

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

CIV-2021-404-1618

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU 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

Cont.

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**APPLICANT'S SUMMARY OF ORAL ARGUMENT**

26 April 2022

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Assigned judicial officer: Venning J

Next event date: Hearing on 26-28 April 2022

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AND

AUCKLAND COUNCIL

Third respondent

## APPLICANT'S SUMMARY OF ORAL ARGUMENT

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### Summary of applicant's case

1. Faced with a requirement to produce an RLTP that was consistent with GPS 2021, the respondents treated GPS 2021's directive to reduce emissions and to give effect to emissions reduction targets as a mere relevant consideration, and proceeded to implement an RLTP that will result in:
  - (a) A very significant increase in Auckland's vehicle kilometres travelled (VKT), i.e. the total amount of driving, over the next decade; and
  - (b) No material reduction in Auckland's road transport emissions.
2. The decisions at issue were unlawful because:
  - (a) Auckland Transport and the RTC misdirected themselves in relation to the requirements of GPS 2021 and its climate change strategic priority;
  - (b) There were fundamental failings in Auckland Transport's process for developing RLTP 2021 that meant the ability of RLTP 2021 to reduce emissions was not properly tested, with the consequence that the decision-makers were not properly and reasonably informed;
  - (c) Auckland Transport's preparation of RLTP 2021 and its advice to the decision-makers proceeded on fundamental misconceptions about transport policy and planning that are contradicted by the available evidence, including the respondents' own documents; and
  - (d) The decision-makers had no proper or reasonable basis to be satisfied that RLTP 2021 was consistent with the purpose of the LTMA.
3. The Planning Committee's decision to endorse RLTP 2021 was also tainted by the failings in Auckland Transport's process and advice regarding RLTP 2021. Additionally, the Planning Committee Decision was unlawful because:
  - (a) The respondents had committed to requiring the approval of the Planning Committee before RLTP 2021 was approved by the Board;
  - (b) In making its decision, the Planning Committee failed to comply with the mandatory decision-making requirements of the LGA:
    - (i) In breach of s 80, it failed to identify the reasons for the inconsistency between RLTP 2021 and Auckland Council's own plans and policies, including Auckland Council's declaration of a climate emergency and Te Tāruke-ā-Tāwhiri;
    - (ii) In breach of s 77, it failed to identify and consider the option of declining to endorse RLTP 2021 and requiring Auckland Transport to make changes to it; and
    - (iii) It failed to have regard to the principles in s 14 of the LGA.

4. The respondents suggest that the applicant is seeking to invite the Court to assess the merits of the decisions at issue, and to intrude into matters that are reserved to the discretion of the decision-makers. That mischaracterises the applicant's case, which allege orthodox errors of law.

**Context – emissions reduction commitments**

5. Prior to the decisions, Auckland and New Zealand had made a series of commitments in response to the global climate crisis:
- (a) Under the Paris Agreement, which came into force on 4 November 2016, New Zealand has committed to contribute to the global effort to limit the global average temperature increase to 1.5°C;
  - (b) New Zealand's NDC under the Paris Agreement was to reduce its net greenhouse gas emissions to 30% below gross 2005 levels by 2030 (which it has now increased to 50%);
  - (c) In 2017 Mayor Phil Goff signed the Local Government Leaders' Climate Change Declaration 2017 on behalf of Auckland Council.<sup>1</sup>
  - (d) On 11 June 2019 Auckland Council declared a climate emergency;<sup>2</sup>
  - (e) On 21 July 2020 Auckland Council adopted Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan, including targets to reduce Auckland's greenhouse gas emissions to 50% below 2016 levels by 2030, and to reduce its gross transport emissions to 64% below 2016 levels by 2030;<sup>3</sup>
  - (f) On 2 December 2020 the New Zealand Government declared a climate emergency;<sup>4</sup> and
  - (g) The Climate Change Commission published its draft advice to the Government on 31 January 2021 and its final advice on 9 June 2021, recommending emissions budgets that required net emissions of carbon dioxide to reduce by 47% against a 2019 baseline,<sup>5</sup> and making specific recommendations for reductions of transport emissions.<sup>6</sup>
6. The decisions at issue bear directly on whether those emissions reductions targets will be met:

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<sup>1</sup> [[302.0469]].

