

9 December 2020

Climate Change Commission
Level 21, 1 Willis Street
Wellington 6011

Dear Dr Carr and fellow Commissioners

ENSURING THE COMMISSION'S DRAFT REPORTS COMPLY WITH ITS LEGAL OBLIGATIONS

Introduction

1. Our letter dated 13 November 2020 addressed the Climate Change Commission's legal obligation to ensure that its advice is consistent with the purposes of the Climate Change Response Act (**CCRA**) of providing a framework for policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius and enabling New Zealand to meet its international obligations under the Paris Agreement.
2. The purpose of this letter is to raise three issues which the Commission needs to get right in its advice on the NDC, emissions budgets and the emissions reduction plan.

Context

3. On 1 February 2021 the Commission will start consulting on New Zealand's first three emission budgets, its advice on the first emissions reduction plan, its advice on biogenic methane and its views on our Nationally Determined Contribution (**NDC**) under the Paris Agreement.
4. These workstreams provide an opportunity to reset New Zealand's approach to climate action. In our view, such a reset is badly needed. While our present NDC conveys the impression of an ambition to decrease emissions by 30% in 2030 (relative to 2005), the gross/net approach hides the fact that this target allows actual emissions to increase. The Commission has been created as an independent and expert body that can call out

our lack of climate action and hold our politicians to account. We strongly believe it must do so in strong and transparent terms.

5. The present gap between our national aspirations and our actions is illustrated by our lack of progress against the fundamental goal of limiting global warming to 1.5°C. When Parliament declared a climate emergency on 2 December 2020, it recited SR15's finding that, to limit global warming to 1.5°C, global net CO₂ emissions must decline by about 45% from 2010 levels by 2030,¹ reaching net zero by around 2050.
6. Given that New Zealand's 2010 emissions (net) were 47.8 Mt CO₂-e, a consistent NDC would require 2030 emissions to be around **26.3 Mt CO₂-e** (with an interquartile range of 19.1 to 28.7 Mt CO₂-e). In contrast, New Zealand's NDC target for 2030 is **58.3 Mt CO₂-e** (and our forecast emissions are even higher).
7. Leaving aside potential second order refinements in relation to split gasses,² in our view it is abundantly clear that:
 - a) New Zealand's NDC is not consistent with limiting global warming to 1.5°C with no or limited overshoot;
 - b) New Zealand's NDC is over twice as high as consistency would require; and
 - c) far from prescribing a 40-60% reduction in emissions by 2030, our target allows for emissions to *increase* by as much as 22% relative to 2010 (that is, 58.3 Mt CO₂-e versus 47.8 Mt CO₂-e).
8. Against this background and in light of the Commission's upcoming work programme, we wish to comment on the following three issues that will be central to the Commission's forthcoming draft reports:
 - a) First, we consider that 2030 is an important waymark for limiting global temperature changes. In forming our emissions budgets and in assessing our current NDC, the level of emissions in 2030 is as important as our stock of emissions in 2021-30. Consideration of the stock of emissions over this period, should not be at the exclusion of assessing our rate of emissions as at 2030.
 - b) Secondly, we consider that the Commission should call out our present NDC as being both misleading and lacking in any ambition. The Commission is an independent and expert body and should not hesitate to speak directly on such matters to ensure public awareness and political accountability.

¹ SR15 also expresses the required reductions as an interquartile range of 40–60%.

² For example, if the SR15 2030 target was calculated by looking at CO₂ and non-CO₂ emissions separately, then the combined target would be modestly above 26.3 Mt CO₂-e.

- c) Thirdly, we seek confirmation from the Commission that (as raised in our previous letter) its recommendations for the first emissions budgets and reduction plan will be based on the Commission's own assessment of what is necessary to limit global temperature rise to 1.5°C, and not based on the existing NDC. In reaching its own assessment of what is required, we consider that the Commission's focus must be on the science and on our maximum possible ambition in setting emissions budgets. If more generous budgets are set as a matter of pragmatics, cost and politics, then this is more appropriately addressed by the Government in response to the Commission's proposed budgets and reduction plans.
9. We note the constrained time frames that the Commission is working under and the difficult logistics of re-consulting if it does not get its framework right to begin with. We have a mandate from our members to hold the Commission to account in terms of its legal obligations and we are also conscious that any review proceedings may be more appropriate in relation to the February consultation documents given the Commission's overall timeframes. Accordingly, we would welcome the opportunity to discuss these issues further later this month or in January 2021.

