

Tim Adriaansen  
Sunday 18 May 2025

Tēnā koutou katoa Richard, Dean, and Auckland Transport board members;  
and, for informational purposes, Mayor and Councillors.

I have followed with pensiveness Auckland Transport's response to central government direction to implement speed limit changes across the Auckland region.

While the outcome of these speed changes looks set to disappoint transport professionals and community advocates such as myself, I am particularly concerned that Auckland Transport appear to have overlooked critical aspects of your legal and professional obligations, and that this puts the Auckland public, Auckland Transport, and you personally as Directors and Chief Executive at considerable risk.

This letter contains the information that decision makers at Auckland Transport are required to know in order to ensure that they are fulfilling their legal responsibilities as Directors and Chief Executive, and I recommend you read it in full. Recommended actions are included at the end of the letter.

Please note that in the interests of transparency and accountability, this advice will be shared with advocates, media, and those in the legal profession.

An executive summary is included before the following sections:

1. Purpose of this letter
2. A note on timing
3. Auckland Transport, Director and Executive Responsibilities
4. Risks associated with increased speed limits
5. Conflict between Acts and the Speed Rule
6. Required Mitigating Actions
7. Minimum acceptable standards of safety
8. Recommended course of action

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### **Executive Summary**

Auckland Transport's position appears to be that the organisation is required to follow changes to the Setting of Speeds rule. However, there is a risk that this conflicts with obligations under the Local Government (Auckland Council) Act 2009 (LGA), Land Transport Management Act 2003 (LTMA), and Health and Safety at Work Act 2015 (HSWA).

To comply with all of its legal obligations, Auckland Transport is required to minimise exposure to speed limit changes and to mitigate the impacts of any changes by implementing suitable engineering controls (such as protected bicycle lanes and raised or controlled pedestrian crossings) on streets where the speed limit is to be set in a way which would otherwise be unsafe.

This is because, while Auckland Transport may have limited control over implementation of the setting of speeds rule, Auckland Transport **does control** and **is responsible for** the management, road layout and engineering of local roads in the Auckland region.

Should speed limits be raised in locations without suitable engineering designed to match those limits, then the action taken by Auckland Transport to increase speed limits would demonstrably reduce road user safety, and would not comply with the LGA or LTMA purpose to 'contribute to a safe land transport system'. The only way to both increase speed limits *and* contribute to a safe transport system is to implement risk mitigation measures through physical engineering and street layout changes in locations where speeds are increasing, or to eliminate traffic altogether.

Under the LGA, **Directors must not breach the Act or cause a breach, or agree to any breach by Auckland Transport, of the Act**. Directors appointed to Auckland Transport must, when acting as a director, exercise the **care, diligence, and skill** that a reasonable person would exercise in the same circumstances, taking into account the **nature of the action** and the **position of the director** and the **nature of the responsibilities undertaken** by him or her.

*Raising speed limits, without taking mitigating steps to reduce the risks associated with increased vehicle speeds, **does not** and **cannot** reasonably be considered to contribute to a safe land transport system.*

Therefore, if Auckland Transport concludes that it is **required** to raise speed limits on Auckland streets, then Auckland Transport is also (and simultaneously) **required** to deliver the necessary infrastructure to support safe use of those streets at higher speed limits, or to implement speed mitigating infrastructure.

Minimum safe infrastructure standards are detailed in Auckland Transport's own Transport Design Manual and accompanying engineering codes, supported by two Safety Business reviews which underpin the organisation's Vision Zero road safety policy. Some of these are detailed below, but in summary and as a starting point, the following engineering elements are explicitly required to meet Auckland Transport's own "*minimum standards of compliance*":

- Protected or buffered cycleways on all roads with vehicle operating speeds of 40km/h or greater
- Raised table or signal-controlled pedestrian crossings in busy pedestrian areas (such as commercial centres or near public transport stops) where vehicle operating speeds exceed 30km/h

It should be reiterated that these are minimum standards of safety developed by Auckland Transport's Design and Standards team and endorsed by the Auckland Transport Board of Directors.

*Raising speed limits on roads which fail to meet minimum safe engineering standards **does not** and **cannot** be considered to meet a Director's requirement to "exercise the care, diligence, and skill that a reasonable person would exercise".*

A reasonable person would ask “*does this road meet the minimum design standards necessary to safely support the proposed vehicle operating speeds?*” If directors cannot confidently answer this question, then speed limit increases should not take place. To answer this question adequately, a road safety audit must be completed on all roads where speed limits are to be changed, evaluating motor vehicle traffic speeds and volumes, and considering pedestrian movements in the area.

Finding sufficient funding and gaining public approval for implementation of the required mitigating infrastructure changes will be a challenge for Auckland Transport, but should be considered a consequence of changes to the Setting of Speeds Rule, and thus beyond the organisation's control (i.e. the same approach as Auckland Transport appears to have taken to implementation of the Setting of Speeds Rule). No speed changes should take place unless Auckland Transport is ready and able to deliver accompanying safe infrastructure, as to do so would not only put the Auckland public at very real risk of harm, but also places your organisation – and you personally – at considerable consequential legal risk.

