

22 March 2021

Climate Change Commission Secretariat
PO Box 24448
Wellington 6142

For the attention of Dr Rod Carr, Chairperson

Dear Dr Carr

Please find enclosed the submissions of Lawyers for Climate Action NZ Inc (**LCANZI**) on the Climate Change Commission's draft advice.

In making these submissions, we are fully supportive of the objectives of the Commission. The Commission's draft advice contains many excellent policy suggestions and we strongly support urgent action to put these into practice. We also acknowledge the openness of the Commission and its willingness to engage with us on multiple occasions on the issues discussed in our submissions. While we take a different view to the Commission on some issues, we greatly appreciated the opportunity to discuss these differences with them in an open and constructive manner.

However, as you will see, main focus of our submission is on whether the Commission's draft advice complies with the applicable legal frame. We have the following concerns:

- In our view, the Commission's draft advice does not comply with the legal requirements. The main reason for this is that the advice is not consistent with what is required to keep global warming to less than 1.5° Celsius - we consider that emissions over the current decade must be capped at 400 Mt, not the 628 Mt proposed by the Commission's draft budgets. This is a fundamental error that must be fixed before the advice is finalised. Failing this, the advice will be unlawful, in our opinion. Further, Aotearoa New Zealand's international reputation and brand will be at risk if we fail to adopt budgets and policies consistent with doing our fair share to keep global warming to less than 1.5° Celsius.

- The methods for accounting for Aotearoa New Zealand's emissions and presentation chosen by the Commission have the effect of obscuring our lack of progress to date and of making the budgets appear more ambitious than they really are.
- The Commission's recommendation that Aotearoa New Zealand should use offshore mitigation to bridge the gap between our Nationally Determined Contribution (**NDC**) under the Paris Agreement and our domestic emissions reductions, is, in our view, at odds with the Act and with the Paris Agreement itself. It would leave Aotearoa New Zealand exposed to international criticism and a high level of uncertainty about the cost and availability of international credits.

As you know, LCANZI is a non-profit group of over 300 lawyers who have come together to advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050. More information about us can be found on our website: <https://www.lawyersforclimateaction.nz/>

Thank you for the opportunity to make these submissions. We would be very happy to meet and discuss any aspect of them with you or your staff.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jenny Cooper'.

Jenny Cooper QC
President, Lawyers for Climate Action NZ Inc

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SUBMISSION TO CLIMATE CHANGE COMMISSION

22 March 2021

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1. Introduction

- 1.1. Lawyers for Climate Action NZ Inc (**LCANZI**) is a non-profit group of over 300 lawyers who have come together to advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050. More information about us can be found on our website: <https://www.lawyersforclimateaction.nz/>
- 1.2. The main focus of our submission is on whether the Commission's draft advice complies with the applicable legal framework, including:
 - The Climate Change Response Act 2002 (the **Act**);
 - Aotearoa New Zealand's international obligations in relation to climate change;
 - Te Tiriti o Waitangi; and
 - The right to life, which is protected under both domestic and international law.
- 1.3. Our conclusion is that the Commission's draft advice does *not* comply with the legal requirements. The main reason for this is that the advice is not consistent with what is required to keep global warming to less than 1.5° Celsius. This is a fundamental error that must be fixed before the advice is finalised. Failing this, the advice will be unlawful, in our opinion.
- 1.4. In addition, Aotearoa New Zealand's international reputation and brand will be at risk if we fail to adopt budgets and policies consistent with doing our fair share to keep global warming to less than 1.5° Celsius.
- 1.5. We also have concerns with the approach that the Commission has taken to accounting for Aotearoa New Zealand's emissions. In our view, the accounting methods and presentation chosen by the Commission are not consistent with the Act and have the effect of obscuring our lack of progress to date and of making the budgets appear more ambitious than they really are.
- 1.6. Finally, we take issue with the Commission's recommendation that Aotearoa New Zealand should use offshore mitigation to bridge the gap between our Nationally Determined Contribution (**NDC**) under the Paris Agreement and our domestic emissions reductions. While we do not oppose all use of offshore mitigation, the approach taken is at odds with the Act and with the Paris Agreement itself. It would leave us exposed to international criticism and to a high level of uncertainty about the cost and availability of international credits.

Comment on engagement with Commission

- 1.7. In making these submissions, we stress that we are fully supportive of the objectives of the Commission and we do not wish to impede its work or to slow down the adoption of policies to reduce emissions. The Commission's draft report contains many excellent policy suggestions and we strongly support urgent action to put these into practice.
- 1.8. We also wish to acknowledge the openness of the Commission and its staff and their willingness to engage with us on multiple occasions on the issues discussed in this submission. While we take a different view to the Commission on some issues, we greatly appreciated the opportunity to discuss these differences with them in an open and constructive manner.

2. Summary

What is required to keep global warming to less than 1.5° Celsius

2.1. The Commission's draft emissions budgets for the period between 2021 and 2030 would see Aotearoa New Zealand emitting 628 Mt CO₂-e.¹ However, to be consistent with what the science tells us is required to have a 50-66% chance of limiting the global temperature increase to 1.5° Celsius, that number should be less than 485 Mt CO₂-e.² This figure is based on global averages. Our "fair share" contribution as a substantial past emitter and as a developed country requires more ambition, and, in our view, means capping our emissions over the current decade at no more than 400 Mt CO₂-e.³

How the Commission has fallen into error

2.2. In our view, the draft emissions budgets are significantly higher than they should be and will permit an excess of over 200 Mt CO₂-e of emissions between 2021 and 2030. This gap has arisen for a combination of reasons including because:

- The Commission's analysis of the NDC contains a maths error which means that its calculated limit of 564 Mt CO₂-e for 2021-30 should have been 485 Mt CO₂-e.
- The Commission has failed to quantify how much this figure needs to be reduced to represent our "fair share". We consider that emissions greater than 400 Mt CO₂-e between 2021 and 2030 cannot be justified.
- In setting the draft emissions budgets, the Commission appears to have focussed on what is "achievable" rather than first asking "what is necessary to contribute to limiting the global temperature increase to 1.5° Celsius?". We consider that if the Commission had properly directed itself to this question, the answer would have been the same as for the NDC analysis and the budgets should have been set to limit our emissions for the coming decade to no more than 400 Mt CO₂-e.
- Also, as explained below, we consider that by adopting the "modified activity-based" measure of emissions, the Commission's charts give the misleading appearance of emissions reducing over time, whereas our net emissions have been increasing decade-on-decade since 1990 and would continue to do so in 2021-30 if the draft emissions budgets were adopted. This may have given the Commission false comfort about the level of ambition in our budgets.

