the Act).*
- *Whether the effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified (s10(1)(a)(ii) of the Act).*

Lawfully Established:

The Council's records indicate that Building Consents were issued in February and April 1984 for the construction of a building on the site. The District Plan current at that time identified the area as being zoned "Tourist A – Skyline Special Development Zone" (Ordinance 16).

The objectives of the zone were to 'provide a wide range of facilities for tourists, visitors and family groups to the site'. The predominant uses were broad ranging including the sale of souvenir goods, and the operation of cafes, coffee bars, restaurants and other catering establishments.

It is evident that the zone was established to cater specifically for the use the building would be put to in conjunction with other tourist attractions in the area, including the Cable Car, Cable Car Museum (later addition), Carter Observatory and the Botanical Gardens and accompanying viewing platform. Resource Consent for a food kiosk on the Cable Car side of the building (SR82488) was also granted in November 2001.

Given that only Building Consents were issued, and noting the Predominant Uses, it is considered that the building and accompanying activities were established as permitted activities under the Plan in operation at the time of establishment. The applicant has provided evidence by way of a licencing plan, and supporting information, which sets out the seating levels which align with the car parking requirements of the time.

The test of lawful establishment under section 10(1)(a)(i) of the Act is satisfied.

Discontinuance:

Appendix 5 of the application outlines evidence that the building has been in use since establishment. Some of the articles included indicate that the building was not in continuous use for the entire period (i.e. closing between 1988 and 1991). This closure was, however, prior to the notification of the current Plan in 1994 and the predominant use of Ordinance 16 could still be relied on.

Since that time evidence has been provided that the building has been in continuous use up until September of this year. Council records indicate that a Liquor Licence was issued in April 2001 which was subsequently renewed in 2002, 2005 and 2008 with no changes to terms and conditions.

The activity, therefore, is considered to be continuous in terms of section 10(2) of the Act.

Degree of Non-Compliance:

The applicant is not seeking to alter the building as it currently stands and, as a result, does not challenge section 10(3) of the Act

Character, Intensity and Scale of Effects:

It is evident that the activities within the building have morphed over time from restaurants of various refinement including function and wedding facilities, but generally being a combination of all the above. I do not believe these challenge section 10(1)(a)(ii) of the Act as, irrespective of the actual medium for food/liquor delivery, the actual activity has remained substantially the same. The predominant uses of Ordinance 16, I believe, were sufficiently broad to allow for such variation, notably the 'catering establishments' use of 16C2.

Seating capacity has remained substantially the same over time also, but is less than when the build was originally constructed due to the removal of the 'conservatory' area for use as public toilets.

Examining car parking, it is noted that the building is now located on a separate lease area (refer DP427677) from the car parking which remains in the residual of Lot 1 DP55960 outside of the lease area. Referring to the letter dated 14 December from Paul Brennan (the Council's Manger – Property Management), it is noted that the full use of the car park will be made available to the Skyline tenancy. The number of car parks available is, therefore, unchanged since the time of the establishment of the building and activity.

Accordingly, section 10(1)(a)(ii) of the Act is met.

Conclusion

The building and activity described in the application were lawfully established prior to the current Plan becoming operative and would qualify under section 10A of the Act. An Existing Use Right Certificate under Section 139A of the Act can therefore be issued.



Brett Smith
Delegated Officer



Bill Stevens
Delegated Officer

Delegated Authority Code: (13)

Appendix E – Resource Consent issued 23 September 2016 for Medical Centre and Pharmacy (SR366352)

23 September, 2016

Urban Perspectives Ltd
PO Box 9042
Marion Square
Wellington 6141

Service Request No: 366352
File Reference: 1007163

Attention: Peter Coop

Dear Peter,

Application for Resource Consent SR No. 366352 Granted

Service Request Type: Resource Consent
Site Address: 1 Upland Road, Kelburn
Legal Description: Lot 1 DP 55960
Consent Type: Land Use

I write in relation to your Resource Consent application for additions and alterations to a non-residential building for a medical centre and pharmacy, with associated signage at 1 Upland Road, Kelburn.

The application was considered by officers acting under delegated authority on 23 September 2016. I advise that under section 104B of the Resource Management Act 1991 (the Act), resource consent for the application is granted subject to the conditions listed in the attached Notice of Decision.

Rights of objection to the consent conditions may be exercised under section 357A(2) by the consent holder. Any objection must be made in writing, with the reasons for the objection within 15 working days of this notification (or within such extended period as the Council in any special case may allow).

A copy of the full Notice of Decision and Decision Report is attached. If you would like to discuss this application further please contact me on the number below.