If Auckland Transport is unable to secure sufficient funding to implement speed limit increases safely, then **Auckland Transport should not proceed with speed limit increases until such time as funding becomes available.**

Under New Zealand law, an Act (such as the LGA) typically takes precedence over a rule (such as the Setting of Speeds Rule) where conflict occurs between the two.

Therefore, Auckland Transport is only required to follow the Setting of Speeds Rule if it is *also* able to contribute towards a safe transport system in the public interest, *and* if Directors are confident that they are exercising the care, diligence, and skill that a reasonable person would exercise.

Acting as Chief Executive and Directors, you carry legal responsibilities for the outcomes of decisions made by you and your organisation. Should speed limits be raised in a way that knowingly increases risk, without *also and at the same time* implementing suitable mitigating actions to protect the public from that risk (which appears to be the case with Auckland Transport's current approach), you may be personally liable under the Crimes Act (1961) or Health and Safety at Work Act (2015). For example, **reckless conduct in respect of duty which exposes someone to a risk of death or serious injury**, can result in penalties for individuals of a fine of up to \$600,000, or up to 5 years in prison, or both.

According to information published as part of Auckland Transport's Safe Speeds programme, an increase in collision impact speed from 30km/h to 50km/h increases the risk of death to road users outside of a vehicle by approximately 700%.

*If Auckland Transport proceeds with speed limit increases without suitable risk mitigation, you as directors **will knowingly, recklessly, and in breach of your duties, expose people to a risk of death or serious injury.***

This letter should not be considered legal advice, which must be sought independently. However, it should be noted that the wider Auckland community is watching very closely to how Auckland Transport responds to this situation. Should loss of life or serious injury occur

as a result of Auckland Transport's decision making – which is statistically likely considering the level of risk involved with motor vehicles and speed limit increases – then it can be expected that full accountability will be sought from those decision makers who allowed for such tragedy to occur.

To protect the wider public, the interests of Auckland Transport, and yourselves from professional misconduct and legal liability, I **recommend an immediate pause** on implementation of speed limit increases until these issues can be fully resolved. Further recommended actions are detailed at the end of this letter.

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## 1. Purpose of this letter

- a. The purpose of this letter is to provide Auckland Transport's decision makers, including the Board of Directors and Chief Executive, with the necessary information to make robust decisions with regards to implementation of the Setting of Speeds Rule, last updated on 15 January 2025.
- b. A secondary purpose of this letter is to ensure that all decision makers with legal responsibilities have been fully provided with information which impacts their decision making, should that decision result in legal proceedings. This may be material when considering a legal challenge to a Director's demonstration of:
  - i. “exercising care, diligence, and skill”;
  - ii. the definition of “reasonableness”;
  - iii. considering “all practicable steps” where an ability to prevent death or serious injury is concerned;
  - iv. reasonable care and precautions to avoid endangering human life.
- c. This letter is given freely and without liability, in the interests of supporting a safe transport system in the public interest.

## 2. A Note on timing

- a. It may be deemed inconvenient or otherwise that this letter is received near to implementation of speed increases. However, it must be stated that seeking and understanding advice is the responsibility of Directors. If new advice is presented in this letter at a time which is inconvenient to Auckland Transport, then that is a consequence of Auckland Transport's own actions in failing to seek or consider appropriate advice at an earlier time.
- b. Considering the substantial risk to human life involved in changes to speed limits across a wide area of Auckland, **the reasonable thing to do, at any time, is to pause undertaking speed limit increases** until such time as outstanding issues can be fully resolved. This is highly likely to be supported in a court of law (despite direction contained within the Speed Rule itself or Ministerial direction) when considering the information laid out below. That is to say: Directors are, at this time, within their legal rights to pause implementation of unsafe speeds in the Auckland region, even if that means they cannot deliver *to the letter* of the Setting of Speeds Rule. This is because of the **considerable risk to human life** which must be weighted as a consideration, and complications with duties under differing legislation.

### 3. Auckland Transport, Director and Executive Responsibilities

Auckland Transport is responsible for management of Auckland's regional land transport network as defined in various legislation, primarily the Local Government (Auckland Council) Act 2009. The need for this correspondence arises as a consequence of Auckland Transport's response to changes to the Land Transport Rule Setting of Speed Limits 2024, pursuant to the Land Transport Act 1998.

#### a. Setting of Speeds Rule

- i. Auckland Transport is required to follow the Setting of Speeds Rule.
- ii. The "Rule" refers to the Land Transport Rule Setting of Speed Limits 2024, last updated on 15 January 2025.
- iii. The objective of this Rule is to contribute to an effective, efficient and safe land transport system.
- iv. Section 11 (pg. 49) of the Rule details Transitional Provisions, commonly referred to as "speed limit reversals".
- v. Significant legal advice and discussion has taken place related to interpretation of the rule, and for the sake of legibility, this letter will attempt to use plain language to describe the rule's implications (as well as that of other legislation).
- vi. The Rule identifies '**specified roads**' as:
  1. Local streets where speed limits were set to 30km/h since January 2020, and where "the reason or one of the reasons for setting that speed limit was because there is a school in the area"; or
  2. Various classifications of roads where a speed limit was set since January 2020 where the previous speed limit was higher.
- vii. The Rule requires that speed limits on specified roads be reversed to be the same as the previous speed limit, and that this must happen no later than July 1 2025.
- viii. The Rule makes an exception for roads outside the school gate (where a variable speed limit is required), and roads where significant changes in land use have occurred.

