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

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2021-485-735**

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**UNDER** the Judicial Review Procedure Act 2016

**IN THE MATTER OF** an application for judicial review of  
decisions under sections 19A and 19B of the  
Land Transport Management Act 2003

**BETWEEN** **MOVEMENT**

**Applicant**

**AND** **NEW ZEALAND TRANSPORT AGENCY**

**First Respondent**

**AND** **MINISTER OF TRANSPORT**

**Second Respondent**

**AND** **AUCKLAND TRANSPORT**

**Intervenor**

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**SECOND RESPONDENT'S STATEMENT OF DEFENCE**

**6 April 2022**

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**CROWN LAW**  
**TE TARI TURE O TE KARAUNA**  
PO Box 2858  
Wellington 6140  
Tel: 04 472 1719

Contact Person:

Polly Higbee / Nathan de Lautour

[polly.higbee@crownlaw.govt.nz](mailto:polly.higbee@crownlaw.govt.nz) / [nathan.delautour@crownlaw.govt.nz](mailto:nathan.delautour@crownlaw.govt.nz)

The second respondent by his solicitor says, in response to the amended statement of claim dated 10 March 2022, he:

**Parties**

1. Admits the applicant is a charitable trust registered on the Charities Register, but otherwise has insufficient knowledge of the matters pleaded in paragraph [1] and therefore denies them.
2. Has insufficient knowledge of the applicant's objectives in bringing the proceeding, and therefore denies paragraph [2].
3. Admits paragraph [3].

**Facts upon which the application is based**

***Zero Carbon Act***

4. In respect of paragraph [4]:
  - 4.1 relies on the Climate Change Response Act 2002, as amended by the Climate Change Response (Zero Carbon) Amendment Act 2019 (**CCRA**), as if pleaded in full;
  - 4.2 otherwise denies paragraph [4] and says Parliament has set an emissions reduction target for greenhouse gases other than biogenic methane, and separately for biogenic methane, under s 5Q of the CCRA.

***Declaration of climate emergency by Government and Parliament***

5. Admits paragraph [5] to the extent it reflects the text of the Government motion. For the avoidance of doubt, the second respondent does not apprehend that in pleading this paragraph the applicant intends to impeach or question the proceedings of Parliament.

***Transport greenhouse gas emissions***

6. Admits paragraph [6] on the basis it reflects information contained in the New Zealand Greenhouse Gas Inventory (**NZGHGI**) 1990-2019. He notes the NZGHGI 1990-2020 is due to be released on 12 April 2022.

7. In respect of paragraph 7:
  - 7.1 says the NZGHGI 1990-2019 does not explicitly state the fastest growing source of emissions, however the inventory does have sufficient information in the common reporting format tables to determine this;
  - 7.2 says whether paragraph [7] is correct likely depends on the period of time the applicant is referring to;
  - 7.3 admits the Hīkina te Kohupara discussion document published by the Ministry of Transport records that transport emissions have risen more than any other emissions source between 1990 and 2018; and
  - 7.4 otherwise denies paragraph [7].
8. In respect of paragraph [8]:
  - 8.1 admits paragraph [8](a) on the basis it reflects information contained on page 10 of the NZGHGI 1990-2018;
  - 8.2 admits paragraph [8](b) on the basis it reflects information contained on page 9 of the NZGHGI 1990-2018; and
  - 8.3 says the source in the NZGHGI as to the figure of 42.6 referred to by the applicant is unclear, and so otherwise denies paragraph [8].
9. In respect of paragraph [9]:
  - 9.1 says that achieving the targets in s 5Q of the CCRA will require climate mitigation measures to be taken across the New Zealand economy, including in transport;
  - 9.2 says that the CCRA provides a framework for policy decisions relating to the climate change mitigation measures New Zealand will adopt to achieve the s 5Q targets, but that the CCRA framework is only one part of the overall regulatory response to reduce transport emissions;

- 9.3 says further that:
- 9.3.1 the framework under the CCRA includes the preparation of advice by the Climate Change Commission on emissions reduction plans and emissions budgets;
  - 9.3.2 the Climate Change Commission delivered its final advice to the Minister of Climate Change on 31 May 2021 on the first three emissions budgets and the first emissions reduction plan;
  - 9.3.3 the Minister of Climate Change is currently preparing emissions budgets and an emissions reduction plan;
  - 9.3.4 the statutory deadline for the first three emissions budgets and the first emissions reduction plan is 31 May 2022;
  - 9.3.5 says that the Emissions Trading Scheme enacted under the CCRA will also contribute to New Zealand's response to climate change; and
- 9.4 otherwise denies paragraph [9].

