

**BEFORE INDEPENDENT HEARING COMMISSIONS  
MAI I NGĀ KAIKOMIHANA MOTUHAKE**

**UNDER**

the Resource Management Act  
1991 (“**RMA**”)

**AND**

**IN THE MATTER OF**

submissions on Hearing Stream 1:  
Strategic Direction of the Proposed  
Wellington City District Plan

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**LEGAL SUBMISSIONS ON BEHALF OF TE TŪĀPAPA KURA KĀINGA -  
MINISTRY OF HOUSING AND URBAN DEVELOPMENT**

Dated 16 February 2023

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MINISTRY OF HOUSING AND URBAN DEVELOPMENT**

**May it please the Commissioners:**

**Introduction**

1. These submissions are filed in support of the relief sought by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (“**HUD**”) in its submission on the Proposed Wellington City District Plan (“**PDP**”), as it relates to Hearing Stream 1 – Strategic Issues.

**An introduction to HUD**

2. HUD leads the New Zealand Government’s housing and urban development work programme. It is responsible for strategy, policy, funding, monitoring and regulation of New Zealand’s housing and urban development system. As set out in its submission on the PDP, HUD is working to:
  - (a) address homelessness;
  - (b) increase public and private housing supply;
  - (c) modernise rental laws and rental standards;
  - (d) increase access to affordable housing, for people to rent and buy; and
  - (e) support quality urban development and thriving communities.
3. HUD has a particular interest in the PDP, stemming from its co-lead role in developing the National Policy Statement on Urban Development (“**NPS-UD**”), and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“**Act**”) and overseeing their implementation.

**Issues**

4. The issues which are raised in HUD’s submission, and which are relevant to this Hearing Stream are:
  - (a) the status of the Johnsonville Line, and whether it ought to qualify as a rapid transit service; and
  - (b) the extent of the walkable catchment from the City Centre Zone within which the intensification policies of the NPS-UD apply.

## Witnesses

5. HUD has filed corporate evidence from Mr Benjamin Wauchop, who will appear at the hearing of HUD's submission on 28 February 2023. Mr Wauchop is a Principal Policy Advisor with HUD, and was responsible for the preparation of HUD's submissions on the various planning processes required to implement both the NPS-UD and the Act.

## Issue #1 – the status of the Johnsonville Line

6. The status of the Johnsonville Line, and whether or not it qualifies as a "rapid transit service" as defined under the NPS-UD, has been the subject of significant debate, both during the preparation of the PDP and immediately prior to its notification.
7. While the section 42A report writer has recommended that it now be included within the definition, a number of other submitters, including the Wellington's Charitable Character Trust, continue to seek to exclude the Line from the definition.

### *The Johnsonville Line*

8. The Johnsonville Line, which many of the Commissioners will be familiar with, connects Wellington Railway Station, with the communities at Crofton Downs, Ngaio, Khandallah, Raroa, and Johnsonville.<sup>1</sup> The line currently operates at 15 minute frequencies during peak times.<sup>2</sup> The average travel time between Crofton Downs Station and Wellington Railway Station is only some eight minutes, and 14 minutes for Simla Crescent station.<sup>3</sup> A journey from Johnsonville Train Station to Wellington Railway Station takes only 23 minutes.<sup>4</sup>

### *"Rapid transit service" defined*

9. The NPS-UD provides a definition of "rapid transit service" which means:
 

...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. "Rapid transit stop" is defined as a place where people can enter or exit a rapid transit service, whether existing or planned.
11. Policy 3 of the NPS-UD requires that in Tier 1 urban environments such as Wellington, regional policy statements and district plans should

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<sup>1</sup> See Figure 1 of the Section 42A Report for Part 1, plan wide matters and strategic direction ("**S42A**") at p37.

<sup>2</sup> S42A at [178].

<sup>3</sup> S42A at Figure 13, p 51.

<sup>4</sup> Ibid.

enable building heights of at least six storeys within at least a walkable catchment of existing and planned rapid transit stops.

12. The terms “frequent, quick, reliable and high capacity” are not defined.<sup>5</sup>

*Principles applying to the interpretation of planning instruments*

13. As such, their meaning falls to be determined by reference to established principles of interpretation in relation to planning instruments. The Court of Appeal in *Powell v Dunedin City Council* held that while it is appropriate to seek the plain meaning of a rule<sup>6</sup> from the words themselves, it is not appropriate to undertake that exercise in a vacuum.<sup>7</sup> Regard must be had to the immediate context (including the relevant objectives, policies and methods of the relevant section) and, where any obscurity or ambiguity arises, it may be necessary to refer to other sections of the plan and the objectives and policies of the plan itself.<sup>8</sup>
14. Counsel submit that the section 42A report contains a careful and thorough-going analysis of the relevant objectives and policies of the NPS-UD, as they relate to the interpretation of a “rapid transit service” and the need for that service to be “frequent, quick, reliable and high capacity”. Those words take colour from both their immediate and wider regulatory context,<sup>9</sup> as well as from the social, commercial or other objective of the regulation.

