

In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua o Aotearoa
Te Whanganui-ā-Tara Rohe

CIV 2021-485-735

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**
Respondent

Statement of defence of Waka Kotahi New Zealand Transport
Agency (**Waka Kotahi**)

Dated: 2 February 2022

Reference: T D Smith (tim.smith@chapmantripp.com)

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**STATEMENT OF DEFENCE OF WAKA KOTAHI NEW ZEALAND
TRANSPORT AGENCY (WAKA KOTAHI)**

The respondent (**Waka Kotahi**), by its solicitors, in response to the statement of claim for judicial review dated 26 November 2021, says:

The parties

- 1 In response to paragraph 1 it:
 - 1.1 admits that Movement is incorporated as a charitable trust board under the provisions of the Charitable Trust Act 1957;
 - 1.2 otherwise has insufficient knowledge of, and therefore denies, paragraph 1.
- 2 It has insufficient knowledge of the applicant's objectives in bringing the proceeding, and therefore denies paragraph 2.
- 3 It admits paragraph 3 and says further:
 - 3.1 its statutory objective under the Land Transport Management Act 2003 (**LTMA**) is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest;
 - 3.2 its functions include to:
 - (a) contribute to an effective, efficient, and safe land transport system in the public interest;
 - (b) manage the State highway system, including planning, funding, design, supervision, construction and maintenance and operations;
 - (c) manage funding of the land transport system, including administration of land transport revenue; and
 - 3.3 it has a statutorily independent function to "*determine whether particular activities should be included in a national land transport programme*" (**NLTP**).

**Facts upon which the application is based
Zero Carbon Act**

- 4 In response to paragraph 4, it:
 - 4.1 admits paragraph 4;
 - 4.2 says further that in relation to biogenic methane the Government has set a target to reduce emissions of biogenic

methane to 24% to 47% less than 2017 emissions by 2050, including to 10% below 2017 levels by 2030; and

- 4.3 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.

Declaration of climate emergency by Government and Parliament

5 In response to paragraph 5, it:

- 5.1 admits paragraph 5 to the extent it reflects the text of the Government motion;
- 5.2 says further that the Government motion also:
- (a) notes that the Government has made significant progress on meeting the challenge of climate change through the Paris Agreement and the CCRA;
 - (b) acknowledges the core tenets of New Zealand's response by establishing emissions budgets that set New Zealand on a path to net zero by 2050, setting a price on emissions through the New Zealand Emissions Trading Scheme, transitioning to a low-carbon economy and planning for climate adaption; and
- 5.3 otherwise relies on the text of the motion as if pleaded in full.

Transport greenhouse gas emissions

6 In response to paragraph 6, it:

- 6.1 admits that the figures pleaded at paragraph 6 are consistent with those included in the Ministry for the Environment's Greenhouse Gas Inventory 1990-2019 (the **Inventory**);
- 6.2 says further that the pleaded figures relate to gross domestic emissions;
- 6.3 says further that the methodology used by the Inventory to calculate emissions is one of a variety of ways of measuring emissions and different measures may produce different results;
- 6.4 relies on the Inventory as if pleaded in full; and
- 6.5 otherwise denies paragraph 6.

- 7 In response to paragraph 7, it:
- 7.1 says further that the Inventory does not clearly record the fastest growing sources of emissions;
 - 7.2 admits that the Hīkina te Kohupara discussion document (**Hīkina**) published by the Ministry of Transport records that transport emissions have risen more than any other emissions source between 1990 and 2018;
 - 7.3 relies on Hīkina as if pleaded in full; and
 - 7.4 otherwise denies paragraph 7.
- 8 In response to paragraph 8, it:
- 8.1 admits the figures in paragraph 8 are consistent with those included in the Inventory;
 - 8.2 repeats paragraph 6.3, above;
 - 8.3 relies on the Inventory as if pleaded in full; and
 - 8.4 otherwise denies paragraph 8.
- 9 In response to paragraph 9, it:
- 9.1 admits paragraph 9;
 - 9.2 says further that achieving the target under the CCRA of reducing net emissions of all greenhouse gases except biogenic methane to zero by 2050 (**2050 Target**) will require a broad range of measures to be taken across the New Zealand economy, including but not limited to, measures in relation to land transport;
 - 9.3 says further that reducing land transport emissions will require co-ordinated action by multiple entities, including Waka Kotahi and local authorities in relation to land use and urban planning;
 - 9.4 says further that the CCRA provides a framework for policy decisions relating to determining the measures New Zealand will adopt to achieve the 2050 Target;
 - 9.5 says further that:
 - (a) the framework under the CCRA includes the preparation of advice by the Climate Change

