

**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

Statement of planning evidence of Janice Carter on behalf of
Stride Investment Management Limited (submitter 470) and
Investore Property Limited (submitter 405)

Hearing Stream 5

Dated 18 July 2023

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MAY IT PLEASE THE COMMISSIONERS

INTRODUCTION

1. I have been engaged by Stride Investment Management Limited (**Stride**) and Investore Property Limited (**Investore**) to provide expert evidence, both who have made submissions on the Proposed Wellington City District Plan (**Proposed Plan**). In this hearing, these legal submissions primarily relate to the Natural Hazards, Subdivision, Three Waters and Noise chapters of the Proposed Plan.
2. I hold the position of Senior Associate at Barker and Associates Limited.
3. I hold the qualifications of Bachelor of Science in Geology and Geography from the University of Canterbury and a Master of Science (Hons) (Resource Management) from the University of Canterbury.
4. I have been employed in planning roles in private consultancies and local government for 30 years. I am a full member of the New Zealand Planning Institute. I have recently undertaken work as an independent commissioner for the Christchurch City Council.
5. I have been providing councils with advice in relation to resource management planning for a variety of projects including ports development, industrial activity, urban growth, natural hazards and three waters. I have also been involved in district plan reviews and plan changes and have presented evidence to Council hearings and the Environment Court. Recent natural hazard work includes stage 2 of the Proposed Waikato District Plan and advising Nelson City Council on flooding and coastal hazard matters for its combined unitary plan review, and housing choice plan change. I also peer reviewed the Infrastructure Chapter for the Proposed Waikato District Plan, and more recently advised the Christchurch City Council on infrastructure/three water provisions for its intensification Plan Change.

CODE OF CONDUCT

6. I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023, and agree to comply with it. My qualifications as an expert are set out above. Other than where I state that I am relying on the advice of another

person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE

7. My evidence will address the primary and further submission points of Stride and Investore on the following areas of the Proposed Plan:
 - (a) Natural hazards.
 - (b) Subdivision.
 - (c) Noise.
 - (d) Three waters.

8. In preparing my evidence, I have reviewed:
 - (a) The Proposed District Plan;
 - (b) The accompanying s32 report;
 - (c) The s42A reports – Natural Hazards and Coastal Hazards, Noise, Subdivision, Three Waters;
 - (d) The statement of evidence of Sam Morgan (Natural and coastal hazards);
 - (e) The statement of evidence of Alastair Osborne (Flood Hazard Modelling);
 - (f) The statement of evidence of James Beban;
 - (g) The statement of evidence of Malcom James Hunt (Noise and Acoustics);
 - (h) The statement of evidence of Sean Syman (Noise); and
 - (i) Statement of evidence of Nadia Nitsche (Hydraulics and Hydrology).

Overview

9. Stride and Investore (the submitters) submissions support the Proposed Plan in part, particularly to the extent that it enables well-functioning urban environments in accordance with objective 1 of the National Policy Statement on Urban Development 2020 (**NPSUD**). The submitters seek a number of amendments to better give effect to the NPSUD, and to ensure an appropriate balance between addressing natural hazard risk and providing for urban development.

NATURAL HAZARDS

NH-R10 Potentially hazard sensitive activities in the inundation area of the Flood Hazard Overlay

10. The Investore and Stride submissions seek that NH-R10 is retained as notified.
11. In the s42A report the reporting officer recommends amending NH-R10 to clarify the rule applies to the construction of buildings or the conversion of existing buildings that will contain a potentially hazard sensitive activity, and to clarify the wording around finished floor levels. The reporting officer also recommends amending the rule numbering to NH-R9 as a consequential amendment following the recommended deletion of NH-R6.
12. I support the s42a recommended version of NH-R9 and consider that it provides for an appropriate balance of risk management while retaining appropriate discretion to address natural hazard risks for potentially hazard sensitive activities in the inundation area of the Flood Hazard Overlay.