¹ Climate Change Commission 2021 Draft Advice for Consultation, page 155.

² See section 5 below.

³ See section 6 below.

Failure to meet legal requirements

2.3. The consequence of this gap between the Commission's recommendations and what the science and our fair share requires (628 versus 400 Mt CO₂-e) is that the Commission's draft advice is contrary to legal requirements as follows:

- It is not consistent with the purpose of the Act of contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius;⁴
- It is not consistent with the purpose of the Act of enabling Aotearoa New Zealand to meet its international obligations under the Paris Agreement, which require us to pursue *ambitious* domestic emissions reductions;⁵
- In view of the greatly increased risks to human life if the temperature increase exceeds 1.5° Celsius, it is not consistent with the right to life under the New Zealand Bill of Rights Act (**NZBORA**) and the Universal Declaration of Human Rights;⁶ and
- In view of the increased impacts on Māori use and enjoyment of their whenua, kāinga, and taonga if the temperature increase exceeds 1.5° Celsius, we consider that adoption of the Commission's draft advice by the Government would not be consistent with the Crown's obligations under Te Tiriti o Waitangi.⁷

2.4. The Commission's advice on a new NDC also fails to meet the relevant legal requirements:

- The Commission's advice on what a new NDC should be is also not consistent with what is required to limit the global average temperature increase to 1.5° Celsius. In particular, the 564 Mt CO₂-e figure proposed by the Commission contains a maths error and should be 485 Mt CO₂-e. Accordingly, the advice fails to comply with the purpose of the Act;⁸ and
- While the Commission correctly finds that Aotearoa New Zealand should do substantially more to reduce emissions than the global average, due to its privileged position,⁹ it fails to put forward its assessment of what this means quantitatively, meaning it has failed to meet its obligation to advise the Minister of what the new NDC should be.

⁴ See section 3 below.

⁵ See sections and 6 below.

⁶ See section 3 below.

⁷ See section 3 below.

⁸ See section 5 below.

⁹ Climate Change Commission 2021 Draft Advice for Consultation p20, p153.

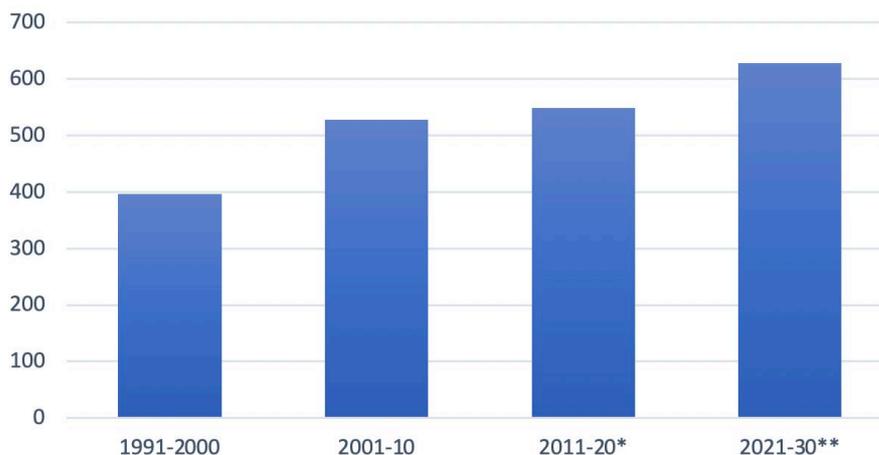
- 2.5. Unless the Commission amends its advice to recommend that Aotearoa New Zealand reduces its domestic emissions to a level that is consistent with limiting the average global temperature increase to 1.5° Celsius, and with doing our fair share as a developed country, we consider that the Commission’s advice will be unlawful and at risk of being set aside by the Court on an application for judicial review.
- 2.6. Similarly, if the Commission were to finalise its advice in its current form, we believe that a decision by the Government to accept the advice would also be unlawful and liable to being set aside by the Court.

Accounting issues and transparency

- 2.7. We have a general concern with the approach that the Commission has taken to accounting for Aotearoa New Zealand’s greenhouse gas (**GHG**) emissions when setting its emission budgets and portraying our past performance.
- 2.8. The Commission’s approach has been to adopt a “modified activity-based” method which does not attempt to track net emissions for plantation forests, but instead disregards CO₂ removals that will become CO₂ emissions when the forest is harvested. This is sometimes referred to as “averaging”. It is a complicated concept that attempts to focus attention on gross emissions, recent plantation forest planting and recent deforestation. Importantly, it is a “notional” measure of emissions does not represent our actual level of net emissions in a particular year.
- 2.9. Based on modified activity-based emissions, the Commission’s graphs show relatively steady emissions between 1990 and today, with emissions reducing under the Commission’s budgets (for example, figure ES1).
- 2.10. However, in our view Greenhouse Gas Inventory (**GHGI**) net emissions is the appropriate measure of our performance and should be used to set our emissions budgets. We consider that the use of GHGI net for setting emissions budgets and measuring performance is mandated by the definition of “net accounting emissions” in the Act, and the references to net accounting emissions in sections 5Q(1)(a) and 5X(4). GHGI net is also one of the main ways that we will be judged internationally given that this reporting is mandated under the United Nations Framework Convention on Climate Change (**UNFCCC**).
- 2.11. Looked at in GHGI net terms – which better represents what the atmosphere sees – the picture looks quite different:¹⁰

¹⁰ That is, despite our headline international commitments to reduce emissions, the combination of gross:net accounting and the use of international offsets has meant that our domestic net emissions have been steadily increasing and will continue to do so over the current decade.

Net emissions by decade (GHG Inventory)



Source: Greenhouse Gas Inventory 1990-2018 published by the Ministry for the Environment. The decade-by-decade amounts are 397, 528, 549 and 628 Mt CO₂-e.

* = estimated by using the most recently available figures (2009-2018)

** = based on CCC forecast and assuming modified-activity based emissions will be about the same as GHGI net over this period, see eg fig 7.1 of the Commission's draft advice. That is, 2021 GHG Inventory removals are estimated at 99.5 Mt over this period, and NDC accounting removals (that is, modified activity-based emissions) at 73.5 Mt based on the Commission's data behind fig 7.1.