<sup>2</sup> [[301.1004]]; [[308.3462]]

<sup>3</sup> Te Tāruke-ā-Tāwhiri at 43 [[301.0232]] and 52 [[301.0241]].

<sup>4</sup> [[304.1774]].

<sup>5</sup> [[307.2844]]; [[307.2847]].

<sup>6</sup> [[307.2875]]; <https://ccc-production-media.s3.ap-southeast-2.amazonaws.com/public/Inaia-tonu-nei-a-low-emissions-future-for-Aotearoa/Modelling-files/Charts-and-data-for-2021-final-advice.xlsx>

- (a) As RLTP 2021 records:<sup>7</sup>
  - (i) In 2018 Auckland’s road transport emissions were around 38.5% of Auckland’s total emissions, and 5.5% of New Zealand’s total emissions; and
  - (ii) Failure to make substantial emission reductions in Auckland will severely limit New Zealand’s ability to meet its climate targets; and
- (b) The decade covered by RLTP 2021 extends beyond 2030, the year by which New Zealand’s NDC and Auckland’s targets under Te Tāruke-ā-Tāwhiri must be met.

**Statutory context**

7. The statutory context for the decisions was:

- (a) Section 14 of the LTMA provided (relevantly):

Before a regional transport committee submits a regional land transport plan to a regional council or Auckland Transport (as the case may be) for approval, the regional transport committee must—

- (a) be satisfied that the regional land transport plan—
  - (i) contributes to the purpose of this Act; and
  - (ii) is consistent with the GPS on land transport; [...]

- (b) The final GPS 2021 was published on 3 September 2020. Relevantly:

- (i) One of four strategic priorities was “climate change”:<sup>8</sup>

Transform to a low carbon transport system that supports emission reductions aligned with national commitments, while improving safety and inclusive access.

- (ii) The required primary outcome was:<sup>9</sup>

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.

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<sup>7</sup> [[301.0035]].

<sup>8</sup> [[301.0152]].

<sup>9</sup> [[301.0152]].

- (iii) GPS 2021 contemplated that “a reduction in greenhouse gas emissions will be achieved through action across all priorities, programmes and activity classes”.<sup>10</sup>
- (iv) There was an express requirement for funding applicants to demonstrate how investments meet specific indicators, including reduction of emissions.<sup>11</sup>
- (c) The strong direction to *give effect* to the Climate Change Commission’s targets was included in GPS 2021 at Auckland Council’s request.<sup>12</sup>
- (d) The firm obligations regarding emissions reductions were not mere relevant considerations to be balanced or traded off against other strategic priorities.<sup>13</sup> GPS 2021 itself, and the applicant’s un rebutted expert evidence, confirm that the strategic priorities are mutually supporting, and can be delivered by the same interventions.<sup>14</sup> There is no inconsistency between them, and RLTP 2021 was required to deliver them all.<sup>15</sup>
- (e) Those obligations were all the more important in a context of the climate emergency, and the respondents’ own emissions reduction targets under Te Tāruke-ā-Tāwhiri.

**Context – urgency of climate problem and consequence of inaction**

8. There is no dispute about climate change, its causes and effects, and the required mitigation. Uncontested evidence from three IPCC authors, Professor Will Steffen, Professor Tim Naish and Professor Alistair Woodward, shows:
- (a) Global temperature increases need to be kept to less than 1.5°C in order to avoid the worst effects of the climate crisis. For that to occur, only 320 billion tonnes of CO2 may be emitted in the future, but at current rates that budget will be exhausted by the end of 2029;<sup>16</sup>
  - (b) Every additional emission of greenhouse gases increases the risk that global tipping cascades will be triggered, leading to a hothouse Earth scenario, and threatening the habitability of Earth;<sup>17</sup>
  - (c) The effects of climate change threatening the livelihoods of hundreds of millions of people around the world<sup>18</sup>

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<sup>10</sup> GPS 2021 at [7] [[301.0136]].

