



LAWYERS FOR
**CLIMATE
ACTION**  **NZ INC.**

**Submission on Draft Government Policy Statement on
Transport**

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Key points:

- A. This submission focuses on climate-related issues arising out of the Draft GPS 2024.
- B. The Government is obliged under the Paris Agreement and the Climate Change Response Act 2002 to reduce emissions and contribute to the global effort to limit warming to 1.5°C above pre-industrial levels. The Draft GPS risks making it very difficult for New Zealand to meet its legal commitments.
- C. The Draft GPS proposes a shift away from direct transport decarbonisation initiatives towards a greater reliance on the Emissions Trading Scheme. The Emissions Trading Scheme alone, in its current state, will not be sufficient to meet New Zealand’s climate obligations. The Government must continue prioritising transport decarbonisation, including through greater investment in public transport and active transport modes.
- D. To be consistent with the purpose of the Land Transport Management Act 2003, New Zealand’s binding emissions reduction targets, and having regard to the National Policy Statement for Urban Development, the Draft GPS should:
 - a. Specify climate change and emissions reductions as the overriding strategic priority for GPS 2024.
 - b. Provide a significantly increased expenditure target for the walking and cycling activity class, enable multimodal spending on walking and cycling infrastructure from other activity classes, and remove the unreasonable restrictions on using the walking and cycling activity class.
 - c. Significantly increase the expenditure target for the public transport activity classes.
 - d. Remove policy support for the construction of new roads unless the use of these roads over their lifetime can be demonstrated to be consistent with achieving New Zealand’s emissions reduction targets.
 - e. Remove “directions” for construction of specific new roads.
- E. In addition, a further round of consultation on the excluded emissions reduction content is necessary to ensure compliance with s 67(1)(c) of the Land Transport Management Act.

About Lawyers for Climate Action NZ

1. Lawyers for Climate Action NZ is an incorporated society with over 350 members from across New Zealand. Our members include Kings Counsel, barristers, solicitors, legal academics, and students. We use the law to enable more effective action on the climate crisis. We have no vested interest other than seeing New Zealand contribute to the goals of the Paris Agreement in light of the science of climate change as expressed by the IPCC. More information about us can be found on our website:
<https://www.lawyersforclimateaction.nz/>

Importance of reducing transport emissions

2. Transport emissions are the fastest growing source of greenhouse gas emissions in New Zealand and account for 18% of total greenhouse gas emissions, and nearly 40% of domestic carbon dioxide emissions. Nearly 70% of all transport CO₂ emissions are from the light vehicle fleet - cars, SUVs, utes, vans and light trucks.¹
3. Achieving New Zealand's emissions reduction targets (which are based on independent advice from the Climate Change Commission) requires a very large reduction in emissions from land transport. This reduction will not be achieved by incremental change; it requires that all available levers are pulled across the whole land transport system.

Inconsistency with New Zealand's climate obligations

4. We strongly disagree with the strategic priorities and direction outlined in the Draft GPS 2024. The Draft GPS' failure to prioritise emissions reductions is a significant backwards step and places the Government at risk of being in breach of several of its legal obligations.

Climate Change Response Act 2002

5. The Climate Change Response Act 2002 sets a target for New Zealand to:
 - a. reduce net emissions of all greenhouse gases (except biogenic methane) to zero by 2050; and
 - b. reduce emissions of biogenic methane to 24-47 per cent below 2017 levels by 2050, including to 10 per cent below 2017 levels by 2030(the **2050 Target**).

¹ Climate Change Commission, 2023 [Advice on the Direction of Policy for the Government's Second ERP](#) (December 2023) at p.309.

