

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2021-404-1618

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

UNDER

the Judicial Review Procedure Act 2016

IN THE MATTER OF

an application for judicial review

BETWEEN

**ALL ABOARD AOTEAROA
INCORPORATED**

Applicant

AND

AUCKLAND TRANSPORT

First Respondent

AND

**THE REGIONAL TRANSPORT
COMMITTEE FOR AUCKLAND**

Second Respondent

AND

AUCKLAND COUNCIL

Third Respondent

AFFIDAVIT OF NICHOLAS JOHN LEE

December 2021

Counsel: Davey Salmon QC
Mills Lane Chambers
davey.salmon@millslane.co.nz
+64 21 974 873

JACK CUNDY BARRISTER & SOLICITOR
PO Box 1077 Shortland Street, Auckland 1140
jack@jackcundy.co.nz
+64 972 9313

AFFIDAVIT OF NICHOLAS JOHN LEE

I, Nicholas John Lee, of Auckland, Director, swear –

1. I make this affidavit in support of the application by All Aboard Aotearoa Inc. (**All Aboard**) for judicial review of decisions made by the Regional Transport Committee (**RTC**), Auckland Council and Auckland Transport in respect of the Regional Land Transport Plan for Auckland 2021 (**RLTP**).
2. All Aboard is a coalition of six non-governmental organisations, Bike Auckland Inc., Generation Zero Inc., Lawyers for Climate Action NZ Inc., Movement (charitable trust), Women in Urbanism Aotearoa Inc. and Greenpeace Aotearoa Inc. I am the chair of All Aboard and I am authorised to make this affidavit on All Aboard’s behalf.
3. I annex marked exhibit “NJL1” a bundle of documents that I refer to in this affidavit. Page references are to pages of the exhibit.

The need to reduce Auckland’s transport emissions

4. The central aim of All Aboard is to achieve the urgent decarbonisation of transport in Auckland, which we see as the best way for Auckland to lead Aotearoa to contribute to the global effort to limit warming to 1.5°C above pre-industrial levels, in order to avoid the worst effects of the climate crisis.

5. As page 34 of the RLTP acknowledges:

[[301.0034]]

Road transport has consistently been Auckland’s largest single source of GHG emissions at 38.5 percent in 2018. The overwhelming majority of these emissions (80 percent) come from private motor vehicles and light commercial vehicles. Heavy vehicles (or freight and buses) account for 20 percent of land transport emissions. Given the scale of Auckland’s contribution to New Zealand’s transport emissions, failure to make substantial emissions reductions in Auckland will severely limit New Zealand’s ability to meet it’s [sic] climate change targets.

6. The severity of the climate crisis, the urgent need to decarbonise transport in Auckland, and how that needs to be done, are matters that are well known to Auckland Council and Auckland Transport. They are recognised in various commitments that Auckland Council has made, including:

(a) In 2015, joining the C40 Cities Climate Leadership Group, a network of world cities committed to taking urgent action to confront the climate crisis;

[[

(b) The Local Government Leaders’ Climate Change Declaration 2017, which Mayor Phil Goff signed on behalf of Auckland Council, which commits to developing and implementing ambitious action plans that reduce greenhouse gas emissions and supporting resilience, including plans to promote walking, cycling, public transport and other low carbon transport options;

[[302.0469]]

(c) Auckland Council’s declaration of a climate emergency on 11 June 2019, which Mayor Goff described as “signalling the Council’s intention to put climate change at the front and centre of our decision making”; and

[[303.0977]]

[[303.0997]]

- (d) Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan, adopted on 21 July 2020, in which Auckland Council adopted the "core goal" of reducing Auckland's greenhouse gas emissions by 50% by 2030, and reaching net zero emissions by 2050. The plan recognises that a 64% reduction in gross emissions from transport by 2030 (based on 2016 levels) is necessary in order for that core goal to be achieved. [[301.0190]]
7. Auckland Council has spelled out in Te Tāruke-ā-Tāwhiri what actions it must take to achieve the necessary reduction in emissions. In short, it must "encourage a shift to public transport use, walking and micro-mobility devices, rather than driving". To do so it will (among other things):
- (a) "reduce private vehicle travel";
 - (b) "make travelling by public transport more appealing than using personal vehicles";
 - (c) "make travel by public transport faster, more frequent and reliable over a wider network";
 - (d) "prioritise investment along congested corridors and expand Auckland's Rapid Transit Network";
 - (e) "increase access to bicycles, micro-mobility devices and the safe, connected and dedicated infrastructure that supports their use";
 - (f) "accelerate investment in dedicated cycleways"; and
 - (g) "improve access to public transport hubs".
8. There is accordingly broad agreement between the parties about why Auckland's transport emissions must be urgently reduced, and what needs to be done in order to achieve that.