10. In respect of paragraph [10]:

- 10.1 admits that the nature of some infrastructure investment decisions means that investment decisions made today may have long-term implications for greenhouse gas emissions from transport; and
- 10.2 repeats paragraph [9] above and otherwise denies paragraph [10].

***Purpose of the Act***

- 11. Admits paragraph [11].
- 12. Apprehends paragraph [12] is in the nature of submission to which he is not required to plead.

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

13. Admits paragraph [13] and relies on the Government Policy Statement on Land Transport 2021 (**GPS 2021**) as if pleaded in full, and says further that the GPS 2021:
  - 13.1 is prepared pursuant to Part 3 of the Land Transport Management Act 2003 (**LTMA**); and
  - 13.2 includes the results the Crown wishes to be achieved from the allocation of funding from the National Land Transport Fund (**NLTF**) and guides Regional Land Transport Plans and the National Land Transport Programme 2021-2024 (**NLTP**).
14. In respect of paragraph [14]:
  - 14.1 admits that the GPS 2021 states on page 14 that: “Together the four strategic priorities and the investment strategy in this GPS 2021 will contribute to all five key outcomes of the Transport Outcomes Framework. In addition, reducing greenhouse gas emissions and supporting regions apply across all priorities, programmes and activity classes”; and
  - 14.2 otherwise denies paragraph [14] and relies on the GPS 2021 as if pleaded in full.
15. Admits paragraph [15] and relies on the GPS 2021 as if pleaded in full.
16. Admits paragraph [16] and relies on the GPS 2021 as if pleaded in full.
17. Admits paragraph [17] to the extent that it reflects the GPS 2021 and relies on the GPS 2021 as if pleaded in full.
18. In respect of paragraph [18]:
  - 18.1 admits the GPS 2021 states on page 29 that: “Funding applicants need to show that they considered alternatives, and how they compare in meeting the results set out in Section 2.6”;

- 18.2 says further that in context the reference to “Funding applicants” was a reference to anyone eligible for funding from the NLTF for a specific project or activity; and
  - 18.3 otherwise denies paragraph [18] and relies on the GPS 2021 as if pleaded in full.
19. In respect of paragraph [19]:
- 19.1 admits that section 2.6 of the GPS 2021 is a table that lists the four strategic priorities, transport outcomes, and proposed indicators;
  - 19.2 relies on the GPS 2021 as if pleaded in full; and
  - 19.3 otherwise denies paragraph [19].

***Climate Change Commission advice***

20. Admits paragraph [20], and says further that the Climate Change Commission delivered its final advice to the Minister of Climate Change on 31 May 2021.
21. In respect of paragraph [21]:
- 21.1 admits subparagraph (a);
  - 21.2 admits subparagraph (b);
  - 21.3 admits subparagraph (c);
  - 21.4 denies the Climate Change Commission solely used a demonstration path to calculate the level of the first three recommended emissions budgets;
  - 21.5 says further the Climate Change Commission’s advice states on page 132: “We do not intend for the demonstration path to be a prescriptive path that Aotearoa must follow to meet our recommended emissions budgets, but rather as a path to show that our recommended emissions budgets are achievable” and refers to the advice as if pleaded in full;

- 21.6 says further that he understands the demonstration pathway is based on reducing transport emissions by approximately 13 percent by 2030, and 41 percent by 2035 (compared to 2019 levels). However, this is across the transport system, not limited only to land transport; and
- 21.7 otherwise denies paragraph [21] and relies on the Climate Change Commission's advice as if pleaded in full.
22. Denies paragraph [22], and relies on the Climate Change Commission's advice as if pleaded in full.

***National Land Transport Programme***

23. Admits paragraph [23].
24. In respect of paragraph [24]:
- 24.1 says that the NLTP is a statutory document;
- 24.2 refers in particular to sections 19A, 19B, 19C and 20 of the LTMA which set out the responsibilities of the first respondent in respect of the NLTP, the core requirements of the NLTP, the content of the NLTP and the basis on which activities may be approved as qualifying for payments from the NLTF; and
- 24.3 otherwise denies paragraph [24] and relies on the LTMA as if pleaded in full.
25. Admits that the NLTP includes the statements paraphrased in paragraph [25], but otherwise relies on the NLTP as if pleaded in full.

