

I Te Kōti Matua O Aotearoa | In the High Court of New Zealand
Tāmaki Makaurau Rohe | Auckland Registry
2021-404-1618

under the Judicial Review Procedure Act 2016
in the matter of an application for judicial review

between

ALL ABOARD AOTEAROA INCORPORATED
an incorporated society, having its registered office at Level
13, 70 Shortland Street, Auckland
Applicant

and

AUCKLAND TRANSPORT
a council-controlled organisation of the Auckland Council
established by s 38 of the Local Government (Auckland
Council) Act 2009, having its head office at 20 Viaduct
Harbour Avenue, Auckland
First Respondent

and

STATEMENT OF CLAIM

6 August 2021

LeeSalmonLong

Barristers and Solicitors

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET

PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND

TELEPHONE 64 9 912 7100

COUNSEL:

DAVEY SALMON QC

MILLS LANE CHAMBERS, AUCKLAND

TELEPHONE +64 21 974 873

EMAIL davey.salmon@millslane.co.nz

EMAIL: michael.heard@lsl.co.nz SOLICITOR ON RECORD: MICHAEL HEARD

EMAIL: jack.cundy@lsl.co.nz SOLICITOR ACTING: JACK CUNDY

**THE MEMBERS OF THE REGIONAL TRANSPORT
COMMITTEE FOR AUCKLAND**

being the directors of Auckland Transport and the KiwiRail
member, pursuant to ss 5(1) and 105A of the Land Transport
Management Act 2003 and s 38 of the Local Government
(Auckland Council) Act 2009

Second Respondents

and

AUCKLAND COUNCIL

a unitary authority established by s 6 of the Local
Government (Auckland Council) Act 2009, having its public
office at 135 Albert Street, Auckland

Third Respondent

STATEMENT OF CLAIM

THE APPLICANT SAYS:**Parties**

1. The applicant is an incorporated society that is concerned with (and represents the interests of members concerned with) the social and environmental impacts of the transport sector in Tāmaki Makaurau Auckland, including on climate change and air quality, and the urgent need for transport to be decarbonised.
2. The applicant brings this proceeding in the public interest and having regard to the urgency and severity of the climate crisis. The applicant has no private interest in the matters in issue in the proceeding.
3. The first respondent is Auckland Transport, a council-controlled organisation of the Auckland Council established by s 38 of the Local Government (Auckland Council) Act 2009 (**Auckland Transport**).
4. The second respondents are the members of the Regional Transport Committee for Auckland, being the directors of Auckland Transport and the KiwiRail member, pursuant to ss 5(1) and 105A of the Land Transport Management Act 2003 (**LTMA**) and s 38 of the Local Government (Auckland Council) Act 2009 (**RTC**).
5. At all material times:
 - (a) The directors of Auckland Transport were Adrienne Young-Cooper (chair), Wayne Donnelly (deputy chair), Darren Linton, Kylie Clegg, Mary-Jane Daly, Dr Jim Mather, Nicole Rosie, Abbie Reynolds and Tommy Parker; and
 - (b) The KiwiRail member of the RTC was Gwyneth MacLeod.
6. The third respondent is Auckland Council, a unitary authority established by s 6 of the Local Government (Auckland Council) Act 2009 (**Auckland Council**).

Climate crisis and action required to limit average global temperature increase to 1.5°C

7. The Intergovernmental Panel on Climate Change (**IPCC**) is the United Nations body tasked with assessing the science related to climate change.
8. In October 2018 the IPCC published a special report, Global Warming of 1.5°C (**Special Report**). The facts pleaded in paragraphs 9 to 17 below are taken from the Special Report and the applicant relies on the Special Report as if pleaded in full.
9. The Special Report synthesises the findings of more than 6,000 published articles relating to climate change impacts, risks and responses and provides the most comprehensive and authoritative statement of the current scientific consensus on climate change.