Yours sincerely,



Anna Hanson
Consents Planner
Resource Consents Team
Wellington City Council
Phone: 801 3236
Email: planning@wcc.govt.nz

Application for Resource Consent

NOTICE OF DECISION

<u>Site Address:</u>	1 Upland Road, Kelburn
<u>Legal Description:</u>	Lot 1 DP 55960
<u>Applicant:</u>	Panorama Properties Ltd
<u>Proposal:</u>	Additions and alterations to a non-residential building for a medical centre and pharmacy, with associated signage
<u>Owners:</u>	The Wellington City Council
<u>Service Request No:</u>	366352
<u>File Reference:</u>	1007163
<u>District Plan Area:</u>	Outer Residential
<u>Notations in District Plan:</u>	None
<u>Activity Status:</u>	Discretionary (Unrestricted) Activity

DECISION – Land Use Consent:

That officers, acting under delegated authority from the Wellington City Council (the Council) and pursuant to section 104B of the Resource Management Act 1991 (the Act), **grant resource consent** to the proposal to construct additions and alterations to a non-residential building for a medical centre and pharmacy, with associated signage at **1 Upland Road, Kelburn** (being Lot 1 DP 55960), subject to the following conditions:

Conditions of Consent:

General:

(a) The proposal must be in accordance with the information provided with the application Service Request No. 366352 and the following plans by Herriot & Melhuish Architecture Ltd entitled, "Skyline Building Alterations", Job No. 1544, all dated 12 August 2016:

- Proposed Site Plan, Drawing No. RC-A004;
- Proposed Floor Plans, Drawing No. RC-A005; and,
- Proposed Elevation & 3D View, Drawing No. RC-A006.

Hours of Operation:

(b) The opening hours of the medical centre and pharmacy are restricted to the following:
Monday to Friday: 8:00am to 6:00pm.
Saturday: 8:00am to 5:00pm
Sunday: 8:00am to 5:00pm for pharmacy only

Additionally, the medical centre and pharmacy may be open for up to two weeknight evenings per week between 6:00pm and 8:30pm.

Signage:

- (c) The size, dimensions and location of signage associated with the medical centre, pharmacy and perfumery must be in accordance with the Proposed Elevation & 3D View Plan, Drawing No. RC-A006, dated 12 August 2016.

Car Parks:

- (d) Prior to operation of the building for medical centre or pharmacy activities, 10 car parks in the location depicted on the Site Plan (Drawing No. RC-A004) approved by Condition (a) above must be marked and signage erected to reserve the parks for exclusive use of the medical centre.

Monitoring and Review:

- (e) Prior to starting work the consent holder must advise of the date when work will begin. This advice must be provided at least 48 hours before work starts to the Council's Compliance Monitoring Officer either by telephone (801 4017), facsimile (801 3165) or email (rcmonitoring@wcc.govt.nz) and must include the address of the property and the Service Request Number.
- (f) The conditions of this resource consent must be met to the satisfaction of the Council's Compliance Monitoring Officer. The Compliance Monitoring Officer will visit the site to monitor the conditions, with more than one site visit where necessary. The consent holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with section 36 of the Act. These costs* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained.

* Please refer to the current schedule of Resource Management Fees for guidance on the current administration charge and hourly rate chargeable for Council officers.

Notes:

1. The land use consent must be given effect to within 5 years of the granting of this consent, or within such extended period of time pursuant to section 125 of the Act as the Council may allow.
2. Where appropriate, the Council may agree to reduce the required monitoring charges where the consent holder will carry out appropriate monitoring and reporting back to the Council.
3. This resource consent is not a consent to build. A building consent may be required under the Building Act 2004 prior to commencement of construction.
4. Landowner approval will need to be obtained prior to the commencement of the operation of the medical centre, including the exclusive use of 10 of the car parks in the pay and display car parking area. Landowner approval may also be required for the proposed building works. It is recommended that the consent holder liaise with the Council's Property Team regarding obtaining Landowner approval.

5. This resource consent does not authorise any works that also require consent from the Greater Wellington Regional Council. If necessary, separate resource consent(s) will need to be obtained prior to commencing work.
6. Damaged areas of legal road vegetation or berm must be reinstated by the consent holder within three months of completion of construction.
7. As far as practicable all construction activity related to the development must take place within the confines of the site. No buildings, vehicles, materials or debris associated with construction may be kept on Council land, including the road, without prior approval from the Council. Please note that land owner approval is required under a *separate approval process* and that this must be sought and approved prior to any works commencing.

