

**In the High Court of New Zealand  
Wellington Registry  
I te Kōti Matua o Aotearoa  
Te Whanganui-A-Tara Rohe**

**CIV**

**Under**

the Judicial Review Procedure  
Act 2016

**In the matter of**

an application for judicial review  
of decisions under section 20 of  
the Land Transport Management  
Act 2003

**Between**

Movement, a charitable trust  
having its registered office at 39  
Wood Street, Freemans Bay,  
Auckland.

Applicant

**And**

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

Respondent

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**Statement of Claim for Judicial Review**

**Dated 2 December 2020**

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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 socially and environmentally sustainable transport.
2. 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**

### **Climate change and transport emissions**

3. In May 2019, Nelson City Council declared a State of Climate Emergency in recognition of the mounting advice from scientists and the United Nations that there is a small window for action to avoid the most damaging effects of climate change.
4. On 2 December 2020, the New Zealand Parliament will declare a climate emergency.
5. Nearly 20% of New Zealand’s domestic greenhouse gas emissions come from transport, with 90% of those emissions from road transport.
6. Road transport has been New Zealand’s fastest growing source of carbon dioxide emissions since 1990.
7. New Zealand has committed to reduce greenhouse gas emissions to 30% below 2005 levels by 2030 under the Paris Agreement on Climate Change.
8. Through the Climate Change Response (Zero Carbon) Amendment Act 2019 the Government has set a target for New Zealand to reduce net emissions of all greenhouse gases except biogenic methane to zero by 2050.
9. Achieving net zero carbon requires a transition to a low carbon transport system. Intervention is required to reduce New Zealand’s transport emissions.
10. The nature of infrastructure investment decisions means the investment decisions made today will have long-term implications for carbon emissions from transport.

### **GPS 2018**

11. On 1 July 2018, the Government Policy Statement on Land Transport 2018 (“**GPS 2018**”) came into effect.
12. The GPS 2018 includes strategic priorities, objectives, short to medium-term results (3 – 6+ years), long-term results (10+ years), reporting measures and themes.
13. An objective under the “Access” strategic priority is:

A land transport system that enables transport choice and access.

14. The associated long-term result is:

Increased mode shift from private vehicle trips to walking, cycling and public transport.

15. Two of the associated short to medium-term results are:

Result 14: A reduction in overall single occupant private vehicle travel in urban areas.

Result 17: Increased proportion of journeys made using public transport and active modes of travel (including children travelling to and from school).

16. An objective under the “Environment” strategic priority is:

A land transport system that reduces greenhouse gas emissions, as well as adverse effects on the local environment and public health.

17. An associated long-term result is:

Reduce greenhouse gas emissions from transport.

18. Two of the associated short to medium-term results are:

Result 24: Reduced greenhouse gas emissions from land transport using a whole-of-system approach.

Result 28: Increased uptake of active travel modes such as walking and cycling to support environmental and public health objectives.

19. The GPS 2018 contains reporting measures for each short to medium-term result.

20. The GPS 2018 contains the following themes:

- a. a mode-neutral approach to transport planning and investment decisions
- b. incorporating technology and innovation into the design and delivery of land transport investment
- c. integrating land use and transport planning and delivery.

21. The GPS contains the following ministerial expectations of the respondent:

The Ministerial Expectations in GPS 2018 are that the Transport Agency is expected to continue to:

- a. Take a lead role in securing integrated planning of the transport system.
- b. Ensure that all transport modes, and alternatives, have been considered when planning and investing in land transport, and decisions are based on the ability to deliver positive social, economic and environmental outcomes.
- c. Take a lead role in advancing technology and innovation to deliver the best transport solution.
- d. Take a lead role in securing prudent activity management and operations.

- e. Work with the Ministry of Transport to monitor and report on the results under the GPS, to enable appropriate evaluation of the GPS.
- f. Monitor and report on investment decision-making and investment efficiency.
- g. Take a lead role in advancing the Government's priorities in Auckland.