- 2.12. The use of the 'modified activity-based' measure may have given the Commission false comfort about the level of ambition in its 2022-30 budgets and about how they will be received internationally.
- 2.13. The draft 2022-30 budgets would result in our net emissions increasing significantly in 2021-30 as they have in each of the past three decades when expressed in well understood and uncontroversial GHGI net terms. In our view, this is simply unacceptable in the face of a global climate crisis and will undermine our international credibility on climate issues. Conversely, if the budgets were set in accordance with the purpose of the Act, as required, the GHGI net chart would instead show a material drop in 2021-30. We note that our proposed "fair share" budget cap of 400 Mt CO₂-e represents a return to our 1991-2000 levels of net emissions and should be seen as a bare minimum level of ambition.
- 2.14. As currently presented, the Commission's draft advice makes it difficult to understand how the proposed budgets compare with past emissions and with international scientific recommendations. It is also very difficult for members of the public to understand the choices the Commission has made, the consequences of those choices, and the alternative options which are available.

- 2.15. As a consequence, despite the extensive public engagement that the Commission has undertaken, we consider that the Commission has not adequately fulfilled its consultation obligations under the Act.

- 2.16. Getting the budget figures right, and presenting them in a form that the public can understand, are both essential elements of the Commission's role. If the Commission gets the budget figures wrong we risk under-estimating what is required and failing to meet our goals as a consequence (or incurring greater costs down the line than we would have if we had taken action earlier – something we are already facing as a consequence of past failures). If the Commission fails to communicate the facts and issues clearly we risk disenfranchising the public from this vital decision-making process and failing to build the broad support required for the necessary changes to our society and economy.

3. Legal requirements for the Commission's advice

Introduction

- 3.1. This section of our submission discusses in more detail the legal requirements for the Commission's advice. The starting point is the Climate Change Response Act 2002 (the **Act**) and the requirements that it places on the Commission and its advice.

Purpose of the Act

- 3.2. As a public body exercising functions conferred by the Act, the Commission is legally required to act in accordance with the Act's purpose.¹¹ This is explicitly required by s 3(2) of the Act which provides that "A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of this Act."
- 3.3. The purpose of the Act is set out in s 3 and has a number of elements. The first is "to provide a framework by which New Zealand can develop and implement clear and stable climate change policies that – (i) contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and (ii) allow New Zealand to prepare for, and adapt to, the effects of climate change" (s 3(1)(aa)).
- 3.4. The second is to enable New Zealand to meet its international obligations under the UNFCCC, the Kyoto Protocol, and the Paris Agreement, each of which are appended as Schedules to the Act (s 3(1)(a)).
- 3.5. Under the Paris Agreement, Aotearoa New Zealand, together with almost every other country in the world, has agreed to limit global warming to well below 2° Celsius above pre-industrial levels and to pursue efforts to limit warming to 1.5° Celsius.¹² This commitment reflects the fact that the consequences of global warming will be much more severe if warming exceeds 1.5° Celsius.¹³
- 3.6. The High Court has previously held in *Thomson v Minister for Climate Change* that the powers and discretions conferred under the Act must be exercised in accordance with its purpose, which must be interpreted consistently with

¹¹ See for example *Astra Zeneca Ltd v Commerce Commission* [2010] 1 NZLR 297 (SC) at [29]: "A public body like the Commission must not exercise a power conferred upon it by statute for a purpose that is not within the contemplation of the enabling statute."

¹² Paris Agreement Article 2.

¹³ See IPCC SR15.

Aotearoa New Zealand's international obligations, including the UNFCCC and the Paris Agreement.¹⁴

- 3.7. Accordingly, when exercising *any* of its functions under the Act, the Commission is *legally required* to do so in a way that is consistent with the Act's purposes of contributing to the global effort to limit the global average temperature increase to 1.5° Celsius and enabling Aotearoa New Zealand to meet its international obligations, including under the Paris Agreement. Any action by the Commission that is not consistent with these purposes would be unlawful.
- 3.8. This raises the question of what is meant by the requirement in s 3(1)(a) to "contribute to" efforts to limit the temperature increase to 1.5° Celsius. In our view, this phrase must be interpreted in light of the fact that it will only be possible to limit the temperature increase to 1.5° Celsius if all parties to the Paris Agreement do their share to reduce emissions so that global emissions do not exceed the "budget" amount remaining before the concentration of greenhouse gases in the atmosphere reaches the level at which a higher temperature rise occurs.
- 3.9. If Aotearoa New Zealand reduces its emissions by less than its fair share, or does so over a longer timeframe than required, then our excess emissions will directly contribute to *failure* to meet the 1.5° Celsius target. For that reason, the requirement to "contribute to" global efforts to limit the increase in temperature must, at a minimum, mean cutting emissions by *at least* as much as the global average required to stay within the remaining emissions budget consistent with 1.5° Celsius.

Commission's other obligations under the Act

- 3.10. As well as the purpose of the Act, the Commission must also comply with the specific provisions of the Act relating to its role and functions. These include s 5B, which provides that the purposes of the Commission are to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change, and to monitor and review the Government's progress towards its emissions reduction and adaptation goals.
- 3.11. The Act sets out in s 5M a list of matters the Commission must consider, where relevant, when performing *any* of its functions under the Act. These include the current available scientific knowledge, technology, economic effects, distribution of benefits, costs and risks between generations, and the Crown-Māori relationship, te ao Māori, and specific effects on iwi and Māori.

¹⁴ *Thomson v Minister for Climate Change* [2017] NZHC 733 at [88]. This reflects the principle that domestic law must be interpreted in a manner that is consistent with international obligations where possible – see *Helu v Immigration and Protection Tribunal* [2015] NZSC 28 at [143]-[145].

- 3.12. The Commission is also subject to a requirement in s 5N to proactively engage with persons it considers relevant to its functions and, where it considers it necessary, provide for participation by the public and undertake consultation. (Note there is also a specific requirement in s 5ZA for the Commission to make its proposed advice on the emissions budget publicly available and allow time for submissions).

Provisions relating to measuring emissions

- 3.13. The Commission’s draft advice proceeds as if the way we measure emissions for the purposes of budget setting and monitoring progress is an open issue. The draft advice prefers a modified activity-based measure over GHGI net.
- 3.14. However, the 2050 target (s 5Q(1)(a)) and the Minister’s obligation to ensure the emissions budgets are met (s 5X(4)) are described in terms of “net accounting emissions”.
- 3.15. “Net accounting emissions” is defined in the Act as follows:

net accounting emissions means the total of gross emissions and emissions from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory), less—

- (a) removals, including from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory); and
- (b) offshore mitigation

- 3.16. We consider that this is an express reference to the GHGI net measure of emissions and that it is clear from the context of the Act that budgets must be set, and progress monitored, using GHGI net.

