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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-2021-485-341**

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<b>UNDER THE</b>	<b>Judicial Review Procedure Act 2016 and part 30 of the High Court Rules 2016</b>
<b>IN THE MATTER OF</b>	<b>an application for judicial review</b>
<b>BETWEEN</b>	<b>LAWYERS FOR CLIMATE ACTION NZ INCORPORATED</b>
	<b>Applicant</b>
<b>AND</b>	<b>CLIMATE CHANGE COMMISSION</b>
	<b>First respondent</b>
<b>AND</b>	<b>MINISTER FOR CLIMATE CHANGE</b>
	<b>Second respondent</b>

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**SECOND RESPONDENT'S AMENDED STATEMENT OF DEFENCE TO  
AMENDED STATEMENT OF CLAIM**

**1 October 2021**

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The second respondent by his solicitor says, in response to the amended statement of claim dated 24 September 2021:

1. He admits paragraph 1, save that he has no knowledge of and therefore denies the exact membership numbers of the Applicant and says further the purposes of the Applicant are set out in the Rules of the Applicant, varied by resolution dated 25 October 2019.
2. He apprehends paragraph 2 is in the nature of submission to which he is not required to plead but, to the extent paragraph 2 contains allegations of fact in respect of the Applicant's purpose in bringing the proceeding, he has insufficient knowledge of and therefore denies those allegations.
3. He admits paragraph 3 and relies on ss 5A-5C of the Climate Change Response Act 2002 (**Act**) as if pleaded in full.
4. In respect of paragraph 4, he:
  - 4.1 admits various powers, duties and functions are reposed in him under the Act (including under s 5X), and relies on the Act as if pleaded in full;
  - 4.2 otherwise denies paragraph 4; and
  - 4.3 says further that the determination and communication of a nationally determined contribution (**NDC**) under the Paris Agreement is a decision made by a Minister of the Crown, with the agreement of Cabinet.
5. He admits paragraph 5.
6. He admits paragraph 6.
7. In respect of paragraph 7, he:
  - 7.1 admits the Special Report Global Warming of 1.5°C (**2018 Special Report**) is based on the assessment of around 6,000 published articles and draws on their findings;
  - 7.2 says further that:

7.2.1 the 2018 Special Report and other recent Intergovernmental Panel on Climate Change (**IPCC**) reports (including the IPCC Special Report on the Ocean and the Cryosphere in a Changing Climate, and the IPCC Special Report on Climate Change and Land) outline the current scientific consensus as to the nature, effects, and extent of the effects of the release of greenhouse gases and the degradation of carbon sinks and relies on the text of the 2018 Special Report and other recent IPCC reports as if pleaded in full;

7.2.2 New Zealand is a member country of the IPCC, supports its work programme, and participates in the production of its reports; and

7.2.3 the New Zealand Government has “accepted” the 2018 Special Report and “approved” its Summary for Policy Makers which provides a policy-relevant but policy-neutral summary of the 2018 Special Report, where according to the Principles Governing IPCC Work:

(a) “acceptance” of IPCC Reports at a Session of an IPCC Working Group or the Panel signifies that the material has not been subject to line by line discussion and agreement, but nevertheless presents a comprehensive, objective and balanced view of the subject matter; and

(b) “approval” of IPCC Summaries for Policy Makers signifies that the material has been subjected to detailed, line by line discussion and agreement;

7.3 otherwise apprehends he is not required to plead to paragraph 7.