#### b. Interpretation of the Rule

It should be noted that interpretation of the Rule varies widely between road controlling authorities, that this variation in interpretation provides Auckland Transport with considerable leeway in how the Rule is applied, and also puts them at considerable liability risk. This is important when considering "reasonableness" and "all practicable steps" where Auckland Transport's and Director's duties are concerned. If other Road Controlling Authorities have taken steps to minimise or mitigate the impacts of higher speed limits which Auckland Transport has not, then this is evidence that Auckland Transport failed to take all practicable and/or reasonable steps available to prevent injury or death.

- i. Auckland Transport appears to have taken a broad approach to identifying which roads are specified roads, and this results in large-scale and wide-reaching implications. The scale of change, as a consequence of Auckland Transport's approach, corresponds to a large-scale increase in risk, which must be taken into consideration.
- ii. Auckland Transport's broad identification of specified roads means that subsequent speed limit changes will *greatly increase exposure* between road users outside of a vehicle and motor vehicles travelling at speeds likely to cause serious injury or death in the event of a collision.
- iii. An alternative view is being implemented by other road controlling authorities which minimises the number of specified roads, and therefore minimises exposure and risk to members of the public.
- iv. Choosing to broadly identify specified roads, and therefore take an approach which increases risk and exposure to harm, is inconsistent with Auckland Transport's other legal obligations. In particular, Auckland Transport is required to *minimise* risk resulting from the organisation's work.
- v. **Directors must be confident** that Auckland Transport has taken all practicable steps to minimise risk to the public by minimising exposure to unsafe speeds. This requires a strict and constrained approach to identifying specified roads as per the Rule.
- vi. Should other road controlling organisations apply a minimal approach, which exposes people to lesser risk, then it will be extremely difficult for Auckland Transport to claim that they took all practicable steps to minimise risk. Practicable steps could include, for example, working collaboratively with other road controlling authorities when seeking legal advice or developing implementation strategies.

**c. Local Government (Auckland Council) Act 2009**

- i. Auckland Transport's responsibilities are principally detailed in the Local Government (Auckland Council) Act 2009, (the LGA).
- ii. **Section 39** of the LGA specifies "The purpose of Auckland Transport is to contribute to an effective, efficient, and safe Auckland land transport system in the public interest."
- iii. **Section 44** of the LGA specifies the following duties for Directors of Auckland Transport:
  - 1. A director must not breach this Act or cause a breach, or agree to any breach by Auckland Transport, of this Act.
  - 2. A director must, when acting as a director, act with honesty and integrity.
  - 3. A director must, when acting as a director, act in good faith and not pursue his or her own interests at the expense of Auckland Transport's interests.
  - 4. A director must, when acting as a director, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- a. the nature of Auckland Transport; and
  - b. the nature of the action; and
  - c. the position of the director and the nature of the responsibilities undertaken by him or her.
- iv. **Directors must understand** the implications of Section 44.4 of the LGA in the context of transport as *a high-risk sector that is a leading cause of harm to people and the environment*. The nature of responsibilities bestowed to directors of transport agencies and of the decisions that those directors make are considerably greater, carry greater risks, and result in greater impacts, than similar decision-making positions in other sectors or industries. This has material implications for what is considered “reasonable” where directors of transport agencies are concerned.
- v. **Section 45** of the LGA details the functions of Auckland Transport and includes:
  - (b) manage and control the Auckland transport system in accordance with this Act, including by performing the statutory functions and exercising the statutory powers set out in section 46 as if Auckland Transport were a local authority or other statutory body, as the case may be.
  - (d) To undertake any other transport functions that the Auckland Council may lawfully direct it to perform or delegate to it (for example, management of off-street parking facilities owned by the Council); and
  - (g) To undertake any other functions that are given to it by this Act or any other enactment, or that are incidental and related to, or consequential upon, any of its functions under this Act or any other enactment.
- vi. **Directors must understand** Section 45 (b) to mean that the Auckland transport system is a workplace which Auckland Transport is responsible for, making Auckland Transport a Person Conducting a Business or Undertaking (PCBU) as defined in the Health and Safety at Work Act 2015.
- vii. **Directors must understand** Section 45 (d) to mean that Auckland Transport is legally obligated to implement Auckland Council's direction to Auckland Transport, such as the Vision Zero safety policy and the Transport Emissions Reduction Pathway.
- viii. **Directors must understand** Section 45 (g) to mean that Auckland Transport is legally obligated to follow the Health and Safety at Work Act 2015, as well as the Land Transport Act and other associated legislation.