*The immediate context*

15. The immediate context includes Objective 1, and the desire for well-functioning urban environments that *enable* all people and communities to provide for their own wellbeing now and into the future. It includes Objective 2, which requires improvements in housing affordability, by supporting competitive markets. It also includes Objective 3, which enables greater densities in areas, inter alia, that are well-served by existing or planned public transport, and where there is high demand for housing.<sup>10</sup>

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<sup>5</sup> There being no doubt that the Line is a public transport service as separately defined under the NPS-UD.

<sup>6</sup> In that case, in a district plan.

<sup>7</sup> *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA) at [35], citing *Beach Road Preservation Society Inc v Whangarei District Council* [2001] NZRMA 176 (HC).

<sup>8</sup> *Powell*, above n 7 at [35], citing *J Rattray & Son Ltd v Christchurch City Council* (1984) 10 NZTPA 59 (CA) at 61.

<sup>9</sup> Applying, albeit in a different context, the Supreme Court’s decision in *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

<sup>10</sup> See, in this regard, the evidence of Benjamin Wauchop at [20] and the S42A at [165], where they identify high demand for housing based on high prices in the surrounding area.

*The broader context*

16. The broader regulatory context includes, as the section 42A report writer has identified, the Wellington Regional Land Transport Plan 2021; the Wellington Regional Public transport Plan; the Wellington Regional Growth Framework; and the One Network Framework Movement and Place Classification dated March 2021, all of which identify the Johnsonville Line as “rapid transit” in one form or another.
17. It also includes the broader objectives of the Government in promulgating the NPS-UD and requiring it to be implemented on the Act. This includes the need to rapidly accelerate the supply of housing where the demand for housing is high, helping to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities.<sup>11</sup> The Government’s intention in passing the Act included the need to encourage low carbon cities, through the provision of denser housing, especially near public transport hubs.<sup>12</sup> Finally, it includes the removal of minimum carparking standards, which in my submission were often seen as a proxy for private vehicle-focussed developments which ignored the benefits that public transport infrastructure, including rail, often provided.

*Application to facts*

18. Viewed against that background context, and the clear social and commercial objectives of both the NPS-UD and the Act, inclusion of the Johnsonville Line as a “rapid transit service” and its stations as “rapid transit stops” is entirely consistent with an interpretation which views text in light of purpose.
19. As Mr Wauchop describes, this issue is underpinned by the benefits of intensification, including the environmental benefits of reducing carbon emissions, enabling shorter commute times and efficient use of infrastructure,<sup>13</sup> and supporting the aims of the First Emissions Reduction Plan.
20. HUD agrees with the assessment of the section 42A report writer in that regard, and his conclusion that the Line fits within the NPS-UD’s definition of a rapid transit service.<sup>14</sup>

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<sup>11</sup> Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (83-1), explanatory note at 1.

<sup>12</sup> Ibid.

<sup>13</sup> Evidence of Benjamin Wauchop at [13](d).

<sup>14</sup> S42A at [201]. Counsel note the support for the inclusion the Johnsonville Line as a “rapid transit stop” in the evidence of Mr Georgeson for Stride, an experienced transport engineer; and the evidence of Ms Grinlinton-Hancock for KiwiRail.

*Reference to guidance materials as an aid to interpretation*

21. Finally, and if any further support was required to resolve any residual ambiguity in the application of the definition, counsel submit that the MfE guidance referred to by the section 42A report writer is highly persuasive and illustrative of the intent to include rail services, such as the Johnsonville Line, within the definition of “rapid transit service”.
22. The section 42A report at paragraph 153 identifies guidance produced by MfE, titled “*Understanding and implementing intensification provisions for [the NPS-UD]*”. At paragraph 5.5.1 of that document, MfE gives examples of *existing* rapid transit stops as including “train stations on the commuter rail services in Wellington and Auckland”, as well as bus services on Auckland’s Northern Busway. The section gives the example of Kingsland Station in Auckland as an existing “rapid transit stop”.<sup>15</sup>
23. As the author of *Statute Law in New Zealand* notes, Courts have on occasion had regard to post-Act conduct by those charged with the administration of an Act in a complex area.<sup>16</sup> The RMA, and national policy instruments issued pursuant to it, are an obvious example of a complex area of law which often require careful interpretation.<sup>17</sup> Counsel submit the guidance above is persuasive in relation to the purpose which sits behind the definition of “rapid transit service” and “rapid transit stop”.

*Conclusion*

24. However, it is also a common sense application of ordinary principles. In my submission, trains are among the quickest, most reliable, and most frequent means of moving significant numbers of people in urban environments. It makes perfect sense, therefore, that we should be encouraging intensification around train stations as a means of moving people around Wellington City – and, from HUD’s perspective, the Johnsonville Line is no exception.

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<sup>15</sup> Incidentally, a Western line train from Kingsland takes 22 minutes to travel to Britomart Station, and 21 minutes in the opposite direction, according to Auckland Transport’s timetable (as to which, see [here](#)). That is just one and two minutes quicker than the journey along the entire length of the Johnsonville Line from Wellington Railway Station to the end of the line.