8. He admits paragraph 8.

9. He admits paragraph 9.

10. He admits paragraph 10 and says further that the extent and degree of such adverse consequences varies depending on certain factors including geographic location.
11. He admits paragraph 11 but says further that the extent and degree of such consequences will vary depending on the magnitude and rate of temperature increases, geographic location, levels of development and vulnerability, and on the choices and implementation of adaptation and mitigation options.
12. He admits paragraph 12 to the extent it refers to the content of the 2018 Special Report and otherwise relies on the 2018 Special Report as if pleaded in full.
13. In respect of paragraph 13, he:
  - 13.1 admits there are available pathways that would be consistent with a likely (50-66%) chance of limiting temperature increase to 1.5°C above pre-industrial levels with no or limited overshoot and such pathways will require rapid emissions reductions of greenhouse gases between now and 2030;
  - 13.2 says further that the achievability of limitation of temperature increase to 1.5°C above pre-industrial levels under such pathways is based upon varied assumptions about economic and social development, and technological and behavioural changes over time; and
  - 13.3 otherwise denies paragraph 13, which lacks sufficient specificity to reasonably respond to.
14. He denies paragraph 14 and says further the IPCC 2018 Special Report assessed a range of global emission pathways that would be consistent with limiting temperature increase to 1.5°C above pre-industrial levels with no or limited overshoot and at least global cost, for a range of different assumptions, and that these pathways show a range of percentage reductions between 2010, 2030 and 2050.
15. He admits paragraph 15 to the extent it refers to the content of the 2018 Special Report, but:

- 15.1 otherwise denies paragraph 15;
  - 15.2 says further that the emission reductions refer to the global scale only and the IPCC 2018 Special Report states explicitly that those reductions do not represent national strategies and do not indicate requirements; and
  - 15.3 relies on the 2018 Special Report as if pleaded in full.
16. He admits paragraph 16.
17. In respect of paragraph 17, he:
- 17.1 admits the content of paragraph 17 insofar as it refers to net carbon dioxide emissions referred to in the 2018 Special Report;
  - 17.2 says further that the 2018 Special Report refers to broader categories of emissions and removals than those listed by the applicant;
  - 17.3 says further that the term “net emissions” can also refer to figures calculated using emissions and removals reported in the New Zealand Greenhouse Gas Inventory (**NZGHGI**) used to:
    - 17.3.1 report New Zealand’s National Inventory Report (**NIR**) of all anthropogenic emissions and removals; and
    - 17.3.2 define and measure progress in respect of New Zealand’s international targets; and
  - 17.4 otherwise denies paragraph 17.
18. He is not required to plead to paragraph 18.
19. He admits paragraph 19.
20. He admits paragraph 20.
21. He admits paragraph 21 and relies on Article 2 of the United Nations Framework Convention on Climate Change (**UNFCCC**) as if pleaded in full.

22. He admits the UNFCCC provides the Parties to the UNFCCC should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects and says further:
- 22.1 the UNFCCC provides that parties shall be guided in their actions to achieve the objective of the UNFCCC and to implement its provisions by the principle set out above at paragraph 22, *inter alia*; and
- 22.2 he relies on Article 3 of the UNFCCC as if pleaded in full.
23. He admits paragraph 23, but refers to and relies upon the UNFCCC and its annexes as if pleaded in full.
24. He denies paragraph 24 and:
- 24.1 says further:
- 24.1.1 under Article 4(2)(a) of the UNFCCC Parties included in Annex I committed themselves to adopting national policies and taking corresponding measures on the mitigation of climate change, which policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the UNFCCC;
- 24.1.2 this takes into account the differences in Annex I Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective; and
- 24.2 refers to Article 4(2)(a) of the UNFCCC as if pleaded in full.
25. He admits paragraph 25.

26. He admits paragraph 26 and says further for the avoidance of doubt that the Paris Agreement was adopted under the UNFCCC but is not subsidiary to the UNFCCC.
27. He admits paragraph 27 and says further that the Paris Agreement was adopted on 12 December 2015.
28. He admits paragraph 28.
29. He admits paragraph 29.
30. He admits paragraph 30 and relies upon Article 2 of the Paris Agreement as if pleaded in full.
31. He admits the Paris Agreement states that “Parties aim to reach global peaking of greenhouse gas emissions as soon as possible...and to undertake rapid reductions thereafter”, but otherwise denies paragraph 31 and relies on the Paris Agreement as if pleaded in full.
32. In respect of paragraph 32, he:
  - 32.1 admits that Parties to the Paris Agreement are required to:
    - 32.1.1 prepare, communicate and maintain successive NDCs they intend to achieve;
    - 32.1.2 pursue domestic mitigation measures, with the aim of achieving the objectives of their NDCs; and
    - 32.1.3 submit their NDCs to the UNFCCC Secretariat;
  - 32.2 says further the requirement to submit NDCs to the UNFCCC secretariat is contained in decision 1/CP.21 (**Decision to adopt the Paris Agreement**); and
  - 32.3 otherwise denies paragraph 32.
33. In respect of paragraph 33, he:

