

**IN THE HIGH COURT OF NEW ZEALAND CIV-2021-485-000735
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

Under the Judicial Review Procedure Act 2016

In the matter of an application for judicial review of decisions under sections 19A and 19B of the Land Transport Management Act 2003

Between Movement, a charitable trust having its registered office at 355 Foster Road, RD 1 Waimauku, Kumeu, Auckland.
Applicant

And New Zealand Transport Agency, a Crown Entity established under the Land Transport Management Act 2003, 50 Victoria Street, Wellington.
Respondent

Amended Statement of Claim for Judicial Review

Dated 10 March 2022

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PARTIES

1. The applicant is Movement, a trust incorporated under the Charitable Trusts Act 1957. The applicant is an advocate for sustainable transport.
2. The applicant brings this proceeding in the public interest, having regard to the urgency and severity of the climate crisis and the contribution of transport emissions to New Zealand's carbon emissions.
3. The respondent is the New Zealand Transport Agency, a Crown Entity established under s 93 of the Land Transport Management Act 2003 (**Act**).

FACTS UPON WHICH THE APPLICATION IS BASED

Zero Carbon Act

4. Through the Climate Change Response (Zero Carbon) Amendment Act 2019 the Government has set a target for Aotearoa New Zealand to reduce net emissions of all greenhouse gases except biogenic methane to zero by 2050.

Declaration of climate emergency by Government and Parliament

5. 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.

Transport greenhouse gas emissions

6. Nearly 20 percent of New Zealand's domestic greenhouse gas emissions come from transport, with 90 percent of those emissions from road transport.
7. Road transport has been New Zealand's fastest growing source of carbon dioxide emissions.
8. Road transportation greenhouse gas emissions made up 42.6 percent of all carbon dioxide emissions in 2018, and increased:
 - a. 2 percent from 2017 to 2018.
 - b. 101.6 percent from 1990 to 2018.

9. Achieving net zero carbon requires a transition to a low carbon transport system. Intervention is required to reduce New Zealand's transport greenhouse gas emissions.
10. The nature of infrastructure investment decisions means the investment decisions made today will have long-term implications for greenhouse gas emissions from transport.

Purpose of the Act

11. The purpose of the Act is to contribute to an effective, efficient, and safe land transport system in the public interest.
12. A safe land transport system in the public interest requires a reduction in greenhouse gas emissions from land transport.

Government Policy Statement on Land Transport 2021

13. 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. The applicant relies on GPS 2021 as if pleaded in full.
14. GPS 2021 specifies that a reduction in greenhouse gas emissions will be achieved through action across all priorities, programmes and activity classes.
15. GPS 2021 includes four strategic priorities:
 - a. Safety;
 - b. Better Travel Options;
 - c. Improving Freight Connections; and
 - d. Climate Change.
16. Each strategic priority has associated primary outcomes and short to medium term results (to be delivered by 2031).
17. 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”.
 - c. One of the short to medium term results, to be delivered by 2031, is “Reduced greenhouse gas emissions”.
18. GPS 2021 specifies that funding applicants need to show that they have considered alternatives and how the alternatives compare in meeting the results set out in Section 2.6 of GPS 2021. “Funding applicants” in this context means road controlling authorities, being the respondent, local authorities and the Department of Conservation.
19. Section 2.6 of GPS 2021 is a table listing strategic priorities, results and proposed indicators.

Climate Change Commission recommended greenhouse gas emissions reduction target

20. 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.
21. The CCC Advice:
- a. Recommends emissions budgets for all gases, net, of 290 MtCO_{2e} (2022 – 2025), 312 MtCO_{2e} (2026-2030) and 253 MtCO_{2e} (2031 – 2035).
 - b. Recommends annual average emissions budgets of 72.4 MtCO_{2e} (2022-2025), 62.4 MtCO_{2e} (2026 – 2030) and 50.6 MtCO_{2e} (2031-2035).
 - c. Provides the percentage reduction of different greenhouse gases by 2025, 2030 and 2035 that the emissions budgets equate to, where net carbon dioxide is reduced by 47 percent by 2030 and 78 percent by 2035 (against a 2019 baseline).
 - d. Used a demonstration path to calculate the level of the first three recommended emissions budgets. To be consistent with the

demonstration path, transport carbon dioxide emissions must reduce:

