

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

NO. CIV-2021-404-001618

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 MEMBERS OF THE REGIONAL TRANSPORT**
 COMMITTEE FOR AUCKLAND
 Second Respondent

AND **AUCKLAND COUNCIL**
 Third Respondent

**STATEMENT OF DEFENCE ON BEHALF OF
FIRST AND SECOND RESPONDENTS**

10 September 2021

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THE FIRST AND SECOND RESPONDENTS SAY:

Parties

1. They admit paragraph 1 of the statement of claim.
2. They have insufficient knowledge of and therefore deny the allegations in paragraph 2 of the statement of claim.
3. They admit paragraph 3 of the statement of claim.
4. They admit paragraph 4 of the statement of claim but say further that:
 - (a) at all material times the second respondents were not acting individually or in their personal capacities but only collectively as members of the regional transport committee for Auckland (**RTC**);
 - (b) the RTC is the Governing Body of the first respondent (refer section 5 of the Land Transport Management Act 2003) plus a non-voting KiwiRail member;
 - (c) the relevant decision-maker in relation to RTC decisions and appropriate respondent (in accordance with section 9(2) of the Judicial Review Procedure Act 2016) is therefore the first respondent, and not the individual members of the RTC, as pleaded.
5. They admit paragraph 5 of the statement of claim, but repeat paragraph 4 of this statement of defence.
6. They admit paragraph 6 of the statement of claim.

Climate crisis and action required to limit average global temperature increase to 1.5°C

7. They admit paragraph 7 of the statement of claim.
8. With regard to paragraph 8 of the statement of claim, they:

(a) admit the paragraph, and say further that the pleadings in paragraphs 9 to 17 below are likewise based on the Special Report which is relied on as if pleaded in full;

(b) in particular, admit that:

(i) anthropogenic climate change is occurring;

(ii) if unmitigated, the effects of climate change will be severe, including extreme weather patterns leading to droughts and flooding, sea level rises and increased ocean temperatures, with consequential health, economic and ecosystem risks and loss of biodiversity;

(iii) dangerous anthropogenic warming is likely to be unavoidable unless substantial mitigation steps are taken;

(c) say further that:

(i) the nature and scope of the effects of global warming in various warming scenarios are uncertain and will vary depending on local circumstances;

(ii) the question of climate change and the appropriate response to climate change raises complex policy issues at an international, national, local and individual level;

(iii) measures to mitigate climate change in New Zealand and elsewhere require a holistic and multifaceted approach across many levels of society and actors.

9. They admit paragraph 9 of the statement of claim and repeat paragraph 8 of this statement of defence.

10. They admit paragraph 10 of the statement of claim and repeat paragraph 8 of this statement of defence.
11. They admit paragraph 11 of the statement of claim and repeat paragraph 8 of this statement of defence.
12. They admit paragraph 12 of the statement of claim and repeat paragraph 8 of this statement of defence.
13. They admit paragraph 13 of the statement of claim and repeat paragraph 8 of this statement of defence.
14. They admit paragraph 14 of the statement of claim and repeat paragraph 8 of this statement of defence.
15. They admit paragraph 15 of the statement of claim and repeat paragraph 8 of this statement of defence.
16. They admit paragraph 16 of the statement of claim and repeat paragraph 8 of this statement of defence.
17. They admit paragraph 17 of the statement of claim and repeat paragraph 8 of this statement of defence.
18. Save as to say that those causing the effects of climate change include people in the past, the present and the future, they admit paragraph 18 of the statement of claim.
19. They admit paragraph 19 of the statement of claim.
20. They admit paragraph 20 of the statement of claim and repeat paragraph 8 of this statement of defence.
21. Save as to say that:
 - (a) the potential and likely effects of climate change, and the measures required to mitigate those effects, are of high public importance but not necessarily of the “highest” public

importance in all places and at all times, and in the context of all decisions; and

- (b) there are other matters that are also of high public importance, some of which may not be complementary with measures required to mitigate the potential and likely effects of climate change;

they admit the allegations in paragraph 21 of the statement of claim.