<sup>11</sup> GPS 2021 at [89] [[301.0159]] and section 2.6 [[301.0154]].

<sup>12</sup> [[303.1278]].

<sup>13</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [83] and [128]; applicant’s submissions at [4.23]-[4.31].

<sup>14</sup> Applicant’s submissions at [4.15]-[4.22].

<sup>15</sup> Applicant’s submissions at [4.27]-[4.29].

<sup>16</sup> Affidavit of Will Steffen at [9(d)] [[201.0019]].

<sup>17</sup> Affidavit of Will Steffen at [57] [[201.0034]].

<sup>18</sup> Affidavit of Alistair Woodward at [15] [[201.0069]].

- (d) Climate change will have significant impacts on New Zealand,<sup>19</sup> and disproportionate impacts on Māori;<sup>20</sup> and
- (e) Climate change will disproportionately affect the young and future generations in all scenarios, but the effects will be much worse if global temperature increases are higher.<sup>21</sup>

### **Development of RLTP 2021**

9. Key features of Auckland Transport’s development of RLTP 2021 were:
- (a) All significant decisions regarding the transport investment programme were taken before RLTP 2021 was prepared, in the context of developing the ATAP programme.<sup>22</sup>
  - (b) Auckland Transport was committed to delivering its pre-existing 2018 investment programme. It started from the flawed premise that more than 93% of the investment was required for projects and programmes that it deemed “mandatory”.<sup>23</sup>
  - (c) There was no change to the approach following the release of the final GPS 2021 on 3 September 2020.<sup>24</sup>
  - (d) Auckland Transport did not assess any of the individual projects and programmes in RLTP 2021 against the strategic priorities and indicators set out in GPS 2021 before including them.<sup>25</sup> The only assessment related to less than 7% of the investment, but even that was only on a blended “package” basis.<sup>26</sup>
  - (e) Auckland Transport failed to apply a proper climate lens in selecting projects and programmes for the investment programme, and there was no priority given to climate outcomes.<sup>27</sup>
  - (f) The only assessment of climate impacts of individual projects and programmes was conducted retrospectively, after RLTP 2021 had been substantially finalised. It showed much of the programme was “emissions neutral” (it would maintain emissions) or “emissions adding” (it would increase them). Much of the budget was allocated to like-for-like renewals of existing car infrastructure.<sup>28</sup>

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<sup>19</sup> Affidavit of Tim Naish at [36]-[34] [[201.0049]].

<sup>20</sup> Affidavit of Alistair Woodward at [30]-[33] [[201.0074]].

<sup>21</sup> Affidavit of Alistair Woodward at [34]-[37] [[201.0074]]; affidavit of Will Steffen at [58]-[60] [[201.0034]].

<sup>22</sup> Applicant’s submissions at [5.23]-[5.26].

<sup>23</sup> Applicant’s submissions at [5.10]-[5.14].

<sup>24</sup> Applicant’s submissions at [5.21].

<sup>25</sup> Applicant’s submissions at [5.31].

<sup>26</sup> Applicant’s submissions at [5.15].

<sup>27</sup> Applicant’s submissions at [5.18] and [5.29(c)].

<sup>28</sup> Applicant’s submissions at [5.30] and [5.34].

