

**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**

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**STATEMENT OF DEFENCE ON BEHALF OF  
THIRD RESPONDENT**

**10 September 2021**

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 **Simpson Grierson**  
Barristers & Solicitors

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

## **THE THIRD RESPONDENT SAYS**

### **Parties**

1. It admits paragraph 1 of the statement of claim.
2. It has insufficient knowledge of and therefore denies the allegations in paragraph 2 of the statement of claim.
3. It admits paragraph 3 of the statement of claim.
4. It admits paragraph 4 of the statement of claim but says 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. It admits paragraph 5 of the statement of claim, but repeats paragraph 4 of this statement of defence.
6. It admits paragraph 6 of the statement of claim.

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

7. It admits paragraph 7 of the statement of claim.
8. With regard to paragraph 8 of the statement of claim, it:

- (a) admits the paragraph, and says 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, admits 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) says 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.** It admits paragraph 9 of the statement of claim and repeats paragraph 8 of this statement of defence.

10. It admits paragraph 10 of the statement of claim and repeats paragraph 8 of this statement of defence.
11. It admits paragraph 11 of the statement of claim and repeats paragraph 8 of this statement of defence.
12. It admits paragraph 12 of the statement of claim and repeats paragraph 8 of this statement of defence.
13. It admits paragraph 13 of the statement of claim and repeats paragraph 8 of this statement of defence.
14. It admits paragraph 14 of the statement of claim and repeats paragraph 8 of this statement of defence.
15. It admits paragraph 15 of the statement of claim and repeats paragraph 8 of this statement of defence.
16. It admits paragraph 16 of the statement of claim and repeats paragraph 8 of this statement of defence.
17. It admits paragraph 17 of the statement of claim and repeats 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, it admits paragraph 18 of the statement of claim.
19. It admits paragraph 19 of the statement of claim.
20. It admits paragraph 20 of the statement of claim and repeats 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;

it admits the allegations in paragraph 21 of the statement of claim.

### **United Nations Framework Convention on Climate Change**

**22.** It admits paragraph 22 of the statement of claim.

**23.** It admits paragraph 23 of the statement of claim.

**24.** It admits paragraph 24 of the statement of claim.

**25.** It admits paragraph 25 of the statement of claim.

**26.** It admits paragraph 26 of the statement of claim.

**27.** It admits paragraph 27 of the statement of claim.

### **Paris Agreement**

**28.** It admits paragraph 28 of the statement of claim.

**29.** It admits paragraph 29 of the statement of claim.

**30.** It admits paragraph 30 of the statement of claim.

**31.** With regard to paragraph 31 of the statement of claim, it admits 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 denies that this is stated to be the “central aim” and relies on the Paris Agreement as if pleaded in full.

**32.** It admits paragraph 32 of the statement of claim.

**33.** It admits paragraph 33 of the statement of claim.

**34.** It admits paragraph 34 of the statement of claim.

**35.** It admits paragraph 35 of the statement of claim.

### **Zero Carbon Act**

**36.** It admits paragraph 36 of the statement of claim.

**37.** It admits paragraph 37 of the statement of claim and says 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, it:

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

(b) otherwise admits the paragraph.

**39.** In relation to paragraph 39 of the statement of claim it:

(a) admits 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 denies the allegations in the paragraph;
- (c) says 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.** It admits paragraph 40 of the statement of claim.

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

**41.** It admits paragraph 41 of the statement of claim.

**42.** It admits paragraph 42 of the statement of claim.

**43.** It denies paragraph 43 of the statement of claim and says 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. It admits paragraph 44 of the statement of claim.

#### **Government Policy Statement on Land Transport 2021**

- 45. It admits paragraph 45 of the statement of claim.
- 46. It admits paragraph 46 of the statement of claim, and says 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 it:
  - (a) admits paragraph (a);
  - (b) admits paragraph (b), save as to say that the quoted words are described as the “primary” (rather than “priority”) outcome in the GPS 2021;
  - (c) admits paragraph (c) and says 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) says that none of the strategic priorities, associated outcomes and intended results in the GPS 2021 can be viewed in isolation, and relies on the GPS 2021 in its entirety.
- 48. With regard to paragraph 48 of the statement of claim it:
  - (a) admits paragraph (a);



- (b) admits 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) admits paragraph (c) and says 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) says that none of the strategic priorities, associated outcomes and intended results in the GPS 2021 can be viewed in isolation, and relies on the GPS 2021 in its entirety.

