

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

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

**CIV-2021-485-000341**

**UNDER** Judicial Review Procedure Act 2016 and Part 30 of the  
High Court Rules 2016

**IN THE MATTER OF** an application for judicial review

**BETWEEN** **LAWYERS FOR CLIMATE ACTION NZ INCORPORATED**, a  
duly incorporated society having its registered office at  
Level 13, 70 Shortland Street, Auckland  
Applicant

**AND** **THE CLIMATE CHANGE COMMISSION**, a Crown Entity  
under s 5A of the Climate Change Response Act 2002  
First respondent

**AND** **MINISTER FOR CLIMATE CHANGE**,  
Parliament Buildings, Wellington  
Second respondent

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**STATEMENT OF DEFENCE**

**Dated: 5 August 2021**

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Counsel Acting: Victoria Casey QC  
Clifton Chambers

Luke Cunningham Clere  
Barristers and Solicitors  
PO Box 10-357  
Wellington

**The first respondent, by its solicitor, says in response to the statement of claim dated 1 July 2021:**

1. In response to paragraph 1, it:
  - 1.1 admits that the Applicant is an incorporated society;
  - 1.2 admits that members of the Applicant hold views on the best way to ensure more effective action in Aotearoa New Zealand against climate change;
  - 1.3 says that those views were considered during the consultation process undertaken by He Pou a Rangi the Climate Change Commission (the **Commission**) described in paragraph 62 below; and
  - 1.4 otherwise has insufficient knowledge and therefore denies paragraph 1.
2. In response to paragraph 2, it says that while Aotearoa New Zealand's response to climate change is in the public interest, the public interest in the particular claims pursued in this proceeding is not established.
3. It admits paragraph 3 and further says that:
  - 3.1 the Commission is an interdisciplinary team of seven experts appointed by the Governor-General on the recommendation of the Minister of Climate Change (the **Minister**) following consultation with representatives of all political parties in Parliament; and
  - 3.2 in accordance with the requirements of the Climate Change Response Act 2002 (the **Act**), the Commission is comprised of members who collectively have:
    - 3.2.1 an expert understanding of climate change mitigation and adaptation, including the likely effects of any responses to climate change;
    - 3.2.2 experience working in or with local and central government;
    - 3.2.3 knowledge of the process by which public and regulatory policy is formed and given effect to; and
    - 3.2.4 technical and professional skills, experience, and expertise in, and an understanding of innovative approaches relevant to:

3.2.4.1 the environmental, ecological, social, economic, and distributional effects of climate change and climate change policy interventions;

3.2.4.2 the Treaty of Waitangi (Te Tiriti o Waitangi) and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity); and

3.2.4.3 a range of sectors and industries, at regional and local levels.

4. In response to paragraph 4, it:

4.1 admits that the second respondent is the Minister of Climate Change, a Minister of the Crown having responsibility for various powers, duties and functions under the Act, including setting emissions budgets under s 5X of the Act;

4.2 says that Cabinet is responsible for determining Aotearoa New Zealand's nationally determined contribution (**NDC**) under the Paris Agreement; and

4.3 otherwise denies paragraph 4.

5. It admits paragraph 5.

6. It admits paragraph 6.

7. In response to paragraph 7, it:

7.1 relies on the Intergovernmental Panel on Climate Change's 2018 *Special Report: Global Warming of 1.5°C (2018 Special Report)* as if pleaded in full;

7.2 says that the Intergovernmental Panel on Climate Change (**IPCC**) prepares and publishes comprehensive Assessment Reports about knowledge on climate change, its causes, potential impacts and response options. The IPCC also produces Special Reports, which are an assessment on a specific issue and Methodology Reports, which provide practical guidelines for the preparation of greenhouse gas inventories;

7.3 says that since publication of the 2018 Special Report, the IPCC has published:

