

Before Independent Hearing Commissioners appointed by Wellington City Council

Under the Resource Management Act 1991

In the matter of the hearing of submissions on the Proposed Wellington City District Plan

Synopsis of legal submissions on behalf of Stride Investment Management Limited (submitter 470) and Investore Property Limited (submitter 405)

Hearing 1 – Strategic Direction

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MAY IT PLEASE THE COMMISSIONERS

INTRODUCTION

1. Stride Investment Management Limited (**Stride**) and Investore Property Limited (**Investore**) each filed a submission and a further submission on the Proposed Wellington City District Plan (**Proposed Plan**). Stride and Investore support the Proposed Plan in part and oppose the Proposed Plan in part.
2. These legal submissions will:
 - (a) provide some background to Stride and Investore;
 - (b) identify that the Proposed Plan must give effect to the NPS-UD;
 - (c) explain why the Johnsonville Line meets the definition of a ‘rapid transit service’; and
 - (d) explain why a 15 minute walkable catchment should be identified in relation to the Johnsonville metropolitan centre and Train Station.
3. In addition to these legal submissions
 - (a) Joe Jeffries has prepared a statement of planning evidence in support of Stride and Investore’s submissions; and
 - (b) Mark Georgeson has prepared a statement of transport evidence in support of Stride and Investore’s submissions.

BACKGROUND TO STRIDE AND INVESTORE

4. Stride and Investore are both part of Stride Property Group, which is a group of listed companies and funds. Stride is a specialist real estate investment manager which manages the portfolios of Stride Property Limited (**SPL**), Diversified NZ Property Trust (**Diversified**) and Investore (which specialises in large format retail assets).

5. Stride Property Group has significant investment in Johnsonville Shopping Centre, as identified in Figure 1 below.
- (a) SPL and Diversified each own 50% share in the Johnsonville Shopping Centre land, and Stride manages the Johnsonville Shopping Centre land (identified in pink and dark green on Figure 1). Johnsonville Shopping Centre is approximately 4 ha in area and originally opened in 1969 as Wellington City's first shopping mall.
 - (b) Investore owns the retail site at 91 Johnsonville Road, Johnsonville (on the State Highway 1 side of Johnsonville Road) which is currently tenanted by Countdown, Jesters Pies, Unichem Pharmacy and others (identified in light green on Figure 1).

Figure 1 – Ownership of Johnsonville Metropolitan Centre land



6. Investore also owns the Countdown sites at:
- (a) 3 John Street, Newtown;
 - (b) 5 William Earp Place, Tawa; and
 - (c) 43 Bay Road, Kilbirnie.

7. The Stride Property Group develops properties with a view to long-term ownership and, therefore, invests in its buildings to meet high quality, energy efficiency and design standards. As Stride and Investore continue to reinvest in their portfolios, they wish to ensure that the Proposed Plan applies appropriate controls and enables appropriate development.
8. Stride is currently preparing a masterplan for a mixed-use development at the Johnsonville Shopping Centre site to provide for retail, office, residential, food and beverage and entertainment activities. It is proposed that the site be developed over time and at a far greater density and height than that currently enabled to optimise the land and infrastructure resource and support sustainable development and transport modes.
9. Enabling intensive mixed-use development at the Johnsonville Shopping Centre site is necessary to support its role and function as a metropolitan centre.
10. The scale, form and type of development sought by Stride and Investore in their submissions is consistent with the direction in, and will give effect to, the National Policy Statement on Urban Development 2020 (**NPS-UD**) for the density of urban form in metropolitan centres zones “to reflect demand for housing and business use in those locations”.¹ The matters to be addressed in this first hearing, the status of the Johnsonville Railway Line and the size of the walkable catchment in Johnsonville, are also important for the role and function of the Johnsonville metropolitan centre

THE PROPOSED PLAN MUST GIVE EFFECT TO THE NPS-UD

11. The NPS-UD came into force on 20 August 2020 and provides clear and directive objectives and policies to ensure towns and cities are well-functioning urban environments and have sufficient development capacity to meet the changing needs of diverse communities. It removes barriers to development to allow growth ‘up’ and ‘out’ in locations that have good access to existing services, public transport networks and infrastructure. It also

¹ NPS-UD, Policy 3(b).

requires local authorities to engage with the development sector to identify significant opportunities for urban development.²

12. Section 74(1)(ea) of the Resource Management Act 1991 (**RMA**) requires a territorial authority to change its district plan 'in accordance with' a national policy statement. In addition, but separate to this, s 75(3)(a) requires that a district plan must 'give effect to' any national policy statement including the NPS-UD.
 - 1.1 To "give effect to" a national policy statement is a high legal standard. The Supreme Court recognised in *King Salmon* that "give effect to" means "implement" and is a strong direction and is intended to constrain decision-makers.³ It would be inconsistent with the hierarchical scheme of the RMA for decision-makers to decline to implement aspects of a national policy statement.⁴
13. In giving effect to the NPS-UD when making decisions on the Proposed Plan, the Council is required to:
 - (a) contribute to well-functioning urban environments.⁵
 - (b) enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which the area is in or near a centre zone; is well-serviced by existing or planned public transport; and / or there is a high demand for housing or business land in the area.⁶
 - (c) provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.⁷

² NPS-UD, Policy 10(c).

³ *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593 (**King Salmon**) at [77] and [91]. Accessible here: <https://www.courtsofnz.govt.nz/assets/cases/2014/sc-82-2013-eds-v-king-salmon-civil-appeal.pdf>.

⁴ *King Salmon* at [90].

⁵ NPS-UD, Objective 1 and Policy 1.