33.1 admits that pursuant to Article 4(9) of the Paris Agreement, Parties to the Paris Agreement shall communicate an NDC every five years in accordance with the Decision to adopt the Paris Agreement and any relevant decisions of the Conference of the Parties (**COP**) serving as the meeting of the Parties to the Paris Agreement (**CMA**); and

33.2 says further that under the Decision to adopt the Paris Agreement:

33.2.1 Parties to the Paris Agreement were:

(a) invited to communicate their first NDC no later than when their instrument joining the Paris Agreement (instrument of ratification, acceptance, approval or accession) was submitted;

(b) requested to, by 2020:

(i) communicate a new NDC and to do so every five years thereafter pursuant to Article 4(9) of the Paris Agreement if their intended nationally determined contribution (**INDC**) communicated in accordance with decision 1/CP.20 contained a time frame up to 2025; or

(ii) communicate their NDC by communicating or updating their INDC communicated pursuant to decision 1/CP.20 (if their INDC contained a timeframe up to 2030) and to do so every five years thereafter pursuant to Article 4(9) of the Paris Agreement; and

(c) required to submit their NDCs to the secretariat at least 9 to 12 months in advance of the relevant session of the COP/CMA; and

33.3 otherwise denies paragraph 33.



34. In respect of paragraph 34, he:
- 34.1 admits paragraph 34, but
  - 34.2 says further the NZGHGI published by the Ministry for the Environment on behalf of the Chief Executive as the ‘inventory agency’ under the Act includes information on annual anthropogenic emissions and removals in New Zealand, along with other information; and
  - 34.3 also refers to the definition of the “New Zealand Greenhouse Gas Inventory” in s 4(1) of the Act as if pleaded in full.
35. In respect of paragraph 35 he:
- 35.1 admits Ministry officials prepare the NZGHGI on behalf of the Chief Executive;
  - 35.2 says further that s 32 of the Act sets out the primary functions of the ‘inventory agency’, defined in s 4(1) as the Chief Executive, and refers to s 32 of the Act as if pleaded in full; and
  - 35.3 otherwise denies paragraph 35.
36. He admits paragraph 36, repeats paragraph 35 above, but says further, for the avoidance of doubt, that:
- 36.1 the NZGHGI is used for multiple purposes; and
  - 36.2 there are other reporting obligations under the UNFCCC, Kyoto Protocol and the Paris Agreement that are not discharged by the preparation of the NZGHGI.
37. He admits paragraph 37 and says further:
- 37.1 the NZGHGI includes figures which represent estimates of historical CO<sub>2</sub>-e emissions, calculated using methodologies developed by the IPCC and adopted for use by Parties under the UNFCCC, Kyoto Protocol and the Paris Agreement; and

- 37.2 each successive inventory time series updates previous iterations of the inventory, to reflect improvements in data and methodologies.
38. In respect of paragraph 38 and the associated footnote, he:
- 38.1 admits:
- 38.1.1 the figures set out at paragraphs 38(a) and (b) of the Applicant's statement of claim match the sum of the figures for CO<sub>2</sub>-e net emissions (for national inventory reporting) recorded in the NZGHGI for each year between 1991-2000 and 2001-2010 respectively, expressed in megatonnes or million tonnes (**Mt**) with rounding to the nearest Mt (so the net emissions for 1991-2000 were 447.74 Mt and for 2001-2010 were 536.81 Mt); and
- 38.1.2 the figure set out at paragraph 38(c) of the Applicant's statement of claim is calculated by adding the figures for CO<sub>2</sub>-e net emissions recorded for each year between 2011 and 2019 and multiplying that figure by 10/9;
- 38.2 says further:
- 38.2.1 the figures for CO<sub>2</sub>-e net emissions (for national inventory reporting) reported in the NZGHGI are expressed in kilotonnes (**kt**); and
- 38.2.2 he disputes the validity of approach used by the Applicant to estimate net CO<sub>2</sub>-e for the years 2011-2020 detailed in the footnote to paragraph 38, as the inventory data for 2020 will not be published until April 2022;
- 38.2.3 the "net emissions" figures set out at paragraphs 38(a) and (b) of the Applicant's statement of claim are not the same figures that are used to define and account for New Zealand's international targets; and
- 38.3 otherwise denies paragraph 38.