6. Part 1B, Subpart 2 also requires the Minister of Climate Change to set emissions budgets “with a view to meeting the 2050 Target” and “contributing to” the goals of the Paris Agreement. Emissions budgets must also be set “in a way that allows those budgets to be met domestically”. Section 5X of the Climate Change Response Act obliges the Minister to “ensure” that the emissions budgets are met.
7. The First Emissions Reduction Plan (**ERP**) identified that emissions from land transport need to reduce by 41% by 2035 and reach net zero by 2050 in order to achieve the emissions reduction targets in the Climate Change Response Act. That is a huge reduction, which must be achieved over a very short period of time. The ERP identified that ensuring that the next GPS on Land Transport guides investment that is consistent with the ERP is critical to achieving that reduction.
8. The Ministry of Transport’s Decarbonising Transport Action Plan (December 2022) set out in detail how the Government intended to achieve the requirement to reduce transport emissions by 41 per cent by 2035.
9. The Draft GPS does not align with the ERP or implement the methods in the Action Plan. It does not provide any methods to guide investment in a way that will reduce emissions. The lack of emissions modelling also makes it difficult to ascertain the impact of the Draft GPS on New Zealand’s emissions pathways and climate obligations.
10. The GPS says it does not align with the ERP because the previous Government’s emission reduction policies are being reassessed. We take issue with this approach. But for the purposes of this submission, while the Government is entitled to reassess those policies, in the meantime the GPS does not provide any methods to guide investment in a way that will reduce emissions. Government priorities may change, but climate change has not gone away, and New Zealand’s emissions reduction targets are legally binding.
11. Investment decisions made under the GPS will lock in the rising emissions profile from land transport for many years to come, ensuring that New Zealand’s emissions reduction targets are unachievable.

New Zealand’s international obligations

12. Under the Paris Agreement, New Zealand agreed to:
 - a 2030 Nationally Determined Contribution (**NDC**), which it “intends to achieve”. New Zealand’s first NDC is to reduce greenhouse gas emissions to 50% below 2005 levels by 2030 (**2030 NDC**);
 - hold the increase of global average temperatures to well below 2°C above pre-industrial levels and pursue efforts to limit the increase to 1.5°C above pre-industrial levels;

- aim to reach “global peaking of greenhouse gas emissions as soon as possible” (Art 4(1));
- “pursue domestic mitigation measures” with the aim of achieving its NDCs;
- “tak[e] the lead by undertaking **economy-wide absolute emission reduction targets** (Art 4(4)).

13. The Paris Agreement is a legally binding international treaty. Under international law, New Zealand must perform its obligations under the Paris Agreement in good faith.² The Paris Agreement also contains normative elements that can be said to establish obligations of conduct for each state party - due diligence obligations. These require state parties to exercise best possible efforts, and ultimately do the utmost, when pursuing domestic measures with the aim of achieving its NDC.
14. Failing to meaningfully pursue emissions reductions in transport could place New Zealand in breach of its obligations under the Paris Agreement. It could demonstrate a lack of good faith when considering how serious New Zealand is about pursuing the domestic mitigation efforts required to meet its NDC. It will almost certainly also mean that New Zealand is not on track to meet its 2030 NDC.
15. If New Zealand does not meet its 2030 NDC, this could have significant international ramifications. For instance, New Zealand has committed to achieving its 2030 NDC in its recent Free Trade Agreement with the European Union. Failing to achieve the 2030 NDC - and demonstrating a lack of good faith with respect to its Paris Agreement obligations - will arguably represent a breach of the FTA and leave New Zealand vulnerable to trade sanctions.

Misguided reliance on the ETS to do the heavy-lifting

16. The Draft GPS says that the Emissions Trading Scheme (**ETS**) is the Government’s key tool to reduce emissions. However, the ETS by itself is not capable of delivering the change needed to reduce emissions from land transport. Research indicates that emissions pricing alone will not significantly incentivise change in transport behaviour.³
17. The ETS is also not capable of ensuring an equitable transition – in other words, emissions reductions that do not disproportionately impact already disadvantaged communities, including poorer people and communities, and Māori. For instance, in order for the carbon price to meaningfully incentivise emissions reductions, the cost of petrol and diesel will likely increase significantly. Without further investment in alternative forms of transport (including public transport, walking, and biking), this leaves many in an impossible position.

² Art 26, Vienna Convention of the Law of Treaties.

³ See “[Why Emissions Pricing Can’t Do It Alone](#)” 18(1) Policy Quarterly 1 (2022) at p. 6.

The only way to avoid adverse impacts on equity and accessibility is to ensure people have access to viable transport alternatives. The Draft GPS will not enable this.