**d. Health and Safety at Work Act 2015 (HSWA)**

- i. Auckland Transport is a Person Conducting a Business or Undertaking (PCBU) as defined in s17 of the HSWA.
- ii. Auckland's Transport system is a workplace as defined in s20 of the HSWA. This is confirmed by the functions of Auckland Transport as defined in the LGA, which sets out the ordinary ‘work’ that Auckland

Transport does as “manage and control the Auckland transport system”.

- iii. Auckland Transport’s Directors and Chief Executive are considered officers as defined in s18 of the HSWA. Officers of the PCBU must exercise due diligence to ensure that the PCBU complies with any duty or obligation which the PCBU has (s44.1)
- iv. Under s30, “Management of risks”, a duty imposed on a person by or under the HSWA requires the person—
  - (a) to eliminate risks to health and safety, so far as is reasonably practicable; and
  - (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.
- v. A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. (s36.2)
- vi. A PCBU must ensure, so far as is reasonably practicable, the provision and maintenance of safe plant and structures (s36.3(b))
- vii. **Directors and the Chief Executive must understand** that Auckland Transport is legally obligated to ensure that, as far as is reasonably practicable, plant, structures and fixtures (such as roads, signage, signals, barriers, crossings etc.) eliminate risks to health and safety, and that the health and safety of any person is not put at risk through the design, construction or management of plant, structures or fixtures for which Auckland Transport is responsible. Where elimination of risk is not possible, Auckland Transport must take **all practicable steps** to minimise risk.
- viii. This is not an extensive list of duties for either PCBUs or officers under the HSWA, and further advice should be considered.
- ix. s47 of the HSWA covers offences and states:

A person commits an offence against this section if the person—

  - (a) has a duty under subpart 2 or 3; and
  - (b) without reasonable excuse, engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury or serious illness; and
  - (c) is reckless as to the risk to an individual of death or serious injury or serious illness.
- x. An individual who is a PCBU or an officer of a PCBU is liable, on conviction, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both.
- xi. **Directors and the Chief Executive must understand** that considering responsibilities resultant from interpreting s44.4 of the LGA (taking into account the high-risk, large-impact nature of transport systems and the nature of the role of director), what constitutes a “reasonable excuse” for failing to meet HSWA duties will require extremely robust decision making and confidence in the advice tendered and process followed.



- xii. **Directors and the Chief Executive must understand** that they may face personal liability, including fines or prison time, if Auckland Transport fails to take all practicable steps to eliminate and minimise harm.
- xiii. Prosecutions under the HSWA are fairly frequent and common, and have included prosecutions against organisations similar to Auckland Transport such as Ports of Auckland and Kiwirail. **Directors and the Chief Executive must be aware** of the considerable risk of prosecution under the HSWA and weigh the potential consequences into their decision making.

**e. Crimes Act 1961**

- i. The Crimes Act 1961 (s156) states:  
“Every one who has in his or her charge or under his or her control anything whatever, whether animate or inanimate, or who erects, makes, operates, or maintains anything whatever, which, in the absence of precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.”
- ii. **Directors and the Chief Executive must understand** that they may face criminal liability if they do not take reasonable precautions and use reasonable care to prevent the endangerment of human life. “Reasonableness” must include consideration of the nature of transport systems and the role of directors as described in the LGA.
- iii. In practice, application of criminal negligence for situations such as Auckland Transport’s are rare and unlikely. However, there is a very real risk that, for example, the family of a child who is seriously injured or killed in a location where Auckland Transport have implemented unsafe speeds may choose to pursue criminal liability from decision makers. **Directors and the Chief Executive** need to be aware of this risk and weigh the potential consequences in their decision making.
- iv. Similarly but separately, if a pattern of serious injuries or fatalities occurs which aligns with Auckland Transport’s actions regarding speed limits and road treatments, then this may be considered sufficient evidence to bring about a criminal prosecution against decision makers who failed to take preventative or mitigating action.
- v. **Directors and the Chief Executive should be confident** that written ministerial direction has explicitly discharged them of their legal duties as per the LGA and HSWA.

**4. Risks associated with increased posted speed limits**

- a. Changes to posted speed limits as proposed by Auckland Transport are associated with two principal, multiplying risk factors:
  - i. Increased physical forces in the event of a crash (level of *potential harm*)

- ii. Increased locations and opportunities for people to experience that level of harm (*exposure*)

**b. Potential harm**

Potential harm relates to the physical forces involved in a crash, and the biology of human bodies. This is already well understood by Auckland Transport's Road Safety team, as illustrated by this quote from the Auckland Transport [web page on reasons for safe speeds](#):

***"The impact of speed on the human body***

*Setting safe speed limits, to what a human body can survive, is important because two out of three serious injuries are happening to people outside of vehicles. The internationally accepted speed to greatly reduce the chances of a pedestrian being killed or seriously injured is 30km/h.*

*For people who are walking or biking, a reduction in vehicle speed from 50km/h to 30km/h translates to a 90 percent chance of surviving the crash. Setting safe speed limits where people walking and cycling mix with vehicles, like in town centres and around schools is **essential to reducing death and serious injury (DSI)**." [emphasis added]*