### **Emissions impacts of RLTP 2021**

10. RLTP 2021 records the respondents' understanding of the emissions impacts of investment programme:
  - (a) The primary figures presented cover the period from 2016 to 2031:
    - (i) VKT will increase by 22%, in line with population growth.<sup>29</sup> RLTP 2021 will not achieve any reduction in car use, even on a per capita basis.
    - (ii) Road transport emissions will increase by 6% under RLTP 2021, but anticipated government interventions are expected to decrease emissions by 7%.<sup>30</sup> Those other interventions, rather than the RLTP investment, will generate a potential net emissions reduction of 1%.
  - (b) An appendix to RLTP 2021 estimates that across the period from 2021 to 2031 road transport emissions will decrease by 5%,<sup>31</sup> but that figure includes the impact of the anticipated government interventions.
  - (c) There is no evidence that the RLTP investment itself would decrease emissions, even across that narrower (2021 to 2031) period.

### **The decisions at issue**

11. Auckland Transport conducted a retrospective assessment of the alleged consistency between RLTP 2021 and GPS 2021 (the "Section 14 Analysis") *after* the investment programme was finalised, and immediately before the decisions at issue were made.<sup>32</sup> The Section 14 Analysis was provided to each of the decision-makers.
12. The Section 14 Analysis:
  - (a) Materially misunderstood the requirements of GPS 2021;<sup>33</sup> and
  - (b) Made assertions about the alleged inability of RLTP 2021 to achieve better emissions outcomes that are wholly inconsistent with the evidence, including the respondents' own documents.<sup>34</sup>
13. The RTC Decision, Planning Committee Decision and Board Decision were made on 18 June 2021, 24 June 2021 and 28 June 2021 respectively.
14. Auckland Transport's decision document for the Planning Committee presented a binary choice between endorsing RLTP 2021 (as prepared by Auckland Transport) and not endorsing it (in which case the existing RLTP

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<sup>29</sup> [[301.0078]].

<sup>30</sup> [[301.0079]].

<sup>31</sup> Appendix 9 at [29] [[301.0120]].

<sup>32</sup> [[309.4175]].

<sup>33</sup> Applicant's submissions at [6.23]-[6.38].

<sup>34</sup> Applicant's submissions at [6.51]-[6.66].



2018 would remain in effect, with negative consequences for the availability of funding and activities).<sup>35</sup>

15. By contrast, Auckland Transport’s decision document for the Board identified a third option, being for the Board to direct the RTC to reconsider aspects of RLTP 2021.<sup>36</sup>
16. That meant:
  - (a) The Planning Committee was led to believe that Auckland Transport and the RTC could not be requested to make changes to RLTP 2021, when in fact that was not the case; and
  - (b) The Board was led to believe that the Planning Committee had endorsed RLTP 2021 on the same basis as was presented to the Board, when in fact that was not the case.
17. After the decisions were made, the respondents began working on a transport emissions reduction plan (**TERP**) that will revisit the mix of transport investment in Auckland.<sup>37</sup> The applicant says Auckland Transport was required to reconsider the approach to transport investment before (and not after) RLTP 2021 established Auckland’s investment programme for the next decade.

**First cause of action – RTC Decision**

18. The applicant contends that the RTC Decision was unlawful for four distinct but interrelated reasons:
  - (a) The RTC did not properly understand the requirements of GPS 2021;
  - (b) In determining whether RLTP 2021 was consistent with GPS 2021 the RTC was not properly and reasonably informed;
  - (c) The RTC proceeded on the basis of fundamental misconceptions about transport planning and policy; and
  - (d) The RTC did not have proper and reasonable grounds to determine that RLTP 2021 was consistent with the purpose of the LTMA.

*Misunderstanding of requirements of GPS 2021*

19. The Section 14 Analysis and the RTC Decision proceeded on an erroneous understanding of what the “climate change” strategic priority and primary outcome required.<sup>38</sup> The alleged error is one of law, and is properly subject to review

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<sup>35</sup> Planning Committee Decision Document at [49]-[50] [[310.4222]]; applicant’s submissions at [7.12]; respondents’ submissions at [7.35(a)]-[7.35(d)].

<sup>36</sup> Board Decision Document at [55] [[311.4621]].

<sup>37</sup> Applicant’s submissions at [6.49], [6.57(c)]-[6.57(d)] and [6.72].