18. In addition, the ETS in its current form is not fit-for-purpose. We have previously outlined our concerns to the Government about this.⁴ We are more than happy to continue engaging with the Government on possible ways the ETS can be improved so that it provides effective market incentives to support gross emissions reductions.

Inconsistency with the Land Transport Management Act

19. The legal requirements for a GPS on Land Transport have not been met. The requirements for preparation or review of a GPS are set out in the Land Transport Management Act 2003 (LTMA):

67 Preparation or review of GPS on land transport

When preparing or reviewing a GPS on land transport, the Minister must—

- (a) be satisfied that the GPS on land transport contributes to the purpose of this Act; and
 - (b) take into account—
 - (i) any national energy efficiency and conservation strategy; and
 - (ii) any relevant national policy statement that is in force under the Resource Management Act 1991; and
- ...
- (a) have regard to the views of Local Government New Zealand and representative groups of land transport users and providers.

20. The purpose of the LTMA is to contribute to an effective, efficient, and safe land transport system in the public interest.

21. Failure to comply with the LTMA will mean that the Minister has acted unlawfully and decisions in relation to the GPS will be at risk of being set aside by a Court on an application for judicial review.

The Draft GPS does not contribute to a safe transport system in the public interest

22. The Draft GPS does not contribute to a safe land transport system in the public interest. A safe land transport system in the public interest is one in which:

⁴ See, for instance, [LCANZI Submissions on Te Arotake Mahere Hokohoko Tukanga Review of the NZ ETS](#) (11 August 2023); [Submission on He Waka Eke Noa](#) (18 November 2022); [Submission on National Direction for Plantation and Exotic Carbon Afforestation](#) (18 November 2022).

- a. emissions are reduced to a level consistent with New Zealand’s emission reduction goals;⁵
 - b. people can get around safely without having to be in a car;
 - c. the negative health impacts associated with air pollution are reduced.⁶
23. The Draft GPS does not provide for a safe land transport system. It charts a course for rising emissions by:
- a. excluding climate change from its four strategic priorities;
 - b. providing for the highest ever expenditure on land transport, but with expenditure targets and activity classes that are entirely skewed towards funding new roads and maintenance of existing roads. This unprecedented investment in road building is not supported by any methods to ensure that new roads do not inevitably lead to more emissions;
 - c. requiring that “reliable travel times” is prioritised over all other considerations when making investment decisions in the road-related improvement activity classes; and
 - d. providing investment for infrastructure to reduce speed limit reductions, and increasing speed limits to 110 km/h on some roads. Increased speed increases emissions per vehicle kilometre travelled, and vehicle emissions rise significantly at speeds over 100 km/h.

Walking and Cycling

24. In terms of safety for pedestrians and cyclists, the Draft GPS not only reduces overall funding for footpaths and cycleways, it also:

⁵ In *All Aboard Aotearoa* and *Movement* the Courts held that reducing emissions is not part of safety or the public interest, however this finding has been appealed (in the *Movement* case) and accordingly the correct interpretation is not yet settled.

⁶ In its December 2023 [Advice on the Direction of Policy for the Government’s Second ERP](#), the Climate Change Commission noted that “Air pollution can cause serious physical health impacts and is associated with respiratory and cardiovascular illnesses. Research suggests the total costs to society related to air pollution health impacts in Aotearoa New Zealand is \$15.6 billion per year. There is a significant opportunity to improve air quality through decarbonising transport. Access to active types of transport such as walking and cycling can also improve individuals’ health, and public transport can improve mental health by connecting individuals, families, and communities” at p.223.

