

**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 Applicant
And	New Zealand Transport Agency Respondent

Joint memorandum of counsel for mentions hearing

Dated 24 March 2022

Next Event Date: 28 March 2022

Before:

Rout Milner Fitchett
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JOINT MEMORANDUM OF COUNSEL FOR MENTIONS HEARING

May it please the Court:

1. This joint memorandum of counsel is filed in advance of the mentions hearing scheduled for 28 March 2022.
2. The parties have conferred, and respectfully seek:
 - a. That the hearing is vacated; and
 - b. Directions in accordance with section 14 of the Judicial Review Procedure Act 2016, as set out at [15] below.

Background

3. The statement of claim was filed on 26 November and served on 8 December. Initial disclosure has been provided by the applicant. The respondent's statement of defence was filed on 2 February 2022.
4. An amended statement of claim was filed on 10 March 2022. An amended statement of defence was filed on 17 March 2022.

Third parties' interests

5. The parties requested, and the Court made, directions for Waka Kotahi to provide a copy of the documents in this proceeding to approved organisations and the Minister of Transport, and for those entities to have until 14 March 2022 in which to file an application to be joined to the proceeding as intervenor or party.
6. On 14 March 2022, Auckland Transport sought leave to intervene in the proceeding. The applicant and respondent do not object to Auckland Transport being joined in the capacity of intervenor.
7. On 14 March 2022, the Minister of Transport sought leave to be joined as a party. The applicant and respondent do not object to the Minister being joined as a party. Directions relating to the Minister's Statement of Defence are addressed below.

8. On 10 March 2022, Timaru District Council filed a Notice of Appearance Reserving Rights. Counsel for Timaru District Council now advises that Timaru District Council does not seek to pursue its interest in this hearing and that the Notice is withdrawn.

Matters set out in Section 14 Judicial Review Procedure Act

9. By Memorandum of Counsel dated 3 February 2022, the appellant and respondent addressed a number of matters in Section 14 of the Judicial Review Procedure Act. In light of the imminent joinder of additional parties, those matters that remain relevant are addressed again to record the position of all (current and future) parties.
10. The parties agree that no orders are necessary relating to the production of the relevant records of the decision maker. Movement has made an Official Information Act request for documents relevant to the litigation. Waka Kotahi is currently considering that request.
11. The appellant and respondent disagree for the purposes of rule 14.3 on whether this proceeding should be classified as Category 2 or Category 3, but agree that this issue should be reserved at this stage of the proceeding (given that the scope of the proceeding will become clearer as it develops). The plaintiff considers that the proceeding should be categorised as Category 2. The respondent considers that the proceeding may be more appropriately categorised as Category 3. The appellant and respondent therefore propose to revisit categorisation after evidence is exchanged.
12. The parties do not anticipate making any applications for interim relief, or any interlocutory applications, except that the applicant is considering an application for an urgent fixture. The respondent anticipates opposing that application.
13. The parties agree to use an electronic format for the common bundle in accordance with Rule 9.4(5A) High Court Rules and the High Court Practice Note 2019/1.
14. The parties have discussed timetabling directions, as set out below. In addition to the timetabling steps below, the parties may wish to provide evidence in response to the Government's Emissions Reduction Plan and/or

revisions to the Government Policy Statement 2021. The Government currently intends to publish the Emissions Reduction Plan by 31 May 2022. The Government Policy Statement 2021 may be revised following publication of the Emissions Reduction Plan. Decisions by Waka Kotahi over how the National Land Transport Plan is implemented following the release of the Emissions Reduction Plan may be relevant to issues in the litigation. Depending on the timing of any decisions following release of the Emissions Reduction Plan and any revisions to the Government Policy Statement 2021, parties may seek to file supplementary evidence on that matter. The timing of such supplementary evidence would be addressed once there is more certainty over the timing of the decisions that the evidence would relate to.

Orders sought

15. The parties request that the Court makes the following orders and directions:
 - a. Auckland Transport is joined to the proceeding as an intervenor.
 - b. The Minister of Transport is joined to the proceeding as a respondent with the full rights of a party, as set out in the Minister's application dated 14 March 2022.
 - c. The Minister's Statement of Defence is to be filed and served by 6 April 2022.
 - d. Regarding evidence:
 - i. Applicant's affidavits to be filed and served by 29 April 2022.
 - ii. Respondents' affidavits to be filed and served by 10 June 2022.
 - iii. Intervenor's affidavits to be filed and served by 24 June 2022.
 - iv. Applicant's affidavits in reply to be filed and served by 15 July 2022.
 - v. Applicant to file and serve electronic common bundle by 22 July 2022.
 - e. Regarding legal submissions:

- i. Applicant's legal submissions (not hyperlinked) to be filed and served by 29 July 2022.
 - ii. Respondents' legal submissions (not hyperlinked) to be filed and served by 19 August 2022.
 - iii. Intervenor's legal submissions (not hyperlinked) to be filed and served by 2 September 2022.
 - iv. Applicant to file and serve an electronic casebook, including bundle of authorities and hyperlinked versions of all parties' submissions (to be prepared by each party), by 9 September 2022.
- f. The hearing is to be set down in the High Court at Wellington for three days on the first available dates after 16 September 2022.
 - g. The position on cost categorisation of the proceeding be reserved, with the parties to revisit this once evidence is exchanged.

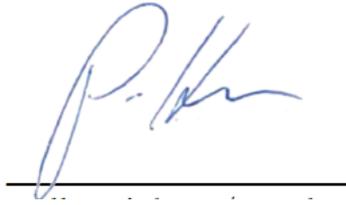
Dated 24 March 2022



Sally Gepp / Luke Acland
Counsel for Movement



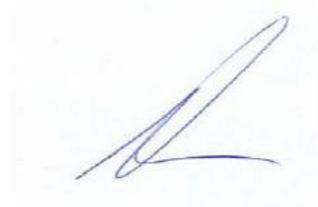
Victoria Heine QC / Tim Smith / Anthony Wicks
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Polly Higbee / Nathan de Latour
Counsel for the Minister of Transport



Padraig McNamara / Chris Ryan
Counsel for Auckland Transport



Craig O'Connor
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