Provisions relating to Commission’s advice on emissions budgets

- 3.17. The required scope of the Commission’s advice to the Minister on emissions budgets is set out in s 5ZA. It is worth noting that this does not limit the purpose of the emissions budgets to simply meeting the Act’s 2050 targets. Further, s 5W explicitly links the emissions budgets to meeting the Paris Agreement commitment by requiring the Minister to set the emissions budgets “with a view to meeting the 2050 target *and* contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels” [emphasis added].
- 3.18. The Act sets out, in s 5ZC, a list of matters the Commission *must* have regard to when preparing advice to the Minister on the emissions budgets. The list includes, among other things, how the budget and 2050 target may realistically be met, domestic and international scientific advice, distribution of impacts, and Aotearoa New Zealand’s relevant obligations under international agreements.

- 3.19. These considerations do not displace the requirement for the Commission to ensure its advice is consistent with the purpose of the Act. Accordingly, as well as having regard to the matters set out in s 5ZC (and the matters in s 5M, where relevant), the Commission must also ensure that its advice is consistent with the Act's purposes of contributing to the global effort to limit the global average temperature increase to 1.5° Celsius and with enabling Aotearoa New Zealand to meet its international obligations.
- 3.20. It is also worth noting that s 5W requires the budgets to be set "in a way that allows those budgets to be met domestically" and that s 5Y requires each budget to include all greenhouse gases and to be expressed as a net quantity of carbon dioxide equivalent (i.e. not as separate figures for each gas).

Provisions relating to Commission's advice on emissions reduction plan

- 3.21. The Commission is required by s 5ZH of the Act to provide the Minister, before the beginning of an emissions budget period, with advice on "the direction of the policy required in the emissions reduction plan for that emissions budget period".
- 3.22. In doing so, the Commission is again subject to the overarching obligation to ensure its advice is consistent with the Act's purpose, namely, contributing to the global effort to limit the global average temperature increase to 1.5° Celsius and enabling Aotearoa New Zealand to meet its international obligations.
- 3.23. The Commission's advice on an emissions reduction plan is also subject to the requirement to consider the matters set out in s 5M and the express requirement in s 5ZC (which applies by reason of s 5ZH(3)) to take into account New Zealand's relevant obligations under international agreements.

Provisions relating to Commission's advice on the NDC

- 3.24. The Commission's advice on Aotearoa New Zealand's NDC under the Paris Agreement falls under s 5K of the Act which allows the Minister to request the Commission to prepare reports on matters related to reducing emissions of greenhouse gases and adapting to the effects of climate change.
- 3.25. The Act does not contain any specific directions to the Commission on how to approach this task. However, in providing its advice on the NDC, the Commission is once again required to act in a manner that is consistent with the overarching purpose of the Act. Accordingly, it must ensure its advice on the NDC is consistent with the Act's purpose of contributing to the global effort to limit the global average temperature increase to 1.5° Celsius and enabling Aotearoa New Zealand to meet its international obligations.

Provisions relating to the use of offshore mitigation

- 3.26. The Act defines “net accounting emissions” as gross emissions less removals and offshore mitigation.
- 3.27. The Act, however, places limits on the use of offshore mitigation. In particular, emissions budgets must be met, “as far as possible, through domestic emissions reductions and domestic removals” (s 5Z(1)). The Commission’s advice to the Minister must include an appropriate limit on the use of offshore mitigation and explain the circumstances that justify the use of offshore mitigation (s 5ZA).

Te Tiriti o Waitangi

- 3.28. The Act recognises the Crown’s responsibility to give effect to the principles of Te Tiriti o Waitangi in s 3A but it does not specifically require the Commission or the Minister to have regard to Te Tiriti in recommending and adopting emissions budgets or the NDC. However, as noted above, the list of matters set out in s 5M that the Commission must consider, where relevant, when performing any of its functions under the Act include the Crown-Māori relationship, of which Te Tiriti is a fundamental element.
- 3.29. In light of the overarching obligations that Te Tiriti places on the Crown, we consider that the Minister must comply with Te Tiriti when making any decisions under the Act. Accordingly, it makes sense that these obligations should also be taken into account by the Commission when preparing its advice to the Minister.
- 3.30. Under Article 2 of Te Tiriti the Crown has the obligation to preserve and protect tino rangatiratanga of Māori over their whenua, kāinga and taonga. The Court of Appeal has held that this imposes a duty on the Crown to actively protect Māori use of their lands and waters to fullest extent practicable.¹⁵ In our view, this encompasses a duty on the Crown to preserve and protect Māori lands and waters and other environmental taonga against the effects of climate change.
- 3.31. The Commission references the principles of Te Tiriti in its draft report and states that any targets and supporting policies should avoid compounding historical disadvantages faced by Māori. The draft report also notes the need to acknowledge iwi/Māori rights to exercise rangatiratanga and kaitiakitanga in a joint plan to reduce emissions.¹⁶ We agree, and fully support these recommendations. However, it is also important to recognise that the Crown’s duty of active protection under Te Tiriti goes further and, in our view, requires active steps by the Crown to mitigate the effects of climate change on Māori by cutting emissions.

¹⁵ *NZ Māori Council v AG* [1987] 1 NZLR 641 CA. See also the Wai 262 Report.

¹⁶ Climate Change Commission 2021 Draft Advice for Consultation at p 11 and 9.3.4.

- 3.32. In light of this, we consider that the adoption of emissions budgets and an NDC that are not consistent with the global effort to limit the global average temperature increase to 1.5° Celsius would potentially be inconsistent with the obligations of the Crown under Te Tiriti o Waitangi. In this regard we support the claim that has been brought in the Waitangi Tribunal that the Crown is acting in breach of its Article 2 obligations of active protection towards Maori in failing to take adequate steps to protect Aotearoa New Zealand’s natural environment from the damaging effects of climate change.¹⁷
- 3.33. We are also concerned by the Commission’s comment in the draft report that that it did not have enough information to make recommendations on future policy changes to address the impact of climate change on the Māori economy and its recommendation that the government should fund the compilation of this information. Our concern is that this leaves Māori without the benefit of recommendations from the Commission on policy changes. While we appreciate that the Commission may not have an optimum amount of information, our view is the Commission should still provide policy recommendations in regard to Māori upon the basis of the information that it has at present.
- 3.34. While these are our views of the relationship between the Commission’s advice and Te Tiriti, we acknowledge that we have not consulted with iwi/Māori representatives on this issue and we do not claim to speak on behalf of iwi/Māori.

