

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2021-404-1618

UNDER THE Judicial Review Procedure Act 2016

IN THE MATTER 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 ADRIENNE FRANCES YOUNG-COOPER ON BEHALF OF
THE FIRST AND SECOND RESPONDENTS**

Sworn 25 February 2022

 **Simpson Grierson**
Barristers & Solicitors

Padraig McNamara/Graeme Palmer
Telephone: +64-9-358 2222
Facsimile: +64-9-307 0331
Email: padraig.mcnamara@simpsongrierson.com
DX CX10092
Private Bag 92518
Auckland

Victoria Heine QC
Telephone: +64-4-460 0638
Email: victoria.heine@chambers.co.nz
Thorndon Chambers,
PO Box 1530,
Wellington 6140

I, **Adrienne Frances Young-Cooper**, director of Auckland, solemnly and sincerely swear:

QUALIFICATIONS AND EXPERIENCE

1. I am chair of the Board of Auckland Transport (**AT Board**). I have held this position since January 2020.
2. Auckland Transport (**AT**) is a council-controlled organisation (**CCO**) of Auckland Council established under the Local Government (Auckland Council) Act 2009. It has a number of statutory functions in relation to land transport including, most relevantly for present purposes, preparing the regional land transport plan for Auckland in accordance with the Land Transport Management Act 2003 (**LTMA**).
3. I have been an independent director of resource, transport, housing and urban development organisations for almost 20 years. Before becoming the chair of the AT Board I was:
 - (a) deputy chair of the Auckland Regional Transport Authority (**ARTA**), which was the central co-ordinating agency for transport in the Auckland region from 2004 to 2010;
 - (b) a board director of the New Zealand Transport Agency/Waka Kotahi (**NZTA**) between February 2010 and December 2018;
 - (c) chair of Eke Panuku Development Auckland, which is a CCO of Auckland Council, between November 2018 and December 2020;
 - (d) the chair and deputy chair of Housing New Zealand (now Kāinga Ora) between February 2010 and October 2019;
 - (e) the chair and director of Homes Land and Communities (a 100% subsidiary of Housing New Zealand) between February 2010 and October 2019; and



- (f) deputy chair of Waterfront Auckland (a CCO which merged with Auckland Council Property Limited to form Eke Panuku Development Auckland in September 2015).
4. In addition to being chair of the AT Board, I am also currently the chair of the Board of Directors of the Queenstown Airport Corporation Limited, a position I have held since October 2017.
5. Before becoming a professional director, I practised in town planning and resource management for almost thirty years. In 1995 I co-founded and was the managing director of Hill Young Cooper Limited, a planning consultancy.
6. I hold a Master of Science conferred in 1978 jointly by Lincoln College and the University of Canterbury, majoring in resource management. I am a Chartered Fellow of the Institute of Directors.
7. I am authorised to make this affidavit on behalf of the first and second respondents.

SCOPE OF EVIDENCE

8. In this affidavit, I give evidence from an AT Board perspective on:
- (a) the wider context of the 2021 Auckland Regional Land Transport Plan (**RLTP**);
- (b) the roles of the Auckland Regional Transport Committee (**RTC**) and AT Board in relation to the RLTP; and
- (c) AT's overall response to climate change, and where the RLTP sits within that wider context.
9. I have read in draft the affidavits of Hamish Bunn and Jenny Chetwynd on behalf of the first and second respondents. I confirm my agreement with those affidavits to the extent that they deal with matters within my knowledge. This includes the evidence which they give from the perspective of AT as an organisation about the actions of the AT Board

Handwritten signature in black ink, appearing to be 'Ayc' over 'SW'.

and the RTC. I refer to these affidavits in this evidence, to avoid duplication as far as possible. The key documents I refer to are attached as exhibits to Mr Bunn's and Ms Chetwynd's affidavits.

WIDER CONTEXT OF THE RLTP

10. Mr Bunn and Ms Chetwynd set out in detail the immediate context of the RLTP, with particular reference to the LTMA, the Auckland Transport Alignment Project (**ATAP**) and the Government Policy Statement on Land Transport (**GPS**).
11. The RLTP is one component of a New Zealand-wide transport policy and planning framework. Within this overall framework, there are myriad challenges at a national, regional and local level. The RLTP identified particular problems needing to be addressed as including:¹
 - (a) A lack of competitive travel options and high car dependency as Auckland grows, limiting the ability to achieve the quality compact urban approach for Auckland;
 - (b) Existing deficiencies in the transport system, and an inability to keep pace with increasing travel demand, in turn limiting improved and equitable access to employment and social opportunities;
 - (c) Emissions and other consequences of transport are harming the environment and contributing to the transport system becoming increasingly susceptible to the impacts of climate change;
 - (d) The transport system has become increasingly harmful and does not support better health outcomes.
12. There is a whole raft of policies and initiatives underway by a broad range of transport stakeholders and decision-makers to address these issues. These go well beyond the statutory investment programme and funding regimes in the LTMA, of which regional land transport plans form a part.