- i. By 12.5 percent by 2030 (from 16.2 Mt CO₂e in 2019 to 14 Mt CO₂e in 2030);
 - ii. By 41 percent by 2035, compared to 2019.
22. The “emissions reduction target the Climate Change Commission recommended to Cabinet” referred to in the GPS 2021 is:
- a. The emissions budgets set out at paragraph 21.a; and/or
 - b. The annual average emissions budgets set out at paragraph 21.b; and/or
 - c. The percentage reduction of carbon dioxide set out at paragraph 21.c; and/or
 - d. The carbon dioxide reductions required to be consistent with the demonstration path, as set out at paragraph 21.d.

National Land Transport Programme

23. The respondent prepared and adopted a national land transport programme for the period 2021 to 2024 on 31 August 2021 (**NLTP**). The applicant relies on the NLTP as if pleaded in full.
24. The NLTP:
- a. Is a three-year programme of prioritised activities with a 10-year forecast of revenue and expenditure.
 - b. Specifies how the respondent will invest funding in land transport activities.
25. In relation to achieving the “Climate Change” strategic priority, the NLTP specifies that:
- a. The GPS 2021 outcomes will be achieved by implementing Toitū te Taiao – Our Sustainability Action Plan (**Toitū te Taiao**).
 - b. The respondent will make investment decisions that support national commitments on emissions reduction.

- c. The respondent has “certainty about the broad areas of focus for reducing transport emissions, but detailed policies and plans are not yet in place.”
- d. Activities for inclusion in the NLTP support three broad focus areas for reducing transport emissions.
- e. Preference has been given to activities that support safety and access outcomes in ways that also make a strong contribution to reducing the need to travel by car; increasing the use of public transport, walking and cycling; and supporting more efficient freight movement. These activities will contribute to the short to medium term results of reducing transport sector emissions by 2031 and provide a platform for the significant new investment that will be needed to enable delivery of the government’s Emissions Reduction Plan from 2022.

Documents referenced or used in preparation of the NLTP

- 26. The respondent relied on information and documents in the preparation of the NLTP including, but not limited to, Toitū te Taiao, the Investment Prioritisation Method (**IPM**) and the Climate Assessment Tool for Investment (**CATI**).

Toitū te Taiao – Our Sustainability Action Plan

- 27. The respondent adopted Toitū te Taiao in April 2020. The applicant relies on Toitū te Taiao as if pleaded in full.
- 28. Toitū te Taiao has not been amended or updated subsequent to release of the CCC Advice and adoption of GPS 2021.
- 29. One of the workstreams under Toitū te Taiao is: Invest for Sustainable Outcomes. This workstream “focuses on enabling investment settings for long term, balanced and multiple outcomes that seek ‘win-win’ solutions ahead of trade-offs”.
- 30. In relation to achieving ‘win-win’ solutions, Toitū te Taiao specifies:
 - a. That while traditional investment proposals have focused on delivering a primary outcome, the respondent is reviewing its Investment Decision-Making Framework. Its new investment principles “encourage and support a more deliberate approach to

designing and investing for multiple outcomes to ensure every dollar invested works harder and more effectively, supporting government expectations for transport, and wider government priorities”.

- b. That “including GHG emission reduction objectives in the primary outcome ‘mix’ for transport solutions could be a powerful catalyst for resolving near term challenges unrelated to climate change (such as congestion, air and noise pollution, urban sprawl and poor accessibility), while also tracking towards long term GHG emission reduction targets. This is because many of the interventions that reduce emissions can also deliver safety, health and access benefits, if designed that way.”
- c. That the respondent commits, as part of the Investment Decision-Making Framework Review:
 - i. By June 2021, to enable investment for land transport GHG emission reductions through embedding long-term emission reduction objectives and emissions-based thinking into planning, investment and accountability instruments.
 - ii. Over the next three years (from December 2020), to optimise programmes and packages for delivery against multiple/priority outcomes specified in the strategic case.