The right to life

- 3.35. In exercising their powers under the Act, both the Commission and the Minister for Climate Change are required to comply with the New Zealand Bill of Rights Act 1990 (**NZBORA**).¹⁸
- 3.36. One of the fundamental rights protected by the NZBORA is the right to life. Section 8 provides that “[n]o one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice”.
- 3.37. The right to life in s 8 of the NZBORA has counterparts in global and regional human rights instruments, such as the International Covenant on Civil and Political Rights¹⁹, which Aotearoa New Zealand is a party to, and the European Convention on Human Rights (**ECHR**).²⁰
- 3.38. In view of the scientific consensus that the consequences of global warming for human life will be much more severe if warming exceeds 1.5° Celsius above pre-

¹⁷ Wai 2607 claim on behalf of the Mataatua District Maori Council. *Standing up for a sustainable world – voices of change* C.Henry, J.Rockstrom and N. Stern ed.(2020) pp179- 185.

¹⁸ New Zealand Bill of Rights Act 1990, s 3.

¹⁹ International Covenant on Civil and Political Rights, art 6.

²⁰ European Convention on Human Rights, art 2.

industrial levels, we consider that setting of an emissions target which exceeds Aotearoa's proportionate share of the remaining budget of emissions available before the 1.5° Celsius goal is exceeded is inconsistent with the right to life under the NZBORA.

- 3.39. Support for our view comes from the Dutch case of *The State of the Netherlands v Stichting Urgenda*,²¹ which arose from a 2013 challenge to the Dutch Government's target of a 20% reduction in emissions by 2020. The applicant NGO argued that the target was inconsistent with, inter alia, the right to life in the ECHR, in circumstances where the scientific consensus was that a reduction of 25-40% was necessary to keep warming to a maximum of 2°C. The Dutch Supreme Court upheld the lower court rulings that the State was under a duty to reduce emissions by 25% by 2020.
- 3.40. The Court concluded that the right to life imposes a positive obligation on States to take appropriate measures to protect the lives of those within its jurisdiction from a "real and immediate risk" which is "genuine and imminent".²² The Court also noted that, while the Netherlands' output of GHG emissions is relatively small when looked at on a worldwide scale, this did not excuse it from action. It held that the right to life "should be interpreted in such a way that [it] oblige[s] the contracting states to do 'their part' to counter [the] danger" of climate change.²³
- 3.41. The success of *Urgenda* has inspired similar challenges in other jurisdictions, including in Ireland, where the Irish Supreme Court held that the Irish Government's National Mitigation Plan 2017 was invalid on the grounds that the plan did not meet statutory requirements and also noted that there may be environmental cases where the right to life may be engaged.²⁴ A number of other cases involving similar claims based on the right to life are currently proceeding through court systems worldwide, including in the South Korean Constitutional Court,²⁵ the Canadian Federal Court of Appeal²⁶ and in the European Court of Human Rights.²⁷
- 3.42. In light of this, we consider that the Commission is obliged to ensure that its advice is consistent with the right to life of all New Zealanders, including New Zealand citizens in the Cook Islands, Niue and Tokelau who are particularly vulnerable to loss of life through the impacts of climate change.

²¹ *The State of the Netherlands v Stichting Urgenda* ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands, 13 January 2020).

²² At [5.2.2].

²³ At [5.8].

²⁴ *Friends of the Irish Environment v Ireland* [2020] IESC 49.

²⁵ *Do-Hyun Kim v South Korea* (filed 13 March 2020).

²⁶ *La Rose v Her Majesty the Queen* (appealed 24 November 2020).

²⁷ See <<https://youth4climatejustice.org/>>.

Consequences of illegality

- 3.43. The consequence of the Commission giving advice that is not consistent with the Act would be that its advice would be unlawful and may be set aside by the Court on an application for judicial review, which may be brought by any interested person. This does not mean that the Court will step in and substitute its own views for those of the Commission. Rather, the likely outcome would be that Court would identify the error (e.g. failure to ensure that the advice is consistent with limiting the global average temperature increase to 1.5° Celsius and with enabling Aotearoa New Zealand to meet its international obligations) and direct the Commission to reconsider its advice in accordance with the Court's determination as to the relevant legal requirements.
- 3.44. Further, if the Commission's advice were held to be unlawful, any decision by the Government to adopt the advice would likewise be unlawful and at risk of being set aside by the Court. Again, the Court would not substitute its views for those of the Government but, as has occurred in The Netherlands and in Ireland, it may set aside the Government's decision and require it to undertake a fresh decision-making process in accordance with the Court's determination as to the relevant legal requirements.

4. Getting a clear picture of our emissions

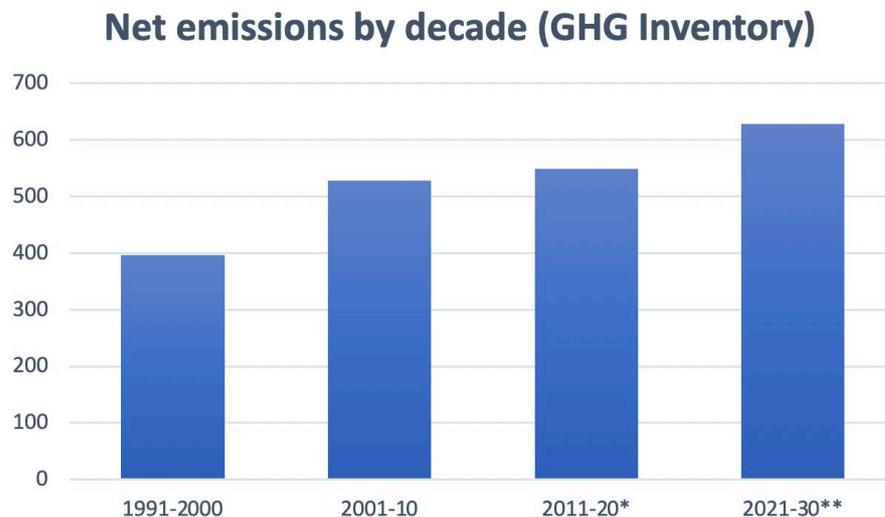
Introduction

- 4.1. Aotearoa New Zealand has appeared to set reasonably ambitious international targets. These include:²⁸
- to reduce our emissions to 5% below 1990 levels by 2020; and
 - to reduce greenhouse gas emissions to 30% below 2005 levels by 2030.
- 4.2. However, it has been difficult to assess our actual progress in terms of reducing our gross emissions or increasing our removals (forestry) due to the methodologies adopted for measuring our progress and strategies for meeting these targets. These include:
- adopting a gross:net approach for expressing our international targets;²⁹
 - using international offsets to meet our targets as a substitute for domestic action;
 - carrying over units between periods;
 - use of split-gas accounting; and
 - switching from GHG Inventory net to a ‘modified activity-based’ measure of emissions.
- 4.3. These are all complex issues. However, a concern common to all these choices is that they have a tendency to make our climate ambition appear greater than our climate action.
- 4.4. Furthermore, an unfortunate side effect is that the ability to engage in these issues in order to understand our climate change progress is out of the grasp of all but a handful of specialists. When you add the complexity of the emissions trading scheme (ETS) it becomes even more difficult. While commentators have criticised the methodologies and strategies referred to above, it is difficult to create genuine debate or political engagement due to a fortress of jargon and intricacy.
- 4.5. At the end of the day, what matters is the level of emissions that the atmosphere receives from Aotearoa. That is what New Zealanders can understand and deserve to be told about.