For more information on the traffic management process and what further separate land owner approvals may be required in relation to the logistics of working within the legal road either contact the Transport Asset Performance team or visit this link: <http://wellington.govt.nz/~media/services/parking-and-roads/roadworks/files/traffic-management-process-2013.pdf>

8. Construction noise is managed through the construction noise controls set out in NZS 6803:1999 and adoption of a best practical option approach in accordance with section 16 of the Act, to ensure that the emission of noise from the site does not exceed a reasonable level.
9. It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The applicant is advised to contact Heritage New Zealand if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as building modification or demolition, earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.
10. Rights of objection to the conditions specified above may be exercised by the consent holder pursuant to section 357A of the Act. Any objection shall be made in writing, setting out the reasons for the objection within 15 working days of this notification or within such extended period as the Council in any special case may allow.

Reasons for Decision:

1. Pursuant to section 95 of the Act, the effects of the proposal on the environment will be no more than minor and no parties will be adversely affected.
2. There are no special circumstances.
3. Pursuant to section 104 of the Act, the effects of the proposal on the environment will be acceptable.

4. The proposal is in accordance with the relevant objectives and policies of the District Plan, and Part 2 of the Act.
-

DECISION REPORT

RELEVANT PLAN CHANGE – Delete section if no relevant plan changes

Plan Change 80 - General minor amendments to District Plan text & maps VII:

Plan Change 80 involves a range of minor amendments to Wellington City District Plan maps and text. The Council's decision on Plan Change 80 was approved on 29 June 2016 and publicly notified on 14 July 2016. Under section 86B of the Act, the plan change has legal effect from the date that the decision was notified. Plan Change 80 does not change the District Plan provisions that relate to this site. Hence no assessment against the plan change is required.

SITE DESCRIPTION

The applicant's Assessment of Environmental Effects (AEE) includes a description of the site and its immediate surroundings. I consider that this description is accurate and it should be read in conjunction with this report.

PROPOSAL

The AEE also includes a description of the proposal that I adopt. The applicant's proposal description should be read in conjunction with this report.

In short, it is proposed to undertake additions and alterations to the existing non-residential building for use as a medical centre and pharmacy. Minor alterations to the existing perfumery tenancy are also proposed. The development will also include the erection of signage associated with the proposed uses.

ACTIVITY STATUS

Resource consent is required under the following rules:

Operative District Plan:

Non-Residential Activity: The proposed use of the building for medical centre and pharmacy activities will require consent as a Discretionary (Unrestricted) Activity, pursuant to Rule 5.4.1 .	Discretionary (U)
Non-Residential Building Alterations and Additions: It is proposed to construct additions and alterations to the existing non-residential building to facilitate the proposed medical centre and pharmacy activities. Consent is required as a Discretionary (Unrestricted) Activity, pursuant to Rule 5.4.4.A .	Discretionary (U)

Overall, the proposal is assessed as a **Discretionary (Unrestricted) Activity** under the Operative District Plan.

WRITTEN APPROVALS

No written approvals were provided with the application.

SECTION 95 ASSESSMENT - NOTIFICATION ANALYSIS

Pursuant to sections 95 to 95F of the Act the application can be considered non-notified and without service provided that the adverse effects on the environment will be no more than minor and that the written approvals of all affected parties have been obtained.

Potential Adverse Effects:

Residential Amenity Effects:

The development has the potential to affect the residential amenity of the nearby residential properties and on this basis an assessment must be undertaken to determine the scale of effects. Residential amenity includes factors such as shading, privacy, bulk, dominance and noise.

The proposed additions to the building will be located at least 26 metres from the closest boundaries of nearby residential properties (located to the west and south-west of the subject site). The additions will be within the building recession planes and height requirements of the District Plan, and the building will be within the 35% site coverage requirement. Accordingly, the building will be of a scale anticipated for the area. Given this and the separation distance, I consider that the effects of the building alterations and additions on the residential amenity of any residential zoned property will be less than minor.

Regarding privacy effects of the proposal, as discussed above, the building accommodating the medical centre and pharmacy building is located at least 26 metres from the residential properties to the west and south-west of the subject site. The medical centre and pharmacy activities will be insular, with the main activity associated with these uses taking place inside the subject building. People will use the car parking area in a transitory way to get to the medical centre and pharmacy.

The proposed upper storey deck will be set back approximately 4.5m from the site's eastern boundary. Given the elevation of the subject site above the residential properties to the east, views from the deck will be out and over these properties. Additionally, the residential properties to the east are located approximately 22m from the eastern face of the building, providing adequate separation distance between the subject building and these residential properties.

Any other property is sufficiently separated that there will be negligible privacy effects as a result of the proposed works and non-residential uses.

For these reasons, I consider that the privacy effects of the development will be less than minor, with no parties being adversely affected.

Regarding the noise associated with the activity (medical centre and pharmacy), the applicants have asserted that the noise generated will be within the District Plan Permitted Activity Standard levels. The Council's Environmental Noise Officer, John Dennison, has reviewed the application and considers that the noise generated will be insubstantial. I also add that both medical centre and pharmacy uses are insular, with the activity (and therefore associated noise effects) occurring within the building. On this basis, I consider that the noise effects, insofar as this impacts the residential amenity of nearby residential properties,

will be less than minor.