United Nations Framework Convention on Climate Change

22. They admit paragraph 22 of the statement of claim.

23. They admit paragraph 23 of the statement of claim.

24. They admit paragraph 24 of the statement of claim.

25. They admit paragraph 25 of the statement of claim.

26. They admit paragraph 26 of the statement of claim.

27. They admit paragraph 27 of the statement of claim.

Paris Agreement

28. They admit paragraph 28 of the statement of claim.

29. They admit paragraph 29 of the statement of claim.

30. They admit paragraph 30 of the statement of claim.

31. With regard to paragraph 31 of the statement of claim, they admit that the Paris Agreement states, in Article 2, that it aims to strengthen the global response to the threat of climate change including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and by pursuing efforts to limit the temperature increase

to 1.5°C above pre-industrial levels, but deny that this is stated to be the “central aim” and rely on the Paris Agreement as if pleaded in full.

32. They admit paragraph 32 of the statement of claim.

33. They admit paragraph 33 of the statement of claim.

34. They admit paragraph 34 of the statement of claim.

35. They admit paragraph 35 of the statement of claim.

Zero Carbon Act

36. They admit paragraph 36 of the statement of claim.

37. They admit paragraph 37 of the statement of claim and say further that the Zero Carbon Act made a number of other changes to the Climate Change Response Act 2002 including (amongst other matters) in relation to the setting by the Government of National Emissions Budgets and the preparation of Emissions Reduction Plans.

Local Government Leaders’ Climate Change Declaration 2017

38. With regard to paragraph 38 of the statement of claim, they:

(a) deny that the Local Government Declaration was signed by the Auckland Council, and say it was a declaration signed by mayors and chairs of local authorities, including the Mayor of Auckland Council;

(b) otherwise admit the paragraph.

39. In relation to paragraph 39 of the statement of claim they:

(a) admit that under the Local Government Declaration the Mayor of Auckland, and other mayors and chairs, committed to develop and implement ambitious action plans that reduce greenhouse gas emissions and support resilience within their councils and for their local communities, with the plans to

promote walking, cycling, public transport and other low carbon transport options (amongst other matters);

- (b) otherwise deny the allegations in the paragraph;
- (c) say further that the Local Government Declaration was a statement of position and intent by the signatories, and did not amount to a legal commitment by the signatories (or the local authorities of which they were mayor or chair including Auckland Council) to take any particular action.

Declaration of climate emergency by Auckland Council

40. They admit paragraph 40 of the statement of claim.

Te Tāruke-ā-Tāwhiri: Auckland's Climate Plan

41. They admit paragraph 41 of the statement of claim.

42. They admit paragraph 42 of the statement of claim.

43. They deny paragraph 43 of the statement of claim and say that:

- (a) Te Tāruke-ā-Tāwhiri is a climate plan for Auckland rather than for the Auckland Council, or the Auckland Council group as such. It sets out goals, "action areas" and roles in delivery across the full range of potential activities and actors, both public and private sector, under various topics, including transport;
- (b) Te Tāruke-ā-Tāwhiri contains an implementation plan, including an implementation summary table broken down into the same topics, including transport, and action areas within each topic. For some action areas, the table sets out indicative targets aligned to the decarbonisation pathway (where modelled);
- (c) under the action area "Changing the way we all travel", the indicative targets include those listed in (a) to (e) of paragraph 43 of the statement of claim, amongst others;

- (d) these reflect a scenario that represents one possible pathway to achieving net zero emissions by 2050, and are not legally binding greenhouse gas reduction requirements or targets for Auckland Council or the Auckland Council group, or anyone else.

Declaration of climate emergency by Government and Parliament

- 44. They admit paragraph 44 of the statement of claim.

Government Policy Statement on Land Transport 2021

- 45. They admit paragraph 45 of the statement of claim.

- 46. They admit paragraph 46 of the statement of claim, and say further that the two strategic priorities not mentioned in the statement of claim are “Improving Freight Connections” and “Safety”.