²⁸ See <https://www.mfat.govt.nz/en/environment/climate-change/meeting-our-targets/>.

²⁹ That is, setting a target based on gross emissions in the base year (that is, ignoring forestry removals), but measuring progress by net emissions (that is, taking into account forestry removals).

- 4.6. The following chart (reproduced from the Introduction) shows Aotearoa New Zealand's net GHG Inventory emissions by decade, including as projected for 2021-30 by the Commission.



Source: Greenhouse Gas Inventory 1990-2018. See the Introduction for explanatory notes.

- 4.7. What this shows is that, decade-on-decade, our net emissions are increasing and that this will continue under the Commission's proposed budgets.
- 4.8. Importantly, no matter how we like to portray our climate commitment in words, it will ultimately be judged on results. These are the international apple-with-apple figures that we will be judged on. In no way do they represent a reasonable level of climate ambition.

Accounting for emissions

- 4.9. The approach taken in the draft report to accounting for emissions has an impact on how our budgets and targets are viewed.
- 4.10. The approach adopted by the Commission is summarised as follows:³⁰

Overall, we consider that the NDC's modified activity-based framework for land emissions accounting, with a 1990 base year and 'averaging' for post-1989 forests, is a more suitable accounting approach for measuring progress towards emissions budgets and the 2050 target.

- 4.11. In adopting this activity-based approach to accounting for forestry the Commission rejected the alternative approach of 'GHG Inventory net'.

³⁰ Climate Change Commission 2021 Draft Advice for Consultation p 140.

- 4.12. In our view, the Commission has no discretion on this issue and is required to use GHGI net by the Act. As explained in section 3, the Act uses the concept of “net accounting emissions” in defining the 2050 target and in imposing a duty on the Minister to ensure that emissions budgets are met (ss 5Q and 5X). “Net accounting emissions” is defined by reference to our GHGI reports. Accordingly, we consider that, as a matter of law, GHGI net is the required measure.
- 4.13. Furthermore, we consider that GHGI net is more appropriate. GHGI net is a more accurate measure of ‘what the atmosphere sees’. As the Commission notes:³¹

‘Land-based’ accounting [GHG Inventory net] aims to cover all emissions and removals from soil, trees, plants, biomass, and wood products. Emissions and removals by forests are reported in a way that corresponds to tree growth, harvest and deforestation – known as stock change accounting. By trying to record emissions and removals when they occur, it gives a truer representation of ‘what the atmosphere sees’.

- 4.14. By contrast, the ‘modified activity-based’ measure treats plantation forests differently by disregarding CO₂ removals that will become CO₂ emissions when the forest is harvested. It is a complex and “notional” measure of emissions that does not represent our actual level of net emissions in a particular year but rather averages out the removal-emission cycles from plantation forests.
- 4.15. A supporter of the ‘modified activity-based’ measure might argue that if GHG accounting is used for our future targets and budgets, it will make our 2021-30 performance look poor relative to past decades due to the lower level of removals in the coming decade (see fig 7.1).

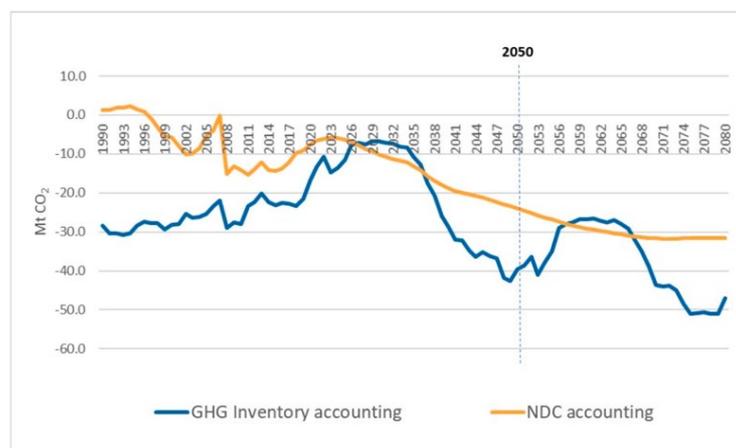


Figure 7.1: Comparison of national forest net emissions using Greenhouse Gas Inventory (stock change) and NDC (averaging) accounting.

Source: MPI October 2020 updated ‘with existing measures’ projection, \$35 emissions price

³¹ Climate Change Commission 2021 Draft Advice for Consultation p 138.

- 4.16. There is some truth to this; our performance in 2021-30 measured by GHG Inventory net will be adversely affected by the low level of removals in this period compared to what we have experienced between 1990 and 2020.
- 4.17. However, we do not consider that this means that GHG Inventory net should be replaced. In particular:
- a) The key issue is what we are emitting net of removals, and that is what the GHGI net numbers show.
 - b) We report the GHGI numbers under the UNFCCC. Accordingly, this is what our performance and international reputation will be judged on.
 - c) The numbers span 40 years (1990 to 2030), so the long term trend is clear despite the cyclical nature of forestry emissions and removals.
 - d) Aotearoa New Zealand has relied on forestry removals as measured by GHGI to demonstrate our progress in the past. We cannot disown this metric now when removals are at the low ebb in the cycle. Rather, we should have a consistent measure of our progress and, if need be, explain poor performance over a particular period by reference to forestry cycles and defend our position based on longer term performance (to the extent we can).
 - e) At any rate, neither forestry nor the cyclical nature of forestry removals is “the problem”. Rather, the problem is our failure to take steps to address the falling level of removals from forestry which has occurred over the last decade and which will continue over the next decade or so. Aotearoa New Zealand has known that this part of the cycle was coming, but we have failed to take steps to reduce our gross emissions to accommodate the decline in removals.
 - f) Switching to a different measurement of net emissions is not the answer and it creates its own set of problems. In terms of fig 7.1, the impression it creates is that Aotearoa New Zealand has used the blue line when it suited us (that is, to show significant removals 1990-2020), but we are now switching to the orange line which raises our past levels of net emissions to make our 2021-30 performance look better in relative terms.
- 4.18. What ultimately matters is what we put into the atmosphere. The Commission is attempting to put us on a clear path of reducing gross emissions and increasing removals through forestry. In many ways these actions are more important than an esoteric debate over GHG Inventory net versus the ‘modified activity-based’ measure. However, it is important that we have clarity as to actual progress (or lack of it) and this is what using GHG Inventory consistently over time and for all headline measures would deliver.