- 7.3.1 in May 2019 a methodology report *2019 Refinement to the 2006 Guidelines for National Greenhouse Gas Inventories*;
  - 7.3.2 in August 2019 a special report *Special Report on Climate Change and Land*; and
  - 7.3.3 in September 2019 a special report *Special Report on the Ocean and Cryosphere in a Changing Climate*;
- 7.4 the IPCC is currently preparing its *Sixth Assessment Report (AR6)*. Working Group 1 is expected to publish its contribution to the AR6 this month, with contributions from the other working groups and a synthesis report to follow; and
- 7.5 otherwise denies paragraph 7.
- 8. It admits paragraph 8.
- 9. It admits paragraph 9.
- 10. It admits paragraph 10.
- 11. It admits paragraph 11.
- 12. It admits paragraph 12.
- 13. It admits paragraph 13.
- 14. In response to paragraph 14, it:
  - 14.1 says that in the 2018 Special Report, the IPCC assessed different global greenhouse gas emission pathways that it considered would be consistent with a likely chance (50 – 66 percent) of limiting the increase of global average temperatures to within 1.5°C above pre-industrial levels;
  - 14.2 relies on the 2018 Special Report as if pleaded in full; and
  - 14.3 otherwise denies paragraph 14.
- 15. In response to paragraph 15, it:
  - 15.1 repeats paragraph 14;

- 15.2 says the interquartile range of the different global pathways assessed by the IPCC with no or limited overshoot include:
  - 15.2.1 for net carbon dioxide emissions, a 40 to 58 percent global reduction by 2030 relative to 2010 levels, and a 94 to 107 percent reduction by 2050 relative to 2010 levels; and
  - 15.2.2 for agricultural methane emissions, an 11 to 30 percent global reduction by 2030 relative to 2010 levels, and a 24 to 47 percent reduction by 2050 relative to 2010 levels;
- 15.3 relies on the 2018 Special Report as if pleaded in full; and
- 15.4 otherwise denies paragraph 15.
- 16. It admits paragraph 16.
- 17. In response to paragraph 17, it:
  - 17.1 says that net carbon dioxide emissions, as referred to in the Commission's Final Advice, *Ināia tonu nei: a low emissions future for Aotearoa* (the **Advice**), are: (a) gross carbon dioxide emissions; *minus* (b) carbon dioxide removals from the land use, land-use change, and forestry sector; *plus* (c) carbon dioxide emissions from the land use, land-use change, and forestry sector; and
  - 17.2 otherwise denies paragraph 17.
- 18. It apprehends it is not required to plead to paragraph 18.
- 19. It admits paragraph 19.
- 20. It admits paragraph 20.
- 21. It admits paragraph 21, and relies on the United Nations Framework Convention on Climate Change (**UNFCCC**) as if pleaded in full.
- 22. It admits paragraph 22, and relies on the UNFCCC as if pleaded in full.
- 23. It admits paragraph 23.

24. In response to paragraph 24, it:
  - 24.1 says that one of the principles of the UNFCCC, set out in Article 3.1, is that “the developed country Parties should take the lead in combating climate change and the adverse effects thereof”;
  - 24.2 relies on the UNFCCC as if pleaded in full; and
  - 24.3 otherwise denies paragraph 24.
25. It admits paragraph 25.
26. In response to paragraph 26 it admits that the Paris Agreement was adopted under the UNFCCC.
27. It admits paragraph 27.
28. It admits paragraph 28.
29. It admits paragraph 29.
30. In response to paragraph 30, it:
  - 30.1 says that the Paris Agreement includes in Article 2.1(a) a long-term temperature goal 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, recognising that this would significantly reduce the risks and impacts of climate change;
  - 30.2 relies on the Paris Agreement as if pleaded in full; and
  - 30.3 otherwise denies paragraph 30.
31. In response to paragraph 31, it:
  - 31.1 says that Article 4.1 of the Paris Agreement provides that in order to achieve the long term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals

by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty;

31.2 relies on the Paris Agreement as if pleaded in full; and

31.3 otherwise denies paragraph 31.

32. In response to paragraph 32, it:

32.1 says that pursuant to Article 4(2) of the Paris Agreement, each Party is required to prepare, communicate and maintain successive NDCs that it intends to achieve;

32.2 says that pursuant to Article 4(2) parties are required to pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions;

32.3 relies on the Paris Agreement as if pleaded in full; and

32.4 otherwise denies paragraph 32.

