

**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 5 – District-wide matters

Dated 28 July 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
901585535:1

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 their properties at Johnsonville Metropolitan Centre.
2. These legal submissions will:
 - (a) explain it is inequitable and onerous to require a stormwater assessment against the undeveloped state of a site; and
 - (b) note that we consider the additions to the Noise and Subdivision chapters sought by Waka Kotahi and KiwiRail are unnecessary and inappropriate.
3. In addition to these legal submissions, Janice Carter has prepared a statement of planning evidence in support of Stride and Investore's submissions on the Natural Hazards, Noise, Subdivision and Three Waters chapters of the Proposed Plan.

IT IS INAPPROPRIATE AND UNNECESSARILY ONEROUS TO REQUIRE A STORMWATER ASSESSMENT AGAINST THE UNDEVELOPED STATE OF A SITE

4. The Proposed Plan provides that subdivision and development manage the discharge of stormwater so that the rate of discharge is at or below the discharge for a site in an "undeveloped state".¹ The Council officer has proposed a definition for "undeveloped state" being "the modelled grassed (pastoral or urban open space) state of the site prior to urban Development."²
5. This would require an assessment of a site against an imaginary greenfields state of a site, which would ignore existing infrastructure and is therefore inequitable, inappropriate and onerous.

¹ See Policy THW-P5 and Rule THW-R6.

² Section 42A report at [110].

6. Stride and Investore lodged further submissions seeking to amend Policy THW-P5 and THW-R6 to delete the references to an “undeveloped state” and replace with “pre-developed state” or “current state”.³ Stride and Investore also seek to delete the definition of “undeveloped state” as consequential relief.
7. The Council officer notes that the intention of using the phrase “undeveloped state” is to “limit an applicant’s ability to use an existing environment argument in the resource consent process.”⁴
8. However, when considering a resource consent application, a consent authority is required to have regard to the actual and potential effects on the environment of allowing the activity under s 104 of the RMA.⁵
9. The “environment” is defined in s 2 RMA. The Court of Appeal in *Hawthorn* established that the “environment” includes the future state of the environment as it may be modified by the carrying out of permitted activities under a district plan or implementation of unimplemented resource consents.⁶ The High Court has commented that the rationale for this definition is that it is not appropriate to consider an environment that is “artificial”.⁷
10. An assessment of effects on the “undeveloped” state of the site would not be an assessment of effects on the environment, because the “undeveloped” state is not the environment.
11. We understand that the Council officer is concerned with capacity constraints in the Council’s stormwater network.⁸ However, where there is an existing network which already provides a level of service, this must be taken into account. The existing network includes infrastructure that is being relied on by landowners and developers, and has been paid for by rates and development contributions. It would be inequitable to ignore this

³ Stride and Investore supported the submission of Woolworths New Zealand.

⁴ Section 42a report at [100].

⁵ RMA, s 104(1)(a).

⁶ *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA),

⁷ *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 at [70].

⁸ Section 42A Report: Three Waters at [227].

infrastructure which has already been paid for. The Proposed Plan cannot ignore that this existing network forms part of the environment.

12. If additional capacity is required for a development, the Council has other mechanisms to provide additional capacity. This includes taking development contributions for stormwater under its Development Contributions Policy 2022.

THE ADDITIONS TO THE NOISE AND SUBDIVISION CHAPTERS SOUGHT BY WAKA KOTAHI AND KIWI RAIL ARE UNNECESSARY AND INAPPROPRIATE

13. Stride and Investore lodged further submissions in opposition to additional provisions sought by Waka Kotahi and KiwiRail to manage the effects of subdivision on the transport network.
14. The Council officer and Ms Carter state that the additional provisions sought by Waka Kotahi New Zealand Transport Agency and KiwiRail Holdings Limited to the Subdivision chapter are not necessary in light of the existing measures in the Proposed Plan.⁹
15. We are not aware of any suggestion that there is a conflict between the Strategic Direction and Infrastructure provisions and the relevant provisions in the Noise and Subdivision chapters that Waka Kotahi and KiwiRail have sought additions to. Therefore we do not consider it is necessary to include additional provisions in the Subdivision chapter.
16. Stride and Investore also lodged further submissions in opposition to KiwiRail's proposed extension of the 'high noise areas' indoor noise requirements from within 40m to within 100m of a State Highway. Ms Carter considers these proposed amendments would impose costs on development that are not justified by the potential noise effects.¹⁰ In the Johnsonville Metropolitan Centre zone this is particularly relevant, since there are no through trains or freight, and existing 'moderate noise areas' apply.

⁹ Statement of evidence of Janice Carter on behalf of Stride and Investore.

¹⁰ Statement of evidence of Janice Carter on behalf of Stride and Investore at [43].

CONCLUSION

17. Stride and Investore seek that their submissions and the relief sought (set out in Appendix A to Ms Carter's statement of evidence) are accepted by the Panel.

DATED at Auckland this 28th July 2023



Bianca Tree / Amy Dresser

Counsel for Stride Investment
Management Limited and Investore
Property Limited