- 4.19. If GHG Inventory net was used for our budgets, our reporting and our NDC (both for the base year and the thing being measured, i.e. net:net) then we would have an understandable view into our climate progress. This would greatly assist transparency and political engagement. The only complexity would be the cyclical nature of forestry emissions and removals, but that is an order of magnitude simpler than the layers of complexity adopted to avoid it.

Commission's choice of modified activity-based rather than GHG Inventory net emissions

- 4.20. We do not consider that the Commission's charts (which are based on modified activity-based measures of emissions, also known as NDC accounting) present a true picture of where we have been and where we are heading.

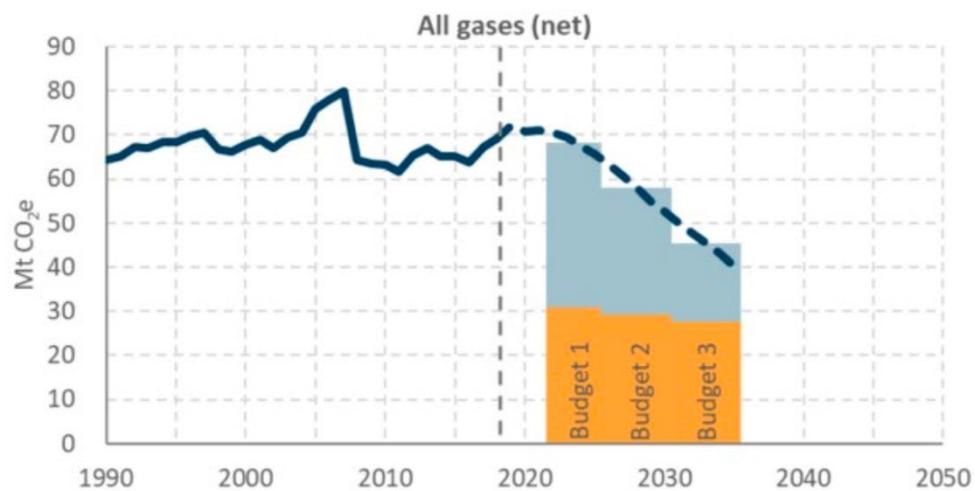
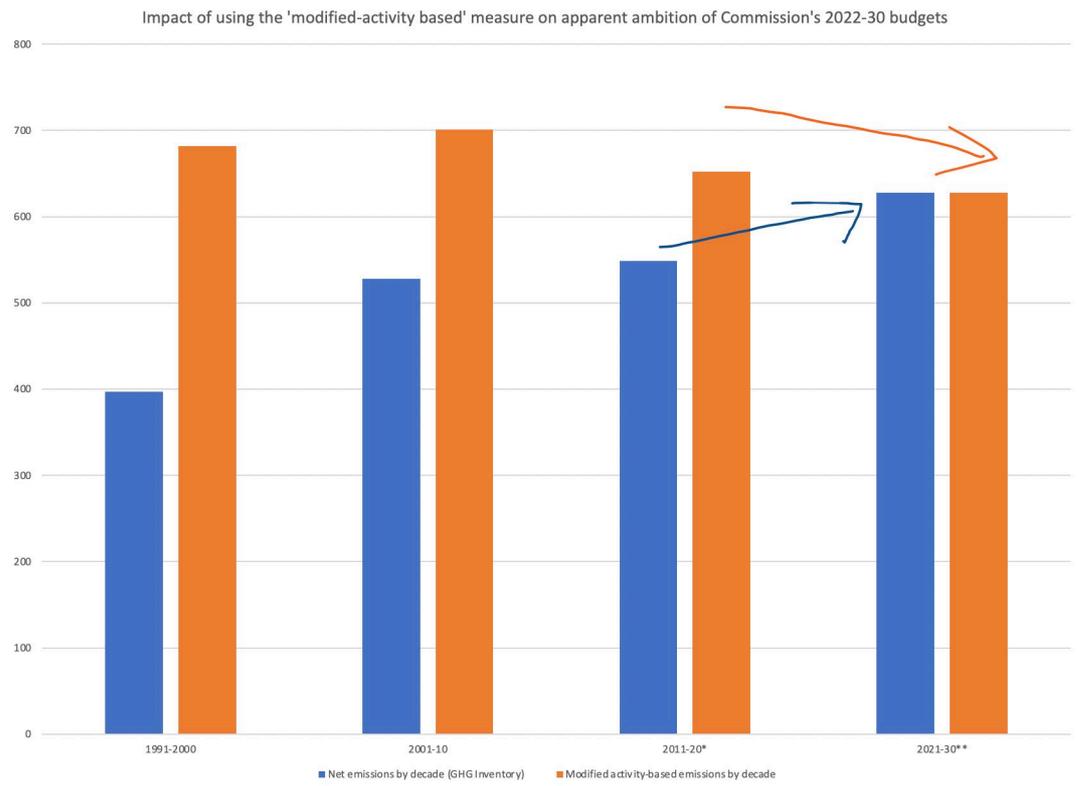


Figure ES1: Our proposed emissions budgets. The figure shows all gases combined as CO₂ equivalent – grey is emissions of long-lived gases, orange is biogenic methane emissions.

- 4.21. Compared with what we have previously reported (GHGI net), the switch to a modified activity-based measure makes our historic emissions look higher and our 2021-30 emissions look lower than would be the case. That is, a lot of the “ambition” is simply changing what is measured.
- 4.22. This can be seen in the following chart, where the change from using GHG Inventory net to the ‘modified activity-based’ measure makes our 2021-30 performance look better than 2011-20. That is, the 2021-30 figure is the same in both graphs (since the estimated GHGI and ‘modified activity-based’ removals are approximately the same over this period, see fig 7.1) but using the ‘modified activity-based’ measure increases the 2011-20 figure which makes it look as if the direction of change is favourable. It seems that we are again choosing methodologies on an ad hoc basis to improve our apparent ambition.