Overall, I consider that the effects of the proposed development on the residential amenity of any party will be less than minor. There will be no affected parties.

Streetscape and Townscape Character Effects:

The portion of the building to which additions and alterations are proposed is located in excess of 20 metres from the street boundary. The design of the building works and the effects on streetscape have been assessed by the Council's consultant Urban Designer, Morten Gjerde. Dr Gjerde has noted that the proposed works will change what is effectively a side elevation into a front elevation, most readily viewed from Upland Road. The proposed changes to the existing non-residential building will therefore result in an improved relationship with the street.

Though the site is zoned Outer Residential, the building sits amongst a cluster of non-residential buildings associated with the cable car. The character of the wider area is mixed, though predominantly residential.

The proposed additions and alterations to the building, and associated medical centre and pharmacy activities will not significantly change the character of the area, given that the subject building and closest buildings are also non-residential. A pay and display car park is located in front of the subject building. The use of a portion of this area exclusively for medical centre staff and patients will not alter the character of the area.

Overall, I consider that the effects of the development and its associated uses on the streetscape and townscape character of the neighbourhood will be less than minor. No parties are considered affected in this regard.

Traffic Effects:

The application and supplementary traffic information has been reviewed by the Council's RMA Traffic Engineer, Andrew Rowe. Mr Rowe has provided a traffic assessment of the proposed activities, which should be read in conjunction with this report.

The proposal includes the creation of a screened service area. The application notes that the need for servicing by vehicles will be very low, given the nature of the medical centre and pharmacy activities. Mr Rowe is of the view that the proposed service area will not block traffic or cause conflict with pedestrians, given the width of the aisle.

Regarding the traffic generated by the activities, Mr Rowe has relied on NZTA data that has determined the parking demand for such a use to be 1.5 times the number of staff. Up to 20 staff will be working at the medical centre and pharmacy and accordingly, 30 parking spaces are anticipated to be required by the activities.

The subject site contains a pay and display car parking area that has 50 car parking spaces. 10 of these spaces are to be reserved for exclusive use of the medical centre. The traffic survey provided by the applicant shows that there are a large number of parking spaces available within the pay and display car park (at least 38 available at the times of survey). Therefore, the pay and display car park is considered to have enough available car parking spaces to provide for the proposed medical centre and pharmacy uses. Given the abundance of parking spaces available in the pay and display car parking area at the times surveyed, it is considered that the displacement of 10 casual users from the parks that are to be for exclusive use of the medical centre will be adequately absorbed elsewhere within the parking area.

Mr Rowe would support the application if all the parking associated with the proposed uses was contained within the subject site, utilising either the 10 parking spaces reserved for the medical centre, or the pay and display parks.

While I acknowledge Mr Rowe's concerns that parking on the street could impact upon the ability of local residents to park on the street, I note that unless specifically reserved for resident parking, the street is available for any person to park on.

The traffic survey shows that street parking is at capacity. Much of the immediate area has yellow 'no parking' lines and there are therefore very limited numbers of street parking spaces. Given there is no capacity on the street in the immediate vicinity, parking associated with those staff and patients that want to park on the street will be dispersed around the wider area. Traffic effects on the wider street network are therefore considered to be no more than minor.

Logically however, most patients and staff choosing to drive to the medical centre will likely park on-site in either the reserved spaces or pay and display parks, given the convenience of the location and greater likelihood of a car park being available at the time needed. The effects of car parking within the site associated with the development on nearby residential properties are considered to be comparable with what currently occurs on the site. I therefore consider that these effects are less than minor.

For the reasons discussed above, I consider the proposal will have no more than minor effects on the street environment, with less than minor effects on any specific person. No parties are considered adversely affected.

Notification Decision:

- Section 95A(2)(a)/95D - Adverse effects on the environment are no more than minor and public notification is not required.
- Section 95B/95E - Adverse effects on any person are less than minor and no parties will be adversely affected.
- Section 95A(4) - There are no special circumstances relating to this proposal that require it to be publicly notified. Special circumstances are circumstances that are unusual or exceptional, but may be less than extraordinary or unique. There is nothing to suggest that there are unusual or exceptional circumstances relevant to the proposal.

It is noted that neighbours have registered an interest in works occurring on the subject site. Neighbour interest does not deem them to be affected parties under the tests of the Act or qualify as special circumstances under the Act.

- On this basis the application will be assessed on a non-notified basis.

SECTION 104 ASSESSMENT - SUBSTANTIVE DECISION

Section 104(1)(a) – Effects Assessment:

Adverse effects:

A consideration of the effects on the environment has been made above. The matters discussed and the conclusions reached are also applicable to section 104(1)(a) considerations.

