

18 June 2020

Auckland Council Governing Body
Auckland Council
Private Bag 92300
Auckland 1142

By email to: akhaveyoursay@aucklandcouncil.govt.nz

SUBMISSION TO AUCKLAND COUNCIL ON THE PROPOSED EMERGENCY BUDGET, ANNUAL BUDGET 2020/2021

Climate Change

1. This letter is sent on behalf of Lawyers for Climate Action NZ Inc. and the Equal Justice Project in response to Auckland Council's request for feedback on the Auckland Council Emergency Budget – Annual Budget 2020/21 (**Emergency Budget**).
2. Lawyers for Climate Action NZ Inc. is a group of over 300 lawyers who seek to advocate for legislation and policies to ensure New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050.
3. Equal Justice Project is a collective of law students who are passionate about building a climate resilient future. In particular, we advocate on behalf of rangatahi to ensure that local responses to climate change align with the vision of net zero carbon by 2050.

Summary of submissions

4. We strongly oppose the proposals in the Emergency Budget to delay climate change initiatives and foundation work for climate change interventions, and to make cuts to public transport services and delay public transport investments. We consider that adopting these proposals would be contrary to Council's moral and legal obligations to take prompt and effective action to substantially reduce Auckland's emissions by 2030 and to ensure that Auckland's assets and infrastructure are able to withstand the impacts of climate change.

5. We also consider that it would be financially imprudent to delay such actions, having regard to the risks to Auckland's assets and infrastructure associated with climate change.¹
6. We appreciate that, if Council's financial projections in the Emergency Budget are correct, maintaining these initiatives and work streams may require either a different approach to funding or making cuts in other areas. While we accept these steps are difficult and may have undesirable short-term consequences, addressing climate change is necessary, urgent and must be prioritised.
7. The IPCC's 2018 Special Report on Global Warming of 1.5°C found that global warming above 1.5°C would have catastrophic and potentially irreversible impacts and that limiting the average temperature rise to less than 1.5°C above pre-industrial levels requires emissions cuts by around 45% from 2010 levels by 2030.² Recent analysis by Paul Winton for the 1point5 Project shows that, to achieve the required emissions reductions in New Zealand, we need to largely decarbonise road transport by 2030.³
8. In light of these facts, it would be a serious abrogation of its moral, legal and fiscal duties for Auckland Council to delay action on climate change.

Background

9. Auckland Council says it is facing a significant financial challenge. Due to COVID-19, revenue is projected to be over \$500 million less than previously budgeted.
10. The Auckland Council *Emergency Budget Consultation Document* starts by saying that Council is determined to deal with long-term challenges such as climate change.⁴
11. The Auckland Council *Emergency Budget Supporting Information* provides more detail and starts by noting that in December 2019, the Council agreed to include a modest amount of new expenditure in the then Annual Budget 2020/2021 for the following items:
 - (a) \$1.8 million capital and \$100,000 operational expenditure to begin decarbonising the council's fleet;
 - (b) \$1.5 million to begin phasing out gas boilers in council aquatic centres;
 - (c) \$2.7 million for planting an additional half a million trees over the next three years, totalling a million and a half trees this term; and

¹ We note that Local Government New Zealand reported last year that approximately \$1.4 billion of local government infrastructure in the Auckland region is exposed at a 1.5m increase in sea level. See Local Government New Zealand "Vulnerable: The quantum of local government infrastructure exposed to sea level rise" (January 2019) at 3.

² IPCC Special Report: Global Warming of 1.5°C (SR15), 2018, available at <https://www.ipcc.ch/sr15/>.

³ Available at www.1point5.org.nz.

⁴ *Emergency Budget Consultation Document*, pages 5, 21 and 23.

(d) \$900,000 for foundation work for climate change interventions.⁵

12. The *Supporting Information* notes that for rates increase scenarios below 2.5 per cent, reductions would likely include delaying the climate change initiatives and foundation work for climate change interventions proposed in the first round of consultation above.⁶ A Table is provided on pages 15-17 setting out the consequences of options for a 3.5%, 2.5% and a 1.5% to 0% rates increase, including on climate change initiatives:

Principle / criteria	Considerations at 3.5%	Further considerations at 2.5%	Further considerations at 1.5% to 0%
Climate change	Reduced local activity budgets will temporarily reduce our ability to progress climate change response actions. Temporary reductions in some public transport services and delayed investment in public transport, walking and cycling infrastructure are likely to adversely affect Auckland's carbon emissions in the near-term.	Adjustments to transport fares and further delays to investment in public transport, walking and cycling infrastructure are likely to further adversely affect Auckland's carbon emissions in the near-term.	Reductions such as not proceeding with the foundation work for climate change interventions will further reduce the council's ability to adequately respond to the climate emergency. Further delays in proceeding with public transport and active mode infrastructure investment will further impact Auckland's emissions.

13. Further, it has been proposed that even with a rates increase of 3.5%, the Climate Change Response Fund (funding for reactive storm damage) will be reduced from \$20M to \$5M. In addition, Auckland Council's aspirations for addressing the impacts of climate change and reducing congestion by increasing walking and cycling, encouraging mode shift, and improving access to frequent and attractive public transport will be impacted by a reduction in the capital budget and a reduction in public transport services. The *Supporting Information* notes that the current targets relating to a reduction in carbon emissions, total transport boarding's and kilometres of new cycleway added to the network are unlikely to be met.⁷

Measure	2019/20	2020/21	2021/22
Number of buses in the Auckland bus fleet classified as low emission	5	25	55
Reduction in CO2e (emissions) generated annually by Auckland Transport corporate operations (from 2017/18 baseline)	7%	9%	11%
Percentage of Auckland Transport streetlights that are energy efficient LED	56%	66%	76%

Our Feedback

14. Our feedback responds to the Council's final request in its Feedback Form for any other feedback.

⁵ *Emergency Budget Supporting Information*, page 5.