Commission on emissions budgets and an emissions reduction plan;

- (b) the Climate Change Commission delivered its final advice to the Government on 31 May 2021 (**CCC Advice**);
- (c) following the preparation of the CCC advice, the Minister for Climate Change is currently preparing emissions budgets and an emissions reductions plan informed by the advice and is expected to adopt emissions budgets and an emissions reduction plan in 2022;
- (d) an emissions budget must state the total emissions that will be permitted for the relevant emissions budget period;
- (e) an emissions reduction plan must set out the policies and strategies for meeting the relevant emissions budget, including sector-specific policies to reduce emissions and increase removals, a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change, and a strategy to mitigate the impacts that reducing emissions and increasing removals will have on employees and employers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action; and

9.6 says further that the Emissions Trading Scheme enacted under the CCRA will also contribute to New Zealand's response to climate change.

10 In response to paragraph 10, it:

- 10.1 says that infrastructure investments such as those funded through the National Land Transport Fund (**NLTF**) and transport investments funded by the Crown may be of a long-term nature with significant lead times and a variety of long-term implications;
- 10.2 admits that infrastructure investment decisions may, in some circumstances, have long-term implications for greenhouse gas emissions from transport;
- 10.3 repeats paragraph 9, above, and says further that whether a particular investment has long term implications for greenhouse gas emissions and if so to what extent depends on the particular investment; and

10.4 otherwise denies paragraph 10.

Purpose of the Act

11 It admits paragraph 11.

12 It apprehends paragraph 12 is an allegation of law to which it is not required to plead.

Government Policy Statement on Land Transport 2021

13 It admits paragraph 13 and says further that:

13.1 the Government sets the direction for land transport investment through the NLTF in the Government Policy Statement on Land Transport (**GPS 2021**);

13.2 publication of GPS 2021 followed a period of public engagement, including:

(a) workshops with local government and other stakeholders from March to May 2019; and

(b) publication of a draft GPS 2021 on or about 19 March 2020; and

13.3 GPS 2021 was amended on or around 5 July 2021 to clarify funding for rail activities.

14 In response to paragraph 14, it:

14.1 denies that GPS 2021 "specifies" the matters pleaded in paragraph 14; but

14.2 admits that GPS 2021 in the section "Overview of GPS 2021", in the context of describing the relationship between the four strategic priorities in GPS 2021 and the outcomes identified in the Ministry of Transport's Transport Outcomes Framework, contains a statement that "*Some priorities are more directly linked to specific outcomes – for example the Safety priority has a direct link to the Healthy and Safe People outcome. However, as the outcomes are inter-related, each strategic priority will deliver co-benefits across the Transport Outcomes Framework. For example, a reduction in greenhouse gas emissions will be achieved through action across all priorities, programmes and activity classes*"; and

14.3 relies upon GPS 2021 as if pleaded in full.

15 It admits paragraph 15 and says further that:

15.1 the GPS is required pursuant to the LTMA to include:

- (a) the results that the Crown wishes to achieve from the allocation of funding from the NLTF over a period of at least 10 consecutive financial years; and
 - (b) the Crown's land transport investment strategy;
- 15.2 the Crown's land transport investment strategy must, for the first 6 financial years of the GPS, address, amongst other matters:
- (a) the short-term to medium-term results that the Crown wishes to achieve through the allocation of funding from the NLTF;
 - (b) the activity classes to be funded from the NLTF;
 - (c) likely revenue, including changes to the duties, fees, and charges paid into the NLTF;
 - (d) the identification of an expenditure target for the NLTP for each year;
 - (e) a maximum and minimum level of expenditure for the NLTP for each year;
 - (f) funding ranges for each activity class;
 - (g) a statement of the Minister's expectations of how the Waka Kotahi gives effect to the GPS; and
 - (h) forecast funding ranges for each activity class for the period of 4 financial years following the first 6 financial years of the GPS;
- 15.3 the GPS may also set out national land transport objectives, policies, and measures for a period of at least 10 financial years beginning on the date that the GPS is issued;
- 15.4 GPS 2021 also includes:
- (a) a statement of roles and responsibilities under the GPS;
 - (b) expenditure targets for the NLTP for each year;
 - (c) a minimum and maximum level of expenditure for the NLTP each year;
 - (d) activity classes to be funded from the NLTF;