## 2019 reporting measures

- 22. The GPS 2018 provided that, during the term of GPS 2018, the NZ Transport Agency in collaboration with the Ministry of Transport would develop and resolve reporting measures where these were indicated as being a proxy or where a clear method for reporting had not been identified.
- 23. The GPS 2018 anticipated a "second stage GPS" which would "reflect further action taken by the Government to reduce greenhouse emissions from the transport system".
- 24. Between October 2018 and September 2019, revised reporting measures were produced. The revised reporting measures were published as the Revised Reporting Measures for the Government Policy Statement (GPS) on Land Transport 2018, rather than a second stage GPS, in November 2019.
- 25. The revised reporting measures for results 14, 17, 24 and 28 are:
  - a. For result 14:
    - 14A: Distance per capita travelled in single occupancy vehicles.
    - 6B: Mode share – people (defined as “% of travel using a particular mode. Modes to include: pedestrian, car/van driver, car/van passenger, cyclist, motorcyclist, bus, train, ferry (as per the Household Travel Survey). In future, ride share data is also expected to be included.”)
  - b. For result 17:
    - 17A. Mode share for how children travel to/from school
    - 6B Mode share – people (defined as “% of travel using a particular mode. Modes to include: pedestrian, car/van driver, car/van passenger, cyclist, motorcyclist, bus, train, ferry (as per the Household Travel Survey). In future, ride share data is also expected to be included.”)
    - 6F Number of passenger boardings using urban public transport services (defined as per NZTA output class measure: Sum of all public transport passenger boardings by bus, train and ferry across all regions. This measure is sometimes called ‘patronage’. It includes boardings using SuperGold card concessions. A boarding is a single trip made on public transport, for example when a person boards a bus to when they get off. This is not to be confused with a journey, which concerns an individual's origin and destination, which may involve multiple trips and modes)
  - c. For result 24:
    - 24A. Tonnes of greenhouse gases emitted per year from land transport

24B. \$ investment in greenhouse gas emission reduction measures

d. For result 28:

6B Mode share – people (defined as “% of travel using a particular mode. Modes to include: pedestrian, car/van driver, car/van passenger, cyclist, motorcyclist, bus, train, ferry (as per the Household Travel Survey). In future, ride share data is also expected to be included.”)

### **Southern Link / Nelson Future Access Project**

26. Since the early 2000s, the respondent and its predecessors have given consideration to the concept of a new arterial route into Nelson from the south.
27. In January 2015, the respondent commenced a transport planning project in relation to a new inland arterial route between Annesbrook Drive and Haven Road, known as the Nelson Southern Link Investigation.
28. In August 2019, the respondent announced a new transport planning project, called the Nelson Future Access Project, which would build on the previous Nelson Southern Link Investigation. The Nelson Future Access Project incorporates:
  - a. A short term package of improvements including elements such as cycling and pedestrian improvements, public transport improvements and speed management.
  - b. Three different long-term packages, being:
    - i. Priority lanes – adding lanes to SH6/Rocks Road and Waimea/Rutherford (peak period clearways) for priority traffic (“**First long-term package**”)
    - ii. Widening the Coastal State Highway Corridor (providing two lanes in each direction) for general traffic (“**Second long-term package**”)
    - iii. Building a new Inland Route (“**Third long-term package**”). The Third long-term package incorporates the Southern Link.
29. The Nelson Future Access Project is currently in the Detailed Business Case phase.
30. In June 2020 the respondent produced a consultation document seeking public feedback on the Nelson Future Access Project.
31. The consultation document includes the following descriptions of the long-term packages:
  - a. First long-term package:
 

Building on top of the short-term package, this long-term package aims to further improve public transport, walking and cycling trips with the goal of

reducing the number of single-occupant vehicles using the two main arterial routes (SH6/Rocks Road and Waimea/Rutherford) between Annesbrook roundabout and the Haven Road/SH6 intersection.

This option would create priority lanes for buses and possibly vehicles with more than one passenger to provide for a less congested journey into and out of the Nelson city area.

There will be some localised widening and changes to the main arterials, including making parking only available during off peak.

This option also includes making Rocks Road more resilient to climate change and widening it to provide a 5m walking and cycling facility.

b. Second long-term package:

Building on top of the short-term package of improvements, this long-term package incorporates significant road widening to four lanes for general traffic on SH6 between Annesbrook and Haven Road roundabouts. The additional capacity provided is for general traffic to use on a 24/7 basis.

This option also includes making Rocks Road more resilient to climate change. A 5m walking and cycling facility would be separated from the traffic by landscaping and parking.

c. Third long-term package:

This long-term package looks at using the old railway alignment and St Vincent Street Corridor (prior Nelson-Southern link corridor) to cater for the predicted long-term increase in transport demand. It builds on the short-term package of improvements and includes a new road which could be configured in a number of ways (eg it could be the State Highway taking all the traffic including freight or it could become a route for priority vehicles such as buses and vehicles with multiple occupants).

This package also includes improving the existing connection between St Vincent Street and the city centre. If the new route became a route for all traffic, the current SH6 between Annesbrook and Haven Road roundabouts would be re-designated a local arterial route.

The new road would come with facilities such as pedestrian crossings, features to reduce noise such as smooth surfaces and noise walls and safe speed zones. The existing cycle facility would be maintained. If the long-term decision was for this route to become a state highway taking general traffic, there would also have to be consideration of additional safety measures ...