33. In response to paragraph 33, it:

33.1 says that pursuant to paragraph 22 of the Decision to Adopt the Paris Agreement (1/CP.21):

33.1.1 Parties were to communicate their first NDC no later than when the Party submitted their respective instrument of ratification, acceptance, approval or accession of the Paris Agreement; and

33.1.2 if a Party had communicated an intended NDC prior to joining the Agreement, that Party was considered to have satisfied the requirement to communicate an NDC unless the Party decides otherwise;

33.2 says that pursuant to Article 4(9) of the Paris Agreement and paragraphs 23 and 24 of the Decision to Adopt the Paris Agreement (1/CP.21):

33.2.1 those Parties whose intended NDC pursuant to the Decision to Adopt the Paris Agreement (1/CP.21) contains a time frame up to 2025 to

communicate by 2020 a new NDC and to do so every five years thereafter; and

33.2.2 those Parties whose intended NDC pursuant to the Decision to Adopt the Paris Agreement (1/CP.21) contains a time frame up to 2030 to communicate or update by 2020 these contributions and to do so every five years thereafter;

33.3 says that pursuant to Article 4(3) of the Paris Agreement, each Party's successive NDC is to represent a progression beyond the Party's then current NDC and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;

33.4 relies on the Paris Agreement and the Decision to Adopt the Paris Agreement (1/CP.21) as if pleaded in full; and

33.5 otherwise denies paragraph 33.

34. It admits paragraph 34, and further says that:

34.1 the New Zealand Greenhouse Gas Inventory (**GHG Inventory**) contains emissions and removals data, major emissions trends, and methodologies for estimating emissions and removals;

34.2 each Inventory contains data from 1990 to the latest year for which data is available. The most recent Inventory report covers emissions and removals from 1990 to 2019;

34.3 the Inventory informs government agencies' policy recommendations on climate change, and it enables progress towards Aotearoa New Zealand's emissions reductions targets to be monitored and reported on; and

34.4 the GHG Inventory reports emissions against multiple measures.

35. It admits paragraph 35.



- 36. In response to paragraph 36, it:
  - 36.1 repeats paragraph 34;
  - 36.2 says that the GHG Inventory is used for multiple purposes, including:
    - 36.2.1 reporting obligations under UNFCCC, the Kyoto Protocol and the Paris Agreement; and
    - 36.2.2 collecting and providing data for setting and measuring progress towards emissions budgets; and
  - 36.3 otherwise denies paragraph 36.
  
- 37. In response to paragraph 37, it:
  - 37.1 repeats paragraph 36;
  - 37.2 says that the GHG Inventory provides a range of data and historical annual estimates of matters including:
    - 37.2.1 gross emissions of greenhouse gases from all sectors excluding land use, land-use change and forestry (**LULUCF**) (for example, forest land, cropland, grassland, wetlands, settlements, other land); and
    - 37.2.2 net emissions, comprising greenhouse gas emissions and removals from all sectors including LULUCF; and
  - 37.3 the GHG Inventory follows a process of continuous improvement and the whole Inventory time series, from the base year (1990) to the latest year, is recalculated when the methodology or underlying data change. This means the emissions estimates are only up to date in the latest Inventory, and previous Inventories are not useful for comparisons. Changes made to the Inventory are often related to improvements in activity data collection, emission factors and methodology, or the identification of additional sources of emissions or removals.

38. In response to paragraph 38, it repeats paragraph 37 and:
- 38.1 says that the figures set out by the Applicant in paragraph 38(a) and (b) of the statement of claim are levels of net emissions for the relevant time periods using the GHG Inventory reporting net emissions measure;
  - 38.2 says that the GHG Inventory reporting net emissions measure is only one of the measures used in the GHG Inventory;
  - 38.3 says that the figure set out by the Applicant in paragraph 38(c) of the statement of claim is not drawn from the GHG Inventory but is based on the Applicant's own calculations;
  - 38.4 does not accept the figure set out by the Applicant in paragraph 38(c) of the statement of claim; and
  - 38.5 otherwise denies paragraph 38.
39. It repeats paragraph 38, and otherwise admits paragraph 39.
40. It admits paragraph 40, and further says:
- 40.1 carbon dioxide equivalent is a way to describe different greenhouse gases on a common scale that relates the warming effect of emissions of a gas to that of carbon dioxide. It is calculated by multiplying the quantity of a greenhouse gas by the relevant global warming potential; and
  - 40.2 the global warming potential metric used in the Commission's advice is GWP<sub>100</sub>, global warming potential over 100 years.
41. In response to paragraph 41, it:
- 41.1 says that measured on the basis of the GHG Inventory reporting net emissions measure, Aotearoa New Zealand's net emissions have increased during each of the three previous decades; and
  - 41.2 otherwise denies paragraph 41.
42. It admits paragraph 42.
43. It admits paragraph 43.