***Documents referenced or used in preparation of the NLTP***

26. Apprehends that the matters pleaded at paragraph [26] are directed to the first respondent and that he is not required to plead in response to them.

***Toitū te Taiao – Our Sustainability Action Plan***

27. Apprehends that the matters pleaded at paragraph [27] are directed to the first respondent and that he is not required to plead in response to them.

28. Apprehends that the matters pleaded at paragraph [28] are directed to the first respondent and that he is not required to plead in response to them.
29. Apprehends that the matters pleaded at paragraph [29] are directed to the first respondent and that he is not required to plead in response to them.
30. Apprehends that the matters pleaded at paragraph [30] are directed to the first respondent and that he is not required to plead in response to them.

*Investment Prioritisation Method*

31. Apprehends that the matters pleaded at paragraph [31] are directed to the first respondent and that he is not required to plead in response to them.
32. Apprehends that the matters pleaded at paragraph [32] are directed to the first respondent and that he is not required to plead in response to them.
33. Apprehends that the matters pleaded at paragraph [33] are directed to the first respondent and that he is not required to plead in response to them.

*Climate Assessment Tool for Investment*

34. Apprehends that the matters pleaded at paragraph [34] are directed to the first respondent and that he is not required to plead in response to them.
35. Apprehends that the matters pleaded at paragraph [35] are directed to the first respondent and that he is not required to plead in response to them.
36. Apprehends that the matters pleaded at paragraph [36] are directed to the first respondent and that he is not required to plead in response to them.

37. Apprehends that the matters pleaded at paragraph [37] are directed to the first respondent and that he is not required to plead in response to them.

***Respondent's assessment of greenhouse gas emissions from land transport included in the NLTP***

38. Apprehends that the matters pleaded at paragraph [38] are directed to the first respondent and that he is not required to plead in response to them.
39. Apprehends that the matters pleaded at paragraph [39] are directed to the first respondent and that he is not required to plead in response to them.
40. Apprehends that the matters pleaded at paragraph [40] are directed to the first respondent and that he is not required to plead in response to them.
41. Apprehends that the matters pleaded at paragraph [41] are directed to the first respondent and that he is not required to plead in response to them.

**Grounds on which relief is sought, and relief sought**

***First cause of action***

42. Apprehends that paragraph [42] is in the nature of submission to which he is not required to plead, or otherwise alleges matters of fact not directed to him and to which he is not required to plead, but says further he denies the first respondent has failed to ensure the NLTP gives effect to the GPS.
43. Admits paragraph [43] and relies on the LTMA as if pleaded in full.
44. Apprehends paragraph [44] is in the nature of submission to which he is not required to plead.

***Relief sought***

45. Is not required to plead to relief but says further that if the applicant is successful the Court should refuse the relief sought in the exercise of its discretion.

***Second cause of action***

46. Apprehends that paragraph [46] is in the nature of submission to which he is not required to plead, or otherwise alleges matters of fact not directed to him and to which he is not required to plead.
47. Admits paragraph [47] and relies on the LTMA as if pleaded in full.
48. Apprehends that paragraph [48] is in the nature of submission to which he is not required to plead.

***Relief sought***

49. Is not required to plead to relief but says further that if the applicant is successful the Court should refuse the relief sought in the exercise of its discretion.

***Third cause of action***

50. Apprehends that paragraph [50] is in the nature of submission to which he is not required to plead, or otherwise alleges matters of fact not directed to him and to which he is not required to plead.
51. Admits paragraph [51] and relies on the LTMA as if pleaded in full.
52. Apprehends that paragraph [52] is in the nature of submission to which he is not required to plead, but repeats paragraph [18.2] above.
53. Apprehends that paragraph [53] alleges matters of fact directed to the first respondent and to which he is not required to plead.

***Relief sought***

54. Is not required to plead to relief but says further that if the applicant is successful the Court should refuse the relief sought in the exercise of its discretion.

This document is filed by Polly Higbee, solicitor for the second respondent, of Crown Law.

The address for service of the second respondent is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the second respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or

- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) emailed to the solicitor at [polly.higbee@crownlaw.govt.nz](mailto:polly.higbee@crownlaw.govt.nz) provided that the documents are also emailed to [nathan.delautour@crownlaw.govt.nz](mailto:nathan.delautour@crownlaw.govt.nz).