NH-R11 Hazard sensitive activities in the inundation area of the Flood Hazard Overlay

13. Stride and Investore support NH-R11 in part, as it provides for Hazard Sensitive Activities in the Inundation Area as a Restricted Discretionary activity where conditions around floor levels are met.
14. However, Stride and Investore seek amendments to NH-R11.2 to make the default activity status Discretionary within the Inundation Area for Hazard Sensitive Activities that do not comply with NHR11.1, rather than Non-

Complying. This would be consistent with the approach taken to Hazard Sensitive Activities within the Overland Flowpaths (as provided in rule NH-R13).

15. In the s42A report the reporting officer rejects these submission points for the following reason:

I disagree that non-compliance with the floor level requirements for new buildings containing hazard sensitive activities should result in a discretionary activity status. The non-complying activity status only applies to proposed buildings that do not achieve floor levels above inundation levels with allowance for freeboard. Accordingly, non-complying activity status gives appropriate effect to the requirement in s6(h) RMA and sends a strong signal that this is not considered to be an appropriate outcome, particularly due to the risk of damage to buildings. Consequently, I consider that the tests under s104D of the Resource Management Act 1991 are appropriate to ensure that the objectives and policies of the plan are achieved, or that the resulting adverse effects from a proposed development in the flood inundation overlay is minor.

16. I support the Stride and Investore submission points and consider that a Discretionary activity status provides consistency with the Discretionary activity status under NH-R13. NH-R13 provides that a hazard sensitive activity within the *overland flowpath* can be assessed as a Discretionary activity. However, an overland flowpath has a “medium” hazard ranking, while an inundation area has a “low” hazard ranking. It would be a perverse outcome to apply a more restrictive Non-Complying activity status in this circumstance for hazard sensitive activities in an *inundation area* under NH-R11, than for hazard sensitive activities in an overland flowpath which have a higher level of hazard ranking, under NH-R13. In my opinion the Discretionary activity status is appropriate to consider proposals that do not do not achieve floor levels above inundation levels with allowance for freeboard, noting that the inundation areas have a “low” respective hazard ranking. I note that the s42A report does not recommend amending the Discretionary activity status provided under NH-R13.

17. I also consider that a Discretionary activity status enables full consideration of potential adverse effects of the proposal and appropriate consideration of the objectives and policies. The Council retains the ability to decline an application based on the merits of the proposal.
18. I therefore recommend amending NH-R11 to provide a Discretionary activity status where the floor level requirements cannot be met as set out in Appendix 1.

NH-R12 Potentially hazard sensitive activities in the overland flowpath of the Flood Hazard Overlay

19. Stride and Investore support NH-R12 in part as it provides for Potentially Hazard Sensitive Activities in the Overland Flowpath of the Flood Hazard Overlay as a Restricted Discretionary activity where conditions around floor levels are met.
20. Stride and Investore seek amendments to NH-R12.2 to make the default activity status Discretionary within the Overland Flowpath overlay for Potentially Hazard Sensitive Activities that do not comply with NH-R12.1, rather than Non-Complying.
21. In the s42A report the reporting officer accepts this request for the following reason:

I agree that non-compliance with the floor level requirements for new buildings containing potentially hazard sensitive activities in an overland flowpath would more appropriately elevate to a discretionary activity status due to the comparatively lower hazard sensitivity of the potentially hazard sensitive activities contained in these buildings (with this category of hazard sensitivity including a wide range of activities, including retail, commercial, industrial and primary production), compared to hazard sensitive activities. I consider that a discretionary activity status still gives Council the ability to decline an application based on the merits of the proposal, and the more onerous s104 test required for a non-complying activity is unnecessary for potentially hazard sensitive activities.

22. I support the s42a recommendation to amend NH-R12 and concur with the reasoning provided.

NH-R13 Hazard sensitive activities within the overland flowpaths of the Flood Hazard Overlay

23. The Stride and Investore submissions seek that NH-R13 is retained as notified.
24. The s42A report recommends a minor amendment to NH-R13 to clarify the rule applies to the construction of buildings or the conversion of existing buildings that will contain a hazard sensitive activity in the overland flowpath of the Flood Hazard Overlay.
25. I support the s42A recommended version of NH-R13 including the Discretionary activity status and consider it is consistent with the Stride and Investore submissions. In my opinion this rule enables appropriate consideration of flood risk.