39. He repeats his responses given above in relation to the allegations in paragraph 38 and relies upon the April 2021 NZGHGI as if pleaded in full.
40. He admits paragraph 40 and says further that:
- 40.1 the IPCC specifies 100 year global warming potential (**GWP<sub>100</sub>**) values to be attributed to each greenhouse gas for the purposes of calculating CO<sub>2</sub>-e in its Assessment Reports;
  - 40.2 CO<sub>2</sub>-e for each greenhouse gas is calculated by multiplying the quantity of a greenhouse gas by the relevant GWP<sub>100</sub> value;
  - 40.3 the GWP<sub>100</sub> values specified in IPCC Assessment Reports are used internationally for the purposes of complying with reporting obligations under UNFCCC and the Kyoto Protocol (and will be used for reporting under Paris Agreement); and
  - 40.4 the global warming potential values used for national inventory reporting in the current NZGHGI are taken from the IPCC's *Fourth Assessment Report (AR4)*.
41. In respect of paragraph 41, he refers to paragraphs 17 and 38.2.3 above and otherwise denies paragraph 41.
42. He admits paragraph 42. 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.
43. He admits paragraph 43 and repeats the pleading above at paragraph 42.
44. He admits paragraph 44 and relies on the text of the INDC as if pleaded in full.
45. He denies paragraph 45 and says further that while the emissions reductions targets expressed in New Zealand's INDC and New Zealand's first NDC are the same, the first NDC is a separate document to the INDC, communicated to the secretariat of the UNFCCC on 5 October 2016.
46. In respect of paragraph 46 he:

- 46.1 admits an addendum setting out New Zealand's intended approach to accounting for emissions and removals from forestry and other land use in achieving the 2030 target was submitted on 25 November 2015;
- 46.2 says further this was an addendum to New Zealand's INDC which was communicated together with accompanying information on 7 July 2015; and
- 46.3 otherwise denies paragraph 46.
47. He apprehends paragraph 47 contains allegations not directed to him to which he is not required to plead, and relies on the Advice as if pleaded in full.
48. He denies paragraph 48 and says the net emissions figures used in the Applicant's calculations are not the figures used to define and account for New Zealand's international targets, including the NDC.
49. He admits paragraph 49 and relies upon the 22 April 2020 communication and update of New Zealand's NDC as if pleaded in full.
50. He admits paragraph 50 and relies upon the Terms of Reference provided to the Commission as if pleaded in full.
51. Notwithstanding that paragraph 51 contains an allegation of law to which he is not required to plead, he says the Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**) came into force on 14 November 2019.
52. Notwithstanding that paragraph 52 contains an allegation of law to which he is not required to plead, he admits paragraph 52, and says further that s 5Q sets these targets for the calendar year beginning on 1 January 2050 and each subsequent calendar year and relies upon s 5Q of the Act as if pleaded in full.
53. Notwithstanding that paragraph 53 contains an allegation of law to which he is not required to plead, he admits paragraph 53 and relies upon the s 4(1) definitions of "net accounting emissions" and the "New Zealand Greenhouse Gas Inventory" as if pleaded in full.

54. Notwithstanding that paragraph 54 contains an allegation of law to which he is not required to plead, he admits paragraph 54.
55. Notwithstanding that paragraph 55 contains an allegation of law to which he is not required to plead, he admits paragraph 55 and relies upon ss 5X and 5Y as if pleaded in full.
56. Notwithstanding that paragraph 56 contains an allegation of law to which he is not required to plead, he admits paragraph 56 to the extent it reflects the text of s 5W of the Act, but otherwise denies paragraph 56 and relies on s 5W as if pleaded in full.
57. Notwithstanding that paragraph 57 contains an allegation of law to which he is not required to plead, he admits paragraph 57 and relies upon s 5X as if pleaded in full.
58. He admits paragraph 58, save that s 5X(4) refers to the “relevant emissions period” and relies on s 5X as if pleaded in full.
59. He admits paragraph 59 and relies upon s 5ZA as if pleaded in full.
60. He admits paragraph 60 and relies upon s 5ZA as if pleaded in full.
61. He admits paragraph 61 and relies upon the *Gazette* notice of the same date (2020-go3059) extending the Commission’s reporting deadline for its advice on the first 3 emissions budgets as if pleaded in full.
62. He admits paragraph 62.
63. He admits paragraph 63 and says further that the Commission published the Advice on its website on 9 June 2021 on the same day as (but after) the second respondent tabled the Advice in the House of Representatives.
64. He admits paragraph 64 and relies upon the Advice and its supporting volumes as if pleaded in full. References to the Commission’s Advice are to be taken to include the supporting volumes in this statement of defence.
65. He apprehends paragraph 65 contains allegations not directed to him to which he is not required to plead and relies upon the Advice as if pleaded in full.