- (e) funding ranges for each activity class;
- (f) principles for investing;
- (g) identification of "government commitments" that Waka Kotahi is required to report against to the Minister in conjunction with approved organisations as defined in section 5 of the LTMA (**approved organisations**); and
- (h) a statement of Ministerial expectations;

15.5 GPS 2021 states, amongst other matters, that:

- (a) the Government sets the direction for land transport investment through the NLTF in the GPS. Decisions about individual projects are the responsibility of Waka Kotahi [132];
- (b) a large proportion of land transport will continue to be focussed on maintaining the transport system at an acceptable level of service, taking account of the strategic priorities in the GPS [11];
- (c) new investment (over this base) will be strongly driven by the strategic priorities, and the four specific Government commitments for GPS 2021 (Auckland Transport Alignment Project, Let's Get Wellington Moving, Road to Zero and implementation of the New Zealand Rail plan) [12];
- (d) funding is divided into activity classes as a means of achieving the results specified in the GPS [9], [113], and the activity classes in GPS 2021 have been set to deliver the results the Government wishes to see from the Auckland Transport Alignment Project, Let's Get Wellington Moving, and Road to Zero [130]; and
- (e) Government commitments show where the Government deems alignment to the strategic priorities to be strongest [87]; and

15.6 otherwise relies upon GPS 2021 as if pleaded in full.

16 It admits paragraph 16 and relies on GPS 2021 as if pleaded in full.

17 In response to paragraph 17, it:

17.1 admits paragraph 17;

- 17.2 says further that the other short to medium term results for the "Climate Change" strategic priority, to be delivered by 2031, are "*reduced air and noise pollution*" and "*improved resilience of the transport system*";
- 17.3 says further that "Climate Change" is one of four strategic priorities, and that the other strategic priorities have other associated primary outcomes and results; and
- 17.4 relies on GPS 2021 as if pleaded in full.
- 18 In response to paragraph 18, it:
- 18.1 admits that Section 3.2 of GPS 2021, which sets out principles for investing, states that:
- (a) transport investment decisions need to be transparent and provide the best possible impact and value to New Zealanders;
 - (b) for investment using the NLTF, this means seeking value for money through alignment to strategic direction, effectiveness and efficiency;
 - (c) under the heading "effectiveness", funding applicants need to show that they considered alternatives, and how they compare in meeting the results set out in Section 2.6 of GPS 2021;
- 18.2 says further that funding from the NLTF is available to Waka Kotahi and approved organisations (which are not limited to road controlling authorities), as well as the Police, and KiwiRail Holdings Limited and any subsidiary of, or successor to, that company (**KiwiRail**);
- 18.3 relies on GPS 2021 as if pleaded in full; and
- 18.4 otherwise denies paragraph 18.
- 19 In response to paragraph 19, it:
- 19.1 admits that Section 2.6 of GPS 2021 is a table that shows indicators that the Ministry of Transport, working with agencies, will use to monitor progress in achieving the strategic priorities of GPS 2021;
- 19.2 relies on GPS 2021 as if pleaded in full; and
- 19.3 otherwise denies paragraph 19.

Climate Change Commission recommended greenhouse gas emissions reduction target

- 20 It admits paragraph 20, and says further that the CCC Advice was provided to the Minister of Climate Change on or before 31 May 2021.
- 21 In response to paragraph 21, it:
- 21.1 denies paragraph 21; and
- 21.2 says further that:
- (a) the CCC Advice recommends emission budget levels for three periods (2022-2025, 2026-2030 and 2031-2035). The figures are not expressed in the CCC Advice as a specific emissions budget for carbon dioxide;
 - (b) the CCC Advice recommends that the Government implement policies that will meet emissions budgets in each of those periods based on a balance of emissions and removals set out in the CCC Advice;
 - (c) the CCC Advice recommends that the Government implement policies that deliver annual emissions reductions of each greenhouse gas, including carbon dioxide, in each of those periods to levels set out in the CCC Advice;
 - (d) the CCC Advice states that, if its recommendations were implemented, the emission budgets would equate to a percentage reduction of net carbon dioxide emissions by 2030 of 47 percent relative to 2019; and
 - (e) relies on the CCC Advice as if pleaded in full.
- 22 In response to paragraph 22 it:
- 22.1 denies paragraph 22; and
- 22.2 says further that:
- (a) the emissions budgets that are required by sections 5X and 5Y of the CCRA, and which are the subject of the CCC Advice, apply to the wider New Zealand economy and are not targeted to specific sectors;
 - (b) the CCC Advice includes policy recommendations as to how those budgets may be met but also does not recommend specific emissions reductions in a specific sector;