All Aboard's engagement with the RLTP and ATAP process

9. Representatives of All Aboard had a number of engagements with Auckland Council and Auckland Transport regarding the development of the RLTP, and the related Auckland Transport Alignment Project (**ATAP**) (an agreement between Auckland Council and the Government on transport objectives for Auckland).
10. On 10 August 2020 we published an open letter to the Minister of Transport, the Chief Executive of the Ministry of Transport, the Mayor, Chief Executive and Councillors of Auckland Council, and the Boards and Chief Executives of Waka Kotahi and Auckland Transport, calling for transport in Auckland to be largely decarbonised by 2030 (**page 1**). [[304.1464]]
11. On 1 December 2020 we presented to the Board of Auckland Transport about how transport in Auckland could be decarbonised (**pages 3 and 9**). We provided the open letter referred to above to the Board. [[304.1756]]
[[304.1762]]
12. On 9 December 2020 we attended a stakeholder meeting with representatives of the Ministry of Transport, Waka Kotahi, Auckland

- Transport and Auckland Council regarding ATAP. We were given a discussion document at the meeting (**page 13**), which said that the ATAP package was “largely a continuation of ATAP 2018-28” and that the total investment was \$29 billion. The document provided a table showing that the “committed and essential programme” would cost \$29.093 billion, suggesting that the entire budget for the next decade was required for existing projects and programmes. During the meeting I asked what the emissions impacts of the ATAP programme were expected to be. As my handwritten notes on the discussion document record, we were told that emissions were expected to increase by 6%, with a 10-15% increase in VKT. [[304.1776]]
13. On 10 December 2021 a representative of All Aboard, Heidi O’Callahan, met Auckland Transport to discuss emissions modelling (**pages 37, 38 and 40**). As Heidi’s note of the meeting records, Auckland Transport representatives expressed scepticism that active modes (walking and cycling) could materially reduce emissions; they were of the view that Auckland Transport’s renewals budget could not be used to better accommodate walking and cycling; they did not agree that congestion was increased through adding capacity at network pinch points; and they did not consider that the current 70% driving mode share could be reduced quickly. [[304.1800]]
[[304.1806]]
[[304.1801]]
14. On 4 February 2021 representatives of All Aboard presented to Auckland Council’s Planning Committee about decarbonising transport in Auckland, and Auckland Council’s legal obligations (**pages 45, 52 and 54**). [[304.1866]]
[[304.1873]]
[[304.1875]]
15. We met again with the ATAP group on 23 March 2021. We were given a briefing paper regarding the ATAP package (**page 61**), which indicated that the total expenditure was over \$30 billion, but that only \$2.2 billion was regarded as discretionary. The document said that gross emissions were forecast to increase under the package. It also contained a table showing that nearly 40% of the budget was proposed to be spent on projects that would maintain or increase emissions, including roading expansions, and renewals of the existing roading networks. [[305.2193]]
16. In February 2021 Movement, one of All Aboard’s member organisations, had requested information from Auckland Transport about how the RLTP was consistent with the Government Policy Statement on Land Transport 2021 (**GPS**). Auckland Transport responded on 8 April 2021 (**page 89**) saying, among other things: [[305.2242]]
- (a) “Auckland’s draft RLTP achieves consistency by aligning with the Auckland Transport Alignment Project (ATAP)”; and
- (b) “Auckland’s draft RLTP has been prioritised against the objectives agreed by ATAP and is consistent with the indicative ATAP programme. Given that the ATAP programme has been agreed by Cabinet and Council we do not anticipate further assessment at a programme level against GPS indicators” (being the indicators set out in section 2.6 of the GPS).
17. Auckland Transport published the draft RLTP for consultation on 29 March 2021. All Aboard made a submission on the draft on 2 May 2021 (**page 92**). Our submission recorded that a transport plan that increased [[305.2406]]

emissions was plainly not in the public interest and would be inconsistent with the GPS. We also noted, among other things, that the draft RLTP allocated substantial funds to roading projects; that it made no attempt to reduce VKT, which was essential for reducing total carbon dioxide emissions; and that the plan needed a complete overhaul.

18. On 10 May 2021 representatives of All Aboard presented to the RTC on the need to decarbonise transport in Auckland, and the RTC's legal obligations in respect of the RLTP, including under the Land Transport Management Act 2003 (**LTMA**) (**page 105**). [[306.2419]]
19. On 2 June 2021 Movement wrote to Auckland Transport noting that the draft RLTP was not consistent with the GPS and the purposes of the LTMA (**page 126**). [[307.3186]]
20. On 18 June 2021 the RTC resolved to submit and recommend the RLTP to the Planning Committee of Auckland Council for endorsement, and to the Board of Auckland Transport for approval. No significant changes were made to the draft RLTP that Auckland Transport had consulted on.
21. On 23 June 2021 we wrote to the Planning Committee raising our concerns about the RLTP ahead of the Planning Committee's consideration of whether to endorse the RLTP on the following day (**page 131**). Among other things, our letter noted that endorsing the RLTP would be inconsistent with the Environment and Community Committee's declaration of a climate emergency on 11 June 2019; Te Tāruke-ā-Tāwhiri, which the Environment and Climate Change Committee had adopted on 21 July 2020; and the Environment and Climate Change Committee's decision in February 2021 to maintain Auckland's membership of the C40 Cities Climate Leadership Group. We also identified deficiencies in the advice that Auckland Transport had provided in respect of the RLTP. [[310.4203]]