32. The Second long-term package would make it more challenging to reduce dependency on single-occupant vehicles.
33. If the Third long-term package were used for general traffic, it would also make it more challenging to reduce dependency on single-occupant vehicles.
34. The respondent expects:

- a. to identify a preferred long-term package in late 2020; and
- b. to make funding decisions on the preferred long-term package in mid-2021.

### **Funding decisions**

35. In June 2014, Ministry of Transport announced Crown funding for an investigation project into the Southern Link from the Accelerated Regional Rooding Package.
36. Between 2015 and the present, the respondent made decisions to fund the Detailed Business Case for the Southern Link and Nelson Future Access Project from the National Land Transport Fund, and to make associated cash flow adjustments or provide for cost increases related to the Southern Link and Nelson Future Access Project from the National Land Transport Fund:

#### Particulars

- a. The “Nelson Southern Links” (*sic*) Detailed Business Case was included within the National Land Transport Programme 2018-2021.
- b. On 20 August 2018 by decision of its Board, the respondent:
  - i. approved activity lists for each activity class to be included in the National Land Transport Programme 2018-2021; and
  - ii. adopted the National Land Transport Programme 2018-2021.
- c. The respondent announced its decision to fund the Detailed Business Case for the Nelson Future Access Project on 31 August 2018.
- d. As set out in the table below:

<b>Date</b>	<b>Review</b>	<b>Project</b>	<b>Nature of funding decision</b>
23-Jul-15	Jul 2015 Review	DBC Nelson Southern Link	Cash flow adjustment
31-May-16	May 2016 Review	Nelson Southern Link	Cost / Scope adjustment
20-May-19	May 2019 Review	DBC Nelson Future Access	Cash flow adjustment
4-Jul-19	Jul 2019 Review	Nelson Future Access	Cash flow adjustment
23-Jul-19	Jul 2019 Review	Nelson Future Access	Cash flow adjustment

24-Jul-19	Reconciliation 2018/19 Review	Nelson Access	Future	Cost Increase
27-Jul-20	Reconciliation 2019/20 Review	DBC Future	Nelson Access	Cash flow adjustment

- e. Additional funding decisions to be pleaded following discovery.  
(together “**funding decisions**”).
37. The respondent anticipated expending \$2,060,000 of this funding in 2018/2019, \$1,060,900 in 2019/20, \$5,463,635 in 2020/2021, and \$5,627,544 in 2021/22.
38. The funding decisions are decisions to approve an activity or combination of activities as qualifying for payments from the national land transport fund.
39. The respondent’s future decisions:
- a. to identify a preferred long-term package in late-2020; and
  - b. to fund a preferred long-term package in mid-2021;
- are also decisions or part of decisions to approve an activity or combination of activities as qualifying for payments from the national land transport fund. (together “**future funding decisions**”).

### **Reasons for funding decisions**

40. The respondent’s Board has delegated funding and procurement decisions to its staff up to certain monetary limits.
41. For delegated decisions:
- a. A record of the decisions is provided on the respondent’s website in the form of excel spreadsheets. Each spreadsheet covers the decisions made for a one month period.
  - b. The reason given for each funding decision is:

The requirements of section 20 of the Land Transport Management Act 2003 have been met. Further details regarding the reasons can be accessed on Transport Investment Online or by request.
42. Transport Investment Online is an online portal hosted by the respondent. It is not publicly accessible.
43. Requests for reasons for funding decisions are treated by the respondent as requests for information under the Official Information Act 1982.



44. The respondent's Board makes significant funding and procurement decisions.
45. The respondent's Board's minutes are published on the respondent's website as non-searchable Portable Document Format (.pdf) files.
46. The respondent intends publication of the Board minutes to be publication of the record of, and reasons for, funding decisions made by the Board.
47. The respondent's Board's minutes do not set out reasons for the funding decisions.

### **Respondent's assessment of consistency with GPS 2018**

48. Funding decisions made after the GPS 2018 came into effect on 1 July 2018 were required to be consistent with, and give effect to, the GPS 2018.
49. The respondent assessed the consistency of those funding decisions with the GPS 2018 using:
  - a. The Investment Assessment Framework for the 2018-21 National Land Transport Programme ("IAF").
  - b. Assessment against Multi Criteria Analysis ("MCA") Evaluation Criteria.
50. The respondent intends to take into account those assessments in the future funding decisions.