10. By 2017 the global average surface temperature had increased by approximately 1°C above pre-industrial levels.
11. There is overwhelming scientific consensus that this increase is caused by increasing concentrations of greenhouse gases in the atmosphere resulting from human activity.
12. This increase in temperature has had adverse consequences around the world including extreme weather patterns leading to droughts and flooding, sea level rises and loss of biodiversity.
13. These adverse consequences will continue to worsen over the coming decades if average temperatures continue to increase.
14. There is a significant difference between an increase of 1.5°C and an increase of 2°C (or higher). The global outcome will be significantly worse if average temperatures increase by 2°C instead of 1.5°C. In particular, it is projected that an increase of 2°C, compared with an increase of 1.5°C, is likely to mean that:
 - (a) There will be greater increases in average temperatures and more extreme weather in most land and ocean regions;
 - (b) The global average sea level will rise a further 0.1m by 2100, exposing an estimated 10 million more people to related risks (including those on small islands);
 - (c) Impacts on biodiversity and ecosystems will be more severe – the global land area at risk of transformation of ecosystems is projected to be approximately 50% lower at 1.5°C than at 2°C;
 - (d) There will be greater increases in ocean temperature and acidity, and greater decreases in ocean oxygen levels; and
 - (e) Climate-related risks to health, livelihoods, food security, water supply, human security and economic growth will be greater – depending on future socio-economic conditions, limiting warming to 1.5°C rather than 2°C may reduce the proportion of the world's population exposed to climate-induced water stress by up to 50%.
15. Limiting global warming to 1.5°C with no or limited overshoot requires global net anthropogenic carbon dioxide emissions to decline by about 45% from 2010 levels by 2030, and to reach “net zero” (where any emissions are balanced by removal of carbon dioxide from the atmosphere) by around 2050.
16. Pathways limiting global warming to 1.5°C with no or limited overshoot require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems.
17. Limiting global warming to 1.5°C requires limiting total cumulative carbon dioxide emissions over time, because the extent of global warming is a function of total emissions over time. That requires staying within a total “carbon budget” on the way to reaching “net zero” emissions by 2050.

18. Delaying action to mitigate the effects of climate change shifts the burden from the present (and from those causing the effects of climate change) to the future.
19. The costs of mitigating the effects of climate change are increasing, and will be significantly greater in the future than they are now.
20. Climate change creates a known and foreseeable risk to the rights to life, health, food, and an adequate standard of living, and to human cultural rights, including those of ethnic, religious and linguistic minorities.
21. The potential and likely effects of climate change, and the measures required to mitigate those effects, are of the highest public importance.

United Nations Framework Convention on Climate Change

22. Aotearoa New Zealand is a party to the United Nations Framework Convention on Climate Change (**UNFCCC**).
23. Aotearoa New Zealand signed the UNFCCC on 4 June 1992 and ratified it on 16 September 1993.
24. The objective of the UNFCCC is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (Article 2).
25. In order to achieve this objective, the UNFCCC provides that parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.
26. Aotearoa New Zealand is listed as an Annex I (developed) country under the UNFCCC.
27. Article 4 of the UNFCCC requires Annex I countries to take the lead to reverse the long-term trends in anthropogenic emissions.

Paris Agreement

28. The Paris Agreement is an international agreement under the UNFCCC (**Paris Agreement**).
29. Aotearoa New Zealand signed the Paris Agreement on 22 April 2016 and ratified it on 4 October 2016.
30. The Paris Agreement entered into force on 4 November 2016.
31. The central aim of the Paris Agreement is to strengthen the global response to the threat of climate change including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and by pursuing efforts to limit the temperature increase to 1.5°C (Article 2).
32. In order to achieve that long-term temperature goal, the parties to the Paris Agreement agreed to reach global peaking of greenhouse gas emissions

as soon as possible, and to undertake rapid reductions thereafter (Article 4(1)).

33. The Paris Agreement requires each party to establish successive national climate action plans known as nationally determined contributions (**NDCs**) and to submit them to the UNFCCC secretariat, and to pursue domestic mitigation measures, with the aim of achieving the objectives of their NDCs (Article 4(2)).
34. The parties' first NDCs were due in 2020 and the parties must submit further NDCs every five years following that (Article 4(9)).
35. Aotearoa New Zealand's first NDC is to reduce its greenhouse gas emissions to 30% below 2005 levels by 2030.

Zero Carbon Act

36. The Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**) came into force on 13 November 2019.
37. The Zero Carbon Act amended the Climate Change Response Act 2002 to set a target for Aotearoa New Zealand to reduce net emissions of all greenhouse gases (except biogenic methane) to zero by 2050.