44. It admits paragraph 44, and relies on Aotearoa New Zealand's Intended Nationally Determined Contribution, submitted on 7 July 2015, as if pleaded in full.
45. In response to paragraph 45, it:
  - 45.1 says Aotearoa New Zealand communicated its first NDC under the Paris Agreement upon ratification of the Paris Agreement on 5 October 2016; and
  - 45.2 relies on Aotearoa New Zealand's first Nationally Determined Contribution, submitted on 5 October 2016, as if pleaded in full.
46. In response to paragraph 46, it:
  - 46.1 says that by communication to the Ad Hoc Working Group on the Durban Platform for Enhanced Action dated 25 November 2015, Aotearoa New Zealand issued an Addendum to Aotearoa New Zealand's Intended Nationally Determined Contribution to provide further clarity, transparency and understanding about its intended approach to accounting for emissions and removals from forestry and other land use in achieving Aotearoa New Zealand's 2030 target;
  - 46.2 relies on the Addendum to Aotearoa New Zealand's Intended Nationally Determined Contribution, dated 25 November 2015, as if pleaded in full; and
  - 46.3 otherwise denies paragraph 46.
47. In response to paragraph 47, it:
  - 47.1 says that Aotearoa New Zealand's current NDC is a commitment to reduce net greenhouse gas emissions to 30 percent below gross 2005 levels by 2030;
  - 47.2 relies on the NDC and the Addendum to Aotearoa New Zealand's Intended Nationally Determined Contribution as if pleaded in full; and
  - 47.3 otherwise denies paragraph 47.
48. It denies paragraph 48, and further says that this allegation purports to express a comparison between the NDC measure and the GHG Inventory reporting net emissions measure, which is not meaningful.

49. It admits paragraph 49, and further says that it relies on the Submission under the Paris Agreement, Communication and Update of Aotearoa New Zealand's Nationally Determined Contribution, submitted on 22 April 2020, as if pleaded in full.
50. It admits paragraph 50, and further says:
  - 50.1 the request for advice was made by the Minister on 20 April 2020;
  - 50.2 the request for advice was accompanied by Terms of Reference; and
  - 50.3 it relies on the request for advice, dated 20 April 2020, and the accompanying Terms of Reference as if it pleaded in full.
51. It denies paragraph 51, and further says that pursuant to s 2 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**), the Zero Carbon Act came into force on 14 November 2019.
52. It apprehends that it is not required to plead to paragraph 52 as this is a matter of law.
53. It apprehends that it is not required to plead to paragraph 53 as this is a matter of law.
54. It apprehends that it is not required to plead to paragraph 54 as this is a matter of law.
55. It apprehends that it is not required to plead to paragraph 55 as this is a matter of law.
56. It apprehends that it is not required to plead to paragraph 56 as this is a matter of law.
57. It apprehends that it is not required to plead to paragraph 57 as this is a matter of law.
58. It apprehends that it is not required to plead to paragraph 58 as this is a matter of law.
59. It apprehends that it is not required to plead to paragraph 59 as this is a matter of law.
60. It apprehends that it is not required to plead to paragraph 60 as this is a matter of law.
61. It admits paragraph 61.
62. It admits paragraph 62, and further says that the public consultation period on the draft advice was from 1 February 2021 to 28 March 2021.
63. It admits paragraph 63, and further says:
  - 63.1 it provided its Advice to the Minister on 31 May 2021;