Issue #1: The rate of emissions in 2030 and the total emissions in the period 2021-30 are both important

10. MfE's paper "Scientific Analysis of compatibility of the NDC with 1.5 degrees" dated 5 February 2020 (**MfE Paper**) reaches the same conclusion set out above that our NDC is not consistent with limiting global warming to 1.5°C with no or limited overshoot. However, on MfE's analysis this is a near miss.
11. MfE converts the 2030 target into an NDC budget for 2021-30 of 601 Mt CO₂-e,³ and then compares this against New Zealand's share of an implied global budget for emissions in 2021-30 for various sets of pathways. New Zealand's share is based on our share of net emissions between 1990 and 2014. According to MfE, the interquartile range for our share of 2021-30 global emissions consistent with limiting global warming to 1.5°C with no or limited overshoot is 490-529 Mt CO₂-e. On this analysis, New Zealand is only about 20-30% above where it should be. Furthermore, the 601 Mt CO₂-e budget is within the range for high overshoot (509-647 Mt CO₂-e).⁴

³ MfE converts the 2030 target of 58.3 Mt CO₂-e into an NDC budget for 2021-30 of 601 Mt CO₂-e. The paper does not spell out how this is derived, but we understand it is a linear reduction from our previous 2020 target to the 2030 NDC target of 58.3 Mt CO₂-e. On this basis the budget starts a little above and finishes a little below 60 Mt CO₂-e in the period 2021-30. That is, a straight-line with a gentle downwards slope.

⁴ The MfE paper reports against the following pathways: 1.5°C with no or limited overshoot; 1.5°C with no, limited or high overshoot; and 2°C. In our view, 1.5°C with no overshoot is the only relevant set of pathways in terms of compatibility with our Paris commitments.

12. MfE argues that methane and other gases should be analysed separately, and that for methane it is the rate of emissions in 2030 that is most relevant and that for other gases it is the total emissions released between 2021-30 that is most important.
13. In our view, the split gas approach is legitimate, but it does not justify focussing exclusively on the 2021-30 stock of emissions for gases other than methane at the expense of the 2030 rate.
14. In particular:
 - a) Focussing on 2021-30 as a block obscures how poor our 2030 outcome is expected to be. That is, New Zealand's emissions are forecast to be 66.1 Mt CO₂-e in 2030, which is more than double the 26.3 Mt CO₂-e target referred to above. In simple terms our performance relative to SR15 gets worse every year from 2021 to 2030, so averaging our performance over this period has a diluting effect which partly masks the true 2030 position.
 - b) While the 2021-30 stock of emissions is important, the 2030 point in time rate is also an important waymark for assessing our progress towards decarbonisation and is a leading indicator for our likely performance in 2031-35.
15. Both our NDC and the SR15 required reductions are expressed in terms of annual emissions as at 2030. Accordingly, there is something odd in converting both our NDC targets into 2021-30 implied ten year emission budgets to test their consistency. It seems to follow a pattern of adopting complex analyses in order to make our emissions look as palatable as possible rather than to facilitate the measurement of our progress (or lack of it).
16. Accordingly, any assessment of SR15 consistency should report against both the 2021-30 stock of emissions and the 2030 point in time rate. This should be done for both the single gas and the split gases approaches.⁵
17. For completeness, we note that we are unclear on what data has been used to create the interquartile global emissions budgets for 2021-30 used by MfE and so are unable to replicate or test the calculation. It is also unclear why MfE determines our share of this budget based on New Zealand's share of net emissions between 1990 and 2014. While we agree that it is complicated to assess our "fair share" of reductions, choosing this particular metric does not avoid a choice. For example, we would like to understand how the analysis changes if: (a) the global budget is shared based on our share of 2010 net emissions which seems more consistent with SR15; and (b) we take into account

⁵ For methane, the 2021-30 stock of emissions is important (in addition to the 2030 rate) as it will have a significant impact on global warming over the decade from 2031-40. We note that the MfE approach does take this into account by dividing the 601 Mt CO₂-e total budget between methane and other greenhouse gases.

that New Zealand is a developed country and should be expected to do more than average. Another way to put the consistency question is to ask, if all countries emit as New Zealand expects to in 2021-30, is the overall outcome consistent with limiting global warming to 1.5°C with no or limited overshoot? If not, what temperature increase would global emissions increasing at the same rate as New Zealand's since 2010 imply?

Issue #2: The Commission should call out our NDC as misleading and lacking any ambition

18. MfE proceeds on the basis that our 2030 emissions target is 58.3 Mt CO₂-e. MfE's figure is calculated using the *gross* emissions in 2005 (83.3 Mt CO₂-e) and subtracting 30% in order to determine a target for *net* emissions. This seems surprising and confusing.
19. New Zealand's NDC is as follows:⁶

New Zealand commits to reduce greenhouse gas emissions to 30% below 2005 levels by 2030.