Local Government Leaders' Climate Change Declaration 2017

38. Auckland Council is a signatory to the Local Government Leaders' Climate Change Declaration 2017 (**Local Government Declaration**), which was published by Local Government New Zealand on 22 July 2017. The applicant relies on the Local Government Declaration as if pleaded in full.
39. Under the Local Government Declaration, Auckland Council committed to develop and implement ambitious action plans that reduce greenhouse gas emissions and support resilience, including plans to promote walking, cycling, public transport and other low carbon transport options.

Declaration of climate emergency by Auckland Council

40. On 11 June 2019 the members of Auckland Council's Environment and Community Committee, who include the mayor and all ward councillors, passed a unanimous resolution to declare a climate emergency (**Auckland Council Climate Emergency Declaration**).

Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan

41. On 21 July 2020 the members of the Environment and Community Committee passed a unanimous resolution to adopt Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan (**Te Tāruke-ā-Tāwhiri**). The applicant relies on Te Tāruke-ā-Tāwhiri as if pleaded in full.
42. A core goal of Te Tāruke-ā-Tāwhiri is to reduce Tāmaki Makaurau Auckland's greenhouse gas emissions by 50% by 2030 (against a 2016 baseline) and achieve net zero emissions by 2050.

43. Te Tāruke-ā-Tāwhiri sets various targets for transport in Tāmaki Makaurau Auckland by 2030, including:
- (a) Gross emissions from the transport sector reduced by 64% (against a 2016 baseline);
 - (b) Vehicle kilometres travelled by private vehicles reduced by 12%;
 - (c) Public transport mode share to increase from 7.8% to 24.5%;
 - (d) Cycling mode share to increase from 0.9% to 7%; and
 - (e) Walking mode share to increase from 4.1% to 6%.

Declaration of climate emergency by Government and Parliament

44. On 2 December 2020 the Parliament of Aotearoa New Zealand passed a Government motion to declare a climate emergency (**Government Climate Emergency Declaration**). The applicant relies on the Government's notice of motion as if pleaded in full.

Government Policy Statement on Land Transport 2021

45. On 17 September 2020 the Government published the Government Policy Statement on Land Transport 2021 (**GPS 2021**), which came into effect on 1 July 2021.
46. GPS 2021 includes four strategic priorities, with associated primary outcomes and short to medium-term results (to be delivered by 2031). The applicant relies on GPS 2021 as if pleaded in full.
47. Under the "Climate Change" strategic priority:
- (a) The strategic priority is: "Transforming to a low carbon transport system that supports emissions reductions aligned with national commitments, while improving safety and inclusive access";
 - (b) The priority outcome is: "Investment decisions will support the rapid transition to a low carbon transport system, and contribute to a resilient transport sector that reduces harmful emissions, giving effect to the emissions reduction target the Climate Change Commission recommended to Cabinet until emissions budgets are released in 2021"; and
 - (c) Two of the short to medium-term results, to be delivered by 2031, are:
 - (i) "Reduced greenhouse gas emissions"; and
 - (ii) "Reduced air and noise pollution".
48. Under the "Better Travel Options" strategic priority:

- (a) The strategic priority is: "Providing people with better travel options to access places for earning, learning, and participating in society";

- (b) The priority outcome is: "...to improve people's transport choices in getting to places where they live, work and play, and to make sure our cities and towns have transport networks that are fit for purpose and fit for the future"; and
- (c) Four of the short to medium-term results, to be delivered by 2031, are:
 - (i) "Public transport and active modes that are more available and/or accessible";
 - (ii) "Increased share of travel by public transport and active modes";
 - (iii) "Reduced greenhouse gas emissions"; and
 - (iv) "Reduced air and noise pollution".

Climate Change Commission advice to Government

- 49. The Climate Change Commission published its advice to the Government on 9 June 2021 (**CCC Advice**). The applicant relies on the CCC Advice as if pleaded in full.
- 50. The CCC Advice recommends emissions budgets that would reduce net emissions by 2030 (against a 2019 baseline):
 - (a) By 38% in respect of long-lived greenhouse gases; and
 - (b) By 47% in respect of carbon dioxide.