<sup>38</sup> Applicant’s submissions at [6.34]-[6.38].

20. The respondents contend the language in GPS 2021 is “minimally directive” and there only had to be “some support and some contribution” to emissions reductions, and the climate change strategic priority needed to be balanced against GPS 2021’s other strategic priorities.<sup>39</sup>
21. On that approach, GPS 2021’s direction to reduce emissions is reduced to a relevant consideration, to be balanced or traded off against other priorities. That is contrary to the Supreme Court’s decision in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*.<sup>40</sup>
22. The climate change strategic priority and primary outcome gave a “strong directive, creating a firm obligation”.<sup>41</sup> The investment decisions had to support the rapid transition to a low carbon transport system; they had to contribute to the reduction of transport emissions; and they had to give effect to the Climate Change Commission’s targets. The expert evidence and the respondents’ own documents show the strategic priorities of GPS 2021 are not in conflict.<sup>42</sup>
23. The respondents suggest (following their erroneous interpretation) that RLTP 2021 was consistent with GPS 2021 because it delivered emissions reductions of 5% between 2021 and 2031.<sup>43</sup> Even that is not correct: the emissions reduction on which the respondents rely is a factor of other anticipated government interventions, and not the RLTP 2021 investment decisions.<sup>44</sup>

*Failure to be properly and reasonably informed*

24. It is well-established that an administrative decision-maker is required to be properly and reasonably informed. See, for example:
  - (a) *Secretary of State for Education and Science v Metropolitan Borough of Tameside*: “the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly”;<sup>45</sup>
  - (b) *Discount Brands Ltd v Westfield (NZ) Ltd* (per Blanchard J): while information “is not required to be all-embracing ... it must be sufficiently comprehensive to enable the consent authority to consider” the relevant issues before it “on an informed basis”.<sup>46</sup>

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<sup>39</sup> Respondents’ submissions at [6.50]-[6.51].

<sup>40</sup> Above n 13; applicant’s submissions at [4.27]-[4.29].

<sup>41</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*, above n 13 at [77].

<sup>42</sup> Applicant’s submissions at [4.15]-[4.22].

<sup>43</sup> Respondents’ submissions at [6.55].

<sup>44</sup> See above at [8].

<sup>45</sup> *Secretary of State for Education and Science v Metropolitan Borough of Tameside* [1977] AC 1014, [1976] 3 All ER 665 at 696 per Lord Diplock.

<sup>46</sup> *Discount Brands Ltd v Westfield (NZ) Ltd* [2005] NZSC 17, [2005] 2 NZLR 597 at [114].

- (c) *Air Nelson Ltd v Minister of Transport*: “the failure to provide a “fair, accurate and adequate report” meant that the decision made ... in this case was flawed”.<sup>47</sup>
- (d) *Dorbu v Lawyers and Conveyancers Disciplinary Tribunal*: “It is fundamental that decision-makers must apply the law correctly and base their findings on sufficient evidence”.<sup>48</sup>
- (e) *Taylor v Chief Executive of the Department of Corrections*: “the decision-maker must take reasonable steps to ascertain the facts and circumstances relevant to the decision”.<sup>49</sup>
- (f) *Ennor v Auckland Council*: “there must be adequate information upon which to make ... decisions”, which “is a basic requirement of reasonable and procedurally fair decision making”.<sup>50</sup>

25. The Courts have consistently held that cases affecting human rights require heightened scrutiny. The most recent New Zealand authority is *Kim v Minister of Justice*. Mallon J said (emphasis added):<sup>51</sup>

...fundamental human rights, involving potential risks to Mr Kim’s life and liberty, are at stake. It is an area where the court is required, in its supervisory jurisdiction, to closely scrutinise the Minister’s exercise of the power. That is not to say there should be no deference accorded to matters requiring the Minister’s judgment. Heightened scrutiny is not a merits review. While it is difficult to define with precision what heightened scrutiny entails, in the present context **I consider it requires the court to ensure the decision has been reached on sufficient evidence and has been fully justified**, while recognising that Parliament has entrusted the Minister (not the courts) to undertake adequate enquiries and to exercise her judgment on whether surrender should be ordered.