- 47. With regard to paragraph 47 of the statement of claim they:

- (a) admit paragraph (a);
- (b) admit paragraph (b), save as to say that the quoted words are described as the “primary” (rather than “priority”) outcome in the GPS 2021;
- (c) admit paragraph (c) and say further that the other short to medium-term result intended to be delivered by 2031 not listed in paragraph (c) is “improved resilience of the transport system”;
- (d) say that none of the strategic priorities, associated outcomes and intended results in the GPS 2021 can be viewed in isolation, and rely on the GPS 2021 in its entirety.

- 48. With regard to paragraph 48 of the statement of claim they:

- (a) admit paragraph (a);

- (b) admit paragraph (b), save as to say that the quoted words are taken from the “primary” (rather than “priority”) outcome under the “Better Travel Options” strategic priority;
- (c) admit paragraph (c) and say that the other short to medium-term result intended to be delivered by 2031 not listed in paragraph (c) is “improved access to social and economic opportunities.”;
- (d) say that none of the strategic priorities, associated outcomes and intended results in the GPS 2021 can be viewed in isolation, and rely on the GPS 2021 in its entirety.

Climate Change Commission advice to Government

49. They admit paragraph 49 of the statement of claim.

50. They admit paragraph 50 of the statement of claim.

Tāmaki Makaurau Auckland’s road transport emissions

51. They admit paragraph 51 of the statement of claim, and say further that:

- (a) during this period there was increased per capita public and active transport patronage in Auckland;
- (b) over the same period, however, the population of Auckland increased significantly;
- (c) the travel demands from this growing population and improving economic conditions more than offset vehicle fleet efficiency improvements and increased per capita public and active transport patronage.

52. They admit paragraph 52 of the statement of claim and say further that:

- (a) during this period public transport patronage in Auckland increased by approximately 75%;

- (b) the increase in total vehicle kilometres travelled is largely attributable to the increase in population in Auckland, meaning an increase in the number of trips made and the length of the trips, and they repeat paragraph 51 of this statement of defence.

53. They admit paragraph 53 of the statement of claim.

54. Save as to admit that:

- (a) transport emissions in Tāmaki Makaurau Auckland are a significant component of Aotearoa New Zealand’s transport emissions; and
- (b) failure to reduce transport emissions in Tāmaki Makaurau Auckland would have an impact on Aotearoa New Zealand’s ability to meet its climate change targets

they deny paragraph 54 of the statement of claim, repeat paragraph 8 of this statement of defence, and say further that a range of measures will be required in order for New Zealand to meet its climate change targets.

Auckland Regional Land Transport Plan 2021

55. They admit paragraph 55 of the statement of claim but say further that:

- (a) the content and purpose of the RLTP is as set out in the LTMA;
- (b) other legislative instruments and policy documents affect the planning and operation of Tāmaki Makaurau Auckland’s transport network; and
- (c) the RLTP does not set out all the measures that will be taken by Auckland Transport or other entities to support particular policy outcomes, for example a reduction in Tāmaki Makaurau Auckland’s transport emissions.

56. They admit paragraph 56 of the statement of claim.

57. Save as to say that:

- (a) the RTC, rather than its individual members, passed the resolution; and
- (b) the pleaded resolution is not complete;

they admit paragraph 57 of the statement of claim, but rely on the resolution in its entirety.

58. With regard to paragraph 58 of the statement of claim, they:

- (a) say that:
 - (i) the Planning Committee, rather than its individual members, passed the resolution;
 - (ii) the pleaded resolution is not complete;
- (b) subject to (a), admit the allegations in the paragraph, but rely on the resolution in its entirety; and
- (c) say further that the Planning Committee Decision was not a formal statutory step in the process of adopting the RLTP and was not the exercise of a statutory power in terms of the Judicial Review Procedure Act 2016.