Tāmaki Makaurau Auckland's road transport emissions

- 51. Between 2009 and 2018 road transport emissions of greenhouse gas in Tāmaki Makaurau Auckland increased by around 11%.
- 52. Between 2009 and 2019 total vehicle kilometres travelled by private motor vehicles, light commercial vehicles and heavy vehicles in Tāmaki Makaurau Auckland increased by around 28%.
- 53. In 2018 road transport emissions in Tāmaki Makaurau Auckland were around:
 - (a) 38.5% of total emissions in Tāmaki Makaurau Auckland; and
 - (b) 5.5% of total emissions in Aotearoa New Zealand.
- 54. Given the scale of Tāmaki Makaurau Auckland's contribution to Aotearoa New Zealand's transport emissions, failure to make substantial and urgent emissions reductions to transport emissions in Tāmaki Makaurau Auckland will severely limit Aotearoa New Zealand's ability to meet its climate change targets.

Auckland Regional Land Transport Plan 2021

55. The Auckland Regional Land Transport Plan 2021 is the plan for Tāmaki Makaurau Auckland’s transport network from 2021 to 2031 (**RLTP**).
56. A draft of the RLTP was prepared by Auckland Transport and published for public consultation between 29 March 2021 and 2 May 2021.
57. At a meeting on 18 June 2021 the members of the RTC resolved to submit and recommend the RLTP to:
- (a) Auckland Council’s Planning Committee (**Planning Committee**) for endorsement; and
 - (b) The Board of Auckland Transport (**Board**) for approval;
- (RTC Decision).**
58. At a meeting on 24 June 2021 the members of the Planning Committee, who include the mayor and all ward councillors, resolved to:
- (a) Endorse the RLTP for submission to the Board for final approval;
 - (b) Note Auckland Council’s commitment to Te Tāruke-ā-Tāwhiri to halve emissions by 2030, which requires further change to transport and land use policy and the mix of transport investment; and
 - (c) Note that Auckland Council and Auckland Transport staff members are jointly developing a Transport Emissions Reduction Plan for Tāmaki Makaurau Auckland that will identify the pathways to support the required emissions reductions reflected in Te Tāruke-ā-Tāwhiri;
- (Planning Committee Decision).**
59. At a meeting on 28 June 2021 the Board resolved to approve the RLTP (**Board Decision**).
60. The RLTP became operational on 1 July 2021. The applicant relies on the RLTP as if pleaded in full.
61. On Auckland Transport’s own modelling (and as recorded in the RLTP itself), under the RLTP:
- (a) Overall vehicle kilometres travelled in Tāmaki Makaurau Auckland are expected to increase roughly in line with expected population growth of 22% between 2016 and 2031. In other words, the RLTP is not expected to result in any material reduction in per capita vehicle kilometres travelled across that 15 year period;
 - (b) Tāmaki Makaurau Auckland’s transport emissions are expected to increase by 6% between 2016 and 2031; and

- (c) The RLTP, improved vehicle efficiency and planned government interventions are, together, expected to result in a reduction of transport emissions in Tāmaki Makaurau Auckland of around 1% between 2016 and 2031.

FIRST CAUSE OF ACTION – RTC DECISION UNLAWFUL

Section 14 of the LTMA

- 62. Section 14 of the LTMA required the members of the RTC, before submitting the RLTP to Auckland Transport for approval, to be satisfied that:
 - (a) The RLTP contributes to the purpose of the LTMA, being to contribute to an effective, efficient and safe land transport system in the public interest; and
 - (b) The RLTP is consistent with GPS 2021.

Auckland Transport's advice to the RTC

- 63. Ahead of the meeting of the RTC on 24 June 2021, Auckland Transport staff members prepared and provided to the RTC a decision document (**RTC Decision Document**). The applicant relies on the RTC Decision Document as if pleaded in full.
- 64. Among other things, the RTC Decision Document:
 - (a) Recommended that the RTC should agree that the RLTP complies with s 14 of the LTMA;
 - (b) Recommended that the RTC should submit and recommend the RLTP to the Planning Committee for endorsement, and to the Board for approval;
 - (c) Enclosed a document, again prepared by Auckland Transport staff members, headed "How the draft RLTP 2021-2031 meets the requirements of section 14 of the LTMA" (**Auckland Transport Analysis**); and
 - (d) Advised the RTC that if it did not approve the RLTP (as prepared by Auckland Transport):
 - (i) The existing 2018 Auckland Regional Land Transport Plan would remain in effect;
 - (ii) Auckland Transport's ability to access funds from the National Land Transport Fund would be affected; and
 - (iii) There would be a likely impact on new and existing activities.