The proposal will utilise 10 car parks within the pay and display car parking area. This will ensure that at least 10 parking spaces will be available to absorb some of the parking effects of the proposed activities. A condition will be included requiring that these are marked out and signage erected to specify that the parks are for exclusive use of the medical centre.

Positive Effects:

In addition to the above mentioned environmental effects I consider the proposal to have the following positive effects:

- The works will allow for adaptive re-use of an existing non-residential building.
- The medical centre will provide medical services for residents of the surrounding suburbs.

Conclusion:

Overall, I consider that the effects of the proposal on the environment will be acceptable.

Section 104(1)(b) - Relevant Planning Provisions:

In considering this application the Council has had regard to provisions of the following planning documents:

- National Environmental Standards
- National Policy Statements
- The New Zealand Coastal Policy Statement
- The Wellington Regional Policy Statement
- The Wellington City District Plan

Higher Order Planning Documents:

I have given regard to the higher order planning documents specified at section 104(1)(b)(i) – (vi) of the Act. In particular, it is my opinion that there are no National Environmental Standards or National Policy Statements that are directly relevant to the consideration of this proposal. Similarly, the New Zealand Coastal Policy Statement is not relevant. The proposal is considered to accord with the general strategic direction of the Wellington Regional Policy Statement.

District Plan:

The following objectives and policies are considered relevant to the proposal:

Operative District Plan:

- Objective 4.2.4
- Objective 4.2.7; Policies 4.2.7.2 - 4.2.7.4
- Objective 4.2.12; Policies 4.2.12.1, 4.2.12.4

Regard has been had for the relevant objectives and policies listed above.

Overall, for the reasons discussed in this Decision Report, I consider that the proposal is consistent with the objectives and policies as set out above.

Section 104(1)(c) - Other Matters:

The application includes use of 10 of the car parks in the pay and display car parking area for exclusive use of the medical centre. Land owner approval will be required prior to this occurring. An advisory note has been added to this effect.

There are no other matters that the Council needs to consider when assessing the application.

PART 2 – PURPOSE AND PRINCIPLES OF THE ACT

Part 2 of the Act sets out the purpose and principles of the legislation, which as stated in section 5, is “*to promote the sustainable management of natural and physical resources*”. Section 5 goes on to state that sustainable management should enable “*people and communities to provide for their social, economic and cultural wellbeing and for their health and safety whilst (amongst other things) avoiding, remedying or mitigating any adverse effects of activities on the environment*”.

In addition, Part 2 of the Act requires the Council to recognise and provide for matters of national importance (section 6); have particular regard to other matters (section 7); and to take into account the principles of the Treaty of Waitangi (section 8).

For the reasons outlined in this report, it is considered that the proposal meets the relevant sections of Part 2 of the Act.

SECTION 108 CONDITIONS

Resource consent is granted subject to conditions. These conditions include that the proposal must be constructed in accordance with the information provided within the application and the approved plans as set out under condition (a). There are also conditions relating to the monitoring of the resource consent.

Other conditions relate to signage, the marking out of reserved car parking and hours of operation.

CONCLUSION

The effects of this proposal are acceptable and the proposal is consistent with the objectives and policies of the Operative District Plan. Having considered the matters set out in section 104 of the Act, and subject to Part 2, I am of the opinion that resource consent can be granted subject to appropriate conditions.

REASONS FOR DECISION

The reasons for the decision are informed by the analysis above. The principal reasons for the decision are summarised as follows:

1. Pursuant to section 95 of the Act, the effects of the proposal on the environment will be no more than minor and no parties will be adversely affected.
2. There are no special circumstances.

3. Pursuant to section 104 of the Act, the effects of the proposal on the environment will be acceptable.
 4. The proposal is in accordance with the relevant objectives and policies of the District Plan, and Part 2 of the Act.
-

Report prepared by: Anna Hanson



Anna Hanson
Delegated Officer

23 September 2016

Delegated Authority No. (1 & 2)



Bill Stevens
Delegated Officer

23 September 2016

Appendix F – email correspondence with Mr. Tom Chi around whether the site was mistakenly zoned OSZ

From: Tom Chi Tom.Chi@wcc.govt.nz
Subject: RE: Meeting Minutes for Skyline Proposed Zone Change
Date: 7 July 2022 at 11:35 AM
To: Ian Gordon Ian.Gordon@stoutstreet.co.nz, Martin Shelton martin.shelton@pennant.co.nz
Cc: Dejan Kirbis Dejan.Kirbis@wcc.govt.nz, Peter Brennan Peter.Brennan@wcc.govt.nz



Hi Ian,

I would clarify that I heavily suspect this is an oversight but cannot say for sure right now – I would still need to have some internal discussions to confirm this.