- 63.2 the Minister presented a copy of the Advice to the House of Representatives on 9 June 2021; and
- 63.3 it made the Advice publically available on its website on 9 June 2021. Further supporting material was released on 9 June 2021 and subsequently through June and July 2021 (**supplementary volumes**).
64. It admits paragraph 64, and relies on the Advice and supplementary volumes as if pleaded in full.
65. In response to paragraph 65, it:
- 65.1 says that emissions budgets for the period 2022 – 2030, when expressed using GWP<sub>100</sub> values from the IPCC's *Fifth Assessment Report (AR5)* for consistency with international obligations relating to Inventory accounting, total 602 Mt CO<sub>2</sub>-e;
- 65.2 says that emissions budgets for the period 2022 – 2030, when expressed using GWP<sub>100</sub> values from the IPCC's *Fourth Assessment Report (AR4)* to allow for comparison to current and past emissions levels, total 576 Mt CO<sub>2</sub>-e;
- 65.3 says that when forecast emissions for 2021 are included the total expected net emissions over the period 2021 – 2030, when expressed using the GWP<sub>100</sub> values from the IPCC's *Fourth Assessment Report (AR4)*, will be 648 Mt CO<sub>2</sub>-e;
- 65.4 relies on the Advice and supplementary volumes as if pleaded in full; and
- 65.5 otherwise denies paragraph 65.
66. In response to paragraph 66, it:
- 66.1 repeats paragraphs 34 to 40 above and says the GHG Inventory has no one single "GHGI accounting measure";
- 66.2 admits that in the Advice relating to the emissions budgets it adopted a "modified activity-based" approach to accounting for net emissions;
- 66.3 says the selection of an appropriate accounting measure is a matter of expert judgement vested in the Commission under the Act;
- 66.4 relies on the Advice and supplementary volumes as if pleaded in full; and

- 66.5 otherwise denies paragraph 66.
- 67. It denies paragraph 67, and further says:
  - 67.1 repeats paragraph 66 above; and
  - 67.2 relies on the Advice and supplementary volumes as if pleaded in full.
- 68. In response to paragraph 68, it:
  - 68.1 says it presented a recalculation of Aotearoa New Zealand's historic net emissions in accordance with the accounting rules adopted in developing the proposed budgets to provide a transparent and fully comparable time series to show how its proposed emissions budgets would affect net emissions;
  - 68.2 repeats paragraph 37 above; and
  - 68.3 otherwise denies paragraph 68.
- 69. In response to paragraph 69, it:
  - 69.1 admits that the effect of recalculating the historical net emissions as explained in paragraph 68 above discloses higher levels of emissions than reported as net emissions measured in megatonnes of carbon dioxide equivalent (CO<sub>2</sub>-e) in the GHG Inventory; and
  - 69.2 otherwise denies paragraph 69.
- 70. In response to paragraph 70, it:
  - 70.1 says that Figure 5.3 uses the recalculated figures and shows that expected net emissions over 2021 – 2030 measured on a modified activity basis under the proposed budgets would decrease compared with the three previous decades; and
  - 70.2 otherwise denies paragraph 70.
- 71. It denies paragraph 71.
- 72. It admits paragraph 72.

73. It admits paragraph 73 and relies on the Advice and supplementary volumes as if pleaded in full.
74. In response to paragraph 74, it:
- 74.1 says that its advice on any changes to the NDC required to ensure it is compatible with global efforts under the Paris Agreement to limit the global average temperature increase to 1.5°C Celsius above pre-industrial levels was, in summary:
- 74.1.1 that the contribution Aotearoa New Zealand makes over the NDC period should reflect a reduction to net emissions of much more than 36 percent below 2005 gross levels by 2030 (that is, emissions of much less than 568 MtCO<sub>2</sub>e over the 2021-2030 period), with the likelihood of compatibility increasing as the NDC is strengthened further;
- 74.2 relies on the Advice and supplementary volumes as if pleaded in full; and
- 74.3 otherwise denies paragraph 74.
75. It admits paragraph 75 and relies on the Advice and supplementary volumes as if pleaded in full.
76. In response to paragraph 76, it:
- 76.1 says it recognised that:
- 76.1.1 under the Paris Agreement each country's contribution to the collective effort is determined nationally. The Paris Agreement does not specify how emission reductions are to be shared between countries;
- 76.1.2 the UNFCCC and the Paris Agreement both make reference to developed country leadership in climate change action, and that it is a core principle of the UNFCCC that developed countries should take the lead in combating climate change;
- 76.1.3 given that emissions in developing countries will peak later, in recognition of their development needs, emissions in developed

countries must peak and reduce more quickly than the global average;  
and

76.1.4 this obligation is on developed countries in the aggregate and does not imply specific obligations on individual countries, but it is an important factor to consider when thinking about what a suitable contribution from Aotearoa New Zealand might be;