<sup>16</sup> Ross Carter *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at pp 379-380. This has included the release of public information bulletins by the Inland Revenue Department, as well as binding taxation rulings, which are intended to clarify the application of complex statutes.

<sup>17</sup> See, for example, the High Court’s reference to extraneous MfE materials in *Poutama Kaitiaki Charitabl Trust & Ors v Taranaki Regional Council* [2022] NZHC 629.

## Issue #2 – the extent of the walkable catchment from the edge of the City Centre Zone

25. The second issue raised in HUD’s submission which is relevant to this hearing is the extent of the walkable catchment from the edge of the City Centre Zone, and whether it is limited to 10 minutes (as notified) or *at least* 15 minutes as sought by HUD.
26. The section 42A report writer has agreed to extend the walkable catchment for the City Centre Zone to 15 minutes. As such, there is a broad level of agreement between HUD and the report writer. However, as with the definition of “rapid transit service” and “rapid transit stop” above, there are submitters who would seek to limit the walkable catchment to anywhere from zero (ie no catchment) to five or 10 minutes as notified.
27. Policy 3 of the NPS-UD also requires tier 1 urban environments, such as Wellington, to enable building heights of at least six storeys in areas within at least a walkable catchment of the edge of city centre zones.

### *“Walkable catchment”*

28. “Walkable catchment” is also not defined in the NPS-UD.
29. The submission in paragraph 13 above regarding the proper approach to the interpretation of such terms applies with equal force to the current dispute.
30. In addition, the guidance material provided by MfE and referred to earlier identifies that the general rule used by many organisations, including in MfE’s Urban Design Toolkit, is a walkable distance of 800m, which translates to an approximate 10 minute walk.<sup>18</sup> However, MfE go on to say that while a distance of 10 minutes (or 800m) should be the minimum walkable catchment in all urban areas, tier 1 local authorities, including Wellington, should extend this threshold *further* to account for local factors, including street layout, topography, connectivity and urban amenity.<sup>19</sup>
31. MfE expect that walkable catchments on the edge of city centre zones are to be larger than those of metropolitan town centres, particularly in larger tier 1 environments such as Wellington. This is because city centres are likely to be larger, have more services and amenities, and be better connected.<sup>20</sup>

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<sup>18</sup> MfE, *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*, Wellington, 2020 at [5.5.3]. The submission at paragraph 23 above applies with equal force to these statements.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

*Evidence supporting a 15 minute walkable catchment*

32. Mr Wauchop has provided links to a literature review undertaken by Auckland Council in the preparation of its intensification planning instrument, which identifies that Wellington has the highest levels of walking across New Zealand, and that many people in New Zealand will walk for longer than 10 minutes to reach their destination.<sup>21</sup> He also identifies guidance provided by Waka Kotahi which shows that over half of “walk only” trips are longer than 10 minutes.
33. As Mr Wauchop notes, restricting development in the City Centre fringe either makes it less likely to occur, or shifts it to less accessible locations, requiring longer commute times and increasing the cost of living in the areas that provide the greatest opportunities. This has inevitable equity impacts – with the costs falling predominantly on future homeowners, renters and the public at large.<sup>22</sup>

*Application*

34. In my submission, a broad and generous approach ought to be taken to the implementation of walkable catchments from the edge of the City Centre Zone, consistent with the thrust of the intensification policies in the NPS-UD, the literature identified by Mr Wauchop, and the guidance provided by MfE.
35. If we are to promote intensification in and around our major city centres, including Wellington, we need to take a robust and realistic approach to the identification of walkable catchments. Areas such as Kelburn, Oriental Bay and the northern end of Adelaide Road are synonymous with the concept of a city fringe. They are well connected to services, amenities and good public transport routes. They are also eminently “walkable” from the city centre, giving that word its plain and ordinary meaning.
36. In my submission, suggestions to the contrary are not based on the view that these areas are not “walkable”, but on general opposition to the application of intensification policies to our urban environments. To limit walkable catchments from the edge of the City Centre Zone to the degree sought would not, in my submission, be an efficient and effective response which gives effect to the NPS-UD.
37. HUD supports the section 42A report writer’s conclusion that a 15 minute walkable catchment should apply, as the minimum distance necessary to give effect to Policy 3 of the NPS-UD.

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<sup>21</sup> Evidence of Benjamin Wauchop at [30].

<sup>22</sup> Evidence of Benjamin Wauchop at [31].



**Conclusion**

38. HUD seeks the relief sought in its submission on the matters that are subject to consideration in this Hearing Stream, namely:
- (a) the inclusion of the Johnsonville Line as a “rapid transit service” and its stations as “rapid transit stops”, and the application of the intensification policies in the NPS-UD to areas surrounding those stops; and
  - (b) a minimum 15 minute walkable catchment from the edge of the City Centre Zone.

**Dated** 16 February 2023

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