### IAF

51. The IAF is a non-statutory document produced by the respondent, that is intended by the respondent to assist it to give effect to the GPS by ensuring there is a visible pathway from GPS priorities and results through to investment.
52. The IAF aims to achieve value for money by prioritising investment proposals which are targeted to achieve the GPS priorities and make efficient use of the available resources.
53. The IAF assesses activities within activity classes (examples of activity classes are "Regional, local road and state highway improvements" and "Walking and cycling improvements").
54. For activity classes other than Investment Management, assessment of investments under the IAF involves:
  - a. An assessment of the Business Case.
  - b. An assessment of alignment with the GPS 2018 ("**Results Alignment**").
  - c. A Cost Benefit Appraisal.

55. Only Results Alignment is assessed for the investment management activity class.
56. Results Alignment is an assessment of investment proposals against the outcomes sought from the GPS in terms of safety, access and environment. Assessment is at an activity class level and considers criteria that align to the GPS results to rate alignment from low to very high.
57. Prioritisation is based on the two assessment factors of Results Alignment and cost benefit appraisal.
58. Activities are given an “exclude” priority order only if they have a Low Results Alignment and Low (BCR 1-2.9) Cost Benefit Appraisal.
59. For each activity class, the Environment GPS Strategic Priority is summarised as:
  - reduce adverse effects on the climate, local environment and public health
60. The IAF has separate and different tables of Results Alignment criteria for each activity classes.
61. An activity is assessed as having a medium results alignment if the activity addresses one or more of the medium criteria, and a high results alignment if it addresses one or more of the high criteria.
62. Funding for the Nelson Future Access Project Detailed Business Case comes within activity classes:
  - a. Investment management.
  - b. Regional, local road and state highway improvements.
63. For the activity class “Investment Management” the criterion for medium and high GPS alignment relating to that strategic priority is:
  - considers approaches to addressing significant environmental and public health impacts on and from operation of the land transport system
64. For the activity class “Regional, local road and state highway improvements”, the Environment criteria are:
  - addresses significant reductions in harm to the environment and people, particularly arising from land transport-related air pollution, noise, and impact of construction and ongoing use of transport infrastructure on water quality and biodiversity
  - addresses long term significant reductions in greenhouse gas emissions from land transport

#### MCA Evaluation Criteria

65. Between about August and December 2019, the MCA Evaluation Criteria were developed by the respondent and a Project Reference Group as a framework for evaluating options for the Nelson Future Access Project.
66. In early 2020, the respondent commissioned MCA analyses from a range of independent experts.
67. The respondent instructed the advisors to assess the First, Second and Third long-term packages by comparison with a “2048 do-minimum” scenario, and the assessments were undertaken on that basis.

## **GROUNDINGS ON WHICH RELIEF IS SOUGHT, AND RELIEF SOUGHT**

### **First cause of action – failure to give reasons**

68. After 1 July 2018, in making the funding decisions, the respondent was required:
  - a. By section 20(2), to be satisfied that the Nelson Future Access Project is consistent with the GPS 2018.
  - b. By section 70, to give effect to the GPS 2018.
  - c. By section 20D, to publish the reasons for the funding decisions on its Internet site. If the Agency decides to withhold information it may only do so in accordance with the provisions of the Official Information Act 1982 that are listed in s 20D. In those circumstances, the Agency must provide reasons for withholding information on its Internet site.
69. The respondent has purported to meet the section 20D requirement:
  - a. By its statement in the excel spreadsheets, in respect of delegated funding decisions, that:
 

The requirements of section 20 of the Land Transport Management Act 2003 have been met. Further details regarding the reasons can be accessed on Transport Investment Online or by request.
  - b. By publishing minutes of its Board’s meetings.
70. The statements in the excel spreadsheets and the Board minutes contents are not proper, adequate statements of reasons.
71. The respondent has failed to publish give reasons for funding decisions relating to the Nelson Future Access Project. In particular, the respondent has failed to give reasons for its decision that the funding decisions are consistent with, and give effect to, the GPS 2018.

### **Relief sought**

72. The applicant seeks the following relief:
  - a. An order quashing the funding decisions made after 1 July 2018.

- b. A direction for the respondent to reconsider the funding decisions made after 1 July 2018.
- c. A direction, in relation to the funding decisions made subsequent to 1 July 2018, that the respondent give proper, adequate reasons in sufficient detail to demonstrate that the funding decisions are consistent with, and give effect to, the GPS 2018.
- d. A direction that, in making the future funding decisions, the respondent must give proper, adequate reasons for the future funding decisions in sufficient detail to demonstrate that the future funding decisions are consistent with, and give effect to, the GPS 2018.
- e. Any such other orders the Court thinks fit.
- f. Costs.