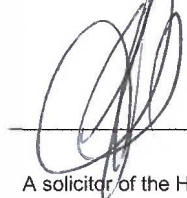
Failure of the RLTP to reduce emissions and car travel

22. The RLTP sets out the results of Auckland Transport's modelling of the impacts of the \$37 billion of investment that it will make (pages 78 and 79). It says that: [[301.0078]]
[[301.0079]]
- (a) Total vehicle kilometres travelled (**VKT**) are expected to increase by 22% between 2016 and 2031, in line with expected population growth;
 - (b) Auckland's total transport emissions are expected to increase by 6% between 2016 and 2031;
 - (c) The Government's Clean Car policy and a shift to biofuels are expected to reduce Auckland's total transport emissions by 7% between 2016 and 2031; and
 - (d) Accordingly, the overall reduction in transport emissions in Auckland is forecast to be only around 1% between 2016 and 2031.

23. All Aboard has reservations about the models Auckland Transport uses to assess emissions and VKT, which tend to underestimate the negative emissions and VKT impacts of road projects, and the positive impacts of providing alternatives to car travel. It also appears that Auckland Transport has not modelled the emissions embodied in building infrastructure and the vehicles that will use it, rather than just the operational emissions.
24. Even adopting Auckland Transport's numbers, however, it is plain that the RLTP investment programme will result in no material reduction to Auckland's transport emissions. The RLTP is therefore entirely at odds with Auckland Council's emissions reduction targets under Te Tāruke-ā-Tāwhiri; New Zealand's Nationally Determined Contribution under the Paris Agreement; and the Climate Change Commission's advice to the Government, to which effect must be given under the GPS and the LTMA. The RLTP also fails to implement the actions identified in Te Tāruke-ā-Tāwhiri that Auckland Council has already accepted are necessary in order to reduce Auckland's transport emissions.
25. We are alarmed that in making the RLTP Auckland Transport proceeded on the basis that almost all of the projects and programmes included were non-discretionary, and that it failed to assess any of them against the strategic priorities and indicators contained in the GPS prior to their inclusion.
26. All Aboard also considers that a transport plan that makes no reduction to VKT (even on a per capita) basis is inconsistent with the safety strategic priority in the GPS, and Auckland Transport's Vision Zero goal of having no deaths and serious injuries on Auckland's roads by 2050.
27. Appendix 9 of the RLTP addresses the alleged consistency between the RLTP and the GPS. We understand that this document was provided to each of the RTC, the Planning Committee and the Board of Auckland Transport before they made their respective decisions to recommend, endorse and approve the RLTP. It included assertions that: [[301.0116]]
- (a) Investment in infrastructure or services only has a very minor impact on total emissions;
 - (b) Plausible changes to the RLTP programme would be unlikely to yield materially different results;
 - (c) There was limited practical scope to relocate elements of the programme from roading projects to increase investment in public transport and active modes;
 - (d) Gains from deterring car travel through lane reallocation alone would be largely offset by increased emissions associated with increased congestion; and
 - (e) Reallocation of general traffic lanes without additional effective alternatives would materially reduce the RLTP's contribution "effectiveness and economic, social and cultural public interests".

28. All Aboard considers that those assertions are demonstrably wrong, and at odds with:
- (a) Contemporary understandings of transport policy and planning;
 - (b) The required actions that Auckland Council has identified as necessary under Te Tāruke-ā-Tāwhiri; and [[301.0190]]
 - (c) The pathways for emissions reductions that the Ministry of Transport identified in its May 2021 discussion document Hīkina te Kohupara – Kia mauri ora ai te iwi – Transport Emissions: Pathways to Net Zero by 2050. [[306.2473]]
29. We share the concerns expressed by the Mayor and Councillors (**pages 136 and 138**), and by Auckland Council staff (**page 154**), that Auckland Transport’s approach is driven by an internal culture that fails to recognise and accept that reducing private vehicle travel is central to achieving emissions reductions. [[305.2186]]
[[305.2188]]
[[306.2660]]
30. I note that shortly after the RLTP was adopted, Auckland Council and Auckland Transport began working on a Transport Emissions Reduction Plan (**TERP**) (**pages 165, 177 and 183**). All Aboard is supportive of the work that is being done on the TERP. In our view, however, it demonstrates exactly what Auckland Transport needed to do before it embarked on making the plan for the next decade of transport investment in Auckland. [[311.4804]]
[[311.4816]]
[[312.5234]]

Affirmation
~~SWORN~~ at Auckland this *22* day of
 December 2021 before me:



 A solicitor of the High Court of New Zealand




 Nicholas John Lee

A Ferguson
Solicitor
Auckland

EXHIBIT "NJL1"

This is the exhibit marked "NJL1" referred to in the affidavit of Nicholas John Lee

Sworn at Auckland this 22 day of December 2021 before me:



A solicitor of the High Court of New Zealand.

A Ferguson
solicitor
Auckland