SUBDIVISION

26. Waka Kotahi [370.189] submits that subdivision within 100m of a state highway corridor should be at least a restricted discretionary activity and seek an additional standard to implement this. This submission point is opposed by Stride and Investore in further submissions on the basis that:

It would be unnecessary and inappropriate to apply a Restricted Discretionary activity status for all subdivision with 100m of a state highway. This blanket rule lacks nuance and may impose an unreasonable burden on subdivision, and other controls are more appropriate to manage any effects of the subdivision on the state highway.

27. In the s42a report the reporting officer agrees with Stride and Investore that the “blanket approach requested by Waka Kotahi is insufficiently nuanced and may impose an unreasonable burden on subdivision, and that there are other controls more appropriate to manage any effects of the subdivision on the state highway.” The reporting officer therefore recommends no further changes to the subdivision provisions in response to the Waka Kotahi request outlined above.

28. I agree with the Stride and Investore submissions, and the reporting officer that it would be unnecessary and inappropriate to apply a Restricted Discretionary activity status for all subdivision within 100m of a state highway, and that this may impose an unreasonable burden on subdivision. I therefore support the reporting officer's recommendation to make no further changes to the subdivision chapter in response to this Waka Kotahi submission point for the reasons they have provided.

SUB-O1 Efficient pattern of development

29. The Waka Kotahi and KiwiRail submissions request amendments to SUB-O1. Stride and Investore opposed both of these submission points in further submissions.
30. The Waka Kotahi submission requests SUB-O1 is amended to add the following clause:
- “Any potential adverse effects of site development on the efficient use and operation of the roading and state highway network.”
31. Similarly, the KiwiRail submission requests SUB-O1 is amended to add the following clause:
- “Maintains the safety and efficiency of the transport network.”
32. The Investore further submission opposes Waka Kotahi's requested amendment on the basis that it is “inappropriately broad and may be interpreted to require all subdivision to consider potential effects on the state highway network”.
33. The reporting officer rejects the relief sought by Waka Kotahi and KiwiRail for the following reasons:
- (a) “The PDP already expresses outcomes on this matter in other chapters, including in UFDO7, SCA-O1, SCA-O2 and perhaps most directly INF-O49.”
 - (b) “The PDP is to be read as a whole, and to the extent these submission points seek to manage effects of subdivision on the safe/efficient use and operation of the transport network, I consider

that this existing direction is sufficient. Duplicating, recasting and/or expressing potentially conflicting direction/outcomes in the Subdivision chapter is unnecessary and inefficient in my view.”

34. The reporting officer recommends that SUB-O1 is retained as notified. I support this recommendation and agree with the reasoning provided. I also agree with the Stride and Investore further submissions that the amendment sought by Waka Kotahi is inappropriately broad.
35. Finally, I agree with the Stride and Investore further submissions that the amendment sought by KiwiRail is unnecessary in light of the existing measures to enable the safety and efficiency of the transport network, including designation powers, and it would be inappropriate to require development on adjoining land to assume this responsibility.

SUB-P3 Sustainable design

36. The KiwiRail submission seeks amendment to SUB-P3 to insert the following additional clause:

7. Manage adverse effects of activities through setbacks and design controls to achieve appropriate protection of infrastructure.

37. The Stride and Investore further submissions oppose this KiwiRail submission and seek that it is disallowed. According to Stride:

This is unnecessary in light of the existing measures to enable the safety and efficiency of the transport network, including designations, and it would be inappropriate to require development on adjoining land to do this.

38. The reporting officer rejects the KiwiRail request on the basis that that INF-O3 and INF-P7 appropriately address adverse effects on infrastructure.
39. I support the reporting officer’s recommendation to reject KiwiRail’s requested amendment to SUB-P3. I disagree with KiwiRail that the requested amendment is necessary for safety reasons. Private property owners do not have a right of access to the rail corridor and KiwiRail has existing powers to control access to its own rail corridors outside of the district plan to ensure safety. Additionally, KiwiRail is a requiring authority so has the ability to

designate private land in order to acquire the interests required for their operations if the existing designation is insufficient to operate safely.