- a. places unreasonable constraints on funding multimodal improvements. This will result in cost and administrative inefficiencies, and ultimately further weaken the delivery of low-carbon transport options;
 - b. requires that investment in walking and cycling is funded exclusively through the walking and cycling activity class (which has a miniscule expenditure target compared with other activity classes); and
 - c. unreasonably requires that the walking and cycling activity class can only be used to maintain the existing walking and cycling network, or investment in walking and cycling where there is either clear benefit for increasing economic growth or clear benefit for improving safety where demonstrated volumes of pedestrians already exist. We note that while walking and cycling projects are required to show clear economic benefits, the same does not appear to be true for the Roads of National Significance.
25. Those limitations are unreasonable because the programme of road building is not supported by funding for the infrastructure needed to ensure those roads can be used safely by people who are not in cars. Those limitations are not consistent with a focus on ensuring a safe land transport system.
26. The move to increase speed limits is also inconsistent with a safe land transport system. It is well established that improved speed management saves lives and reduces serious injuries for vehicle users. Safe speeds also make it safer to walk and cycle, and are therefore a critical part of the emission reduction pathway for New Zealand.⁷
27. The limitations on funding walking and cycling infrastructure will also adversely impact on vehicle users, because the lack of provision for walking and cycling will mean more people must use cars, with all users sharing the same roads. As a result, it is not consistent with the “efficient and effective” aspects of the LTMA’s purpose.

Public Transport

28. In terms of public transport, the Draft GPS should provide for higher investments in the Public Transport Infrastructure and Services Activity Classes.
29. Not appropriately funding these activity classes will have significant ramifications on the funding available for new (including planned) public transport initiatives. It will also impact local councils’ ability to deliver existing services. In Auckland, for instance, if the public transport services activity class is funded at the lower end of the band, we understand that

⁷ J Metcalfe, “*Effect of speed on emissions and air quality*”, Report prepared by Emission Impossible Ltd for Waka Kotahi NZ Transport Agency and Auckland Transport (May 2023, revised in September 2023).

in order to make up the shortfall in Government funding proposed by the Draft GPS, potential fare increases could range from between 22-133%. Increases of this magnitude would be unaffordable for many - once again giving rise to considerable equity concerns, and undermining the role that public transport plays in reducing congestion and emissions.

30. The Draft GPS also notes that the increase in public transport funding over the past 5 years has not been matched by an increase in patronage. However, this minimises the effect of COVID-19 on this mis-match. This is a mistake. Reductions in public transport use have been almost entirely as a result of COVID-19. Levels of use are rapidly returning to pre-COVID-19 levels.

Inconsistency with National Policy Statements

31. The Minister is required by the LTMA to take into account any relevant national policy statement in force under the Resource Management Act 1991. It is unclear whether the Minister has taken relevant national policy statements into account.
32. For instance, objective 8(a) of the National Policy Statement on Urban Development 2020 (**NPSUD**) is that “New Zealand’s urban environments support reductions in greenhouse gas emissions.” The Draft GPS will not assist New Zealand’s urban environments to support reductions in emissions, because it de-prioritises funding of transport infrastructure that enables people to use active modes of transport, or any mode of travel other than by car, and specifies limits on when walking and cycling investments are permissible, which are not consistent with reducing emissions from urban environments. Objective 1 of the NPSUD is that New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. Directing more people into cars because it is not safe for them to walk or cycle will not provide for “well-functioning urban environments”.

Requirement for consultation

33. The Draft GPS indicates that matters relating to climate change/emissions reduction issues are being worked through and will be addressed during development of the second Emissions Reduction Plan, and that this will include deciding on the best policy mix to ensure the second emissions budget is achieved and that the economy is on track to achieve net-zero by 2050. It is indicated that “this [part of the GPS] will be updated to reflect the state of play of ERP2 when the final version of GPS 2024 is published”.
34. The excluded emissions reduction content is critically important, but the public is not able to comment on it because it is not in the Draft GPS. There should be a further round of consultation on a revised Draft GPS that includes the emissions reduction content. At a minimum this content must be provided to representative groups of land transport users

and providers, including sustainable transport advocacy groups, so that the Minister can have regard to their views as required by s 67(1)(c).