66. In respect of paragraph 66, he:
- 66.1 admits that in the Advice relating to the emissions budgets, the Commission adopted a “modified activity-based” approach to accounting for net emissions;
  - 66.2 says further:
    - 66.2.1 there is no single “accounting measure” associated with the NZGHGI;
    - 66.2.2 rather, the NZGHGI as defined in the Act contains a range of information used to discharge New Zealand’s international reporting and accounting obligations; and
  - 66.3 otherwise denies paragraph 66.
67. In respect of paragraph 67 and its subparagraphs, he:
- 67.1 repeats his response above in paragraph 66 in respect of the Applicant’s reference to the “GHGI accounting measure” and “GHGI accounting”;
  - 67.2 says further that the “modified activity-based” approach differs from a “land based” accounting approach in a number of ways including the use of averaging; and
  - 67.3 otherwise denies paragraph 67.
68. He apprehends paragraph 68 is in the nature of submission to which he is not required to plead, or otherwise concerns factual allegations not directed to him.
69. He repeats paragraph 17 above and otherwise apprehends paragraph 69 is in the nature of submission to which he is not required to plead.
70. In respect of paragraph 70 he:
- 70.1 admits:

- 70.1.1 figure 5.3 uses figures calculated on a modified activity based approach; and
  - 70.1.2 the diagram shows a net emissions decrease under the proposed budgets; and
- 70.2 otherwise apprehends paragraph 70 is in the nature of submission to which he is not required to plead.
- 71. He apprehends paragraph 71 is in the nature of submission to which he is not required to plead.
- 72. He admits paragraph 72 and relies on the text of the Advice as if pleaded in full.
- 73. He admits paragraph 73.
- 74. In respect of paragraph 74:
  - 74.1 he admits the Advice on the NDC target was that to be compatible with a goal of limiting global warming with 1.5°C, it would need to reflect emissions of much less than 568 Mt CO<sub>2</sub>-e between 2021-2030;
  - 74.2 says further:
    - 74.2.1 the Commission did not recommend a specific reduction target and the Commission stated that this is a decision for elected representatives; and
    - 74.2.2 the Commission advised that setting the NDC target is a political and ethical issue, and that relevant factors include the cost Aotearoa is willing to bear, social and economic impacts, international expectations and reputation, relative comfort with climate risk, and the balance of how much we do at home versus how much we do internationally; and
  - 74.3 otherwise denies paragraph 74.

75. He says paragraph 75 is in the nature of submission to which he is not required to plead.
76. He says paragraph 76 is in the nature of submission to which he is not required to plead.
77. He apprehends paragraph 77 contains allegations not directed to him to which he is not required to plead.
78. He admits paragraph 78.
79. He admits paragraph 79
80. He says paragraph 80 is in the nature of submission, to which he is not required to plead, but says further that the 26<sup>th</sup> Conference of the Parties is scheduled to take place in Glasgow 31 October to 12 November 2021.