76.2 relies on the Advice and supplementary volumes as if pleaded in full; and

76.3 otherwise denies paragraph 76.

77. It denies paragraph 77, and refers to paragraphs 81 to 89 below.

78. It admits paragraph 78.

79. In response to paragraph 79, it repeats paragraph 49 above.

80. It does not plead to paragraph 80, and further says that this allegation is outside the scope of the Court's supervisory jurisdiction.

## **GROUND 1**

81. In response to paragraph 81 it says it did not provide advice on the appropriate level of net emissions in the advice on the NDC and:

81.1 says that its advice on any changes to the NDC required to ensure it is compatible with global efforts under the Paris Agreement to limit the global average temperature increase to 1.5°C Celsius above pre-industrial levels was, in summary, that:

81.1.1 the contribution Aotearoa New Zealand makes over the NDC period should reflect a reduction to net emissions of much more than 36 percent below 2005 gross levels by 2030 (that is, emissions of much less than 568 Mt CO<sub>2</sub>e over the 2021 – 2030 period), with the likelihood of compatibility increasing as the NDC is strengthened further;

81.1.2 how much the NDC is strengthened further beyond 36 percent 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;

81.1.3 decisions about the level at which the NDC is set require judgements about the potential social and economic impacts of extending the NDC, the expectations of other countries and their governments, tolerance for climate risks and the relative importance of investing in greater levels of climate change action compared to other domestic or international priorities;

81.1.4 such judgements are outside the Commission's remit and should be made by the Government of the day;

81.2 relies on the Advice and supplementary volumes in full; and

81.3 otherwise denies paragraph 81.

82. In response to paragraph 82, it:

82.1 repeats paragraph 81;

82.2 says that the 2018 Special Report does not set out "conclusions" on the "required decreases" in 2010 emissions by 2030;

82.3 further says:

82.3.1 there is no universally agreed upon approach to limit the global average temperature increase to 1.5°C above pre-industrial levels;

82.3.2 scientific modelling can help inform understanding of the global emissions reductions that will be required to limit the global average temperature increase to 1.5°C above pre-industrial levels;

82.3.3 the IPCC has assessed global emissions reduction pathways it considers would be consistent with a likely chance (50 – 66 percent) of limiting the increase of global average temperatures to within 1.5°C above pre-industrial levels;

- 82.3.4 to provide a starting point for assessing the compatibility of Aotearoa New Zealand's NDC with the global 1.5°C goal, the Commission applied the IPCC's global modelling to Aotearoa New Zealand. It did this by converting the global reductions for each individual gas set out in the IPCC 1.5°C global pathways to reductions at the national level for Aotearoa New Zealand, using both the upper and lower quartiles of emissions;
- 82.3.5 applying this approach to the emissions profile of Aotearoa New Zealand, emissions would be 527 MtCO<sub>2</sub>e (lower quartile) to 608 MtCO<sub>2</sub>e (upper quartile) over the 2021-2030 NDC period;
- 82.3.6 Aotearoa New Zealand's current NDC works out as an NDC budget of 596 MtCO<sub>2</sub>e. This is equivalent to the 67th percentile, putting it towards the higher end of the emissions range described above at paragraph 82.3.5;
- 82.3.7 the Commission's advice is that the NDC should reflect emissions much less than just aligning with the middle of the IPCC interquartile range. This means emissions of much less than 568 MtCO<sub>2</sub>e over the 2021 – 2030 period, or reductions of much more than 36 percent below 2005 levels by 2030; and
- 82.3.8 the Commission's advice is also that how much stronger the NDC should be beyond this is a question for elected decision-makers, given the social, political and ethical judgements involved;
- 82.4 relies on the Advice and supplementary volumes in full; and
- 82.5 otherwise denies paragraph 82.
- 83. In response to paragraph 83, it:
  - 83.1 says it referred to and utilised aspects of the IPCC's modelling;
  - 83.2 repeats paragraph 82 above;
  - 83.3 relies on the Advice and supplementary volumes in full; and
  - 83.4 otherwise denies paragraph 83.