### **Second cause of action – error of law**

The applicant repeats paragraphs 1 to 67 and says:

73. After 1 July 2018, in making the funding decisions the respondent was required:
- a. To be satisfied that the Nelson Future Access Project is consistent with the GPS 2018.
  - b. To give effect to the GPS 2018.

74. In purporting to meet those requirements, the respondent erred:

#### Particulars

- a. The GPS 2018 contains specific and directive obligations, expressed as short to medium-term results, requiring:
  - i. A reduction in overall single occupant private vehicle travel in urban areas.
  - ii. Increased proportion of journeys made using public transport and active modes of travel (including children travelling to and from school).
  - iii. Reduced greenhouse gas emissions from land transport using a whole-of-system approach.
  - iv. Increased uptake of active travel modes such as walking and cycling to support environmental and public health objectives.

- b. In assessing the funding decisions, the respondent assessed the Nelson Future Access Project's consistency with the GPS 2018 using the IAF and the MCA.
- c. Assessment in terms of the IAF and MCA does not ensure that the Nelson Future Access Project is consistent with, and gives effect to, the GPS 2018:
  - i. Under the IAF, the relevant criterion for assessment of the Investment Management activity class against the GPS Environment Strategic Priority is: "considers approaches to addressing significant environmental and public health impacts on and from operation of the land transport system". Alignment with that criterion does not demonstrate alignment with the GPS 2018 requirements at paragraph 74a. above.
  - ii. Under the IAF, alignment with "one or more" of all the criteria for an activity class is sufficient to give a medium or high results alignment, meaning that the GPS 2018 requirements set out in paragraph 74a. are not required to be met.
  - iii. Under the IAF, only projects with a low results alignment are excluded.
  - iv. Under the MCA, Nelson Future Access project long-term options were assessed by comparison to a "2048 do-minimum" scenario and not against the GPS 2018 requirements at paragraph 74a. above.
  - v. Under the MCA, the scope of the assessments that were undertaken were limited to particular criteria and did not directly assess the effects of the Long-Term Packages against the specific required results of GPS 2018, including those detailed in 74a. above.
- d. As a result, the respondent has failed to ensure that the funding decisions made after 1 July 2018 are consistent with, and give effect to, the GPS 2018.
- e. In particular, the respondent has failed to ensure that the funding decisions are consistent with and give effect to results 14, 17, 24 and 28.

### **Relief sought**

75. The applicant seeks the following relief:

- a. An order quashing the funding decisions made after 1 July 2018.

- b. A direction for the respondent to reconsider the funding decisions made after 1 July 2018.
- c. A direction that, in making the future funding decisions, the respondent is to assess consistency with the GPS 2018 in accordance with this Court's findings.
- d. Any such other orders the Court thinks fit.
- e. Costs.

### **Third cause of action – error of law**

The applicant repeats paragraphs 1 to 67 and says:

76. After 1 July 2018, in making the funding decisions the respondent was required:

- a. To be satisfied that the Nelson Future Access Project is consistent with the GPS 2018.
- b. To give effect to the GPS 2018.

77. In making the funding decisions since 1 July 2018, the respondent erred by approving funding for proposed activities or combinations of activities that are not consistent with, and do not give effect to, the GPS 2018:

#### Particulars

- a. The Second Long-Term Package will not:
  - i. Reduce overall single occupant private vehicle travel in urban areas.
  - ii. Increase the proportion of journeys made using public transport and active modes of travel.
  - iii. Reduce greenhouse gas emissions from land transport using a whole-of-system approach.
  - iv. Increase uptake of active travel modes such as walking and cycling.
- b. The Third Long-Term Package will not:
  - i. Reduce overall single occupant private vehicle travel in urban areas.
  - ii. Increase the proportion of journeys made using public transport and active modes of travel.
  - iii. Reduce greenhouse gas emissions from land transport using a whole-of-system approach.

- iv. Increase uptake of active travel modes such as walking and cycling.

**Relief sought**

78. The applicant seeks the following relief:

- a. An order quashing the funding decisions made after 1 July 2018.
- b. A direction for the respondent to reconsider the funding decisions made after 1 July 2018.
- c. A direction that in making the future funding decisions the respondent is required to identify and fund only those options that will give effect to the GPS 2018, and in particular results 14, 17, 24 and 28.
- d. Any such other orders the Court thinks fit.
- e. Costs.

This Statement of Claim is filed by Rout Milner Fitchett, counsel for the applicant. The address for service of the applicant is 167 Hardy Street, Nelson. Documents for the applicant may be served at or posted to that address, or emailed to [craig@rmf-law.co.nz](mailto:craig@rmf-law.co.nz).