- c. This is also explained within New Zealand Transport Agency's (NZTA) [Safe System Audit Guidelines](#):

***"Safe System boundary conditions***

*We know people are vulnerable and we understand the key crash types and associated crash forces that people can be exposed to in Australia and New Zealand, which lead to death or serious injuries. A Safe System manages crash forces within these limits so that people are protected.*

*The human tolerance to force dictates the Safe System boundary conditions and we need to be able to identify where these boundary conditions are likely to be exceeded when planning and managing the transport system.*

*Effectively for system designers this means **either adequately protecting people** from high crash energies which exceed these boundary conditions through infrastructure and vehicle design or **reducing the impact forces by reducing travel speeds**. Under a Safe System **people need to be protected from impact speeds that exceed the following** [Emphasis added]:*

**Table 1: Safe impact speeds for different situations**

Road and section types combined with road users	Target Safe System speed
Roads and sections used by cars and vulnerable users	30km/h
Intersections with possible side-on conflicts between cars	50km/h
Roads with possible frontal conflicts between cars	70km/h
Roads with no possible frontals or side-on conflicts between vehicles and no vulnerable road users	>100km/h

Source: ECMT, 2006

*Figure 1: A survivable speeds table from NZTA.*

- *Note that Vulnerable road users include all road users outside of a vehicle, including pedestrians, and people travelling by bicycle or motorcycle.*
- *Note also that **all of the streets** featured in Auckland Transport's Safe Speeds Programme to date are streets where motor vehicle traffic and road users outside of a vehicle share the same physical space.*

- d. It is for this reason that the implementation of 30km/h or lower vehicle operating speeds is frequently referred to as “survivable speeds”, such as by [The World Health Organisation](#), the [World Bank](#), and the [Australasian College of Road Safety](#) (ACRS). Understanding and utilising accurate terminology is important when communicating and considering the implications of Auckland Transport's response to the Setting of Speeds Rule.
- e. Vehicle operating speeds which exceed “survivable speeds” are, by their nature, unsurvivable, or deadly. For this reason, they should be referred to as “deadly”, “unsafe”, or “lethal” speeds. This is important when considering what is *reasonable* in response to setting speed limits.

**f. Exposure**

Exposure relates to the frequency with which the risk of potential harm is likely to occur, and is therefore a multiplier of that risk.

- i. If, for example, Auckland Transport were to change the posted speed limit on a single, low-traffic street, then the overall risk of the action may be considered fairly low. However, Auckland Transport has indicated that more than 1,500 streets have been identified as “specified roads” by the organisation.

- ii. Taken in isolation, individual actions which increase risk may not be deemed to go against the LGA purpose “to contribute to a safe transport system”. However, the same cannot be said for a wide-reaching programme which substantially changes the overall level of risk created by the transport system. The scale of change proposed by Auckland Transport will fundamentally change the risk profile of Auckland's Transport system, making it **less safe as a whole**, and cannot therefore be considered consistent with the purpose of the LGA.
  - iii. The scale of Auckland Transport's approach means that a very large number of people will be exposed to unsafe speeds. The organisation's response to the Setting of Speeds Rule makes the activity **extremely high-risk**. This is important when considering a Director's duties to take into consideration the “nature of the action”.
  - iv. It is prudent to remind decision makers that under s47 of the HSWA, a person commits an offence if the person engages in conduct that ‘*exposes any individual to a risk of death or serious injury*’ (paraphrased). Auckland Transport's current approach to the implementation of unsafe speeds **will expose thousands of individuals to a risk of death or serious injury**.
- g. Directors must understand that changing posted speed limits in a way which encourages unsafe speeds across a large number of locations:
  - i. **Does not and cannot** be considered to contribute to a safe transport system;
  - ii. **Does not and cannot** be considered to exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances when taking into consideration the nature of Auckland Transport, the nature of the action, and the responsibilities of a director;
  - iii. **Does not and cannot** be considered to eliminate risks to health and safety, so far as is reasonably practicable;
  - iv. **Does not and cannot** be considered to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking;
  - v. **Does not and cannot** be considered to demonstrate a duty of care to take reasonable precautions to prevent endangerment of human life.
- h. **Operating speeds versus posted speeds**
  - i. It is prudent to note that there is a difference between *Operating Speeds* (the real speed at which a motor vehicle travels) and *Posted Speed Limits* (the speed which a road controlling authority has determined as the safe legal maximum operating speed).
  - ii. It may be considered that Auckland Transport does not ultimately carry responsibility for the speed at which a driver chooses to operate a vehicle, and that, therefore, the difference between “survivable speeds” and “lethal speeds” is a responsibility held by the driver.

- iii. This is inconsistent with Auckland Transport's Vision Zero approach, and the widely-adopted, best-practice Safe Systems approach, and evidence of the impacts of posted speed limits on driver behaviour.
- iv. Members of the public can expect that ordinary use of public infrastructure, as controlled through devices such as speed limit signage and street design, is an indicator of what is safe and acceptable. Drivers are not expected to have the same level of understanding of road conditions as engineers, or to make, while driving, decisions as well-considered as those made by directors of a transport agency.
- v. Directors must understand that, where unsafe speed limits are posted, Auckland Transport carries responsibility for the outcomes of drivers travelling up to that speed limit.