#### **Ground 1**

81. He says the Commission's advice on the NDC target was that to be compatible with a global goal of limiting warming to 1.5°C, it would need to reflect emissions of much less than 568 Mt CO<sub>2</sub>-e between 2021-2030 and otherwise denies paragraph 81.
82. In respect of paragraph 82 he:
- 82.1 admits:
    - 82.1.1 the figure of 568 Mt CO<sub>2</sub>-e was derived from global rates of emission reductions in pathways assessed in the 2018 Special Report global pathway to 1.5°C;
    - 82.1.2 the Commission's Advice states that its approach "does not account for considerations of how effort should be shared between countries"; and
    - 82.1.3 the Commission's Advice states that the Commission considers New Zealand "should contribute more than the global average required";
  - 82.2 but otherwise denies paragraph 82; and



82.3 says further the Commission's recommendation, in terms of how much the NDC is strengthened beyond 36%, was: "How much the NDC is strengthened beyond 36% should reflect the tolerance for climate and reputational risk and economic impact, and principles for effort sharing, which require political decisions. Any changes to the NDC should be developed in partnership with Iwi/Māori, to give effect to the principles of Te Tiriti o Waitangi/The Treaty of Waitangi and align with the He Ara Waiora framework".

83. He admits paragraph 83.

84. He denies paragraph 84.

85. He admits paragraph 85 to the extent it refers to national inventory reporting net emissions but relies on the NZGHGI as if pleaded in full.

86. He denies paragraph 86, repeats paragraph 4.3 above, and says further that:

86.1 the international obligation to prepare, communicate, and maintain an NDC is an individual obligation on each State Party to the Paris Agreement. The objective of the Paris Agreement of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels is a collective objective shared by all State Parties. There is no direct relationship between the individual obligation and the collective aim that requires a formulaic assessment of compatibility;

86.2 what NDC is compatible with global efforts to pursue limiting warming to 1.5°C above pre-industrial levels is a matter of judgement, not simply a matter of calculating an equivalent New Zealand rate of emissions reduction from the global reductions presented in the 2018 Special Report; and

86.3 other factors may be relevant, including (non-exhaustively): national circumstances, fairness (including reflecting on equity), the absolute level of emissions, where emissions are from, the abatement potential and ability to pay, as well as the feasibility of achieving reductions,

including the balance between domestic and offshore abatement needed to achieve any given reduction target.

87. He denies paragraph 87 and repeats paragraph 86 above.
88. In respect of paragraph 88 he:
- 88.1 admits the Commission applied the 2030 Net Carbon Dioxide Interquartile Range to the 2010 level of gross carbon dioxide emissions;
- 88.2 repeats paragraph 86 and 87 above; and
- 88.3 otherwise apprehends paragraph 88 is not directed to him and therefore he is not required to plead in response.
89. He denies paragraph 89, repeats paragraphs 86, 87 and 88 above and says further that the Paris Agreement does not include the concept of “fair share” pleaded by the plaintiff.
90. In respect of paragraph 90:
- 90.1 admits that if a net:net calculation had been conducted using net emissions that are reported to the UNFCCC based on the NIR included in the NZGHGI, it would have resulted in the figures pleaded by the plaintiff;
- 90.2 repeats paragraphs 86 and 88; and
- 90.3 otherwise apprehends that paragraph 90 is not directed to him and therefore he is not required to plead in response to it.
91. He apprehends paragraph 91 contains allegations not directed to him to which he is not required to plead and refers to the Advice as if pleaded in full.
92. He apprehends paragraph 92 contains allegations not directed to him to which he is not required to plead and refers to the Advice as if pleaded in full.
93. He denies paragraph 93 and repeats paragraph 88 above.

94. He apprehends paragraph 94 is a pleading of law to which he is not required to plead, or otherwise is a pleading not directed to him and therefore he is not required to plead in response.

**Ground 2**

95. He apprehends paragraph 95 is a pleading of law to which he is not required to plead but agrees with the proposition in paragraph 95 and relies on the Act as if pleaded in full.
96. He repeats paragraph 95.
97. He apprehends paragraph 97 is a pleading of law to which he is not required to plead, and that the propositions made by the plaintiff are more appropriate for response by way of submission.
98. He repeats paragraph 97.
99. He apprehends paragraph 99 is a pleading of law to which he is not required to plead, or otherwise is a pleading not directed to him and therefore he is not required to plead in response, but repeats paragraphs 86, 87, 88 and 89 above and says further:
- 99.1 Parliament has determined that New Zealand's contribution will be the 2050 Target. The Executive may increase New Zealand's contribution to global mitigation efforts via the NDC;
- 99.2 s 5ZA of the Act sets out the relevant matters the Commission must advise the Minister on in respect of setting an emissions budget;
- 99.3 the Commission was required to consider the matters in ss 5ZC and 5M; and
- 99.4 offshore mitigation (referred to in the Paris Agreement as internationally transferred mitigation outcomes) is permitted under the Paris Agreement and has always been anticipated as one of the methods through which New Zealand may meet its NDC.