1 RLTP at page 25.



Some of these initiatives, such as the New Zealand Upgrade Programme, are referred to in Mr Bunn's and Ms Chetwynd's evidence.

13. In the case of the RLTP, its ability to meet these challenges is constrained by three key factors: limited ability to prioritise actual public sector transport expenditure in Auckland; and a limit on funding availability; and the RLTP's narrowly defined role in the delivery and operation of the transport system.
14. The funding constraints are described in Mr Bunn and Ms Chetwynd's evidence.² I do not repeat that evidence here, save to emphasise that because of these constraints, it would have been impossible for the RLTP to deliver all the attributes of an "ideal" land transport system.
15. It is also important to recognise that the RLTP is not prepared with a blank slate: its starting point is the real life situation in Auckland, with its challenging geography, existing pattern of development (highly dispersed, and low-density outside the CBD), existing transport network, and high population growth. It is also not the first RLTP, but rather latest RLTP – which means it "carries forward" many long term capital investments and operational costs for the transport system made under previous RLTPs that are already underway on the ground, or to which there are contractual commitments. This, together with the limited funding, imposes significant constraints on what the RLTP can achieve quickly as an investment package, while satisfying the key statutory requirements including consistency with the GPS.
16. Where much of the transport investment programme is practically committed and funding is constrained, balancing progress on all challenges and objectives is required, and trade-offs must be made.
17. Reduced to its essence, the RLTP is a statement of the region's land transport objectives, policies and measures; and a prioritised list of land transport projects and programmes ("activities") for which funding is sought from the National Land Transport Fund (**NLTF**). It includes a list of projects and programmes that are funded by the NTLF but are

² I should also note, at this early stage of the current RLTP, the negative impacts of the ongoing Covid-19 pandemic on our programme.

prioritised by others (much of the rail investment plan is approved by the Minister of Transport). Importantly, regional projects and services cannot attract NLTF funding unless they are prioritised in the RLTP.

18. The RLTP cannot direct or require certain behaviour from individuals or businesses: at best it can only influence their behaviour. Nor can it direct key players such as Waka Kotahi or KiwiRail to make specific investments.
19. Overall then, the scope for an RLTP to respond to the challenges above is limited by existing commitments, funding constraints, the proposals received from other key players, significant Auckland transport investment outside the ability of the RLTP to prioritise the investment, and the RLTP's inability to direct essential government policy changes or dictate private behaviours. For example, initiatives which would have a significant impact on greenhouse gas (**GHG**) emissions – such as road pricing, congestion charging or mandated fuel efficiency standards – are well outside the ambit of an RLTP, and would probably require legislation to be passed. AT has no ability to require these changes.
20. My introduction to the RLTP itself acknowledges these limitations.³ It states that while the RLTP takes important strides towards positive climate change outcomes, it will not achieve the GHG reduction targets for Auckland all by itself. Instead, a suite of policy initiatives such as those above is required, with a concerted effort by all transport partners and a supportive legislative framework. What is really needed to achieve GHG reduction targets is system change.
21. It must also be remembered that responding to climate change, while obviously very important, is not the only requirement of an RLTP. The RLTP must contribute to the purpose of the LTMA, which brings in considerations of effectiveness, efficiency and safety of the land transport system, and the public interest. The RLTP must be consistent with the GPS, which has four strategic priorities only one of which is climate change, and a confined set of activity classes. All of these matters are weighed in the balance when the RTC, and then AT's Board,

³ RLTP at page 3.

decide on the investment package which they consider best satisfies the requirements overall. And to repeat, significant public sector expenditure on transport in Auckland is outside of the control of the RLTP.