65. The Auckland Transport Analysis purported to demonstrate to the RTC how the RLTP meets the requirements of s 14 of the LTMA. The applicant relies on the Auckland Transport Analysis as if pleaded in full.
66. Among other things, the Auckland Transport Analysis asserted that:
- (a) The RLTP, improved vehicle efficiency and planned government interventions are, together, expected to result in a reduction of transport emissions in Tāmaki Makaurau Auckland between 2016 and 2031 of around 1%;
 - (b) Investment in infrastructure or services only has a very minor impact on total emissions, whether positive or negative;
 - (c) Scenario testing shows that plausible changes to the RLTP programme are unlikely to yield materially different results;
 - (d) It is not a given that roading projects will lead to increased tailpipe emissions;
 - (e) Two major highway projects in Tāmaki Makaurau Auckland, Penlink and Mill Road (the latter of which has now been cancelled by the Government for reasons that include the project's adverse impacts on the Government's climate commitments) would have resulted in a *decrease* in carbon dioxide emissions by 2031;
 - (f) There is no available funding to provide further reallocation of general road space towards cycling and other sustainable modes beyond what is provided for in the RLTP;
 - (g) Gains from deterring car travel through lane reallocation would be largely offset by increased emissions associated with increased congestion and diversion amongst the remaining traffic; and
 - (h) Reallocation of general traffic lanes without additional effective alternatives would materially reduce the RLTP's contribution to objectives under the LTMA in respect of effectiveness and economic, social and cultural public interests.
67. The Auckland Transport Analysis also asserted that consistency between the RLTP and GPS 2021 can be inferred from the fact that the RLTP was derived from the Auckland Transport Alignment Programme, which was developed in conjunction with the Ministry of Transport and the New Zealand Transport Agency.
68. The RTC relied upon the RTC Decision Document and the Auckland Transport Analysis in making the RTC Decision.

RTC Decision unlawful

69. The RTC Decision was unlawful because:
- (a) In exercising its decision-making power under s 14 of the LTMA, the RTC was not properly informed, failed to take into account relevant considerations and/or took into account irrelevant considerations, as pleaded at paragraph 70 below.
 - (b) In breach of s 14(a)(ii) of the LTMA, the RTC had no proper or reasonable grounds to be satisfied that the RLTP is consistent with GPS 2021, as pleaded at paragraph 71 below.
 - (c) In breach of s 14(a)(i) of the LTMA, the RTC had no proper or reasonable grounds to be satisfied that the RLTP contributes to an effective, efficient and safe land transport system in the public interest, as pleaded at paragraphs 72 and 74 below.

Not properly informed / relevant considerations / irrelevant considerations

70. The Auckland Transport Analysis and the RTC Decision Document, upon which the RTC relied in making the RTC Decision, contained material inaccuracies, omissions and irrelevancies, including:
- (a) They wrongly advised the RTC that investment in infrastructure or services only has a very minor impact on total emissions. In fact, investment in infrastructure and transport services is a key factor in transport emissions.
 - (b) They wrongly advised the RTC that no plausible changes could be made to the RLTP programme that would yield materially different results. In fact, as recognised in the Planning Committee's resolution of 24 June 2021 (pleaded at paragraph 58 above), changes to the mix of transport investment in the RLTP that result in a reduction of emissions could (and should) have been made.
 - (c) They wrongly advised the RTC that roading projects do not increase emissions. In fact, increased road capacity generates more traffic over time because it encourages driving and enables car-dependent development (a phenomenon known as "induced demand").
 - (d) They wrongly advised the RTC that the Penlink and Mill Road highway projects would together have decreased carbon dioxide emissions by 2031. In fact, those projects would have increased carbon dioxide emissions.
 - (e) They wrongly advised the RTC that there is no available funding to provide further reallocation of general road space towards cycling and other sustainable modes. On the contrary:
 - (i) Around \$2.1 billion of the total funding available under the RLTP is discretionary;