- (c) the CCC advice contains policy recommendations that, amongst other matters, in the first emissions reduction plan the Government commit to:
 - (i) enabling emissions reductions through changes to urban form, function and development;
 - (ii) improving mobility options and reducing emissions by providing affordable, reliable, convenient and low emissions alternatives to high-emissions vehicle use;
 - (iii) accelerating emissions reductions from the light vehicle fleet; and
 - (iv) creating options to decarbonise heavy transport and freight by 2050;
- (d) the CCC Advice provides a demonstration pathway to establish that its recommended emissions budgets are achievable. The demonstration pathway comprises emissions reductions in various sectors of the economy; and
- (e) the demonstration pathway is summarised at Figure 7.5 of the CCC Advice. The supporting data for Figure 7.5 provides that transport sector emissions were 16.2 Mt CO₂e in 2019 and includes hypothetical future emissions totals in the transport sector of 16.4 Mt CO₂e, 14 Mt CO₂e and 9.5 Mt CO₂e in relation to 2025, 2030 and 2035 respectively, the last two figures being the apparent source of the percentages set out in paragraph 22.

National Land Transport Programme

23 In response to paragraph 23, it:

23.1 admits paragraph 23;

23.2 relies on the NLTP as if pleaded in full; and

23.3 says further that:

- (a) the NLTP for the period 2021-2024 (**NLTP 2021-2024**) followed adoption of earlier NLTPs and funding approvals for activities based on those earlier NLTPs; and
- (b) the time for completion of infrastructure projects approved for funding and/or commenced in earlier

NLTP periods can, and in many cases does, extend in to subsequent NLTP periods, including in to the period of NLTP 2021-2024.

- 24 In response to paragraph 24, it:
- 24.1 denies paragraph 24;
 - 24.2 says further that, every three financial years, it must prepare and adopt a NLTP for the following three financial years;
 - 24.3 says further that pursuant to s 19C of the LTMA the NLTP must include, among other matters:
 - (a) an indication of any significant forthcoming national land transport issues known to it;
 - (b) an assessment of how the programme complies with the requirements in s 19B of the LTMA;
 - (c) a list of activity classes identified in the GPS on land transport to be funded from the NLTF and their proposed level of funding;
 - (d) approved activities and combinations of activities, that is, activities that have previously been approved to receive funding from the NLTF but on which expenditure will continue in a financial year included in the NLTP;
 - (e) police activities and combinations of activities approved under s 18L of the LTMA to be delivered by the Commissioner of Police;
 - (f) current rail activities included in the current rail network investment programme;
 - (g) activities and combinations of activities that Waka Kotahi anticipates being funded from the NLTP if they are:
 - (i) included in a regional land transport plan; or
 - (ii) activities or combinations of activities (other than those relating to State Highways) for which Waka Kotahi is responsible for delivery or managing delivery;
 - (h) an indication of any nationally or regionally significant activities that are likely to be considered for funding in

the three financial years that follow the three financial years covered by the national land transport programme; and

- (i) a statement of its anticipated revenue and expenditure in respect of the national land transport programme for 10 financial years from the start of the programme; and

24.4 says further that funding of anticipated activities included in the NLTP is subject to funding being approved for the activity under section 20 of the LTMA or under section 22F of the LTMA (in the case of rail network investment programme activities).

25 In response to paragraph 25 it:

25.1 admits that NLTP 2021-2024 includes a description of how NLTP 2021-2024 will deliver on the strategic priorities of GPS 2021, which includes but is not limited to the Climate Change strategic priority;

25.2 admits that, under the heading "Climate Change" and the sub-heading "Reducing transport carbon emissions" NLTP 2021-2024 includes the statements pleaded at paragraph 25 but says further that:

- (a) NLTP 2021-2024 also includes descriptions about how NLTP 2021-2024 will deliver improved resilience of the land transport system to climate-related weather disruption and adapting to the long-term impacts of climate change, and reducing harm to people and the environment from land transport activities;
- (b) in relation to reducing transport carbon emissions, NLTP 2021-2024 contains other statements concerning how NLTP 2021-2024 will deliver the Climate Change strategic priority, including a non-exhaustive description of the activities in the period 2021-2024 that will deliver on the Climate Change strategic priority;

25.3 says further that the reasons it adopted NLTP 2021-2024, including amongst other matters being satisfied that it gave effect to GPS 2021, are not limited to those set out in NLTP 2021-2024 but include the reasons described in the papers provided to the Board of Waka Kotahi in relation to the decision to adopt NLTP 2021-2024, and the minutes of the Board consideration of that decision, at its meetings of 19 and 31 August 2021; and

25.4 otherwise denies paragraph 25 and relies on NLTP 2021-2024 as if pleaded in full.

