

**Before Independent Hearing Commissioners  
Wellington City Council**

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

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**Legal submissions on behalf of  
Wellington City Council  
Hearing Stream 1**

16 February 2023

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# Legal submissions on behalf of Wellington City Council

## Hearing Stream 1

### 1 Johnsonville Commuter Train Line

- 1.1 With issues relating to “allocation” of proposed plan provisions between the part of the plan using the ISPP and the part of the plan using the usual Schedule 1 process having been addressed in earlier submissions, the remaining issue that the Council has asked me to address in legal submissions for HS1 relates to the Johnsonville Commuter Train Line.
- 1.2 The Johnsonville Commuter Train Line is, in my submission, a rapid transit service and accordingly the Council must enable at least six storey residential development within walkable catchments of the stops on the line.

### 2 Interpretation of NPS-UD

- 2.1 Whether the Johnsonville Commuter Train Line is a “rapid transit service” requires determination of the meaning of that phrase as used in the NPS-UD, and a factual assessment of the attributes of the Johnsonville Commuter Train Line against that meaning.
- 2.2 The purpose of a national policy statement is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA (s 45(1)).
- 2.3 The Legislation Act 2019 applies to the interpretation of secondary legislation such as the NPS-UD.<sup>1</sup> The meaning of the NPS-UD must therefore be ascertained from its text and in the light of its purpose and its context.<sup>2</sup>
- 2.4 The NPS-UD seeks to ensure development capacity is provided in accessible places, helping New Zealanders build homes in the places they want – most notably close to public transport. The MfE Introductory Guide to the NPS-UD makes this intention plain: “The intensification policies (Policies 3, 4 and 5) seek to improve land-use flexibility in the areas of highest demand – areas with good access to the things people want and need, such as jobs and community services, and good public transport services. These factors are indicators of the best areas for development, and there is strong evidence to demonstrate that reducing constraints on development in these locations would have the biggest impact” (p 6).
- 2.5 To this end, policy 3 requires the district plan to enable building heights of at least 6 storeys within at least a walkable catchment of existing and planned rapid transit stops. A rapid transit stop is defined in the NPS-UD as “a place where people can enter or exit a rapid transit service, whether existing or planned”, and a rapid transit service is defined as “any existing or planned frequent, quick, reliable and high-capacity public transport

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<sup>1</sup> RMA, s 52(4).

<sup>2</sup> Legislation Act 2019, s 10.

service that operates on a permanent route (road or rail) that is largely separated from other traffic”.

- 2.6 The Johnsonville Commuter Train Line is plainly a public transport service operating on a permanent route that is separated from other traffic.
- 2.7 As an initial point, I agree with Mr Wharton that the use of “and” linking the four adjectives does not require a transit service to meet all four attributes along the entire route in order to be a rapid transit service.<sup>3</sup>
- 2.8 The difficulty is that the adjectives used in the definition – “frequent, quick, reliable and high-capacity” – are all relative terms and mean different things in different contexts and to different perspectives.
- 2.9 This has led those giving evidence to make comparisons, such as between the speed of the line with equivalent vehicle trips, and to seek to incorporate “walk-and-wait” times into that comparison. When considered in light of the objectives of the NPS-UD, including, importantly, Objective 8, (support reduction in greenhouse gas emissions), in my submission such comparisons do not take the argument very far either way. Comparing the frequency of the line with the frequency of other lines and suggesting it is not as frequent does not mean it is infrequent. The same point can be made about capacity. When compared to the number of cars the line’s existence takes off the roads each day it is very high capacity.
- 2.10 I question, therefore, the value of the comparisons made in all of the evidence filed by witnesses on all sides of the debate. The determination is one of impression and judgment to be made in light of the purpose of the NPS-UD. And ultimately this is a planning process. Comparing existing train journey times to existing car journey times locks in the status quo. The NPS-UD seeks to substantially change the status quo.
- 2.11 Nonetheless, in my submission Mr Wharton’s s 42A report correctly marshals the relevant planning framework (including the RLTP), other documents, and evidence about the line’s attributes. The conclusion reached is the correct one. The Johnsonville Commuter Train Line being a rapid transit service, the plan must enable a minimum of six storeys within a walkable catchment of rapid transit stops on the line.

Date: 16 February 2023

**NMHW**

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<sup>3</sup> Section 42A Report, para 174.