- (ii) The renewals budget in the RLTP can (and should) be used to fund the reallocation of road space towards sustainable modes;
 - (iii) Reallocation of road space can (and should) be delivered as part of other projects that are planned under the RLTP without affecting the available budget; and
 - (iv) Auckland Transport made a choice not to allocate further funding for, and not to reallocate further road space towards, sustainable modes in the RLTP.
- (f) They wrongly advised the RTC that gains from deterring car travel through lane reallocation would be offset by increased emissions and congestion. In fact, reallocating road space to other modes would reduce emissions and congestion.
- (g) They wrongly advised the RTC that reallocating road space without additional effective alternatives would materially reduce the RLTP's contribution to the objectives of the LTMA in respect of effectiveness and economic, social and cultural public interests. In fact, reallocating road space to other modes would itself provide effective alternatives, promote safety, and contribute to the purpose of the LTMA.
- (h) They purported to explain to the RTC how the RLTP supports economic, social and cultural wellbeing, but they made no mention of environmental wellbeing, the adverse impacts that the RLTP would have on environmental wellbeing, and the importance of environmental wellbeing for economic, social and cultural wellbeing.
- (i) They failed to draw the RTC's attention to Auckland Transport's modelling of the expected emissions impacts of the RLTP programme itself (as distinct from the impacts of anticipated improvements in vehicle efficiency and planned government interventions), being a 6% increase in emissions between 2016 and 2031.
- (j) They failed to draw the RTC's attention to Auckland Transport's modelling that vehicle kilometres travelled are expected to increase under the RLTP in line with expected population growth of 22% between 2016 and 2031, with no material reduction in per capita vehicle kilometres travelled.
- (k) They wrongly advised the RTC that consistency between the RLTP and GPS 2021 could be inferred from the fact that the RLTP was derived from the Auckland Transport Alignment Programme. In fact, that was wholly irrelevant to the RTC's assessment of consistency between the RLTP and GPS 2021.
- (l) They wrongly presented the RTC with a binary choice between approving the RLTP (as prepared) and the existing 2018 Auckland Regional Land Transport Plan remaining in effect (with alleged consequent impacts on Auckland Transport's activities and access

to funds). In fact, the RTC could (and should) have requested amendments to the RLTP before submitting it for approval.

No proper or reasonable grounds to be satisfied RLTP consistent with GPS 2021

71. The RLTP is inconsistent with GPS 2021, and the RTC had no proper or reasonable grounds to be satisfied otherwise, including because:
- (a) The RLTP is inconsistent with GPS 2021's strategic priority of transforming to a low carbon transport system that supports emissions reductions aligned with Aotearoa New Zealand's commitments under the Paris Agreement and the Zero Carbon Act.
 - (b) Contrary to the associated priority outcome in GPS 2021, the RLTP does not make investment decisions that support the rapid transition to a low carbon transport system, that materially reduce harmful emissions, and that give effect to the emissions reduction targets in the CCC Advice.
 - (c) In particular, Auckland Transport's modelling forecasts that under the RLTP:
 - (i) Transport emissions in Tāmaki Makaurau Auckland will increase to 6% above 2016 levels by 2031;
 - (ii) Even allowing for improved vehicle efficiency and planned government interventions, transport emissions in Tāmaki Makaurau Auckland will only reduce to 1% below 2016 levels by 2031; and
 - (iii) There will be no per capita reduction in vehicle kilometres travelled.
 - (d) That is wholly inconsistent with:
 - (i) Aotearoa New Zealand's NDC under the Paris Agreement of reducing its greenhouse gas emissions to 30% below 2005 levels by 2030;
 - (ii) Auckland Council's targets under Te Tāruke-ā-Tāwhiri of reducing Tāmaki Makaurau Auckland's overall greenhouse gas emissions to 50% below 2016 levels by 2030, and its emissions from the transport sector to 64% below 2016 levels by 2030, as well as the cumulative emissions budget under Te Tāruke-ā-Tāwhiri; and
 - (iii) The recommended emissions budgets in the CCC Advice, which would reduce Aotearoa New Zealand's greenhouse gas emissions to 38% below 2019 levels and carbon dioxide emissions to 47% below 2019 levels by 2030.