59. They admit paragraph 59 of the statement of claim, but rely on the resolution in its entirety.

60. They deny paragraph 60 of the statement of claim and say that the RLTP is not “operational” as such, but rather is a document which sets out Auckland’s land transport objectives, policies and measures for the 10 financial years commencing on 1 July 2021.

61. In relation to paragraph 61 of the statement of claim they:

- (a) admit that the RLTP says that “private vehicle trips are still forecast to increase and, when combined with an increase in average vehicle trip distance, total VKT between 2016 and 2031

increases roughly in line with the expected 22 percent increase in population.”;

- (b) admit that the RLTP says that “the overall impact of these three factors [expected fleet efficiency improvements, RLTP investment and planned government interventions] is forecast to be a reduction in transport GHG emissions of around one percent from 2016 to 2031”;
- (c) otherwise deny the allegations in the paragraph and in particular deny that under the RLTP Tāmaki Makaurau Auckland’s transport emissions are expected to increase by 6% between 2016 and 2031. The RLTP forecasts an overall transport emissions reduction of at least one percent once the three key factors have been taken into account;
- (d) say that forecast emissions reductions need to take into account the impact of population growth under the counterfactual scenario which – absent the reductions associated with expected fleet efficiency improvements, RLTP investment and planned government interventions – would otherwise have seen an increase in emissions in the order of 22 percent between 2016 and 2031;
- (e) say that, in the context of consistency with the GPS 2021, the most relevant period for consideration is 2021 to 2031. Accounting for the impact of population growth, improvements in fleet efficiency, the impact of planned government interventions and the strong emphasis on public transport and active modes in the RLTP from 2021 onwards, the RLTP estimates a land transport emissions reduction in the order of 5 percent between 2021 and 2031;
- (f) say that any statements in the RLTP must be viewed in the context of the RLTP as a whole, and they rely on the RLTP in its entirety.

FIRST CAUSE OF ACTION – RTC DECISION ALLEGEDLY UNLAWFUL

Section 14 of the LTMA

62. Save as to say that:

- (a) the requirements in section 14 are not limited to the matters pleaded; and
- (b) section 14 requires the RTC, rather than its individual members, to be satisfied of the matters;

they admit the allegations in paragraph 62 of the statement of claim.

Auckland Transport's advice to the RTC

63. Save to clarify that the meeting of the RTC was on 18 June 2021 rather than 24 June 2021, they admit paragraph 63 of the statement of claim but say further that:

- (a) the RTC Decision Document was a report entitled "2021-2031 Regional Land Transport Plan" prepared by staff of Auckland Transport (**AT Staff Report**) to assist the RTC in considering and making a decision in relation to the proposed RLTP;
- (b) the AT Staff Report included as attachments:
 - (i) the draft RLTP;
 - (ii) the Full Public Feedback Report;
 - (iii) the submissions received from local boards, partners and key interest groups;
 - (iv) the proposed changes to the draft RLTP;
 - (v) A document "How the draft RLTP 2021-20321 meets the requirements of section 14 of the LTMA";
 - (vi) An Independent Assurance;
- (c) the RTC also met at other times to discuss and consider the development of the RLTP programme and the draft RLTP.

- 64.** With regard to paragraph 64 of the statement of claim they:
- (a) deny paragraph (a), and say that the AT Staff Report recommended (among other things) that the RTC agree that it was satisfied that the RLTP complied with the LTMA;
 - (b) deny paragraph (b), and say that the AT Staff Report recommended (among other things) that the RTC recommend the RLTP to the Planning Committee for endorsement and to the Board for approval;
 - (c) admit paragraph (c), and say that the document “How the draft RLTP 2021-2031 meets the requirements of section 14 of the LTMA” (**Section 14 Analysis**) was an attachment to the AT Staff Report;
 - (d) deny paragraph (d), and say that the discussion in the AT Staff Report related to the implications of the RTC not recommending approval of the RLTP to the Board, and they rely on that discussion in its entirety.
- 65.** They deny paragraph 65 of the statement of claim and say that the Section 14 Analysis does in fact demonstrate how the RLTP meets the requirements of section 14 of the LTMA.
- 66.** With regard to paragraph 66 of the statement of claim, they:
- (a) deny the paragraph, and say that an accurate record of relevant sections of the Section 14 Analysis is that they included the following statements:
 - (i) “the combination of RLTP investment, improved vehicle efficiency as forecast in Vehicle Emissions Prediction Model 6.1 and planned government interventions such as the Clean Car Standard and biofuels improvements are expected to lead to a small absolute emissions reduction (in the order of -1%) for Auckland between 2016 and 2031”;