Investment Prioritisation Method

- 31. The respondent adopted an IPM on or about 21 December 2020. The applicant relies on the IPM as if pleaded in full.
- 32. The respondent uses the IPM to prioritise activities for investment in the NLTP. By using the IPM, the respondent purports to assess alignment of activities with GPS 2021.
- 33. Relevant attributes of the IPM are that:
 - a. The respondent automatically included in the 2021-24 NLTP any activity phase that is already ‘funding approved’ in the 2018 – 2021 NLTP. Such activity phases are not reviewed under the IPM.
 - b. The respondent prioritised all other activities for investment using the IPM.

- c. The respondent prioritises activities for funding against other activities in the same activity class.
- d. The IPM uses three factors (GPS Alignment, Scheduling and Efficiency) to determine an investment's priority order.
- e. GPS Alignment, which indicates the alignment of a proposed activity or combination of activities with a GPS strategic priority and identifies the potential contribution to achieving the GPS strategic priority, has the greatest influence on an investment's priority order.
- f. The respondent assesses GPS alignment against the "GPS Strategic Priorities" in Table 1 of the IPM. Table 1 lists the four GPS 2021 strategic priorities set out in paragraph 15 above, plus two "combinations", being:
 - i. Better Travel Options *and* Climate Change.
 - ii. Improving Freight Connections *and* Climate Change.
- g. The respondent assigns activities a rating for GPS Alignment based on the highest expected contribution to a single "GPS strategic priority" in Table 1.
- h. The lowest rating available for GPS Alignment is "Low" alignment (not "not aligned") and the highest is "Very High" alignment.
- i. Accordingly, the respondent may allocate an activity a rating of Very High alignment where it fails to achieve the Climate Change strategic priority but achieves one of the other three strategic priorities.
- j. For example, the respondent may rate a new roading project as having Very High alignment in terms of GPS Alignment due to improved freight time travel predictability, despite resulting in increased carbon emissions.

Climate Assessment Tool for Investment

- 34. In preparing the NLTP, the respondent undertook an assessment using the Waka Kotahi CATI.
- 35. CATI provides a qualitative not quantitative profile of an investment programme in terms of its potential to increase or decrease greenhouse gas emissions.

36. CATI assesses activities in the NLTP in terms of whether they have the potential to increase, maintain or reduce greenhouse gas emissions.
37. CATI does not assess:
- a. Whether collectively, activities in the NLTP will increase, maintain or reduce greenhouse gas emissions.
 - b. The extent to which activities in the NLTP will meet the CCC Transport Emissions Reductions Target.

Respondent's assessment of greenhouse gas emissions from land transport included in the NLTP

38. The respondent assessed that:
- a. 22 percent of the proposed investment in the NLTP has the potential to reduce greenhouse gas emissions.
 - b. 65 percent of the proposed investment in the NLTP has the potential to maintain greenhouse gas emissions.
 - c. 13 percent of the proposed investment in the NLTP has the potential to increase greenhouse gas emissions.
39. The respondent does not have projections for greenhouse gas emissions from land transport for the years 2021-2031.
40. The respondent did not assess:
- a. Whether collectively, activities in the NLTP will increase, maintain or reduce emissions.
 - b. The extent to which activities in the NLTP will meet the CCC Transport Emissions Reductions Target.
41. The respondent, as a funding applicant, did not assess alternatives and how they compare in meeting the results set out in Section 2.6 of GPS 2021.

GROUND ON WHICH RELIEF IS SOUGHT, AND RELIEF SOUGHT

First cause of action – error of law – failure to ensure requirements of s 19B met

42. The respondent erred in preparing and adopting the NLTP under s 19A LTMA.
43. In preparing the NLTP, the respondent was required to ensure that the NLTP:
- a. Contributes to the purpose of the Act.
 - b. Gives effect to the GPS 2021.
44. In purporting to meet those requirements, the respondent erred by failing to assess, and thereby ensure, that the NLTP achieved those requirements.

Particulars

- a. A safe land transport system in the public interest requires a reduction in emissions from land transport. The respondent failed to ensure that the NLTP provided for a reduction in emissions from land transport.
- b. GPS 2021:
 - i. Contains specific and directive obligations, expressed as short to medium term results. One of those results is “Reduced greenhouse gas emissions”.
 - ii. Requires that “a reduction in greenhouse gas emissions will be achieved through action across all priorities, programmes and activity classes”.
 - iii. Requires that investment decisions 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.
- c. The respondent does not have projections for greenhouse gas emissions from land transport for the years 2021-2031.
- d. The respondent has assessed that 78 percent of the NLTP investments have the potential to either maintain or increase emissions.