⁶ NPS-UD, Objective 3.

⁷ NPS-UD, Policy 2.

- (d) in metropolitan centre zones, enable building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of *at least* 6 storeys.⁸
- (e) enable building heights of *at least* 6 storeys within at least a walkable catchment of both existing and planned rapid transit stops and the edge of metropolitan centre zones.⁹

THE JOHNSONVILLE LINE MEETS THE DEFINITION OF A 'RAPID TRANSIT SERVICE'

14. The NPS-UD defines a rapid transit service as “any existing or planned frequent, quick, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic”.¹⁰
15. Further to the evidence provided by Mark Georgeson and Joe Jeffries, we consider it is clear that the Johnsonville Line meets the definition of ‘rapid transit’ under the NPS-UD because:
 - (a) It is an existing or planned public transport service: the Johnsonville Line is an existing train service which meets the definition of rapid transit as we set out below. Greater Wellington Regional Council has planned upgrades proposed to the Johnsonville Line which further support it being considered rapid transit.
 - (b) It is frequent: it has service levels every 15 minutes, which meets the ordinary meaning of ‘frequent’ and is supported by comparisons to other classifications of top tier public transport.¹¹
 - (c) It is quick: it is competitive with travel by private car at peak times.¹²
 - (d) It is reliable: Mark Georgeson identifies that the Johnsonville line consistently meets critical performance criteria.

⁸ NPS-UD, Policy 3(b).

⁹ NPS-UD, Policy 3(c).

¹⁰ NPS-UD, 1.4.

¹¹ Statement of Evidence of Mark Georgeson at 5.

¹² Statement of Evidence of Mark Georgeson at 5.

- (e) It is high-capacity: it has a capacity of over 1000 people per day, and there are proposals to increase the rolling stock to increase the capacity of the line.
 - (f) It operates on a permanent route that is largely separated from other traffic: the Johnsonville line operates on rail, and on a strategically significant corridor between Johnsonville and Wellington CBD.
16. Given the clear meaning and directiveness of the NPS-UD, this means:
- (a) The Council is *required* to recognise the Johnsonville Line as a ‘rapid transit service’; and therefore
 - (b) The Proposed Plan is *required* to enable building heights of at least 6 storeys within at least a walkable catchment of the stations on the Johnsonville line.¹³
17. The Council has discretion in identifying what is an appropriate walkable catchment in respect of each station on the Johnsonville Line (as we address below). It may not be appropriate for a 10 minute walkable catchment to be recognised in relation to each station, for example where qualifying matters apply, however at Johnsonville metropolitan centre a greater walkable catchment would better give effect to the NPS-UD.

A 15 MINUTE WALKABLE CATCHMENT SHOULD BE IDENTIFIED IN RELATION TO THE JOHNSONVILLE TRAIN STATION AND METROPOLITAN CENTRE

18. The NPS-UD does not prescribe the size of walkable catchments. Territorial authorities have discretion to recognise a walkable catchment in accordance with the objectives and policies of the NPS-UD.
19. The Proposed Plan identifies a 10 minute walkable catchment in relation to the Johnsonville Metropolitan Centre. This is considered the “minimum” walkable catchment for urban areas.¹⁴

¹³ NPS-UD, Policy 3(c).

¹⁴ Statement of Evidence of Mark Georgeson at 8.

20. However, as stated above, the Johnsonville Line clearly meets the definition of a rapid transit service and so a walkable catchment should also be identified in relation to the Johnsonville Train Station.
21. Additionally, the walkable catchment should be commensurate with the level of services and amenities at a location. The Ministry for the Environment recognises that “the draw of certain amenities will influence how far people are willing to walk to access them, and is likely to influence the size of a walkable catchment.”¹⁵ Johnsonville includes both a rapid transit station and a metropolitan centre with a range of shops. Johnsonville also includes a number of community and recreational facilities, including a police station, medical centre, pool and library. As noted above, the level of goods, services, employment and housing opportunities within the centre will also significantly increase over time. These factors contribute to a well-functioning urban environment¹⁶ and make it appropriate to recognise a larger walkable catchment in relation to Johnsonville.
22. Johnsonville is also the second-largest centre in Wellington City (after the CBD). Johnsonville is also highly connected due to its proximity to State Highway 1, but is located in an area which has a lower level of natural hazard risk relative to several other parts of the city, such as the CBD and Kilbirnie. Well-functioning urban environments include urban environments which are resilient to the likely current and future effects of climate change.¹⁷
23. It is therefore appropriate to identify a 15 minute walkable catchment in relation to the edge of the Johnsonville Metropolitan Centre and Johnsonville Train Station, in which building heights of at least 6 storeys are enabled.¹⁸ This would contribute to a well-functioning urban environment in both Johnsonville and Wellington City, and give effect to the NPS-UD.

¹⁵ Ministry for the Environment *Understanding and implementing intensification provisions for the NPS-UD at 5.5.3.*

¹⁶ NPS-UD, Policy 1(c).

¹⁷ NPS-UD, Policy 1(f).

¹⁸ We understand the specific height enabled within a walkable catchment will be considered in Hearing 4, and so have not addressed this detail in these legal submissions.

RELIEF SOUGHT

24. Further to the specific relief set out in Stride and Investore's submissions on the Proposed Plan, Stride and Investore seek the following relief in Hearing 1:

- (a) Johnsonville Line is recognised as a rapid transit line; and
- (b) A 15 minute walkable catchment is recognised in relation to the Johnsonville Metropolitan Centre and Johnsonville Train Station, in which at least 6 storeys of height is enabled.

DATED at Auckland this 16th February 2023



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