Nonetheless, I think that Open Space Zoning would not be the most appropriate zoning for the site – more appropriate would be a mixed use zoning such as a Centres Zone or Mixed Use Zone.

I have added the last point into the minutes below in red.

Kind regards,
Tom

Tom Chi

Advisor, District Plan | Wellington City Council
E tom.chi@wcc.govt.nz | W Wellington.govt.nz

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Sent: Thursday, 7 July 2022 10:59 am
To: Tom Chi <Tom.Chi@wcc.govt.nz>; Martin Shelton <martin.shelton@pennant.co.nz>
Cc: Dejan Kirbis <Dejan.Kirbis@wcc.govt.nz>; Peter Brennan <Peter.Brennan@wcc.govt.nz>
Subject: RE: Meeting Minutes for Skyline Proposed Zone Change

Hi Tom

Thanks for your meeting with us, your candid responses and your prompt note of the meeting.

There is just one thing we would add to the meeting notes and that is your acceptance that the Open Space zoning to be notified for this site is inappropriate and arises from an oversight.

Ngā mihi, nā

Ian

Ian Gordon

Barrister

Stout Street Chambers

P: 04 4729026

M: 029 4819 276

F: 04 4729029

E: ian.gordon@stoutstreet.co.nz

W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this

email in error, please notify me immediately and then delete the email.

From: Tom Chi <Tom.Chi@wcc.govt.nz>
Sent: Thursday, 7 July 2022 10:38 a.m.
To: Martin Shelton <martin.shelton@pennant.co.nz>; Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Cc: Dejan Kirbis <Dejan.Kirbis@wcc.govt.nz>; Peter Brennan <Peter.Brennan@wcc.govt.nz>
Subject: Meeting Minutes for Skyline Proposed Zone Change

Hi Martin and Ian,

Thank you both for meeting with me this morning. Please see below the meeting notes:

- In attendance: Tom Chi (Advisor, District Plan), Martin Shelton (Pennant Group Ltd and Panorama Property Ltd) and Ian Gordon (Barrister for Mr Shelton, Stout Street Chambers)
- Time: 10:00am – 10:20am
- Discussion opened on the proposed Open Space Zone for the site at 1 Upland Road and noted that the site includes a number of commercial and community activities. MS / IG relief sought is to rezone, instead, to Neighbourhood Centre Zone – a zone that is more supportive of commercial and community activities.
- Staff broadly in agreement from planning perspective. **Open Space Zoning would not be the most appropriate zoning for the site – more appropriate would be a mixed use zoning such as a Centres Zone or Mixed Use Zone.** TC noted to consider Mixed Use Zone
- Discussion around submissions, further submissions, hearings and appeals process – concerns were raised by MS / IG regarding costs being borne privately to engage in the submissions / appeals process and further discussions may be opened with WCC property team regarding these costs
- Agreed approach is to seek rezone request within WCC submission on Proposed District Plan – TC noted internal discussions need to be held on this and will update MS / IG accordingly. TC recommended MS / IG making a submission and further submission with the relief sought

Kind regards,
Tom

Tom Chi

Advisor, District Plan | Wellington City Council
E tom.chi@wcc.govt.nz | W Wellington.govt.nz

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From: Tom Chi Tom.Chi@wcc.govt.nz

Subject: RE: Skyline Site Submission

Date: 15 August 2022 at 10:45 AM

To: ian.gordon@stoutstreet.co.nz Ian.Gordon@stoutstreet.co.nz

Cc: Adam McCutcheon Adam.McCutcheon@wcc.govt.nz, Anna Stevens Anna.Stevens@wcc.govt.nz, Martin Shelton martin.shelton@pennant.co.nz

TC

Hi Ian,

Thank you for providing the lodged submission – I've just been advised this is fully received in our system.

Answers to your questions:

1. Re: the site's zoning; our previous meeting acknowledged that the site had a complex background worth investigating. I sought clarity from my colleagues on this background and we confirm that the open space zoning in the Proposed District Plan is not an error.
2. Re: Council's approach to Panorama's submission; we have not yet considered your submission and will do so after further submissions have closed through our officer's report to the hearing's panel.
3. My colleagues Adam and Anna are our District Plan team leaders.

Kind regards,
Tom

Tom Chi

Advisor, District Plan | Wellington City Council

E tom.chi@wcc.govt.nz | W Wellington.govt.nz

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>

Sent: Monday, 15 August 2022 9:19 am

To: Tom Chi <Tom.Chi@wcc.govt.nz>

Cc: Adam McCutcheon <Adam.McCutcheon@wcc.govt.nz>; Anna Stevens <Anna.Stevens@wcc.govt.nz>; Martin Shelton <martin.shelton@pennant.co.nz>

Subject: RE: Skyline Site Submission

Dear Tom

Thanks for your unexpected email.