Directions

35. The manner in which the GPS directs investment in specific new roads appears to be inconsistent with the requirement that the Minister must not give directions to NZTA in the performance of its statutorily independent functions, which include determining whether particular activities should be included in a national land transport programme (LTMA, s 95(3)(b)).⁸

Value for money, economic growth, and productivity

36. We do not necessarily disagree with the goal of having a land transport system that enables economic growth and higher productivity. However, by failing to appropriately consider climate change, the Draft GPS will not achieve this.
37. Climate change presents significant economic and fiscal risks.⁹ Prioritising economic growth and productivity *without* considering the impacts of climate change, or attempting to meaningfully mitigate those impacts through transport policy, is misguided and short-sighted.
38. The emphasis on road-building in the Draft GPS is almost certain to result in more traffic and increased congestion. It is well-established by economists, transport researchers, and planners that building more highways can have negative impacts on productivity, economic growth, and health-related costs.¹⁰ It should not be assumed that the road-building program proposed in the Draft GPS will necessarily produce positive economic outcomes.
39. We support the recognition in the Draft GPS of the role in public transport in supporting economic growth. We also support the intent expressed in the Draft GPS to invest in some Major Public Transport projects, including the City Rail Link, Eastern Busway, and planning for the delivery of the Rapid Transit Corridor and Airport to Botany Busway. We note, for instance, that research suggests that every dollar invested in public transit generates \$3 in economic growth, and also avoids the significant losses which result from traffic congestion.¹¹

⁸ While s 69 provides that a GPS is not a direction, that is “for the purposes of Part 3 of the Crown Entities Act 2004”. It does not enable a GPS to give a direction under the LTMA.

⁹ See, for example, NZ Treasury and Ministry for the Environment, “[Climate Economic and Fiscal Assessment 2023](#)” (April 2023)

¹⁰ Robert B Noland, “[Relationships between highway capacity and induced vehicle travel](#)” 35(1) Transportation Research: Policy and Practice (2001) 47; Susan Handy, “[Increasing Highway Capacity Unlikely to Relief Traffic Congestion](#)” National Centre for Sustainable Transportation (2015).

¹¹ “[Building Back Better Together](#)” Federation of Canadian Municipalities (November 2020) at p. 9.

40. However, despite funding these projects, the proposed funding changes in the Draft GPS will result in an overall reduction in funding both for the public transport infrastructure and services activity classes. This does not align with the overarching priorities of economic growth and productivity.
41. An additional critical consideration is the impact of the Draft GPS on the likely costs required for New Zealand to meet its 2030 NDC.
42. Reducing transport emissions was meant to account for a reasonable portion of New Zealand's emissions budgets. Emissions budgets are stepping stones towards meeting the 2030 NDC and overarching 2050 Target. Under the First Emissions Reduction Plan, it was proposed that there would be around a 41% reduction in transport emissions by 2035 from 2019 levels. We acknowledge that the Draft GPS explicitly has not attempted to align with the first Emissions Reduction Plan. However, it is very unclear which other policies the Government intends to follow to make up the gap left by significantly reducing projected transport emissions reductions. The likely result is that it will take New Zealand further off-track from meeting its 2030 NDC.
43. Failing to meet our 2030 NDC will have significant economic ramifications. Already, based on 2023 Treasury projections, the fiscal impacts of our emissions shortfall range from \$3-\$24Bn, due to the international offsets required to meet our emissions deficit under the 2030 NDC.¹² If New Zealand opts not to pay for international offsets to meet the 2030 NDC, it could impact New Zealand's international reputation, with flow-on effects on our exporting industries, and access to international capital and low-interest sovereign debt.
44. Effectively removing transport as a way of driving emissions reductions is quixotic, and will likely only have detrimental consequences on economic growth and New Zealand's overarching economic position. Shifting to a low emissions transport system should be embraced as an economic opportunity.

¹² Treasury, [Climate Economic and Fiscal Assessment](#) (April 2023) at p. 86.