- (ii) “...we are confident of a greater absolute reduction in emissions between 2021 and 2031. This reduction is estimated to be in the order of 5%”;
- (iii) “Fundamentally, investment in infrastructure or services only has a very minor impact on total emissions, whether positive or negative. Even the biggest projects may only account for changes in the order of one percent of total. Scenario testing as part of ATAP development, along with analysis of other scenarios as background to the Te Tāruke ā Tāwhiri (Auckland Climate Plan), shows that plausible changes to the programme are unlikely to yield materially different results. External variables such as demand associated with population growth or improvements in fleet efficiency have a much larger impact on total emissions.”;
- (iv) “It is not a given that roading projects will automatically lead to increased tailpipe emissions. For example, Penlink is likely to result in a net reduction in tailpipe emissions as it significantly shortens the connection to the North Shore and reduces congestion while managing demand through tolling. As an illustration, a modelling test for the 2031 year shows that removal of the Penlink and the full Mill Road project (as originally announced in the NZUP package) would lead to a very small (0.15%) increase in CO₂ emissions due to an increase in total VKT and higher congestion. Remaining projects will also make important contributions to other objectives including safety, connectivity overall effectiveness and freight access – or may be multi-modal in nature.”;
- (v) “With the possible exception of a Crown allocation to complete the City Centre to Māngere light rail project, no further funding appears likely for additional sustainable modes. Assumed funding from the NLTP is already at the \$16.3 billion allocation set out in the

GPS. Meanwhile, Council funding for additional public transport services is also limited, with the final allocation being smaller than desirable (although increased on the original draft);

(vi) “There is limited practical scope to relocate elements of the programme from roading projects to further increase investment in public transport and active modes. The bulk of major roading projects included in the RLTP are either committed or included in the NZUP programme, which cannot be altered by the RTC”;

(vii) “General road space reallocation towards cycling and other sustainable modes has also been proposed by submitters as a way of addressing climate issues. This is already occurring as part of the wider cycling programme and projects such as Connected Communities that will provide for bus lanes, bus priority and cycling and safety improvements. As noted, there is no available funding for further reallocation. In practice, it is also likely that gains from deterring car travel through lane reallocation alone would be largely offset by the increase in emissions associated with increased congestion and diversion amongst the remaining traffic. Reallocation of general traffic lanes without additional effective alternatives (which cannot be funded) would also materially reduce the RLTP’s contribution to LTMA objectives around effectiveness and economic, social and cultural public interests”;

(b) say further that statements in the Section 14 Analysis must be viewed in the context of the Section 14 Analysis as a whole, and they rely on the Section 14 Analysis in its entirety;

(c) except as admitted, deny the allegations in the paragraph.

- 67.** They deny paragraph 67 of the statement of claim and say further that:
- (a) the conclusion in the Section 14 Analysis that the RLTP was consistent with the GPS was not based on the Auckland Transport Alignment Programme (**ATAP**); and
 - (b) the Section 14 Analysis stated that Cabinet and central agency support for ATAP was nevertheless consistent with the conclusion (already reached) that the RLTP was consistent with the GPS.
- 68.** With regard to paragraph 68 of the statement of claim they:
- (a) admit that the RTC relied on the AT Staff Report and the Section 14 Analysis in making the RTC Decision;
 - (b) say further that the RTC also relied upon other information which included (among other things) the proposed RLTP, material provided at workshops and other meetings leading up to and including the meeting on 18 June 2021 including a full public feedback report and copies of submissions from local boards, partners and key interest groups, other advice provided by staff and advisers, including that specifically provided during the year-long process of developing the RLTP, and the knowledge and expertise of the RTC members themselves;
 - (c) save as admitted, deny the allegations in the paragraph.