#### i. **Supplementary risks**

- i. Physical crash risk is the greatest, and most important, threat to human health and safety resulting from Auckland Transport's proposed changes in response to the Setting of Speeds Rule. However, there are additional, ancillary risks that Auckland Transport Directors must give consideration to.
- ii. Increasing vehicle operating speeds makes the road environment significantly less safe and less attractive for road users outside of a vehicle. As a consequence, unsafe speed limits have a 'chilling effect' on rates of active and public transport use. This, in turn, results in increased private motor vehicle use, which results in increased pollution (including climate-damaging pollution), increased crash exposure, increased traffic congestion, and increased infrastructure cost.
- iii. These harms incur significant financial and social cost, which subsequently constrain the Auckland region's economic development, and the quality of life of members of the public.
- iv. These harms significantly constrain Auckland Transport's ability to contribute towards Auckland's regional plans and strategies, such as the Auckland Plan 2050, Vision Zero, and the Transport Emissions Reduction Pathway.
- v. Directors must understand that increasing posted speed limits in the manner proposed by Auckland Transport **is not and cannot be** considered "in the public interest".

### **5. Conflict between Acts and the Speed Rule**

- a. The risks associated with increased speed limits clearly and materially conflict with the legal responsibilities of Auckland Transport's Directors under the LGA, HSWA, and the Land Transport Act (LTA) (which is not discussed here, but carries similar responsibilities to the LGA).
- b. As such, Directors must seek legal advice on resolving conflict between secondary legislation (the Rule) and fulfilling their obligations under various Acts.

- c. In general, where there is a conflict, Acts supersede secondary legislation (such as the Speed Rule). It would be *reasonable*, given the multiple apparent conflicts between the Setting of Speeds Rule and different Acts of Parliament, for Directors to fulfil their duties under primary legislation (such as the LGA and HSWA) until such time as the conflict is fully resolved.
- d. It is the role and responsibility of Parliament's Regulations Review Committee to resolve the inconsistency between the Speed Rule and other Acts of Parliament.
- e. In meeting their requirement to take all practicable steps to prevent harm, Auckland Transport's Directors should be confident that the organisation has requested that the Regulations Review Committee assess the Speed Rule for potential conflicts with Acts of Parliament. Directors should seek leave from the Transport Minister to defer the implementation of the Speed Rule up until such time as the Regulations Review Committee has tabled a report on any identified inconsistency in legislation, and/or any alterations to the rule have been made.
- f. It may be considered that, as the Speed Rule was developed by officers of the Ministry of Transport and signed by the Minister of Transport Hon. Simeon Brown, that the Rule has been sufficiently vetted and that it is not Auckland Transport's role to challenge the Speed Rule.
- g. This relies on an *assumption* that the people and systems used in government are flawless and should not be second-guessed. This is demonstrably false, and goes against what a reasonable person would do when presented with evidence that an action is likely to cause harm.
- h. It is the role and responsibility of Auckland Transport to advocate on behalf of the people of Auckland (a role conferred to the organisation under the Vision Zero strategy), and to carry out research and provide education and training in relation to land transport in Auckland (a function established under the LGA). This includes advocacy to the Transport Minister and to the Ministry of Transport.
- i. While it is unusual for a road controlling authority or local government to essentially "plead" with a Minister, it must be recognised that the circumstances created by the Speed Rule are both unusual and potentially extremely harmful, and require an open assessment of what practicable steps Auckland Transport's officers and decision makers can take.
- j. Directors must understand that it is both *reasonable* and *practicable* to:
  - i. Refer the Setting of Speeds Rule to Parliament's Regulations Review Committee;
  - ii. Request an extension of time from the transport minister due to clear conflict between the Rule and other legislation;
  - iii. Advocate to the Transport Minister in an educational manner, detailing to the Minister the potential scale of harm and requesting the minister reconsider the requirements of the Speed Rule when presented with supplementary expert advice from Auckland Transport;
  - iv. Seek written clarification from the minister on whether or not the minister expects Auckland Transport to fulfil obligations under the LGA, the LTA and the HSWA;

- v. If necessary, seek an injunction in court to delay implementation of the Speed Rule until such time as legislative inconsistency can be clearly resolved.

## 6. Required Mitigating Actions

Where Auckland Transport deems that it is *absolutely necessary* to set unsafe speed limits on the Auckland road network, the organisation **must** take all reasonably practicable steps to mitigate the risk presented by those speed limits.