Documents referenced or used in preparation of the NLTP

26 In response to paragraph 26, it:

26.1 admits paragraph 26;

26.2 repeats paragraph 25;

26.3 says further that in preparing NLTP 2021-2024 it undertook significant analysis and information gathering, including:

- (a) preparing forecasts of revenue through the NLTF for the financial years covered by NLTP 2021-2024;
- (b) preparing forecasts of expenditure on approved activities for the financial years covered by NLTP 2021-2024;
- (c) engaging with regional land transport committees in relation to the preparation of regional land transport plans;
- (d) assessing proposed activities submitted for inclusion in NLTP 2021-2024 in regional land transport plans and its own proposed activities that are not included in regional land transport plans through the Investment Prioritisation Methodology (**IPM**);
- (e) undertaking a moderation exercise to ensure that proposed activities were prioritised to give effect to GPS 2021;
- (f) having regard to the results of Climate Assessment Tool for Investment (**CATI**) analysis of approved activities and proposed activities included in the draft NLTP 2021-2024;
- (g) engaging with the Minister of Transport and Ministry of Transport in relation to an additional \$2 billion in financing to support additional proposed activities within the NLTP 2021-2024, and obtaining a letter of comfort in relation to that funding;
- (h) having regard to independent advice from Ernst & Young on the compliance of the draft NLTP 2021-2024 with the requirements of the LTMA; and

26.4 says further that NLTP 2021-2024 was adopted after the Board considered the information provided to it at meetings on 19 and 31 August 2021, and was satisfied on the basis of that information that NLTP 2021-2024 contributes to an effective, efficient and safe land transport system in the public interest, having regard to all mandatory considerations, and that it complied with the requirements of s 19B of the LTMA, including that it gave effect to GPS 2021.

Toitū te Taiao – Our Sustainability Action Plan

27 In response to paragraph 27, it:

27.1 admits paragraph 27;

27.2 says further that Toitū te Taiao is the Sustainability Action Plan published in April 2020 that:

- (a) sets out the commitment of Waka Kotahi to environmental sustainability and public health in the land transport sector; and
- (b) among other things, describes the steps Waka Kotahi will take to deliver its objectives under Arataki, its ten-year plan, of reducing transport greenhouse gas emissions to tackle climate change and support the transition to a low-emission economy; and

27.3 relies on Toitū te Taiao as if pleaded in full.

28 It admits paragraph 28.

29 It admits paragraph 29 and relies on Toitū te Taiao as if pleaded in full.

30 In response to paragraph 30, it:

30.1 admits that paragraphs 30(a) and (b) paraphrases statements contained in Toitū te Taiao;

30.2 admits that, in relation to the fifth workstream identified in Toitū te Taiao, Toitū te Taiao also states that as part of the Investment Decision Making Framework Review, it will enable investment for land transport greenhouse gas emission reductions through embedding long-term emission reduction objectives and emissions-based thinking into planning, investment and accountability instruments as a "*headline action to June 2021*";

30.3 admits that, in relation to the fifth workstream identified in Toitū te Taiao, Toitū te Taiao states as "*additional actions to*

be prioritised and sequenced for the next three years”, four additional actions one of which is “optimise programmes and packages for delivery against multiple/priority outcomes specified in the strategic case”;

30.4 relies on Toitū te Taiao as if pleaded in full; and

30.5 otherwise denies paragraph 30.

Investment Prioritisation Method

31 It admits paragraph 31 and relies on the IPM as if pleaded in full.

32 In response to paragraph 32, it:

32.1 repeats paragraphs 25 and 26, above;

32.2 admits that proposed activities were initially assessed for inclusion in NLTP 2021-2024 and prioritised for funding through the IPM but says further that it also undertook a moderation exercise to ensure that proposed activities were prioritised to give effect to GPS 2021;

32.3 admits that the IPM, in combination with other processes including those described in paragraphs 26 and 32.2, above, is used to assess alignment of activities with GPS 2021; and

32.4 otherwise denies paragraph 32.