I was just this minute writing to you to attach Martin's submission on behalf of Panorama lodged this morning and to request that you follow up on your candid agreement to make an equivalent submission.

Please advise by return if Council no-longer considers the Open Space zone to be an error?

Please let us know as soon as possible if Council will be supporting Panorama's submission.

Could you also advise the roles of the council officers copied into your email?

Thank you.

Kind regards,

Ian Gordon

Barrister / Rōia Tūtahi

Stout Street Chambers

P: 04 4729026

M: 029 4819 276

F: 04 4729029

E: ian.gordon@stoutstreet.co.nz

W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Tom Chi <Tom.Chi@wcc.govt.nz>

Sent: Monday, 15 August 2022 9:08 AM

To: Martin Shelton <martin.shelton@pennant.co.nz>; Ian Gordon <Ian.Gordon@stoutstreet.co.nz>

Cc: Adam McCutcheon <Adam.McCutcheon@wcc.govt.nz>; Anna Stevens <Anna.Stevens@wcc.govt.nz>

Subject: Skyline Site Submission

Hi Martin and Ian,

Coming back to you on our earlier discussion about the Skyline site: The Council are not in support of making a submission on the Proposed District Plan to rezone the site.

For yourselves, I recommend that you make an individual submission on the Proposed District Plan with your relief sought. The submissions period closes on Monday 12th September.

Kind regards,

Tom

Tom Chi

Advisor, District Plan | Wellington City Council

E tom.chi@wcc.govt.nz | W Wellington.govt.nz

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**Absolutely Positively
Wellington City Council**

Me Heke Ki Pōneke

**Appendix G – Letter to Mr Lestyn Burk, Manager Property and Capital
Projects 17 April 2023, raising concerns about the proposed new zoning**

Panorama Property Limited

17 April 2023

Mr Iestyn Burke
Manager Property and Capital Projects
Wellington City Council
PO Box 2199
Wellington 6140

Confidential

Dear Iestyn

Skyline Building, 1 Upland Road, Kelburn –rezoning of Council land

Many congratulations on your appointment to your new role. I would like to meet you and Jon Williams to discuss the negative impact of the proposed re-zoning of Council's land at 1 Upland Road to Open Space Zone.

Background

The land Council currently leases to Panorama Property Ltd at 1 Upland Road, Kelburn (Skyline site), is being re-zoned through the District Plan Review. The land's '*Outer Residential*' zone is being discontinued in the Proposed District Plan and the land is now to be zoned '*Open Space Zone*'.

Specific legislation (the ROLD Act 1964) empowers Council to lease the Skyline land on **ANY commercial terms it sees fit, notwithstanding the land's legal Reserve status** under the Reserves Act or any historic Botanic Gardens status. The proposed Open Space Zone will very heavily constrain any future use of the site and ultimately limit Council's revenues and value from this asset.

Under its lease Panorama will pay Council over \$5.0m in ground rent and commercial rates over its remaining lease term - ~\$250k per annum. However, the Open Space Zone will make it extremely difficult for Council to re-lease the Skyline land commercially due to the restricted permitted uses in the Open Space Zone.

Impact on Panorama

Panorama is also impacted as all the current Skyline uses (medical centre, cafe, perfumery/visitor attraction) are not permitted in the Open Space Zone. If any existing tenant/use ceases i.e., cafe, it must be re-established within 12 months, otherwise existing use rights lapse. Given the forecast recession, a loss of existing use rights could readily occur and in that event, Panorama's ability to meet its rental obligations could be significantly constrained.

Additionally, Panorama would incur unnecessary costs including legal expenses and the costs of expert consultants to obtain fresh consents for non-open space, commercial activities.

District Plan Review Process

When Council publicly notified its proposed District Plan last year (including the proposed re-zoning of the Skyline land) I contacted the Council property team (Peter Brennan and Dejan Kirbis) as my landlord

and effective 'owner' of the land. They were unaware of the proposed re-zoning and were unable to assist or respond other than to arrange a meeting with one of the District Plan Change Team.

My lawyer, Ian Gordon, and I met with Mr Tom Chi just prior to the Proposed Plan change being published. Tom immediately conceded that the proposed Open Space Zoning was clearly in error, given the existing use of the site. Regrettably Tom changed this position a short time later (**Attachment A**) advising that the proposed re-zoning could not be changed and would now be formally published.

Panorama was left with no alternative other than to lodge a formal Submission on the Proposed District Plan (**Attachment B**) and a Further Submission (**Attachment C**). We expect these submissions to be heard by independent commissioners (Stream 7) in November this year.