26. In *Hauraki Coromandel Climate Action Inc v Thames-Coromandel District Council* Palmer J held that “the intensity of review of decisions about climate change by public decision-makers is similar to that for fundamental human rights”.<sup>52</sup>

27. As addressed in the applicant’s submissions, the evidence shows that the process for developing RLTP 2021 meant that ability of RLTP 2021 to reduce emissions was not properly tested, with the consequence that the decision-makers were not properly and reasonably informed.<sup>53</sup>

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<sup>47</sup> *Air Nelson Ltd v Minister of Transport* [2008] NZCA 26, [2008] NZAR 139 at [53].

<sup>48</sup> *Dorbu v Lawyers and Conveyancers Disciplinary Tribunal* HC Auckland CIV 2009-404-7381, 11 May 2011 at [16] (footnotes omitted).

<sup>49</sup> *Taylor v Chief Executive of the Department of Corrections* [2015] NZCA 477 at [94].

<sup>50</sup> *Ennor v Auckland Council* [2018] NZHC 2598 at [31].

<sup>51</sup> *Kim v Minister of Justice* [2016] NZHC 1490 at [7]. See also *Kim v Minister of Justice* [2017] NZHC 2109 at [9] and *Kim v Minister of Justice* [2019] NZCA 209 at [47]. The standard of review was not in issue in the Supreme Court (*Minister of Justice v Kim* [2021] NZSC 57 at [51]).

<sup>52</sup> *Hauraki Coromandel Climate Action Inc v Thames-Coromandel District Council* [2020] NZHC 3228 at [40] and [51].

<sup>53</sup> Applicant’s submissions at [6.44].

28. Given GPS 2021's direction to reduce emissions, Auckland Transport could not compile the investment programme without reference to the emissions impacts of the projects and programmes it proposed to include: that information was fundamental to whether Auckland Transport and the RTC were properly and reasonably informed.
29. Contrary to the respondents' submissions,<sup>54</sup> Auckland Transport's preparation of RLTP 2021 involved no such assessment:
- (a) There is no evidence of the "subject matter advice" that Mr Bunn refers to.<sup>55</sup> Any documents would have been captured by the discovery order, but Mr Bunn has not pointed to any (which the respondents would have identified in discovery).<sup>56</sup>
  - (b) There is no evidence of the "climate workstream" that Mr Bunn refers to.<sup>57</sup> Any documents would again have been captured by the discovery order.
  - (c) Mr Bunn specifically confirmed in correspondence on 8 April 2021 that there was no assessment of RLTP 2021 at the programme level.<sup>58</sup> The respondents' submissions wrongly suggest otherwise.<sup>59</sup>
  - (d) The only assessments of climate impacts of individual projects and programmes were conducted after RLTP 2021 had been substantially finalised.<sup>60</sup> They did not inform what went into the programme

*Misconceptions about transport planning and policy*

30. The applicant's submissions address the misconceptions about transport planning and policy that underpinned Auckland Transport's preparation of RLTP 2021 and its advice to the decision-makers.<sup>61</sup>
31. Most importantly, Auckland Transport proceeded on the demonstrably incorrect basis that "investment in infrastructure and services only has a very minor impact on total emissions",<sup>62</sup> and that rapid reduction of transport emissions would have a "substantial negative impact on economic, social and cultural wellbeing".<sup>63</sup>
32. Auckland Transport's position is contradicted by Te Tāruke-ā-Tāwhiri, the advice of Auckland Council's own transport experts, the TERP, and the

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<sup>54</sup> Respondent' submissions at [5.42].

<sup>55</sup> Affidavit of Hamish Bunn at [59] [[201.0282]].