- a. “Reasonably practicable” is defined in the HSWA as “that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—
  - (a) the likelihood of the hazard or the risk concerned occurring; and
  - (b) the degree of harm that might result from the hazard or risk; and
  - (c) what the person concerned knows, or ought reasonably to know, about—
    - (i) the hazard or risk; and
    - (ii) ways of eliminating or minimising the risk; and
  - (d) the availability and suitability of ways to eliminate or minimise the risk; and
  - (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”
- b. **Directors must understand** that because
  - i. the scale of exposure means the risk is **extremely likely to occur**;
  - ii. and because of the physics involved the risk **can result in catastrophic harm**;
  - iii. and because a director of a transport agency **ought to be well informed** about transport risks;that the threshold for “reasonable” in relation to the setting of speeds is very high.
- c. Many road safety treatments and changes are available which suitably mitigate the risks associated with higher posted speed limits, and **Auckland Transport are required to implement them** in any locations where there is a risk of vehicle operating speeds exceeding survivable speeds.
- d. Auckland Transport **must** assess the risk *and* assess available ways of eliminating and minimising that risk *before* considering the cost of risk minimisation.
- e. **Directors must be satisfied** that risks have been evaluated, and mitigation or minimisation options assessed, *before* approving any speed limit increases.
- f. Low-cost mitigating treatments for roads where vehicles are likely to travel at unsafe speeds include, but are not limited to:
  - i. Temporary or permanent speed bumps;
  - ii. Pop-up, interim, or low-cost protected cycleways;
  - iii. Temporary or permanent signal-controlled pedestrian crossings;
  - iv. “Lateral deflection”, such as islands or planters, which encourage reduced vehicle travel speeds;

- v. Traffic circulation plans which reduce through-traffic speeds and volumes;
- vi. “Modal filters” which prevent motor vehicle through-traffic but permit active modes like walking or cycling;
- vii. Road closure or pedestrianisation.



*Figure 2: Temporary speed bumps, such as this product from Astrolift, can be quickly and cheaply installed to mitigate the risks associated with unsafe posted speed limits. **Auckland Transport is legally required to install them, or an alternative treatment which achieves similar results, alongside any speed limit increase which may cause harm.***

- g. **Directors must be satisfied** that available mitigation options have been assessed, and implement those mitigations at locations where there is an identified risk.
- h. Auckland Transport’s own Transport Design Manual and accompanying design codes detail what *minimum acceptable standards* of safety are required to be met before a road can be considered safe.
- i. “Affordability” is not a valid reason to dispense with the need to implement safety mitigation techniques or devices. Only in instances where the cost is “grossly disproportionate” should a potential mitigation be considered inappropriate. In such circumstances, Auckland Transport must give consideration to closing the street to motor vehicle traffic.
- j. Auckland Transport is required to prioritise funding for minimum standards of operational safety, and will need to find suitable funding within existing budgets. This will require a budget to undertake an independent audit of locations where speed limit changes are to take place, and will require a suitable budget to implement necessary mitigations.
- k. Avoiding the implementation of safety mitigations due to a lack of budget cannot be considered reasonable. For example, given the extreme level of risk associated with Auckland Transport’s response to the Setting of Speeds Rule, Directors should ask themselves “Is it *reasonable* to fund road maintenance, or to prevent potential life-threatening injuries to members of the public?”
- l. **Directors must understand** that they are responsible for allocating suitable financing to achieve a minimum standard of safe operations across Auckland’s road network.

## **7. Minimum acceptable standards of safety**

- a. It is notable that, despite Auckland Transport’s leadership suggesting the organisation is “committed to Vision Zero”, the organisation has been unable



to consistently produce workmanship which achieves minimum standards of safety and complies with the organisation's own policies, strategies and design guidance. In particular, engineering designs, audits and Traffic Control Committee resolutions routinely and consistently approve non-compliant designs which work against the organisation's safety, climate and mode-shift strategies.

- b. It is unclear why this is (it appears to be a combination of political interference, and internal ideology and siloisation), and investigating such matters is beyond the scope of this letter. However, in the interests of ensuring that decision makers are provided with adequate advice, it is prudent to provide examples of what minimum safety standards the organisation is legally required to implement where unsafe speeds are to be set on Auckland's roads.
- c. These standards are taken from Auckland Transport's Transport Design Manual (TDM) and accompanying engineering design codes. These design codes have been developed by Auckland Transport's Design and Standards Team to align with Auckland Transport's strategic outcomes by considering international best practice and adopting it to an Auckland-specific context.
- d. It should be noted that alternative design codes, such as Austroads, are not designed to align with Auckland Transport's strategic outcomes, and should not be considered as suitable alternatives other than in rare exceptional circumstances (except where these design codes are explicitly referenced within Auckland Transport documentation). Auckland Transport is legally required to deliver on strategic policy such as Vision Zero and the Transport Emissions Reduction Pathway, and alternative engineering approaches do not take these obligations into consideration.
- e. For all locations where 85th percentile vehicle operating speeds are likely to exceed 30km/h (as detailed within the independent safety audit which Auckland Transport is required to complete before increasing posted speed limits), **Auckland Transport must provide, at the time of any speed limit increase:**

**i. Minimum acceptable pedestrian crossing facilities**

- 1. On all local streets where pedestrians may be inclined to cross:
  - a. A pedestrian platform or;
  - b. A median refuge or;
  - c. Kerb extensions which narrow crossing distance.
- 2. In busy pedestrian locations such as near bus stops, outside schools or in commercial centres:
  - a. A raised zebra crossing or;
  - b. A pedestrian platform (with suitable dimensions to slow vehicle speeds below 30km/h) or;
  - c. A pedestrian refuge with kerb build-out.
- 3. On streets where traffic volumes exceed 7,500 vehicles per day:
  - a. A raised signalised pedestrian crossing or;
  - b. A raised zebra crossing or;

- c. A signalised crossing with kerb extensions.
- 4. On all residential streets where no formal crossing facility is provided:
  - a. Traffic calming (such as speed bumps) designed to reduce vehicle operating speeds to 30km/h or less.