My informal investigations into Council's rationale suggest that the Open Space team consider there is *a sense of duty to the mechanisms by which the land came into Council ownership (in 1891) and whilst buildings and uses may have become less public and more private over time, they feel obliged to include it in the Open Space (rather than mixed use) zone where the permitted activities will be more restrictive.*

In closing...

I expect that the Property Team as the effective custodian of Council's commercial property assets, would be strongly motivated to protect Council value. I hope that Council Property is now able to support (internally and to the independent commissioners) Panorama's submission that the Skyline land has been incorrectly re-zoned as Open Space Zone and that an alternative more permissive zoning, such as Mixed Use, is more appropriate.

Council (Property) of course retains absolute control over permitted use of the land through its ground leasing terms.

I look forward to meeting you and Jon.

Yours faithfully,

A handwritten signature in black ink that reads "Martin Shelton". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Martin Shelton
Director

Cc Jon Williams – Manager Property, Wellington City Council

(Attachment A) Mr Tom Chi advising that the proposed re-zoning could not be changed and would now be formally published.

(Attachment B) Panorama's formal Submission on the Proposed District Plan

(Attachment C). Panorama's Further Submission on the Proposed District Plan

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz> 
Subject: RE: Skyline Site Submission
Date: 24 August 2022 at 6:24 PM
To: Tom Chi <Tom.Chi@wcc.govt.nz>
Cc: Martin Shelton <martin.shelton@pennant.co.nz>



Thanks Tom

It will come as no surprise to you that Martin is “lost for words”. Similarly, I haven’t been able to offer any clarification.

Is there anything you are able to say by way of explanation?

Thanks again,

Ngā mihi, nā

Ian

Ian Gordon
Barrister
Stout Street Chambers
P: 04 4729026
M: 029 4819 276
F: 04 4729029
E: ian.gordon@stoutstreet.co.nz
W: www.stoutstreet.co.nz

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From: Tom Chi <Tom.Chi@wcc.govt.nz>
Sent: Monday, 15 August 2022 10:45 a.m.
To: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Cc: Adam McCutcheon <Adam.McCutcheon@wcc.govt.nz>; Anna Stevens <Anna.Stevens@wcc.govt.nz>; Martin Shelton <martin.shelton@pennant.co.nz>
Subject: RE: Skyline Site Submission

Hi Ian,

Thank you for providing the lodged submission – I’ve just been advised this is fully received in our system.

Answers to your questions:

1. Re: the site’s zoning; our previous meeting acknowledged that the site had a complex background worth investigating. I sought clarity from my colleagues on this background and we confirm that the open space zoning in the Proposed District Plan is not an error.
2. Re: Council’s approach to Panorama’s submission: we have not yet considered your

submission and will do so after further submissions have closed through our officer's report to the hearing's panel.

3. My colleagues Adam and Anna are our District Plan team leaders.

Kind regards,
Tom

Tom Chi

Advisor, District Plan | Wellington City Council
E tom.chi@wcc.govt.nz | W Wellington.govt.nz

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Sent: Monday, 15 August 2022 9:19 am
To: Tom Chi <Tom.Chi@wcc.govt.nz>
Cc: Adam McCutcheon <Adam.McCutcheon@wcc.govt.nz>; Anna Stevens <Anna.Stevens@wcc.govt.nz>; Martin Shelton <martin.shelton@pennant.co.nz>
Subject: RE: Skyline Site Submission

Dear Tom

Thanks for your unexpected email.

I was just this minute writing to you to attach Martin's submission on behalf of Panorama lodged this morning and to request that you follow up on your candid agreement to make an equivalent submission.

Please advise by return if Council no-longer considers the Open Space zone to be an error?

Please let us know as soon as possible if Council will be supporting Panorama's submission.

Could you also advise the roles of the council officers copied into your email?

Thank you.

Kind regards,

Ian Gordon

Barrister / Rōia Tūtahi
Stout Street Chambers

P: 04 4729026

M: 029 4819 276

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From: Tom Chi <Tom.Chi@wcc.govt.nz>
Sent: Monday, 15 August 2022 9:08 AM
To: Martin Shelton <martin.shelton@pennant.co.nz>; Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Cc: Adam McCutcheon <Adam.McCutcheon@wcc.govt.nz>; Anna Stevens <Anna.Stevens@wcc.govt.nz>
Subject: Skyline Site Submission

Hi Martin and Ian,

Coming back to you on our earlier discussion about the Skyline site: The Council are not in support of making a submission on the Proposed District Plan to rezone the site.

For yourselves, I recommend that you make an individual submission on the Proposed District Plan with your relief sought. The submissions period closes on Monday 12th September.

Kind regards,
Tom

Tom Chi

Advisor, District Plan | Wellington City Council
E tom.chi@wcc.govt.nz | W Wellington.govt.nz

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