<sup>56</sup> See joint memorandum of 21 September 2021 at [10].

<sup>57</sup> Affidavit of Hamish Bunn at [50(b)] [[201.0279]].

<sup>58</sup> [[305.2243]].

<sup>59</sup> Respondents' submissions at [5.41].

<sup>60</sup> Respondents' submissions at [5.30] and [5.34]; [[305.2193]]; [[306.2660]].

<sup>61</sup> Applicant's submissions at [6.51]-[6.72].

<sup>62</sup> [[309.4183]].

<sup>63</sup> Affidavit of Hamish Bunn at [348] [[201.0369]].

independent expert evidence. The position is unreasonable in the administrative law sense,<sup>64</sup> and vitiated each of the decisions at issue.

*Inconsistency with purpose of LTMA*

33. The applicant also says that, in the context of the climate emergency, an investment programme that fails to may any material reduction to transport emissions over the next decade cannot contribute to an effective, efficient, and safe land transport system in the public interest.<sup>65</sup>
34. The 2013 legislative amendment did not impliedly exclude public health and environmental outcomes from the LTMA's statutory purpose as the respondents suggest.<sup>66</sup> If responding to a profound and obvious public health and environmental crisis (which New Zealand has international obligations to address) was to be excluded, the LTMA would have said so in terms.
35. If the respondents' interpretation were correct, then GPS 2021, which introduced a climate change strategic priority, would be contrary to the purpose of the LTMA and ultra vires.

**Second cause of action – Planning Committee Decision**

36. The Planning Committee's role in endorsing RLTP 2021 was a result of the independent Auckland Council CCO review. The review considered a legislative amendment so that Auckland Council approved the RLTP, but it determined that a non-legislative approach could achieve the same result:<sup>67</sup>

Auckland Transport and the council should jointly prepare the regional land transport plan, the draft of which the council should endorse before it goes to Auckland Transport's board for approval.

37. Auckland Transport's publicly reported position is that this recommendation was implemented.<sup>68</sup> The respondents' contention that the Planning Committee's involvement was not significant and was "not legally required and had no legal consequence" is not correct.<sup>69</sup> The Planning Committee had the ability to influence the content of RLTP 2021 and to stop it being adopted.
38. The Planning Committee breached ss 80 and 77 of the LGA, and failed to have regard to the principles in s 14 of the LGA, as addressed in the applicant's submissions.<sup>70</sup>

**Third cause of action – Board Decision**

39. The challenge to the Board's Decision stands or falls with the challenge to the RTC Decision, and is therefore not addressed further.

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<sup>64</sup> *Hu v Immigration and Protection Tribunal* [2017] NZHC 41 at [30].

<sup>65</sup> Applicant's submissions at [6.73]-[6.75].

<sup>66</sup> Respondents' submissions at [3.8]-[3.12].

<sup>67</sup> [[303.1351]] and [[303.1354]].

<sup>68</sup> [https://at.govt.nz/media/1986323/item-14\\_cco-review-progress-update-july-2021\\_final.pdf](https://at.govt.nz/media/1986323/item-14_cco-review-progress-update-july-2021_final.pdf) (page 3).

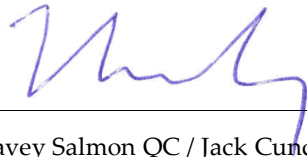
<sup>69</sup> Respondents' submissions at [7.35(e)].

<sup>70</sup> Applicant's submissions at [7.14]-[7.22].

**Relief**

40. There is no evidence to support the respondents' assertion that setting aside the decisions would have "potentially significant consequences for the subsequent stages in the land transport planning and funding process".<sup>71</sup>
41. The applicant maintains its position that decisions should be set aside, noting that there are cascading consequences for the Planning Committee Decision and the Board Decision if a prior decision is set aside.

Date: 26 April 2022



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Davey Salmon QC / Jack Cundy

Counsel for the applicant

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<sup>71</sup> Respondents' submissions at [9.4].