

**Before Independent Hearing Commissioners appointed by Wellington  
City Council**

In the matter of the Resource Management Act 1991 (**RMA**)

And

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

Between

**Stride Investment Management Limited and Investore  
Property Limited**

and

**Wellington City Council**

---

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

Hearing Stream 4 – Metropolitan Centre zone

Dated 20 June 2023

---

**MinterEllisonRuddWatts.**

PO Box 105 249 Auckland City 1143

T +64 9 353 9700

Solicitor acting: Amy Dresser | amy.dresser@minterellison.co.nz

Partner responsible: Bianca Tree | bianca.tree@minterellison.co.nz  
901449398:5

## MAY IT PLEASE THE COMMISSIONERS

### INTRODUCTION

1. Stride Investment Management Limited (**Stride**) and Investore Property Limited (**Investore**) have made submissions on the Proposed Wellington City District Plan (**Proposed Plan**) in relation to Johnsonville Metropolitan Centre. In this Centres hearing, these legal submissions primarily relate to the Metropolitan Centre Zone (**MCZ**) chapter of the Proposed Plan.
2. These legal submissions will:
  - (a) Provide some legal context;
  - (b) Explain the role and function of a metropolitan centre under the National Policy Statement on Urban Development 2020 (**NPS-UD**) and why greater building height is necessary to give effect to the NPS-UD; and
  - (c) Identify that there are fundamental issues with the proposed City Outcomes Contributions framework.
3. In addition to these legal submissions, the following witnesses have prepared statements of evidence in support of these submissions on the MCZ chapter of the Proposed Plan:
  - (a) Joe Jeffries (planning);
  - (b) Cameron Wallace (urban design);
  - (c) Tim Heath (economic);
  - (d) Mark Georgeson (transport); and
  - (e) Jarrod Thompson (corporate).

## LEGAL CONTEXT

4. A territorial authority must review its district plan every 10 years and consider whether provisions require alteration.<sup>1</sup>
5. The requirements for a territorial authority when changing a district plan are set out in Part 5 RMA. Section 74(1)(ea) requires a territorial authority to change its district plan ‘in accordance with’ a national policy statement and s75 requires a district plan to ‘give effect to’ a national planning standard and a national policy statement.
6. Significant changes to the planning framework since the operative Wellington District Plan was last reviewed include the introduction of the National Planning Standards and the NPS-UD.
7. The NPS-UD came into force on 20 August 2020, and was amended on 11 May 2022. The NPS-UD 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. The NPS-UD reinforces the centres hierarchy in the National Planning Standards, and sets express requirements for intensification to be enabled in and in proximity to centres.
8. The Supreme Court in *King Salmon* recognised that ‘give effect to’ in the context of a national policy statement simply means ‘implement’ and that on the face of it this is a strong directive, creating a firm obligation on those subject to it.<sup>2</sup>
9. In giving effect to the NPS-UD when making decisions on the Proposed Plan, the Council is required to:<sup>3</sup>
  - (a) contribute to well-functioning urban environments.<sup>4</sup>

---

<sup>1</sup> Resource Management Act 1991 (**RMA**), s 79.

<sup>2</sup> *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38, [2014] NZLR 593, at [77].

<sup>3</sup> National Policy Statement on Urban Development 2020 (**NPS-UD**), Policy 6(b) and (c).

<sup>4</sup> NPS-UD, Objective 1 and Policy 1.

- (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-served by existing or planned public transport; and / or there is a high demand for housing or business land in the area.<sup>5</sup>
- (c) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets.<sup>6</sup>
- (d) 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.<sup>7</sup>
- (e) 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.<sup>8</sup>
- (f) building heights of at least 6 storeys within at least a walkable catchment of existing and planned rapid transit stops and the edge of metropolitan centre zones.<sup>9</sup>
- (g) have regard to the fact that the planned urban form in the Proposed Plan may involve significant changes to an area, and those changes may detract from amenity values appreciated by some people but improve amenity values appreciated by other people.<sup>10</sup>

### **THE ROLE AND FUNCTION OF A METROPOLITAN CENTRE UNDER THE NPS-UD AND WHY GREATER HEIGHT IS NECESSARY TO GIVE EFFECT TO THE NPS-UD**

10. Stride and Investore both have a significant interest in the Johnsonville MCZ, as set out in Mr Thompson's evidence. Stride manages Johnsonville

---

<sup>5</sup> NPS-UD, Objective 3.