20. This is most naturally read as a commitment to reduce our actual (ie net) emissions by 30% between 2005 and 2030. In 2005 our net emission were 54.5 Mt CO₂-e, and accordingly, we calculate an NDC set at 30% below 2005 levels as 38.1 Mt CO₂-e rather than 58.3 Mt CO₂-e. This would ensure an apples-for-apples comparison between the target and what is being measured (and would represent a reasonable degree of ambition).
21. However, we understand that the official interpretation is that New Zealand uses a gross/net approach. That is, we use the higher 2005 *gross* emissions to set a *net* target for 2030 of 58.3 Mt CO₂-e.
22. The Climate Change Commission should thoroughly investigate this matter and be transparent as to what New Zealand has done and whether it is an appropriate interpretation of our NDC. Other than references to the idea of a "wall of wood artificially depressing the net 2005 number", we have not seen a justification for the gross/net approach.⁷ On a cursory analysis the wall of wood narrative is not apparent from the data (for example, the net:gross ratio is fairly consistent over time). In any event, the gross/net approach is a very ad hoc adjustment (for example, the 2005 LULUCF figure could have been normalised).

⁶ <https://www.mfe.govt.nz/climate-change/why-climate-change-matters/global-response/paris-agreement/new-zealand's-nationally>.

⁷ The gross/net approach has been referred to as a "trick" to make it look like we have climate ambition, but allowing our emissions to increase: <https://thespinoff.co.nz/politics/18-02-2020/once-simple-trick-to-make-your-emissions-record-look-less-abysmal/>

23. We can see no explanation for such an obtuse expression of our NDC other than to misleadingly suggest a degree of ambition which does not exist by starting with a high base figure. If our 2030 target is 58.3 Mt CO₂-e, then the NDC should be re-written as a commitment to:

~~reduce~~ increase greenhouse gas emissions ~~to 30% below~~ in 2030 by no more than 7% above 2005 levels by 2030".⁸

24. While completely lacking in the level of ambition required by a climate emergency and by the Paris Agreement itself, it would at least be expressed honestly.

Issue #3: The emissions budgets and reduction plan must be consistent with limiting global temperature rise to 1.5°C

25. Finally, as we discussed in our previous letter, we consider that it is a mandatory legal requirement on the Commission under the CCRA that its recommendations must reflect pathways consistent with the goal of limiting temperature rise to 1.5°C.
26. We were therefore concerned by the following statement in a Stuff article dated 7 November 2020:⁹

If the commission concludes the [NDC] target is too weak, and the Government accepts its advice, the commission may have to go back and re-do its emissions budgets to account for a tougher 2030 target. The current set of budgets will use the existing Paris target, said Carr.

27. As well as being extremely inefficient, prolonging uncertainty and thereby delaying action, we are firmly of the view that such an approach by the Commission would not be in accordance with the object or purpose of CCRA and would therefore be unlawful.
28. In reaching its own assessment of what is required, we consider that the Commission's focus must be on the science and on our maximum possible ambition in setting emissions budgets. If more generous budgets are set as a matter of pragmatics, cost and politics, then this is more appropriately addressed by the Government in response to the Commission's proposed budgets and reduction plans. We consider that this is appropriate in light of the differing roles of the Commission and the Minister, the need to act with a maximum level of ambition. Furthermore, as set out in our previous letter, we do not consider that setting a budget which is missed to be a mere wealth transfer.

⁸ That is, 58.3 Mt CO₂-e versus 54.5 Mt CO₂-e.

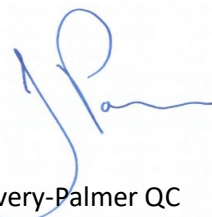
⁹ <https://www.stuff.co.nz/environment/climate-news/123317665/climate-chief-wants-a-road-safety-campaign-to-get-us-out-of-cars>

29. We appreciate that there may have been a misunderstanding or error in the Stuff report as quoted above. However, if it accurately reflects the Commission's intention then that is something we would like to urgently discuss with you.

Yours faithfully,



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Lawyers for Climate Action NZ Inc.



James Every-Palmer QC
Treasurer
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Appendix: Table of emissions

For ease of reference, the following table shows our gross and net emissions (all GHGs; Mt CO₂-equivalent) at selected years:

	1990	2000	2005	2010	2017	2030 (forecast)
Gross	65.7	76.2	83.3	79.0	80.9	75.3
Net	34.5	45.1	54.5	47.8	56.9	66.1

30% below 2005 = 58.3 (gross) and 38.1 (net) Mt CO₂-e

45% below 2010 net = 26.3 Mt CO₂-e

Source: *New Zealand's Fourth Biennial Report Under the Framework Convention on Climate Change* (2019), pp 67, 200-2003. Gross Emissions are referred to as 'Total without LULUCF'; Net Emissions are referred to as 'Total with LULUCF'. LULUCF stands for "land use, land use change, and forestry" and for New Zealand this largely refers to carbon sequestered and lost from forests. The projection for 2030 is based on the assumption that existing policy measures continue.