#### **Climate Change Commission advice to Government**

**49.** It admits paragraph 49 of the statement of claim.

**50.** It admits paragraph 50 of the statement of claim.

#### **Tāmaki Makaurau Auckland’s road transport emissions**

**51.** It admits paragraph 51 of the statement of claim, and says 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.** It admits paragraph 52 of the statement of claim and says 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 it repeats paragraph 51 of this statement of defence.

**53.** It admits 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

it denies paragraph 54 of the statement of claim, repeats paragraph 8 of this statement of defence, and says 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.** It admits paragraph 55 of the statement of claim but says 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.** It admits 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;

it admits paragraph 57 of the statement of claim, but relies on the resolution in its entirety.

**58.** With regard to paragraph 58 of the statement of claim it:

- (a) says that:
  - (i) the Planning Committee, rather than its individual members, passed the resolution;
  - (ii) the pleaded resolution is not complete;
- (b) subject to (a), admits the allegations in the paragraph, but relies on the resolution in its entirety; and
- (c) says 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.** It admits paragraph 59 of the statement of claim, but relies on the resolution in its entirety.

**60.** It denies paragraph 60 of the statement of claim and says 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 it:

- (a) admits 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) admits 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 denies the allegations in the paragraph, and in particular denies 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) says 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) says 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) says 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**

62. It does not plead to paragraphs 62 to 74 of the statement of claim, which are not directed at it.

## **SECOND CAUSE OF ACTION – PLANNING COMMITTEE DECISION ALLEGEDLY UNLAWFUL**

It repeats paragraphs 1 to 62 of this statement of defence and says further:

### **Auckland Transport's advice to the Planning Committee**

75. Save as to say that Auckland Council staff also provided input into the report to the Planning Committee (**Planning Committee Report**), it admits paragraph 75 of the statement of claim.
76. Save as to deny that (d) is an accurate paraphrase of what the Planning Committee Report said, it admits paragraph 76 of the statement of claim but relies on the Planning Committee Report in its entirety.
77. With regard to paragraph 77 of the statement of claim it:
- (a) admits that in making the Planning Committee Decision the Planning Committee relied on the Planning Committee Report, and was advised of the RTC Decision;
  - (b) says further that the Planning Committee also relied on (among other things) the proposed RLTP, 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 a powerpoint presentation to the meeting, and the knowledge and expertise of the Planning Committee members themselves;
  - (c) save as is admitted, denies the allegations in the paragraph.

### **Planning Committee decision allegedly unlawful**

78. It denies paragraph 78 of the statement of claim and in particular it:

(a) denies that the Planning Committee was not properly informed, failed to take into account relevant considerations and/or took into account irrelevant considerations as pleaded in paragraph 70 of the statement of claim, and in that regard it:

(i) says the document “How the draft RLTP 2021-2031 meets the requirements of section 14 of the LTMA” (**Section 14 Analysis**) included the following statements:

- “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”;
- “...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%”;
- “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.”;

- “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 CO<sub>2</sub> 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.”;
- “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)”;
- “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”;
- “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”;

- (ii) says further that these statements in the Section 14 Analysis must be viewed in the context of the Section 14 Analysis as a whole, and it relies on the Section 14 Analysis in its entirety;
- (iii) save as is admitted in (i) and (ii) above, denies the allegations as to the content of the report entitled “2021-2031 Regional Land Transport Plan” (**AT Staff Report**) and the Section 14 Analysis referred to in (a), (b), (c), (d), (e), (f) and (g) of paragraph 70 of the statement of claim;
- (iv) denies 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 paragraph 70 of the statement of claim were factually incorrect on the grounds alleged in paragraph 70 of the statement of claim;
- (v) denies that any of the factual errors or inaccuracies alleged in (a), (b), (c), (d), (e), (f) and (g) of paragraph



70 of the statement of claim, even if established (which is denied), is a legal ground for impugning the Planning Committee decision on the basis alleged in paragraph 78(a) of the statement of claim;

- (vi) denies 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 of the statement of claim;
- (vii) denies 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 paragraph 70 of the statement of claim, but says that in any event both the AT Staff Report and the Section 14 Analysis considered environmental wellbeing;
- (viii) denies that the AT Staff Report or the Section 14 Analysis failed to draw attention to modelled emissions outcomes from the RLTP investment programme, as alleged in (i) of paragraph 70 of the statement of claim, but says that this information was provided in the appropriate context of all known likely significant emissions reduction initiatives, including government initiatives;
- (ix) denies that the Planning Committee 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 paragraph 70 of the statement of claim (applied mutatis mutandis), and says that (amongst other things) the AT Staff Report included the draft RLTP which included this information (refer pages 77 and 78);
- (x) denies 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 paragraph 70 of the statement of claim;