- e. The respondent has not assessed whether collectively, activities in the NLTP will increase, maintain or reduce emissions.
- f. The respondent has not assessed whether the NLTP will give effect to the emissions reduction target the Climate Change Commission recommended to Cabinet as set out at paragraph 22 above.
- g. As a result, the respondent has failed to ensure that the NLTP gives effect to GPS 2021.

Relief sought

45. The applicant seeks the following relief:

- a. An order quashing the decision to adopt the NLTP.
- b. A direction for the respondent to reconsider the NLTP in accordance with this Court's findings.
- c. Any such other orders the Court thinks fit.
- d. Costs.

Second cause of action – error of law – methodology and reference documents

The plaintiff repeats paragraphs 1 – 41 and says:

- 46. The respondent erred in preparing and adopting the NLTP under s 19A LTMA.
- 47. In preparing the NLTP, the respondent was required to ensure that the NLTP:
 - a. Contributes to the purpose of the Act.
 - b. Gives effect to the GPS 2021.
- 48. In purporting to meet those requirements, the respondent erred by assessing the priority of activities for investment in the NLTP using the IPM, and by assessing the emissions impact of the NLTP using CATI.

Particulars

- a. Assessment in terms of the IPM does not ensure that the NLTP gives effect to the GPS 2021, because the IPM methodology:

- i. Enables activities that are not consistent with the climate change strategic priority to be assessed as consistent with the GPS 2021.
 - ii. Is inconsistent with GPS 2021's requirement to evaluate investment based on the extent to which they "achieve the priorities" of the GPS.
 - iii. Is inconsistent with the requirement for all investment decisions to support the rapid transition to a low carbon transport system and to contribute to a resilient transport sector that reduces harmful emissions.
 - iv. Is inconsistent with Toitū te Taiao, in which the respondent committed to optimise programmes and packages for delivery against multiple/priority outcomes. Consistency with Toitū te Taiao was required because the respondent purports to achieve GPS 2021 by implementing Toitū te Taiao.
- b. Assessing the emissions impact of the NLTP using CATI does not enable an assessment of whether the NLTP achieves GPS 2021 because:
- i. It does not enable a quantitative assessment.
 - ii. It assesses the impact of individual activities in terms of whether they are likely to increase, maintain or reduce emissions and does not assess whether land transport included in the NLTP will reduce emissions.
 - iii. It does not assess whether the extent of any emissions reduction is consistent with the emissions reduction target the Climate Change Commission recommended to Cabinet as set out at paragraph 22 above.
- c. For the same reasons, assessment using the IPM and/or CATI does not ensure that the NLTP achieves the purpose of the Act.

Relief sought

49. The applicant seeks the following relief:

- a. An order quashing the decision to adopt the NLTP.

- b. A direction for the respondent to reconsider the NLTP in accordance with this Court's findings.
 - i. Any such other orders the Court thinks fit.
 - ii. Costs.

Third cause of action – error of law

The applicant repeats paragraphs 1 – 41 and says:

- 50. The respondent erred in preparing and adopting the NLTP under s 19A LTMA.
- 51. In preparing the NLTP, the respondent was required to ensure that the NLTP gives effect to GPS 2021.
- 52. In giving effect to GPS 2021, the respondent, as a funding applicant, was required to show that it had considered alternatives, and how those alternatives compared in meeting the results set out in Section 2.6 of GPS 2021.
- 53. The respondent failed to do so.

Relief sought

- 54. The applicant seeks the following relief:
 - a. An order quashing the decision to adopt the NLTP.
 - b. A direction for the respondent to reconsider the NLTP in accordance with this Court's findings.
 - c. Any such other orders the Court thinks fit.
 - d. Costs.

This Statement of Claim is filed by Luke Simon Burgoyne Acland of Rout Milner Fitchett, solicitor for the applicant. The address for service of the applicant is counsel's chambers at Level 1, 189 Hardy Street, Nelson.

Documents for the applicant may be served at or posted to that address, or emailed to sally@sallygepp.co.nz.