RTC Decision allegedly unlawful

- 69.** They deny paragraph 69 of the statement of claim and in particular they:
- (a) deny that the RTC Decision was unlawful;
 - (b) deny that being “not properly informed” is a sound legal basis for a finding of unlawfulness, as alleged;
 - (c) deny that the RTC was not properly informed, failed to take into account relevant considerations and/or took into account irrelevant considerations as alleged;

- (d) deny that the RTC breached section 14(a)(ii) of the LTMA;
- (e) deny that the RTC had no proper or reasonable grounds to be satisfied that the RLTP was consistent with the GPS 2021, as alleged;
- (f) deny that the RTC breached section 14(a)(i) of the LTMA;
- (g) deny that the RTC had no proper or reasonable grounds to be satisfied that the RLTP contributed to an effective, efficient and safe land transport system in the public interest, as alleged.

Allegedly not properly informed / relevant considerations / irrelevant considerations

70. They deny each of the allegations in paragraph 70 of the statement of claim. In particular:

- (a) save as is admitted in paragraph 66 of this statement of defence, they deny the allegations as to the content of the AT Staff Report and the Section 14 Analysis referred to in (a), (b), (c), (d), (e), (f) and (g) of the paragraph;
- (b) they deny that any statements in the AT Staff Report and the Section 14 Analysis in relation to the matters referred to in (a), (b), (c), (d), (e), (f) and (g) of the paragraph were factually incorrect on the grounds alleged;
- (c) they deny that any of the factual errors or inaccuracies alleged in (a), (b), (c), (d), (e), (f) and (g) of the paragraph, even if established (which is denied), is a legal ground for impugning the RTC decision on the basis alleged in paragraph 69(a) of the statement of claim;
- (d) they deny that the Planning Committee's resolution of 24 June 2021 (as pleaded in paragraph 58 of the statement of claim) recognised that changes to the mix of transport investments in the RLTP could and should have been made, as alleged in (b) of paragraph 70;

- (e) they deny that in making a decision under section 14 of the LTMA the RTC was required to consider the issue of environmental wellbeing, as alleged in (h) of the paragraph, but say that in any event both the AT Staff Report and the Section 14 Analysis considered environmental wellbeing;
- (f) they deny that the AT Staff Report or the Section 14 Analysis failed to draw the RTC's attention to modelled emissions outcomes from the RLTP investment programme, as alleged in (i) of the paragraph, but say that this information was provided in the appropriate context of all known likely significant emissions reduction initiatives, including government initiatives;
- (g) they deny that the RTC was not made aware of any relevant modelling of expected vehicle kilometres travelled or per capita vehicle kilometres travelled over the period between 2016 and 2031, as alleged in (j) of the paragraph, and say that (amongst other things) the AT Staff Report included the draft RLTP which included this information (refer pages 77 and 78);
- (h) they deny that the AT Staff Report or the Section 14 Analysis advised that consistency between the RLTP and GPS 2021 could be inferred from the fact that the RLTP was derived from the Auckland Transport Alignment Programme, as alleged in (k) of the paragraph, and they repeat paragraph 67 above;
- (i) they deny that the content of ATAP was irrelevant to the issue of consistency between the RLTP and the GPS 2021, as alleged in (k) of the paragraph;
- (j) they deny that the AT Staff Report presented the RTC with a binary choice between approving the RLTP (as prepared) and the existing 2018 Regional Land Transport Plan remaining in effect, as alleged in (l) of the paragraph, and say that the AT Staff Report correctly set out the implications of not recommending approval of the RLTP to the Board, but that the RTC was aware that amendments to the proposed RLTP could be made (and indeed were made) before the RTC resolved to submit the RLTP to the Board for approval;

- (k) they deny that any of the alleged “material inaccuracies, omissions and irrelevancies” even if established (which is denied) were either legally relevant considerations which were required to be taken into account, or irrelevant considerations which were material or sufficiently material to the decision so as to amount to the taking into account of an irrelevant consideration.