NOISE

New Standard and NOISE-R3 Noise sensitive activity in a new building, or in alterations / additions to an existing building – KiwiRail submission

40. KiwiRail seeks the introduction of a new noise standard which would apply more stringent indoor noise requirements for development within 100m of a railway corridor, and would apply requirements around vibration within 60m of the railway corridor. KiwiRail also seek a related amendment to NOISE-R3 so that it refers to its proposed new Noise Standard.
41. Stride and Investore oppose these KiwiRail submission points, as they consider it is inappropriate to apply the more onerous requirements of the “high noise area” to such a great distance from the railway corridor.
42. According to the Stride further submission:
- Stride is opposed to the requested amendment to NOISE-R3 and any consequential amendments as this would increase the area covered by the “high noise area” from within 40m of a railway corridor to within 100m. It is inappropriate to apply the more onerous requirements of the “high noise area” to such a great distance from the railway corridor, especially in the case of Johnsonville where there are no through trains or freight.
43. I concur with the Stride further submission that it would be inappropriate to apply KiwiRail’s proposed indoor noise requirements between 40m and 100m of a railway corridor, particularly in the case of Johnsonville which only receives electric passenger trains and is a terminus so does not receive trains passing through at speed. In my opinion KiwiRail’s proposed amendments would impose unnecessary costs on development that are not justified by the potential noise effects. I therefore support the reporting officer’s recommendation to reject these requests.

THREE WATERS

THW-P5 Hydraulic neutrality and THW-R6 Hydraulic neutrality – four or more residential units and non-residential buildings

44. THW-P5 and THW-R6 set out a policy and accompanying rule on hydraulic neutrality.
45. Woolworths New Zealand seeks to amend THW-P5 and THW-R6 to remove the references to an “undeveloped state” and replace with “pre-developed state”. Stride and Investore supported these submission points in further submissions.
46. The reporting officer rejects these Woolworths submission points and recommends no further changes to THW-P5 or to the relevant part of THW-R6. According to the reporting officer:
- The intent of requiring modelling to an undeveloped state within the hydraulic neutrality policy framework is to manage onsite stormwater in order to mitigate the effects that stormwater runoff can have on the stormwater network and the wider receiving environment. This gives effect to clause 3.5(4) of the NPS-FM 2020.
47. I agree with the Woolworths submission that it would be more appropriate to use the “pre developed state” of the site as the baseline to assess stormwater runoff. In my opinion the “undeveloped state” of a site is unclear as this may be interpreted to mean a greenfield state, rather than the state of the site prior to the proposed development.
48. Requiring development to achieve stormwater runoff levels equal to or below the greenfield state of a site in existing urban areas would be unnecessarily onerous and difficult to assess. This would also be unnecessary to achieve “hydraulic neutrality” which is defined by Wellington Water as “capturing post-development peak runoff so that it does not exceed the pre-development peak flow rate.”¹ This definition of hydraulic neutrality is consistent with the wording sought by Woolworths. It is not clear what the reporting officer is

¹ Wellington Water Limited *Managing Stormwater Runoff – the use of approved solutions for hydraulic neutrality* at 6.

referring to when she states at paragraph 102 that “undeveloped state” is consistent with Wellington Water’s guidance on hydraulic neutrality.