**ii. Minimum acceptable cycle facilities**

- 1. On all streets where vehicle operating speeds are likely to exceed 40km/h:
  - a. A protected or buffered cycleway with a width no less than 1.5m, with a buffer or protection of width no less than 0.6m, or 0.4m where there is no on-street parking.
- 2. On all streets which feature frequent heavy vehicle movements, such as frequent or rapid bus routes, including school bus routes:
  - a. A protected or buffered cycleway with a width no less than 1.5m, with a buffer or protection of width no less than 0.6m, or 0.4m where there is no on-street parking.
- 3. On all streets with more than 3,000 vehicle movements per day or more than 300 vehicle movements per hour (including peak-hour):
  - a. A protected or buffered cycleway with a width no less than 1.5m, with a buffer or protection of width no less than 0.6m, or 0.4m where there is no on-street parking.
- 4. On all streets where vehicle operating speeds are likely to exceed 30km/h but are less than 40km/h:
  - a. A shared street design which includes traffic calming measures (such as speed bumps or chicanes) to reduce vehicle speeds to 30km/h or below, and clear markings (such as signs or sharrows) indicating a shared space or;
  - b. A buffered cycle lane with a width of no less than 1.5m with a buffer or protection of width no less than 0.6m, or 0.4m where there is no on-street parking.
- 5. At all intersections where a cycle facility exists on any leg of the intersection:
  - a. A “consistent experience” where any cycle facility continues through the intersection and;
  - b. Either fully protected or signal prioritised cycle crossing facilities; or “shared path corner” cycle crossing facilities (except on priority cycle routes).
- 6. At all locations where a cycle lane crosses a side road (t-intersections):
  - a. A raised table crossing

**iii. At any location where the above conditions cannot be met**

- 1. Suitable traffic calming to reduce vehicle operating speeds below 30km/h or;

2. Restrictions to motor vehicle access to the location until such time as the road can be made safe.

## 8. Recommended course of action

- a. Taking into consideration all of the aforementioned, decision makers are faced with a difficult set of decisions. The following is a recommended set of **reasonable** actions based on publicly available knowledge about Auckland Transport's current intended implementation of unsafe speeds, and the information contained within this letter.
- b. The following recommendations are provided freely and without liability as a matter of community advocacy. The only interest sought is for a safe, functional and well-regarded transport system in the Auckland Region.
  1. Auckland Transport **must** immediately pause the roll-out of unsafe posted speed limits until outstanding issues are resolved, even if that means delaying past the date stated within the Speed Rule. Where Auckland Transport are required to "pick and choose" between legal obligations, it is reasonable to prioritise Acts of Parliament over secondary legislation, and reasonable to take steps to prevent a risk of serious injury or death.
  2. Auckland Transport's Directors **must** inform the Minister of Transport that the Setting of Speeds rule, as currently written, conflicts with their obligations under the Local Government Act, and that the issue will need to be resolved prior to resuming the implementation of unsafe speeds.
  3. Auckland Transport **must** inform the shareholder, Auckland Council, that significant additional costs and time will be required to fulfil their legal duties where speed increases are concerned, and that changes to road layouts and the implementation of traffic-calming devices will be required.
  4. Auckland Transport's Directors **must** be satisfied that the organisation's current approach to implementing the Speed Rule minimises harm to any person by minimising the extent of exposure. Directors must be confident that the organisation has collaborated with other road controlling authorities to seek best-practice approaches to minimising harm.
  5. Auckland Transport's Directors **must** be satisfied that an independent safety audit has been carried out at all locations where speed limits are proposed to increase, and that *all possible mitigations* have been considered for implementation at those locations.
  6. Auckland Transport's Directors **must** be confident that road layout and engineering will meet minimum standards of safety (as detailed in this letter) at the time that any speed limit changes occur.
  7. Auckland Transport's Directors *should* refer the Speed Rule to Parliament's Regulations Review Committee and request the

committee seek to resolve apparent conflicts between the Rule and various Acts. Auckland Transport *should* prepare and include suitable evidence and advice to assist the committee in assessing any conflict.

8. Auckland Transport's Directors **must** be confident that communication with the Minister of Transport has accurately detailed the harms likely to result from changes to posted speed limits, and seek Ministerial guidance on expectations around fulfilling their obligation to "contribute to a safe transport system in the public interest".

Thankyou for your time and I trust that Auckland Transport, and you as decision makers, will do the right thing by the people of Auckland.

Nāku noa, nā  
Tim Adriaansen  
Strategic Transport Advisor