84. It denies paragraph 84.
85. In response to paragraph 85, it:
- 85.1 admits that in 2010 the level of gross carbon dioxide emissions in Aotearoa New Zealand, as reported in the most recent GHG Inventory, was 35.031 Mt;
  - 85.2 admits that in 2010 the level of net carbon dioxide emissions in Aotearoa New Zealand, as reported in the most recent GHG Inventory and measured on the basis of the GHG Inventory reporting net emissions measure, was 5.048 Mt; and
  - 85.3 otherwise denies paragraph 85.
86. It repeats paragraph 82 above and otherwise denies paragraph 86.
87. In response to paragraph 87, it:
- 87.1 says that the IPCC 1.5°C pathways use a net-net approach, because this is the most appropriate approach at the global level where the forestry sector is a net source of emissions. Aotearoa New Zealand uses a gross-net approach, because the forestry sector has been a net sink of emissions. Both of these approaches are consistent with the international target-accounting guidance and appropriate to the circumstances they are being applied to;
  - 87.2 relies on the Advice and supplementary volumes in full; and
  - 87.3 otherwise denies paragraph 87.
88. It repeats paragraphs 82 and 87 otherwise denies paragraph 88.
89. It denies paragraph 89.
90. It denies paragraph 90.
91. It relies on the Advice and supplementary volumes as if pleaded in full, and otherwise denies paragraph 91.
92. It relies on the Advice and supplementary volumes as if pleaded in full, and otherwise denies paragraph 92.
93. It repeats paragraphs 82 and 87 above and denies paragraph 93.

94. It denies paragraph 94.

## **GROUND 2**

95. It apprehends that it is not required to plead to paragraph 95 as this is a matter of law.

96. It apprehends that it is not required to plead to paragraph 96 as this is a matter of law.

97. It apprehends that it is not required to plead to paragraph 97 as this is a matter of legal submission.

98. It apprehends that it is not required to plead to paragraph 98 as this is a matter of legal submission.

99. It apprehends that it is not required to plead to paragraph 99 as this is a matter of legal submission. To the extent that paragraph 99 contains factual allegations, those allegations are denied.

## **GROUND 3**

100. In response to paragraph 100:

100.1 to the extent the Applicant alleges that the Commission adopted a “modified activity-based” approach to accounting for emissions to set emissions budgets and measure progress towards emissions budgets and the 2050 Target, it:

100.1.1 repeats paragraphs 66 to 71 above;

100.1.2 says the selection of an appropriate accounting measure is a matter of expert judgement vested in the Commission under the Act;

100.1.3 relies on the Advice and supplementary volumes in full; and

100.1.4 otherwise denies paragraph 100.

100.2 to the extent the Applicant alleges that the Commission adopted a “modified activity-based” approach to measure the compatibility of the NDC, it:

100.2.1 says that in assessing the compatibility of the NDC, the Commission used the NDC target accounting rules already determined by the government;

100.2.2 relies on the Advice and supplementary volumes in full; and

100.2.3 otherwise denies paragraph 100.

101. It denies paragraph 101, and repeats paragraph 37, 66, 67 and 100.

102. It denies paragraph 102.

103. In response to paragraph 103, it:

103.1 repeats paragraphs 66 to 71 above; and

103.2 otherwise denies paragraph 103.

#### **GROUND 4**

104. In response to paragraph 104, it:

104.1 admits that the proposed emissions budgets for the period 2021 – 2030 if adopted and achieved would limit net domestic emissions to 648 Mt CO<sub>2</sub>-e, and that this is a higher figure for that period than would be required if Aotearoa New Zealand was to meet the NDC for that period from reduction in domestic emissions alone;

104.2 relies on the Advice and supplementary volumes as if pleaded in full; and

104.3 otherwise denies paragraph 104.

