

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 THIRD RESPONDENT'S 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).

SECOND CAUSE OF ACTION – PLANNING COMMITTEE DECISION UNLAWFUL

62. It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 75.
77. It has insufficient knowledge of, and therefore denies, the positive allegation in paragraph 77(b).
78. In relation to paragraph 78:
- (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 paragraph 70(a) to (g) of the statement of claim (which are repeated *mutatis mutandis* at paragraph 78(a)), and in particular the second sentence of each of those paragraphs.

- (b) It admits that the Auckland Transport Analysis contained the sections of text quoted in paragraph 78(a)(i).
 - (c) It admits the positive allegation in paragraph 78(a)(ix) but repeats paragraph 70(j) of the statement of claim (*mutatis mutandis*).
 - (d) It otherwise denies all of the positive allegations in paragraph 79.
80. It denies the positive allegation in paragraph 80(b).

AFFIRMATIVE DEFENCE

86. It denies paragraph 86 and says further that the Planning Committee Decision is amenable to review under Part 30 of the High Court Rules in any event.