Alleged no proper or reasonable grounds to be satisfied RLTP consistent with GPS 2021

71. The deny each of the allegations in paragraph 71 of the statement of claim. In particular, they:

- (a) deny that the RTC had no proper or reasonable grounds to be satisfied that the RLTP was consistent with GPS 2021, and say that such reasonable grounds were set out, inter alia, in the Section 14 Analysis;
- (b) deny that inconsistency with the GPS 2021 is sufficient to amount to a breach of section 14(1)(ii) of the LTMA, as alleged in paragraph 69(b) of the statement of claim, so long as the RTC was satisfied of such consistency, which it was;
- (c) say that in any event the RLTP was consistent with the GPS 2021;
- (d) deny that consistency with the GPS 2021 is determined solely by reference to the “Climate Change” strategic priority or particular elements of that strategic priority, and say that the requirement in section 14(1)(ii) of the LTMA for the RTC to be satisfied that the RLTP is consistent with the GPS 2021 relates to consistency with the GPS 2021 as a whole including other strategic priorities in the GPS 2021;
- (e) deny that the GPS 2021 contains the strategic priority alleged in (a) of the paragraph, and say that the relevant “Climate

Change” strategic priority is as set out in paragraph 47(a) of the statement of claim;

- (f) deny that the RLTP is inconsistent with that strategic priority, either on its own terms or when viewed in the context of the GPS 2021 as a whole;
- (g) deny that the RLTP is inconsistent with the “priority outcome” (or correctly, the “primary outcome”) under the “Climate Change” strategic priority in the GPS 2021, as alleged in (b) of the paragraph, either on its own terms or when viewed in the context of the GPS 2021 as a whole;
- (h) deny that the alleged modelling forecasts in (c) of the paragraph are correct or relevant for the purposes of determining consistency with the GPS 2021, and they repeat paragraph 61 of this statement of defence;
- (i) deny that consistency with either Aotearoa New Zealand’s NDC under the Paris Agreement or Te Tāruke-ā-Tāwhiri, as referred to in (d)(i) and (ii) of the paragraph, is relevant to or determinative of the RLTP’s consistency with the GPS 2021 under section 14(1)(ii) of the LTMA, but say that in any event the RLTP is consistent with those matters;
- (j) deny that Auckland Council has targets under Te Tāruke-ā-Tāwhiri as alleged in (d)(ii) of the paragraph, and they repeat paragraph 43 of this statement of defence;
- (k) deny that the RLTP is inconsistent with the CCC’s emissions budgets recommendation (for New Zealand as a whole) as alleged in (d)(ii) of the paragraph and say that, consistent with the GPS 2021, the investment decisions in the RLTP contribute to a reduction in harmful emissions from a resilient transport sector, so that the emissions from that sector will overall assist in giving effect to the national emissions reduction target recommendation.

Alleged no proper or reasonable grounds to be satisfied that RLTP contributes to an effective, efficient and safe land transport system in the public interest

72. With regard to paragraph 72 of the statement of claim, they:

- (a) repeat paragraph 8 of this statement of defence;
- (b) subject to (a), admit (or agree with the statement of opinion) that there is an urgent need to make substantial reductions to emissions of greenhouse gases globally, nationally and in Tāmaki Makaurau Auckland;
- (c) admit that this need is recognised in the documents referred to in the paragraph, although the various documents referred to in the paragraph have a different geographical focus with most not referring specifically to Tāmaki Makaurau Auckland;
- (d) say that this need is recognised in the RLTP itself, which highlights that delivering further major reductions in emissions by 2031 would require very strong interventions to reduce demand for private vehicle travel (for example road pricing schemes) and that while such approaches would contribute to achieving climate outcomes, perverse social, cultural and economic outcomes could also be expected.