No proper or reasonable grounds to be satisfied RLTP contributes to an effective, efficient and safe land transport system in the public interest

72. As recognised by the Special Report, the Paris Agreement, the Zero Carbon Act, the Local Government Declaration, the Auckland Council Climate Emergency Declaration, the Government Climate Emergency Declaration, Te Tāruke-ā-Tāwhiri, the CCC Advice, and GPS 2021 there is an urgent need to make substantial reductions to emissions of greenhouse gasses globally, nationally and in Tāmaki Makaurau Auckland.
73. In addition to causing climate change, transport emissions cause air pollution that poses direct risks to human health and wellbeing.
74. The RTC had no proper or reasonable grounds to be satisfied that the RLTP, which is wholly inconsistent with the emissions reduction targets pleaded at paragraph 71(d) above, contributes to a safe land transport system in the public interest.

Claim for relief:

- (a) A declaration that the RTC acted unlawfully in making the RTC Decision;
- (b) An order setting aside the RTC Decision and the Board Decision;
- (c) Orders that Auckland Transport and the RTC prepare, submit and approve a new regional land transport plan, in accordance with ss 13(2)(a), 14 and 13(2)(b) of the LTMA; and
- (d) Such other relief as the Court thinks fit.

SECOND CAUSE OF ACTION – PLANNING COMMITTEE DECISION UNLAWFUL

The applicant repeats paragraphs 1 to 74 above and says further:

Auckland Transport’s advice to the Planning Committee

75. Ahead of the meeting of the Planning Committee on 24 June 2021, Auckland Transport staff members prepared and provided to the Planning Committee a decision document (**Planning Committee Decision Document**). The applicant relies on the Planning Committee Decision Document as if pleaded in full.
76. Among other things, the Planning Committee Decision Document:
- (a) Noted that the RLTP had been endorsed by the RTC and recommended by the RTC to the Planning Committee for endorsement;
- (b) Recommended that the Planning Committee should endorse the RLTP for submission to the Board for final approval;

- (c) Referred the Planning Committee to the Auckland Transport Analysis (which is set out in full in appendix 9 of the RLTP) in relation to how the RLTP was alleged to meet the requirements of s 14 of the LTMA;
- (d) Advised the Planning Committee that significant changes to increase or reprioritise the RLTP were limited by funding constraints and the impact on other priority areas; and
- (e) Advised the Planning Committee that if the Board did not approve the RLTP (as prepared by Auckland Transport):
 - (i) The existing 2018 Auckland Regional Land Transport Plan would remain in effect;
 - (ii) It was likely that \$345m of funding from Waka Kotahi NZTA for new activities would not be available; and
 - (iii) Existing activities might also be affected.

77. The Planning Committee relied upon the Planning Committee Decision Document, the Auckland Transport Analysis and the RTC Decision in making the Planning Committee Decision.

Planning Committee decision unlawful

78. The Planning Committee Decision was unlawful because:

- (a) In making the Planning Committee Decision, the Planning Committee was not properly informed, failed to take into account relevant considerations and/or took into account irrelevant considerations, being the material inaccuracies, omissions and irrelevancies in the Auckland Transport Analysis and the Planning Committee Decision Document pleaded at paragraph 70 above (*mutatis mutandis*).
- (b) The Planning Committee failed to have any or proper regard to the mandatory requirements of s 14 of the Local Government Act 2002 (**LGA**), including:
 - (i) The interests of future as well as current communities;
 - (ii) The need to maintain and enhance the quality of the environment; and
 - (iii) The reasonably foreseeable needs of future generations.
- (c) In breach of s 77 of the LGA, the Planning Committee failed in the course of its decision-making process:
 - (i) To seek to identify all reasonably practicable options for the achievement of the objective of the Planning Committee Decision, including the option of declining to endorse the RLTP and requiring Auckland Transport to make changes to it; and

- (ii) To assess the options in terms of their advantages and disadvantages.
- (d) The Planning Committee breached s 80 of the LGA, as pleaded at paragraphs 79 to 81 below.