<sup>6</sup> NPS-UD, Policy 1(d).

<sup>7</sup> NPS-UD, Policy 2.

<sup>8</sup> NPS-UD, Policy 3(b).

<sup>9</sup> NPS-UD, Policy 3(c).

<sup>10</sup> NPS-UD, Policy 6.

Shopping Centre and Investore owns the retail centre at 91 Johnsonville Road.

11. The National Planning Standards state that metropolitan centre zones are “areas used predominantly for a broad range of commercial, community, recreational and residential activities” and “this zone is a focal point for sub-regional urban catchments”.
12. Policy 3(b) of the NPS-UD requires that the Proposed Plan enable “in metropolitan centre zones, 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*” (emphasis added). This is a strong direction, and the MCZ must implement it.
13. Interpreting Policy 3(b) in the context of the existing and anticipated demand in Johnsonville, the strategic direction in the Proposed Plan and NPS-UD, and the commercial context of development needed to meet demand over the short, medium and long term,<sup>11</sup> it is clear that greater permitted building heights are necessary to implement the NPS-UD in Johnsonville.
14. First, the NPS-UD must enable building heights and density of urban form to reflect demand in the MCZ. There is demand for a greater density of business development in Johnsonville:
  - (a) Johnsonville is one of Wellington City’s two metropolitan centres. It is second only in amenities and services provided to the City Centre and already serves a catchment of approximately 40,000, from Ngaio in the south, Churton Park to the north and Woodridge to the east.<sup>12</sup>
  - (b) Mr Thompson identifies that Stride’s recent analysis of Johnsonville township displayed significant gaps in business, residential and community activities e.g. gaps in entertainment, food and beverage, general retail, medical, services, community, health, quality commercial office, larger format retail, and high density forms of residential.<sup>13</sup>

---

<sup>11</sup> Where long term means between 10 and 30 years.

<sup>12</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [14] and [16].

<sup>13</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [17].

- (c) The Wellington City population is anticipated to grow by 16% over the next 15 years.<sup>14</sup> In particular the areas surrounding Johnsonville, are anticipated to grow by more than 10,000 people mainly in the north and north-eastern suburb areas.<sup>15</sup>
- (d) Increased residential intensification is enabled under the Proposed Plan within a walkable catchment of Johnsonville MCZ, as building heights of six storeys are required under the NPS-UD.
15. Second, the Council must enable the most intensification in centres that are well-served by public transport and are resilient (not subject to qualifying matters). Concentrating intensification in Johnsonville is consistent with the centres-based strategic direction of the Proposed Plan, and gives effect to the NPS-UD as a whole:
- (a) As a starting point, Johnsonville is well-located for intensification, being an existing centre and including Johnsonville Train Station.<sup>16</sup> Strategic Objective UFD-O1 of the Proposed Plan is that “Wellington’s compact urban form is maintained with the majority of urban development located within the City Centre, in and around Centres, and along major public transport corridors.” This is consistent with the NPS-UD, including Objective 3(a) and (b) to enable more businesses to be located in areas in centre zones and well-served by existing or planned public transport. Mr Georgeson’s evidence supports that Johnsonville is served by existing and future multi-modal transport.<sup>17</sup>
- (b) Johnsonville is also resilient to coastal hazard risks, unlike Wellington City Centre and Kilbirnie. Strategic Objective SRCC-O2 requires that “risks from natural hazards are ... planned for through adaptation and mitigation to ensure the risks are low”. Policy 1(f) of the NPS-UD requires urban environments that are “resilient to the likely current and

---

<sup>14</sup> Statement of economic evidence of Tim Heath on behalf of Stride and Investore at [24].