**Ground 3**

100. He apprehends paragraph 100 is not directed to him and therefore he is not required to plead in response to it, but otherwise refers to the Advice of the Commission as if pleaded in full.
101. He apprehends paragraph 101 contains a matter of law to which he is not required to plead but relies on the Act as if pleaded in full.
102. He apprehends paragraph 102 is a matter of law to which he is not required to plead or is otherwise not directed to him and therefore he is not required to plead in response.
103. In respect of paragraph 103, he admits the two measures are different but repeats the pleadings above in response to paragraphs 66 to 71.
104. [Deleted]
105. [Deleted]
106. [Deleted]
107. [Deleted]
108. [Deleted]
109. [Deleted]
110. [Deleted]
111. [Deleted]

**Ground 4**

112. In respect of paragraph 112 he:
- 112.1 admits the 2018 Special Report advice is that global emissions must be reduced, as shown by the global pathway, in order to limit global temperature increase to 1.5°C; and
- 112.2 says further that what is required of each state is a matter of judgement, not a mathematical calculation.

113. In relation to paragraph 113 he:
- 113.1 admits the Commission has recommended emissions budgets which it predicts will result in 648 Mt CO<sub>2</sub>-e of net emissions over the period 2021-30 and says further these budgets relate to those under s 5X of the Act;
  - 113.2 admits the figure of 648 Mt CO<sub>2</sub>-e, as referred to in the Advice, is based on GWP<sub>100</sub> values in AR4; and
  - 113.3 apprehends the conversion of that figure using a different set of values (in AR5) is not a matter of fact to which he is required to plead, and relies upon the Advice as if pleaded in full.
114. He denies paragraph 114 and says further that determining emissions reductions to contribute to 1.5°C is not a matter of mathematical calculation and requires judgements to be made.
115. He repeats paragraph 114.
116. He repeats paragraph 114.
117. He repeats paragraph 114.
118. He apprehends paragraph 118 contains matters of law to which he is not required to plead, but says further he disagrees with the proposition the Commission's emissions budgets advice (in respect of budgets set under s 5X) was required to be the same as its advice on the NDC.
- 118A. He apprehends paragraph 118A contains allegations not directed to him to which he is not required to plead and relies upon the Advice as if pleaded in full.
- 118B. He apprehends paragraph 118B contains allegations not directed to him to which he is not required to plead and relies upon the Advice as if pleaded in full.
119. He repeats paragraph 114.
120. He repeats paragraph 114.

121. He apprehends paragraph 121 is a matter of law to which he is not required to plead or otherwise is not directed to him and therefore he is not required to plead in response to it, but says further that he repeats paragraphs 86 and 88 above.
122. He apprehends that paragraph 122 (and its subparagraphs) contain matters of law to which he is not required to plead or otherwise are not directed to him and therefore he is not required to plead in response
123. He apprehends that he is not required to plead to the allegations in paragraph 123 as they contain matters of submission, but says further that in the absence of interim relief being sought and granted:
- 123.1 he intends to proceed with the decision-making required by 31 December 2021 under the Act; and
- 123.2 he reserves the right to seek Cabinet's agreement to the determination and communication of a revised NDC prior to the 26<sup>th</sup> Conference of the Parties.

This document is filed by Aaron Martin, 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) transmitted to the solicitor by facsimile to 04 473 3482; or
- (d) emailed to the solicitor at [Aaron.Martin@crownlaw.govt.nz](mailto:Aaron.Martin@crownlaw.govt.nz) provided that the documents are also emailed to [Polly.Higbee@crownlaw.govt.nz](mailto:Polly.Higbee@crownlaw.govt.nz), and [Nixon.Fong@crownlaw.govt.nz](mailto:Nixon.Fong@crownlaw.govt.nz)