- (xi) denies that the content of ATAP was irrelevant to the issue of consistency between the RLTP and the GPS 2021, as alleged in (k) of paragraph 70 of the statement of claim;
  - (xii) denies that the AT Staff Report presented 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 paragraph 70 of the statement of claim, and says 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;
  - (xiii) denies 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.
- (b) denies that the matters alleged to be relevant or irrelevant in respect of the RTC Decision were in any event similarly relevant or irrelevant to the Planning Committee decision, which was not a decision under the LTMA but simply a policy decision whether to endorse the RLTP or not;
- (c) denies that the matters in section 14 of the Local Government Act 2002 are mandatory requirements as alleged, and says they are principles to guide the Council’s performance of its statutory

role, and says further that the Planning Committee did properly or adequately observe those principles, to the extent legally required, when making the Planning Committee Decision;

- (d) denies that the Planning Committee breached section 77 of the LGA by failing to identify all reasonably practicable options or to assess the options in terms of their advantages and disadvantages, and says further that:
  - (i) section 77 is subject to the discretion in section 79, which was lawfully and properly exercised in this case;
  - (ii) the only practicable options were either to endorse or not endorse the RLTP for submission to the Board;
  - (iii) it was not a legally available (and therefore practicable) option for the Planning Committee to require Auckland Transport to make changes to the RLTP;
- (e) denies that the Planning Committee breached section 80 of the LGA, for the reasons in paragraphs 79 to 81 below.

*Alleged inconsistent decisions*

**79.** It denies paragraph 79 of the statement of claim.

**80.** With regard to paragraph 80 of the statement of claim, it:

- (a) admits that the Planning Committee resolved (among other things) to note that Auckland Council's commitment to Te Tāruke-ā-Tāwhiri to halve emissions by 2030 would require further change to transport and land use policy and the mix of transport investment; and that Auckland Council and Auckland Transport staff would jointly develop a Transport Emissions Reduction Plan for Auckland to identify the pathways to support the required emissions reductions reflected in Te Tāruke-ā-Tāwhiri;

- (b) denies that these resolutions recognised (expressly or otherwise) an inconsistency between the RLTP and Te Tāruke-ā-Tāwhiri, and say further there was no such inconsistency.

**81.** With regard to paragraph 81 of the statement of claim it:

- (a) admits the Planning Committee made the Planning Committee Decision, but relies on the resolution in its entirety;
- (b) denies the implication in the word “despite”, that the Planning Committee Decision to endorse the RLTP for submission to the Board was inconsistent with Te Tāruke-ā-Tāwhiri or with the resolutions referred to paragraph 80(a) above;
- (c) denies there was any inconsistency or any significant inconsistency between the Planning Committee decision, which was simply a decision to endorse the RLTP for approval by another legal entity (namely Auckland Transport’s Board), and the Local Government Declaration, the Auckland Council Climate Emergency Declaration and/or Te Tāruke-ā-Tāwhiri;
- (d) denies that any of the Local Government Declaration, the Auckland Council Climate Emergency Declaration and Te Tāruke-ā-Tāwhiri is a policy or plan covered by section 80(1) of the LGA;
- (e) therefore, denies any breach of section 80 of the LGA.

### **THIRD CAUSE OF ACTION – BOARD DECISION ALLEGEDLY UNLAWFUL**

**82.** It does not plead to paragraphs 82 to 85 of the statement of claim, which are not directed at it.

### **AND AS AN AFFIRMATIVE DEFENCE THE THIRD RESPONDENT SAYS**

**86.** The Planning Committee Decision is not amenable to judicial review under the Judicial Review Procedure Act 2016 because it was not the exercise, refusal to exercise or purported exercise of a “statutory power”, as that term is defined in section 5 of the Judicial Review Procedure Act 2016.

This statement of defence is filed by **PADRAIG MALCOLM SVEN MCNAMARA** solicitor for the third respondent of the firm of Simpson Grierson.

The address for service of the third respondent is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the third respondent 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](mailto:padraig.mcnamara@simpsongrierson.com)