<sup>15</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [16].

<sup>16</sup> We presented legal submissions and Joe Jeffries and Mark Georgeson presented evidence on behalf of Stride and Investore supporting the recognition of Johnsonville Line as a rapid transit service at Hearing 1.

<sup>17</sup> Statement of transport evidence of Mark Georgeson on behalf of Stride and Investore at [18].

future effects of climate change”. It is important that Wellington has a centre that is not at risk from coastal hazards.

- (c) It is not appropriate to provide all development capacity in the CBD, or to place a limit on increasing development capacity only to meet demand. The Proposed Plan framework anticipates development in all centres. Mr Heath identifies that while not all capacity will be taken up by the market, its enablement is crucial in providing a competitive development environment within efficient locations and therefore giving effect to the NPS-UD.<sup>18</sup>
16. Third, the Proposed Plan must be forward-looking to serve Wellington and provide sufficient development capacity in Johnsonville for at least the next 30 years.
- (a) Significant time and investment is spent on large-scale development within centres. Mr Thompson addresses the pressures for commercial development in detail, and a key message is that certainty is needed for a development to be feasible, and that greater permitted height limits are critical to support feasibility.<sup>19</sup> Mr Thompson advises that most developments are designed to be within permitted building envelopes to avoid consenting triggers, and reduce delay and uncertainty in a consent process.<sup>20</sup>
  - (b) The Proposed Plan provisions should enable the level of development anticipated in the Johnsonville MCZ over the next 30 years and beyond. The MCZ is a finite resource, and it is important that development within the zone is an efficient use of the land, while retaining capacity for intensive development over time.
  - (c) It is consistent with the NPS-UD for the Proposed Plan to enable forward-looking development capacity. Policy 3(b) is clear and directive, but Objective 6 of the NPS-UD also requires that the Council’s decisions on the Proposed Plan (b) be strategic over the

---

<sup>18</sup> Statement of economic evidence of Tim Heath at [39]. See NPS-UD, Policy 1(d).

<sup>19</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [32]-[39].

<sup>20</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [32].

medium and long term and (c) must respond to proposals that would supply significant development capacity.<sup>21</sup>

- (d) The City Outcomes Contributions framework appears to anticipate that buildings be constructed up to 50% over the permitted building height if the necessary ‘points’ are achieved. We address the fundamental issues with the City Outcomes Contributions framework below and in our submissions on the City Centre zone. However, we note in the City Outcome Contributions it is anticipated that the height limit could be increased by 50% in Johnsonville.<sup>22</sup> This suggests that this increased height is appropriate.
  - (e) The Council must take also into account that amenity values are expected to change, and that those changes are not of themselves an adverse effect.<sup>23</sup> This is a mandatory consideration under the NPS-UD<sup>24</sup> and a natural consequence of the increase in density to be enabled in and around the Johnsonville metropolitan centre.
17. This context demonstrates that there is demand for increased business and residential development in Johnsonville metropolitan centre, that Johnsonville metropolitan centre is appropriate location for growth and intensification, and that it is important to provide sufficient development capacity over the long term – which means using land efficiently.
  18. It appears that the Council officers would support building heights up to 50m and above in Johnsonville, but just seek to have City Outcome Contributions in return.<sup>25</sup> However, Mr Thompson has explained that the height limit and City Outcome Contributions will stifle taller development in Johnsonville.<sup>26</sup>
  19. The increase in building height to 50m in the core of Johnsonville will enable more intensification, support more people to work, live, be entertained, be medically provided for and shop in this accessible location, and is necessary

---

<sup>21</sup> NPS-UD, Objective 6(c).

<sup>22</sup> Statement of economic evidence of Tim Heath at [38].

<sup>23</sup> NPS-UD, Policy 6(b).

<sup>24</sup> NPS-UD, Policy 6(b).

<sup>25</sup> For example, see the statement of supplementary evidence of Lisa Hayes at [58].

<sup>26</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [27].



to achieve the outcomes sought in the objectives and policies of the NPS-UD.