⁶ *Emergency Budget Supporting Information*, page 13.

⁷ *Emergency Budget Supporting Information*, pages 25 and 27.

15. Although we acknowledge that due to COVID-19, Auckland Council is facing uncertain times, we believe that the *Emergency Budget* offers a significant opportunity to reset priorities and to re-appraise all existing initiatives with a “climate lens” to ensure it can mitigate and address the impacts of climate change.
16. First, Auckland Council itself and its Council-Controlled Organisations (such as Auckland Transport and Watercare) have made clear policy commitments to address climate change that we believe must set the priorities for the *Emergency Budget*. For example, on the 11th of June 2019, Auckland Council unanimously voted to declare a climate emergency.⁸ In doing this, the Council said it would ‘put climate change at the front and centre of [its] decision making’.⁹ Auckland has also become a signatory of the C40 Cities Declaration which provides a further set of commitments and resolved to “develop a climate plan consistent with the Paris Agreement aspiration of 1.5°C maximum temperature rise”. More recently, Auckland Council resolved to reaffirm its commitment to a climate plan with “an interim target of halving Auckland’s emissions by 2030”.¹⁰
17. Secondly, Auckland Council, as with all other local authorities, has statutory responsibilities that include addressing climate change. For example, Council has legal obligations under the Local Government Act 2002 to:
- (a) Promote the social, economic, *environmental*, and cultural well-being of communities in the present and for the *future* (s10);
 - (b) Give effect to its identified priorities and desired outcomes in an efficient and effective manner (s14) – this includes giving effect to the policies referred to above;
 - (c) Take into account the need to maintain and enhance the quality of the *environment* and the reasonably *foreseeable needs of future generations* (s14);
 - (d) Manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and *future* interests of the community (s101).
18. In addition, Auckland Council is expressly permitted to take account of the 2050 zero carbon target in its decision making by s5ZN of the Climate Change Response Act 2002 (CCRA) which provides that:
- “If they think fit, a person or body may, in exercising or performing a public function, power, or duty conferred on that person or body by or under law, take into account—

⁸ Auckland Council “Auckland Council declares climate emergency” Our Auckland: To Tatou Tamaki Makaurau (online ed, Auckland, 11 July 2019)

⁹ *Ibid*, at 1.

¹⁰ *Environment and Climate Change Committee*, Resolution ECC/2020/12 (12 March 2020).

- (a) the 2050 target; or
 - (b) an emissions budget; or
 - (c) an emissions reduction plan.”
19. Although the section is worded permissively, we consider that the 2050 target (and, once adopted, any national emissions budget or reduction plan) is a mandatory consideration for Council, based on the principle that “...there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them... would not be in accordance with the intention of the Act.”¹¹
20. Similarly, we consider that the statutory target under s3 of the CCRA of limiting the global temperature increase to less than 1.5°C, is also likely to be a mandatory consideration for Auckland Council.
21. Further, a range of central government policy statements require Auckland Council to focus on addressing climate change, such as the obligations in the New Zealand Coastal Policy Statement.
22. Finally, it is well established that local authorities can owe duties of care to members of the public and can face liability for damages for failing to meet those duties (as seen in the leaky building litigation, for example). Likewise, failure by councils to act prudently to protect against or mitigate the foreseeable risks of climate change may expose local authorities to future damages litigation, as highlighted by Jack Hodder QC in his paper for LGNZ: *Climate change litigation – who’s afraid of creative judges?* (28 March 2019).
23. We believe these legal obligations and risks should be at the forefront of Auckland Council’s decision-making in this *Emergency Budget*.
24. Consistent with this approach, we believe the priority for the *Emergency Budget* should be on projects and initiatives which will reduce emissions and make the city more resilient to the impacts of climate change, such as higher temperatures, drought, storms and flooding and sea level rise.
25. In terms of existing or previously planned projects this means continuing with:
- (a) decarbonising the Council’s fleet;
 - (b) phasing out gas boilers in council aquatic centres;
 - (c) planting an additional half a million trees;
 - (d) increasing walking and cycling;

¹¹ *CREEDNZ v Governor General* [1981] 1 NZLR 172. See also *Thomson v Minister for Climate Change Issues* [2017] NZHC 722 at [94] and *R (Plan B Earth) v Secretary of State for Transport* [2019] EWHC 1070 (the Heathrow runway case) which held that a government decision on an additional runway was unlawful due to failure to consider the Paris Agreement.

- (e) encouraging transport mode shift away from private fossil fuel vehicles;
 - (f) improving access to frequent and attractive public transport;
 - (g) fully funding reactive storm damage; and
 - (h) funding foundation work for climate change interventions.
26. It appears likely that many of these initiatives, such as de-carbonising the Council's fleet, will reduce costs in the medium to long term, as well as reducing emissions and offering other co-benefits to ratepayers in terms of health and quality of life. Indeed, some of this investment, such as fully funding reactive storm damage appears to us to be absolutely essential.
27. However, this is only a start. In addition, we believe Council must put climate change at the front and centre of all its decision making, both for and beyond the *Emergency Budget*. Any discretionary expenditure in the *Emergency Budget* (ie that which is not subject to contractual commitments) should be assessed through a 'climate change lens' and prioritised if it contributes to reducing emissions and deprioritised or cancelled if it contributes to growing emissions.
28. We would welcome the opportunity to meet with or present to Council or officials to discuss these submissions in more detail.

Yours faithfully



Jenny Cooper QC
President, Lawyers for Climate Action NZ

Shereen Lee/Tamara Blackshaw/Katie Marshall
Equal Justice Project