Summary of responses to the Ministry of Transport’s Consultation Questions

Question	Answer
1. Do you agree with the strategic priorities and direction that are outlined in the Draft GPS 2024?	Strongly disagree. The Draft GPS should specify climate change and emissions reductions as the overriding strategic priority for GPS 2024 (see paragraphs 3-23, in particular).
2. Do you agree with the overarching priority of economic growth and productivity outlined in the Draft GPS 2024?	Strongly disagree. By failing to prioritise climate change and emissions reductions, the Draft GPS 2024 is likely to fail in its aim of supporting economic growth and productivity in any event. (see paragraphs 36-44)
b. Do you agree that the 15 Roads of National Significance, and the Roads of Regional Significance, will boost economic growth and productivity?	Disagree. The evidence demonstrates the opposite - that building more roads does nothing to reduce congestion. We are aware of some NZTA studies which have demonstrated that the benefit-to-cost ratio of four-lane highways can be 1 or less. It is very concerning that while walking and cycling projects need to demonstrate “clear economic benefits”, the same does not appear to be true for the Roads of National Significance. It should not be assumed, without supporting analysis, that Roads of National Significance and Roads of Regional Significance will boost economic growth and productivity. Any assessment of those must be accompanied by analysis that demonstrates the construction of those roads will not conflict with the Government’s legal obligations with respect to climate change. (see paragraph 38 in particular)
Questions on specific public transport projects (sub-questions 2(c)-(e)).	We are supportive of greater investments in public transport infrastructure. However, the Draft GPS ultimately results in decreased funding for public transport infrastructure and services. The GPS 2024 should present a more ambitious, nationwide approach to public transport investments. (see paragraphs 28-30)

<p>3. Do you agree with the stronger focus on road maintenance outlined in the Draft GPS 2024?</p>	<p>Disagree One of our concerns is that although road maintenance is necessary for public safety, a better and more long-term approach would focus on how to reduce the road maintenance burden. That would involve funding transport projects that reduce vehicle travel (and associated ongoing maintenance requirements), and reducing road building which only adds to the maintenance burden.</p> <p>In addition, the conceptualisation of resilience in the Draft GPS is relatively narrow. It does not take into account the likely impacts of climate change, which include increased severe weather events.</p>
<p>4. Do you agree with the priorities in the Draft GPS 2024 to improve safety on our roads through greater police enforcement targeting drink driving, drug driving, and excessive speeding?</p>	<p>Strongly disagree Contributing to a “safe transport system” is one of the overarching purposes of the LTMA. However, by failing to recognise or account for the impacts of climate change and emissions, the Draft GPS takes an overly narrow view of “safety”. (see paragraphs 22 -30)</p>
<p>5. Do you agree with the focus on value for money outlined in the Draft GPS 2024?</p>	<p>Disagree. Value for money can be considered, but not without an overarching focus on emissions reduction and climate change. In any event, the Draft GPS will not deliver value for money. (see paragraphs 36-44).</p>
<p>6. Do you agree with the outcomes expected to be achieved through the Draft GPS 2024?</p>	<p>Strongly disagree. Failure to include emissions reductions and a desired outcome, let alone an overarching strategic priority, is a critical omission.</p>
<p>7. Do you agree with the proposed \$50 increase to annual motor vehicle licence fees (‘rego’), spread across two \$25 increases in January 2025 and January 2026, as a way to help pay for transport investment?</p>	<p>Agree. We understand that motor vehicle registration in NZ is small compared to our peer countries, and that this would be a modest charge. This is contingent, however, on where transport investment goes.</p>
<p>8. Do you agree with plans in the Draft GPS 2024 to return to the previous practice of regular fuel excise duty (FED) and road user</p>	<p>Disagree. We are overall supportive of a wide-scale review of changes to FED and RUC to help</p>

<p>charge (RUC) increases from January 2027, as a way to help pay for transport investment?</p>	<p>incentivise and properly invest in alternatives to driving. However, we are concerned that the approach in the Draft GPS will have significant equity implications (for instance, see paragraph 17). We are also concerned about imposing RUCs for EV owners.</p>
<p>9. Do you agree with the proposed Activity Class descriptions and funding ranges?</p>	<p>Strongly disagree. See paragraphs 24-30 in particular.</p>
<p>10. Do you agree with the statement of ministerial expectations as outlined in the Draft GPS 2024?</p>	<p>Strongly Disagree. See our concerns above around the overarching focus on “value for money”, without considering climate change and emissions reductions. We are also concerned about potential increases to public transport costs for users in line with the Minister’s expectation of “contributions from beneficiaries/users wherever possible”.</p>

45. Thank you for the opportunity to engage in this consultation process. We are happy to continue engaging further with you on any of the points raised in this submission.



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This submission was prepared alongside Lawyers for Climate Action’s Transport Subcommittee.