49. I disagree with the reporting officer that reference to an “undeveloped state” specifically is necessary to give effect to clause 3.5(4) of the National Policy Statement on Freshwater Management 2020 (**NPS-FM**), as claimed in paragraph 101 of the s42A report. Clause 3.5(4) does not specifically direct how district plans should assess the receiving environment when managing effects.
50. I note that the Proposed Plan definition of “hydraulic neutrality” refers to “...flows and volumes from the site in an *undeveloped* state.” The reporting officer recommends introducing an accompanying definition of “undeveloped state” which is “The modelled grassed (pastoral or urban open space) state of the site prior to urban development”. In my opinion these proposed definitions apply an inappropriately onerous standard of hydraulic neutrality, and one that is inconsistent with Wellington Water’s own definition of “hydraulic neutrality” which refers to the “pre-developed state” as set out above.
51. I also consider that a concept of “hydraulic neutrality” based on the “undeveloped state” of a site is unnecessary to give effect to THW-O3. In my opinion Woolworth’s requested amendments to THW-P5 and THW-R6 to remove the references to an “undeveloped state” and replace with “pre-developed state” are consistent with THW-O3 which requires that (emphasis added):
- There is no increase in offsite stormwater peak flows and volumes as a result of subdivision, use and development in urban areas.*
52. This wording of THW-O3 implies that development should not result in an increase in stormwater flows, which is a less onerous standard than requiring development to result in stormwater flows no greater than the grassed state of the site.
53. I therefore recommend amending THW-P5 and THW-R6 as requested by Woolworths and as set out in Appendix 1. I also recommend a consequential amendment to the definition of “hydraulic neutrality” to replace “undeveloped state” with “pre-developed state”,

CONCLUSION

54. In my view, the Proposed Plan as amended by the recommendations set out in this statement of evidence are more efficient and effective in achieving the relevant objectives in the Proposed Plan. The proposed amendments will provide greater consistency and provide greater clarity to the plan provisions. Overall, I consider that the amendments proposed are more appropriate in achieving the purpose of the RMA than the Proposed Plan or the proposed changes set out in the section 42A report.

DATED this 18 July 2023

Janice Carter

Appendix 1 - Proposed Text Changes

Black Text – Original wording of the Proposed Plan.

Red Text – Officer's recommended changes, as set out in the Council Officer Report.

Blue Text – Additional changes recommended in this statement of evidence.

Natural hazards	
Rules	
NH-R11	<p>. . .</p> <p>2. Activity Status: Non-Complying <u>Discretionary</u></p> <p>Where:</p> <p>a. Compliance with the requirements of NH-R11.1.a cannot be achieved.</p> <p>...</p>
Three Waters	
Definitions	
Hydraulic neutrality	means managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak flows and volumes from the site in an undeveloped <u>pre-developed</u> state.
Undeveloped state	means the modelled grassed (pastoral or urban open space) state of the site prior to urban Development.
Policies	
THW-P5	<p>Hydraulic neutrality</p> <p>Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that the rate of offsite stormwater discharge is reduced as far as practicable to be at or below the modelled peak flow and volume for each site in an undeveloped <u>pre-developed</u> state.</p>
Rules	
THW-R6	<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. It involves the construction of multi-unit housing, retirement villages, comprehensive</p>

	<p>development or a non-residential building; <u>and or</u> <u>b. For the construction of four or more residential units or non-residential building in the Oriental Bay Precinct Area; and</u> c. Stormwater management measures are incorporated which achieve post development peak stormwater flows and volumes which are the same or less than the modelled peak flows and volumes for the site in an <u>undeveloped pre-developed</u> state.</p> <p>Note: Guidance for calculating peak stormwater flows and volumes is contained in the Wellington Water Quick Reference Guide for Design Storm Hydrology; Standardised Parameters for Hydrological Modelling, April 2019. Guidance on which storm events are to be managed is contained in Chapter 4 of the Wellington Water Regional Standard for Water Services v3.0 December 2021.</p> <p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with any of the requirements of THW-R6.1 cannot be achieved.</p> <p>Matters of discretion are:</p> <ol style="list-style-type: none">1. The extent to which the development incorporates stormwater management techniques or controls to mitigate any increase in <u>pre-development undeveloped</u> peak stormwater runoff;2. The relevant sections of the Wellington Water Regional Standard for Water Services, v3.0, December 2021;3. Design, location, efficiency and effectiveness of measures to manage peak stormwater flows and volumes;4. Ownership, maintenance and operation arrangements;5. Off-site flooding effects; and6. Any site constraints. <p>Notification Status: An application for resource consent made in respect of rule THW-R6.2 is precluded from being either publicly or limited notified.</p>
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