73. With regard to paragraph 73 of the statement of claim, they:

- (a) admit that transport emissions contribute to air pollution, which may in turn have a detrimental effect on human health and wellbeing;
- (b) save as is admitted, deny the paragraph.

74. They deny paragraph 74 of the statement of claim and in particular they:

- (a) deny that the relevant requirement in section 14(a)(i) of the LTMA was to be satisfied that the RLTP contributed to a safe land transport system in the public interest, and say the requirement is as pleaded in paragraph 69(c) of the statement of claim;

- (b) deny that compliance with section 14(a)(i) of the LTMA is determined by considering one element of the purpose of the LTMA - namely contribution to a safe land transport system – in isolation;
- (c) in any event, deny that the RLTP does not contribute to a safe land transport system or is not in the public interest, or that the RTC had no proper or reasonable grounds to be satisfied of those matters;
- (d) deny that consistency with any of the alleged emissions reduction targets in paragraph 71(d) of the statement of claim targets is determinative of whether the RLTP contributes to a safe land transport system or is in the public interest, or of compliance with section 14(a)(i) of the LTMA;
- (e) in any event, deny that the RLTP is inconsistent with any relevant emissions reduction targets pleaded, and they repeat paragraphs 71(i), (j) and (k) of this statement of defence.

SECOND CAUSE OF ACTION – PLANNING COMMITTEE DECISION ALLEGEDLY UNLAWFUL

- 75.** They do not plead to paragraphs 75 to 81 of the statement of claim, which are not directed at them.

THIRD CAUSE OF ACTION – BOARD DECISION ALLEGEDLY UNLAWFUL

Auckland Transport’s advice to the Board

- 82.** They admit paragraph 82 of the statement of claim, but say that the document is more accurately described as a report to the Board (**Board Report**).
- 83.** They admit paragraph 83 of the statement of claim but rely on the Board Report in its entirety.

- 84.** With regard to paragraph 84 of the statement of claim they:
- (a) admit that the Board relied upon the Board Report in making its decision;
 - (b) admit that the Board also relied upon the Section 14 Analysis (which was part of the RLTP attached to the Board Report, and which had also been provided to the Board members as members of the RTC), and was aware of the RTC Decision;
 - (c) say further that the input into the decision was not limited to these documents or matters, but included the matters in paragraph 68(b) above (as the Board members were also members of the RTC);
 - (d) save as is admitted, deny the allegations in the paragraph.

Board Decision allegedly unlawful

- 85.** They deny paragraph 85 of the statement of claim and in particular they:
- (a) deny that the RTC Decision was unlawful, and repeat paragraphs 69 to 74 above;
 - (b) deny that the Board Decision was unlawful because of any reliance on the RTC Decision;
 - (c) deny that in making the Board Decision, the Board was not properly informed or failed to take into account relevant considerations or took into account irrelevant considerations, namely the alleged omissions and irrelevancies in the AT Staff Report (all of which are denied), or that if there was any such failure as alleged (which is denied) it was of material relevance or of a nature to amount to a judicially reviewable error, and it repeats paragraph 70 of this statement of defence;
 - (d) deny that in making the Board Decision, the Board acted contrary to its statutory purpose as set out in section 39 of the Local Government (Auckland Council) Act 2009 for the reasons pleaded in paragraphs 72 to 74 of the statement of claim, and they repeat paragraphs 72 to 74 of this statement of defence

(applied mutatis mutandis to section 39 of the Local Government (Auckland Council) Act 2009).

This statement of defence is filed by **PADRAIG MALCOLM SVEN MCNAMARA** solicitor for the first and second respondents of the firm of Simpson Grierson.

The address for service of the first and second respondents is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the first and second respondents may be left at that address for service or may be -

- a) posted to the solicitor at Private Bag 92518, Auckland; or
- b) left for the solicitor at a document exchange for direction to DX CX10092; or
- c) transmitted to the solicitor by facsimile to +64-9-307 0331; or
- d) emailed to the solicitor at padraig.mcnamara@simpsongrierson.com