DECISIONS BY THE RTC AND THE AT BOARD ON THE RLTP

22. As set out in Mr Bunn's and Ms Chetwynd's evidence, the RLTP is prepared by the RTC, which recommends it to the AT Board. The Auckland Council's Planning Committee endorses the draft RLTP. The AT Board is then responsible for approving the RLTP. I am a member of both the RTC and the AT Board.
23. Mr Bunn and Ms Chetwynd describe the RLTP process in detail. I wish to emphasise the following key points from their evidence:
- (a) As an RTC and AT Board member, I brought extensive personal knowledge and experience to my decision-making on the RLTP. My own experience, set out in the beginning of this affidavit, has spanned nearly all aspects of transport policy. Specifically, in my roles at ARTA, I led the development of the RLTP in that era. And on the board of NZTA I approved the national land transport plan (**NLTP**) on two occasions. This experience supplemented the detailed briefings and reports given by AT officers, as explained in Mr Bunn's evidence;
 - (b) AT Board and RTC members knew and approved of the ATAP process (described in more detail in Mr Bunn's evidence) being used as a key input for the RLTP programme. AT participated in that process through its executive, and the Board received reports throughout. The indicative ATAP programme, once agreed, was used as the starting point for the development of the RLTP. There were benefits to Auckland from this approach, because ATAP is essentially an agreement between the Government and Auckland Council on how the transport programmes and services will be funded from many sources including the NLTF administered by Waka Kotahi;

- (c) There was a high level of awareness of, and interest in, the RLTP's climate change implications in particular, on the part of the RTC and AT's Board. The RTC and Board knew that the approved RLTP had to be consistent with Government policy as expressed in the GPS, including the climate change strategic priority. There was a high level of engagement on that issue, informed by submissions and questions by the Board and debate as to whether the RLTP could do more in this area. In the end, and in light of the financial, practical and legislative constraints explained above, the RTC and AT Board members were satisfied with the form of the RLTP which was ultimately approved;
 - (d) The RTC was presented with a detailed analysis of the how the proposed RLTP satisfied the requirements of section 14 of the LTMA. The RTC members resolved that they were satisfied that the RLTP contributed to the purpose of the LTMA and was consistent with the GPS; and
 - (e) The AT Board received the full proposed RLTP, which included an appendix setting out the consistency of the proposed RLTP with section 14 of the LTMA. We resolved to approve the RLTP.
24. The development and ultimate approval of the RLTP was an informed and robust process. RTC and Board members made choices based on their weighing and assessment of the various requirements and constraints. Some activities would be more or less consistent with particular strategic priorities, such as climate change, than others. This is consistent with my experience, which is that there is no single right or best way to recognise the strategic priorities, and in the end it comes down to judgment, informed by robust technical advice as to the implications of different options.
25. At the point of the RTC recommending the RLTP for approval, and the AT Board approving the RLTP, members were satisfied that the statutory prerequisites were met, and resolved accordingly.

AT AND CLIMATE CHANGE

26. The reality of the situation we face in relation to climate change, and AT's ability to respond to it, is stark:
- (a) Climate change is real: it already impacts on the lives of Aucklanders and the rest of New Zealand, and its impact on people (and indeed the Auckland transport system itself) will only increase;
 - (b) To address the commitments New Zealand has made as a country and goals Auckland Council has set for our city, transport sector emissions will have to reduce significantly;
 - (c) Amongst other things, this means Auckland's transport system will have to allocate less scarce road space to private vehicles and provide for much more public transport, walking, cycling and micromobility;
 - (d) The current RLTP went as far as it could within the assumptions made at the time and the resources available. The next RLTP will have to do more to address the decarbonisation of the Auckland transport system to address climate change, within both the policy framework set by the Government through the GPS, and the funding available both from the Government (through the NLTF) and Council (which is highly constrained);
 - (e) Other policy interventions (for example in relation to road pricing and vehicle efficiency) are essential to meet the climate change challenge. The evidence suggests these will be more important than changes to the RLTP programme, if we are to achieve significant reductions in GHG emissions from the Auckland transport system in the short to medium term;
 - (f) The government's Emissions Reduction Plan, which I understand it intends to publish by 31 May 2022, will set the scale and pace of change for all sectors of the New Zealand

economy, including transport. We can expect that direction to “flow through” into the next GPS in 2024; and

- (g) In addition, the Council’s Transport Emissions Reduction Plan, developed after the current RLTP was adopted in June 2021, will set the scale and pace of change for Auckland.
27. Ms Chetwynd’s evidence sets out AT’s climate change initiatives and policies. As the Chair of the AT Board I confirm that evidence and emphasise that AT takes its responsibilities to address climate change very seriously.
28. AT is committed to contributing to reducing GHG emissions from the Auckland transport system, and working with transport partners and the community to achieve the wider system change required to make real progress in emissions reductions. The RLTP was and is one step towards reducing emissions in a highly constrained setting.

Signature of deponent:


Adrienne Frances Young-Cooper

Sworn at New Plymouth on 25 February
2022

Before me:


Signature

Name
A Solicitor of the High Court of New Zealand

Sean Clifford Maskill
Solicitor
Auld Brewer Mazengarb & McEwen
New Plymouth