Inconsistent decisions

- 79. The Planning Committee Decision was significantly inconsistent with the Local Government Declaration, the Auckland Council Climate Emergency Declaration and Te Tāruke-ā-Tāwhiri.
- 80. The Planning Committee expressly recognised the inconsistency between the RLTP and Te Tāruke-ā-Tāwhiri, and the need for changes to the mix of transport investment, as pleaded at paragraph 58 above.
- 81. Despite that, the Planning Committee:
 - (a) Proceeded to make the Planning Committee Decision; and
 - (b) Failed, in breach of s 80 of the LGA, to identify clearly:
 - (i) The reasons for the inconsistency between the Planning Committee Decision, and the Local Government Declaration, the Auckland Council Climate Emergency Declaration and Te Tāruke-ā-Tāwhiri; and
 - (ii) Any intention of Auckland Council to amend the Local Government Declaration, the Auckland Council Climate Emergency Declaration and Te Tāruke-ā-Tāwhiri to accommodate the Planning Committee Decision.

Claim for relief:

- (a) A declaration that Auckland Council acted unlawfully in making the Planning Committee Decision;
- (b) An order setting aside the Planning Committee Decision; and
- (c) Such other relief as the Court thinks fit.

THIRD CAUSE OF ACTION – BOARD DECISION UNLAWFUL

The applicant repeats paragraphs 1 to 74 above and says further:

Auckland Transport's advice to the Board

- 82. Ahead of the meeting of the Board on 28 June 2021, Auckland Transport staff members prepared and provided to the Board a decision document (**Board Decision Document**). The applicant relies on the Board Decision Document as if pleaded in full.

83. Among other things, the Board Decision Document:
- (a) Noted that the RTC was satisfied that the RLTP complied with the LTMA, including that it contributes to the purpose of the LTMA, and is consistent with GPS 2021;
 - (b) Noted that the RTC had recommended the RLTP to the Board for approval;
 - (c) Recommended that the Board should approve the RLTP;
 - (d) Referred the Board to the Auckland Transport Analysis (which is set out in full in appendix 9 of the RLTP) in relation to how the RLTP was alleged to meet the requirements of s 14 of the LTMA;
 - (e) Asserted that the RLTP is consistent with the purpose of Auckland Transport under s 39 of the Local Government (Auckland Council) Act 2009, being to contribute to an effective, efficient and safe Auckland land transport system in the public interest; and
 - (f) Advised the Board that if it did not approve the RLTP:
 - (i) The existing 2018 Auckland Regional Land Transport Plan would remain in effect, but the Board could direct the RTC to reconsider specific aspects of the RLTP;
 - (ii) It was likely that \$345m of funding from Waka Kotahi NZTA for new activities would not be available; and
 - (iii) Existing activities might also be affected.
84. The Board relied upon the Board Decision Document, the Auckland Transport Analysis and the RTC Decision in making the Board Decision.

Board Decision unlawful

85. The Board Decision was unlawful because:
- (a) In making the Board Decision, the Board relied on the RTC Decision, which was unlawful for the reasons pleaded at paragraphs 69 to 74 above.
 - (b) In making the Board Decision, the Board was not properly informed, failed to take into account relevant considerations and/or took into account irrelevant considerations, being the material inaccuracies, omissions and irrelevancies in the Auckland Transport Analysis and the Board Decision Document pleaded at paragraph 70 above (*mutatis mutandis*).
 - (c) In making the Board Decision, the Board acted contrary to its statutory purpose as set out in s 39 of the Local Government (Auckland Council) Act 2009 for the reasons pleaded at paragraphs 72 to 74 above.

Claim for relief:

- (a) A declaration that the Board acted unlawfully in making the Board Decision;
- (b) An order setting aside the Board Decision;
- (c) Orders that Auckland Transport and the RTC prepare, submit and approve a new regional land transport plan, in accordance with ss 13(2)(a), 14 and 13(2)(b) of the LTMA; and
- (d) Such other relief as the Court thinks fit.

This document is filed by Michael Heard solicitor for the applicant of the firm LeeSalmonLong.

Documents for the applicant may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to P O Box 2026, Shortland Street, Auckland.