

101.0066

I Te Kōti Matua O Aotearoa | In the High Court of New Zealand  
Tāmaki Makaurau Rohe | Auckland Registry  
**CIV-2021-404-1618**

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

---

**APPLICANT'S REPLY TO FIRST AND SECOND  
RESPONDENTS' STATEMENT OF DEFENCE**

29 September 2021

**LeeSalmonLong**

Barristers and Solicitors

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET

PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND

TELEPHONE 64 9 912 7100

COUNSEL:

DAVEY SALMON QC

MILLS LANE CHAMBERS, AUCKLAND

TELEPHONE +64 21 974 873

EMAIL davey.salmon@millslane.co.nz

EMAIL: michael.heard@lsl.co.nz SOLICITOR ON RECORD: MICHAEL HEARD

EMAIL: jack.cundy@lsl.co.nz SOLICITOR ACTING: JACK CUNDY

---

**APPLICANT'S REPLY TO FIRST AND SECOND RESPONDENTS'  
STATEMENT OF DEFENCE**

---

**THE APPLICANT SAYS:**

4. It admits the positive allegations in paragraph 4.
8. In relation to paragraph 8(c):
  - (a) It admits that the urgent need to mitigate climate change, and to reduce emissions of greenhouse gases, raises complex policy issues, and that measures to do so in Aotearoa New Zealand and elsewhere require a holistic and multifaceted approach across many levels of society and actors.
  - (b) It otherwise denies the positive allegations in paragraph 8(c).
  - (c) It says further that many of the measures necessary to mitigate road transport emissions of greenhouse gases in Tāmaki Makaurau Auckland are wholly or largely under the control of Auckland Transport and Auckland Council.
18. It denies the positive allegation in paragraph 18 and says further that (self-evidently) people in the future are not causing the effects of climate change.
21. In relation to paragraph 21:
  - (a) It denies the positive allegation in paragraph 21(a).
  - (b) The positive allegation in paragraph 21(b) is too vague and insufficiently particularised for the applicant to plead to.
37. It admits the positive allegation in paragraph 37.
38. It denies the positive allegation in paragraph 38(a) and says further that the Mayor of Tāmaki Makaurau Auckland signed the Local Government Leaders' Climate Change Declaration as the representative and on behalf of Auckland Council.
39. In relation to paragraph 39:
  - (a) It admits the positive allegation in paragraph 39(a) and repeats paragraph 38 above.
  - (b) It denies the positive allegation in paragraph 39(c).
43. In relation to paragraph 43:
  - (a) It admits the positive allegations in paragraphs 43(a) to (c) and says further that Te Tāruke-ā-Tāwhiri is Auckland Council's climate plan for Tāmaki Makaurau Auckland.
  - (b) It denies the positive allegation in paragraph 43(d).

46. It admits the positive allegation in paragraph 46.
47. It admits the positive allegations in paragraphs 47(b) and (c).
48. It admits the positive allegations in paragraphs 48(b) and (c).
51. In relation to paragraph 51:
- (a) It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 51(a).
  - (b) It admits the positive allegation in paragraph 51(b).
  - (c) It admits that during this period total vehicle kilometres travelled by private motor vehicles, light commercial vehicles and heavy vehicles increased such that they more than offset vehicle fleet efficiency improvements. It otherwise denies the positive allegation in paragraph 51(c).
52. In relation to paragraph 52:
- (a) It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 52(a).
  - (b) It denies the positive allegation in paragraph 52(b) and says further that the increase in total vehicle kilometres travelled is attributable to a combination of the nature of the transport system provided by Auckland Transport, Auckland Council and central government, and the increase in the urban area of Tāmaki Makaurau Auckland due to continued car-dependent development and urban sprawl.
55. In relation to paragraph 55:
- (a) It admits the positive allegations in paragraphs 55(a) and (b).
  - (b) It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 55(c).
57. It admits the positive allegation in paragraph 57(a).
58. In relation to paragraph 58:
- (a) It admits the positive allegation in paragraph 58(a)(i).
  - (b) It denies the positive allegation in paragraph 58(c) and says further that the Planning Committee Decision is amenable to review under Part 30 of the High Court Rules in any event.
60. It denies the positive allegation in paragraph 60 and says further that the RLTP came into effect on 1 July 2021.

61. In relation to paragraph 61:
- (a) It admits the positive allegation in the second sentence of paragraph 61(c). It says further that the RLTP said, in respect of the RLTP investment (on page 82): “Our transport modelling forecasts that Auckland’s per capita transport emissions will reduce by 13 percent between 2016 and 2031. However, the 22 percent increase in population over the same period means that the region’s total emissions are expected to increase by six percent between 2016 and 2031.”
  - (b) It admits that the Auckland Transport Analysis (which is set out in full in appendix 9 of the RLTP) said: “In the Auckland context, the forecast 22% increase in population between 2016 and 2031 would, in a do-minimum scenario, lead to a similar sized increase in greenhouse gas emissions by 2031”. It otherwise denies the positive allegation in paragraph 61(d) and says further that a “do-minimum” scenario is not the only relevant counterfactual, and that Auckland Transport could (and should) have made changes to the mix of transport investment in the RLTP that would result in a greater reduction of emissions.
  - (c) It admits that the Auckland Transport Analysis said: “Accounting for the rate of population growth (which is a proxy for increases in demand) relative to forecast improvements in fleet efficiency, the impact of announced government interventions and the strong emphasis on public transport and active modes in the RLTP from 2021 onwards, 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%.” It otherwise denies the positive allegation in paragraph 61(e).
  - (d) It denies the positive allegation in paragraph 61(f).

#### **FIRST CAUSE OF ACTION – RTC DECISION UNLAWFUL**

---

62. It admits the positive allegations in paragraph 62.
63. In relation to paragraph 63:
- (a) It admits that the meeting of the RTC was on 18 June 2021 rather than 24 June 2021.
  - (b) It admits the positive allegations in paragraphs 63(a) and (b).
  - (c) It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 63(c).
64. In relation to paragraph 64:
- (a) It admits the positive allegation in paragraph 64(c).

- (b) It denies the positive allegations in paragraphs 64(a), (b) and (d).
65. It denies the positive allegation in paragraph 65.
66. It admits that the Auckland Transport Analysis contained the sections of text quoted in paragraph 66(a) and says further that those matters are accurately summarised at paragraph 66 of the statement of claim.
67. It denies the positive allegations in paragraph 67 and says further that the Auckland Transport Analysis included a section under the heading: "Government agreement to ATAP implicitly supports consistency of the RLTP with the GPS".
68. It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 68(b).
70. In relation to paragraph 70:
- (a) It says that the statement of defence is incomplete or evasive because it fails to provide a clear, direct and substantial answer to the allegations in paragraphs 70(a) to (g) of the statement of claim, and in particular the second sentence of each of those paragraphs.
- (b) It denies the positive allegations in paragraphs 70(e), (f) and (j).
- (c) It admits the positive allegation in paragraph 70(g) but repeats paragraph 70(j) of the statement of claim.
71. It denies the positive allegations in paragraph 71.
72. It admits that the RLTP asserted the matters set out in paragraph 72(d) but denies that interventions to reduce demand for private vehicle travel would have perverse social, cultural and economic outcomes as asserted.
74. It admits the positive allegation in paragraph 74(a).

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

---

84. It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 84(c).