20. Stride holds resource consents granted in 2009 and 2017 to expand the retail activities at Johnsonville Shopping Centre. However, the current and future role of the centre will change significantly and Mr Thompson explains that in addition to retail activities, centres now need to provide for office and high density residential as well as a range of retail, entertainment, food and beverage, health and wellbeing, community, and personal services offerings.<sup>27</sup> This range of activities is appropriate in the MCZ, and so Stride and Investore seek these amendments to the permitted height and other development standards to enable the type development that will enable a well-functioning urban environment at Johnsonville.
21. It is also necessary to closely consider the development standards to ensure that there are no overly constraining limits on urban form. The other amendments Stride and Investore are seeking to the MCZ are set out in Appendix A to Mr Jeffries' evidence. Mr Jeffries and Mr Wallace address these amendments in more detail, and we consider the amendments proposed will achieve not only improved urban design outcomes but are also more appropriate development controls in light of the direction of the NPS-UD.

### **THERE ARE FUNDAMENTAL ISSUES WITH THE PROPOSED CITY OUTCOMES CONTRIBUTIONS FRAMEWORK**

22. The City Outcomes Contributions framework proposes to create a 'points' system in which certain thresholds must be met for buildings that exceed the maximum height threshold or are under the minimum height limit.
23. Mr Jeffries' and Mr Wallace's evidence sets out that the City Outcomes Contributions framework is highly problematic from a planning and urban design perspective.
24. We address why this framework is fundamentally problematic from a legal perspective in our legal submissions on the City Centre zone and Waterfront zone. These fundamental problems also apply in relation to the MCZ, and Mr

---

<sup>27</sup> Statement of corporate evidence of Jarrod Thompson at [20]-[21].

Thompson and Mr Heath's statements of evidence further demonstrate that the framework is unlikely to be taken up by developers and instead is likely to lead to perverse outcomes.<sup>28</sup>

25. In the MCZ-specific context, the City Outcomes Framework is also inconsistent with Policy 3(b) of the NPS-UD. Height limits and density of urban form in the MCZ are required to reflect demand for housing and business use. Requiring developers to provide 'outcomes' where height limits are exceeded has no connection to demand for housing and business use in metropolitan centres. The height limits in the MCZ and the connection with the City Outcomes Contributions framework cannot be consistent with or give effect to the NPS-UD.
26. Stride and Investore seek as their primary relief that the City Outcomes Contributions framework is deleted in its entirety from the Proposed Plan. This is most appropriate because it would avoid imposing unnecessary and uncertain limits on building heights, while still enabling quality design outcomes to be recognised through the MCZ consenting regime.
27. As alternative relief, Stride and Investore seek that the City Outcomes Contributions framework is significantly amended so that:
  - (a) Appendix 16 containing the points system and table of outcomes is deleted; and
  - (b) Policy MCZ-P10 is amended to instead 'support' new developments that exceed the height thresholds or do not comply with minimum building heights and provide positive city outcomes.
28. This alternative relief would provide more certainty. It would still limit building heights but recognise the positive outcomes from providing the matters listed in the policy (including contributing to public space, sustainability, earthquake resilience, and housing affordability).

---

<sup>28</sup> Statement of corporate evidence of Jarrod Thompson on behalf of Stride and Investore at [26]; and statement of evidence of Tim Heath at [38].

**CONCLUSION**

29. In summary, the scale, form and type of development sought by Stride and Investore in their submissions on the MCZ is consistent with the direction in, and is necessary to give effect to, the NPS-UD for the density of urban form in the MCZ in Johnsonville “to reflect demand for housing and business use in [that location]”.<sup>29</sup>
30. Stride and Investore seek that its submissions and the relief sought (set out in Appendix A to Mr Jeffries’ statement of evidence) are accepted by the Panel.

**DATED** at Auckland this 20 June 2023



---

**Bianca Tree / Amy Dresser**

Counsel for Stride Investment  
Management Limited and Investore  
Property Limited

---

<sup>29</sup> NPS-UD, Policy 3(b).