33 In response to paragraph 33, it:

33.1 admits sub-paragraph (a), but says further that this is an attribute of the LTMA, not the IPM, and repeats paragraph 24.3(d), above;

33.2 repeats paragraphs 26 and 32, above;

33.3 admits paragraph (c);

33.4 admits paragraph (d);

33.5 admits paragraph (f);

33.6 admits paragraph (g);

33.7 admits paragraph (h); and

33.8 otherwise denies paragraph 33.

Climate Assessment Tool for Investment

34 It admits paragraph 34.

- 35 It admits paragraph 35 and says further that CATI provides an assessment of enabled emissions only.
- 36 In response to paragraph 36, it:
- 36.1 admits that CATI can be used to assess activities, including activities included in the NLTP, in terms of whether they have the potential to increase, maintain or reduce greenhouse gas emissions;
 - 36.2 says further that CATI is one of a range of tools and methods to assess the NLTP;
 - 36.3 repeats paragraph 26.3, above; and
 - 36.4 otherwise denies paragraph 36.
- 37 It admits paragraph 37.
- Respondent's assessment of greenhouse gas emissions from land transport included in the NLTP***
- 38 In response to paragraph 38, it:
- 38.1 admits that it assessed activities included in NLTP 2021-2024 using CATI and that:
 - (a) 22 percent of the value of the activities included in NLTP 2021-2024 relate to activities that have the potential to reduce greenhouse gas emissions;
 - (b) 65 percent of the value of the activities included in NLTP 2021-2024 relate to activities that have the potential to maintain greenhouse gas emissions; and
 - (c) 13 percent of the value of the activities included in NLTP 2021-2024 relate to activities that have the potential to increase greenhouse gas emissions;
 - 38.2 says further that the activities assessed included approved activities; and
 - 38.3 otherwise denies paragraph 38.
- 39 It admits paragraph 39.
- 40 It repeats paragraphs 21, 22, and 32–38, above, and denies paragraph 40.
- 41 In response to paragraph 41, above, it:

41.1 repeats paragraph 19, above; and

41.2 denies that Section 2.6 of GPS 2021 is relevant to the decision to prepare and adopt the NLTP.

Grounds on which relief is sought, and relief sought
First cause of action – error of law – failure to ensure requirements of s 19B met

42 It denies paragraph 42.

43 It admits paragraph 43 and relies on the LTMA and GPS 2021 as if pleaded in full.

44 It denies paragraph 44 and repeats paragraphs 14–18, 21–22, 24–26 and 32–40, above.

Relief sought

45 It apprehends that it is not required to plead to paragraph 45 as it contains the prayer for relief, but says that, to the extent that the applicant establishes the first ground of review (which is denied), the High Court should refuse relief in the exercise of its discretion.

Second cause of action – error of law – methodology and reference documents

46 It denies paragraph 46.

47 It admits paragraph 47.

48 It apprehends that paragraph 48 contains allegations of law to which it is not required to plead, but to the extent it contains any allegation of fact, it denies paragraph 48 and repeats paragraphs 14–18, 21–22, 24–26 and 32–40, above.

Relief sought

49 It apprehends that it is not required to plead to paragraph 49 as it contains the prayer for relief, but says that, to the extent that the applicant establishes the second ground of review (which is denied), the High Court should refuse relief in the exercise of its discretion.

Third cause of action – error of law

50 It denies paragraph 50.

51 It admits paragraph 51.

52 It apprehends that paragraph 52 is an allegation of law to which it is not required to plead, but to the extent it contains any allegation of fact, it:

52.1 repeats paragraph 41, above; and

52.2 otherwise denies paragraph 52.

53 It denies paragraph 53.

Relief sought

54 It apprehends that it is not required to plead to paragraph 54 as it contains the prayer for relief, but says that, to the extent that the applicant establishes the third ground of review (which is denied), the High Court should refuse relief in the exercise of its discretion.

This document is filed by Timothy Dunham Smith, solicitor for the respondent, of the firm Chapman Tripp. The address for service of the first defendant is at the offices of Chapman Tripp, Level 14, 10 Customhouse Quay, Wellington 6011.

Documents for service on the first defendant may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 993, Wellington 6140; or
- (b) emailed to the solicitor by the email addresses on the front page of this document provided that a hard copy is also posted.