105. In response to paragraph 105, it:

105.1 admits that its advice recorded the statements quoted;

105.2 relies on the Advice and supplementary volumes as if pleaded in full; and

105.3 otherwise denies paragraph 105.

106. It apprehends that it is not required to plead to paragraph 106 as this is a matter of law.

107. It apprehends that it is not required to plead to paragraph 107 as this is a matter of legal submission.

108. It apprehends that it is not required to plead to paragraph 108 as this is a matter of legal submission.
109. It apprehends that it is not required to plead to paragraph 109 as this is a matter of legal submission.
110. It apprehends that it is not required to plead to paragraph 110 as this is a matter of legal submission.
111. It apprehends that it is not required to plead to paragraph 111 as this is a matter of legal submission. To the extent that paragraph 111 contains factual allegations, those allegations are denied.

## **GROUND 5**

112. In response to paragraph 112, it:
  - 112.1 objects to this pleading as a matter of submission;
  - 112.2 relies on the UNFCCC, the Paris Agreement, the 2018 Special Report and the Advice and supplementary volumes as if pleaded in full; and
  - 112.3 otherwise denies paragraph 112.
113. In response to paragraph 113, it:
  - 113.1 repeats paragraphs 65 and 104;
  - 113.2 relies on the Advice and supplementary volumes as if pleaded in full; and
  - 113.3 otherwise denies paragraph 113.
114. It denies paragraph 114, and further says that the position promoted by the Applicant involves a pace of change that:
  - 114.1 risks Aotearoa New Zealand losing production in areas where technological solutions to reduce emissions could be applied, if more time were available;
  - 114.2 would likely lead to severe social and economic impacts on communities, people and businesses, far more than would be necessary to achieve the same amount of emissions reductions given more time;

114.3 could not be met without rapidly shutting down many emitting activities, with closures of businesses such as farms and factories at a severe level;

114.4 would result in large scale cuts to economic output across Aotearoa New Zealand;

114.5 would result in intergenerational inequity and would have a legacy impact on the quality of life for younger generations as families are left without employment or essential services; and

114.6 would disproportionately affect iwi/Māori in terms of the Māori economy given its large agricultural base, and Māori workforce who are disproportionately represented in agriculture and manufacturing industries.

115. It denies paragraph 115, and repeats paragraph 114.

116. It denies paragraph 116, and repeats paragraphs 76 and 114.

117. It admits paragraph 117, and relies on the Advice and supplementary volumes as if pleaded in full.

118. It denies paragraph 118.

119. It denies paragraph 119.

120. It apprehends that it is not required to plead to paragraph 120 as this is a matter of legal submission.

121. It apprehends that it is not required to plead to paragraph 121 as this is a matter of legal submission.

## **RELIEF**

122. It is not required to plead to the prayer for relief in paragraph 122, but says:

122.1 it did not advise the Minister as to what would constitute a 1.5°C compliant NDC, so no declaration should be made;

122.2 the alleged error relating to the advice on the NDC was not material and did not affect the conclusion expressed in the Advice, so reconsideration is not necessary; and

122.3 any order regarding the advice relating to the proposed budgets is premature and potentially moot pending the Minister's consideration of that advice.

123. It does not plead in response to paragraph 123, but further says the Advice and supplementary volumes are not by themselves within the things specified in subsection (2) of section 5 of the Judicial Review Procedure Act 2016, and accordingly are not subject to judicial review unless and until a relevant decision is made on the Advice.

This document is filed by Stephanie Bishop, solicitor for the first respondent, of the firm Luke Cunningham Clere.

The address for service of the first respondent is at the offices of Luke Cunningham Clere, Level 10, 89 The Terrace, Wellington (until 27 August 2021) and Level 20, 157 Lambton Quay, Wellington (from 28 August 2021).

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

- (a) posted to the solicitor at PO Box 10357, Wellington, 6143; or
- (b) emailed to the solicitor at [sab@lcc.co.nz](mailto:sab@lcc.co.nz), provided that the documents are also emailed to [hmf@lcc.co.nz](mailto:hmf@lcc.co.nz).