Source: Greenhouse Gas Inventory 1990-2018 and CCC fig 7.1 data to calculate the 'modified activity-based' figures. The 'modified activity-based' figures are 682, 701, 652 and 628 Mt CO₂-e. See the Introduction for further explanatory notes.

- 4.23. In the past MfE has used GHG Inventory to report on our net position. If the Commission continued to use this metric, it would show that our emissions for 2021-30 would be higher than 2011-20 (based on the draft budgets). However, by switching to the 'modified activity-based' measure, the chart shows a higher level of 2011-20 emissions which are above the 2021-30 projections. By switching from the blue line to the orange line in the chart on the right hand side our 1990-2020 emissions looks steady (rather than steadily increasing) and our 2018 starting point is much higher (55.5 versus 69.2 Mt) so the 2021-30 projections (which are similar on both GHG Inventory and the 'modified activity-based' measure) appear to deliver a decrease, instead of an increase, in net emissions.

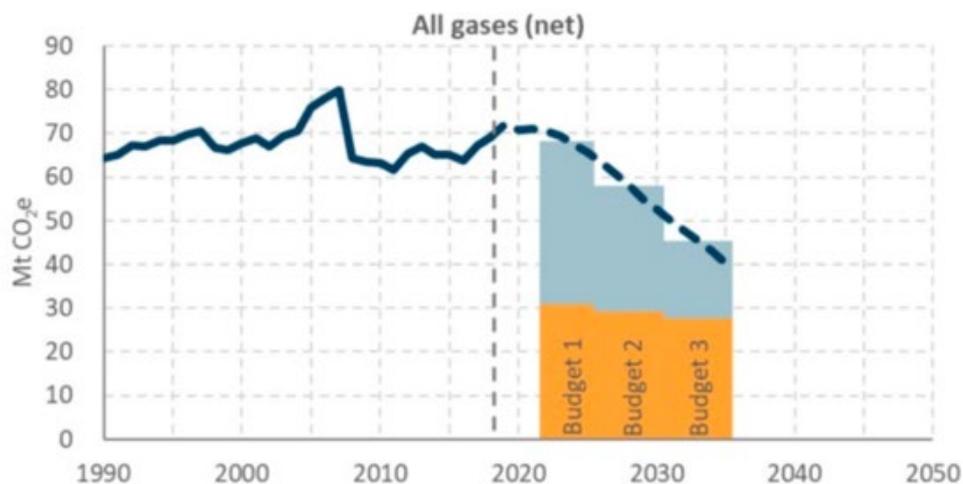
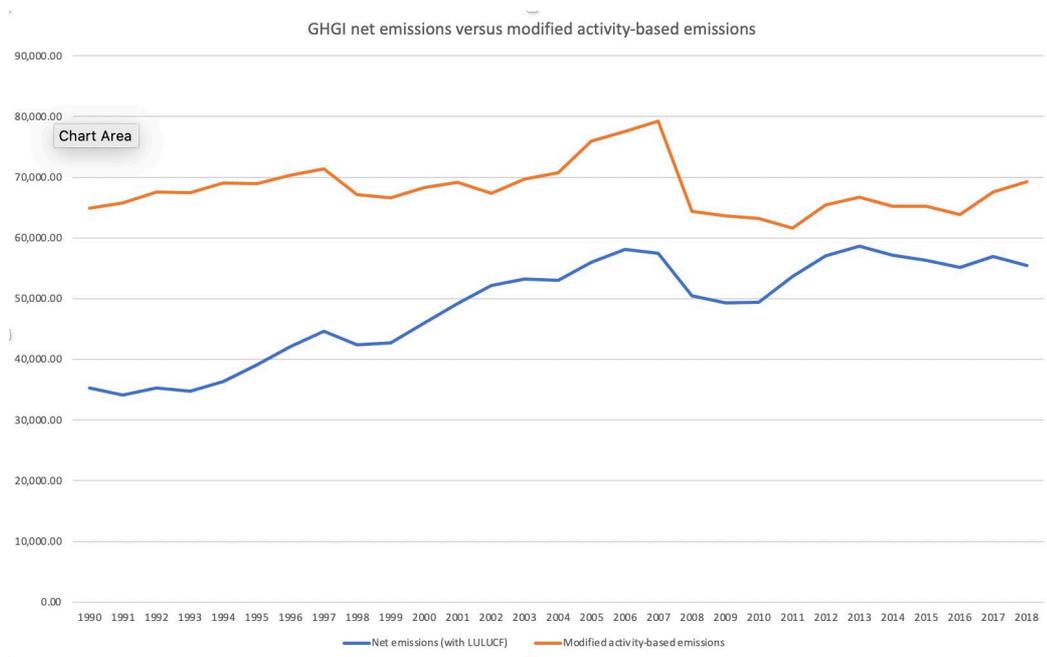


Figure ES1: Our proposed emissions budgets. The figure shows all gases combined as CO₂ equivalent – grey is emissions of long-lived gases, orange is biogenic methane emissions.



Conclusion

- 4.24. We consider that the best way to measure our emissions is through GHG Inventory net. We consider that this should be adopted for our budgets, our reporting and our NDC (both for the base year and the thing being measured, i.e. net:net). In our view, the use of GHGI net is required by the definition of “net accounting emissions” in the Act.
- 4.25. The draft advice treats this as a technical issue (see chapter 7 of the draft advice, and supplementary chapter 3) and the key charts are labelled as showing “All gases (net)”. The only attention drawn to this issue in the first 100 pages is the

bland statement that: “Net emissions and removals by forestry are calculated using the modified activity-based approach (see chapter 7).”³²

- 4.26. We consider that the modified activity-based measure is not a true measure of our net emissions. Rather, it is a notional construct designed to focus on recent forestry plantings and removals. We do not consider it to be a measure of the “net quantity of carbon dioxide equivalent” (s 5Y(1)) nor does it satisfy the definition of “net accounting emissions”. We also consider use of the label “net” is likely to lead to confusion given that this has been how MfE has referred to our GHGI net emissions in its reporting.³³ Furthermore, the impact of this contestable (and we consider very controversial) choice is obscured by not illustrating our past performance and future budgets in GHGI net terms.
- 4.27. In preferring the ‘modified activity-based’ measure, we consider that the Commission has erred in law. Even if it had discretion in choosing how emissions are measured, we consider that it failed to give proper weight to the importance of:
- using consistent measures over time, and is instead changing measures mid-stream when the ‘modified activity-based’ measure will make our performance appear better;
 - using a measure that best matches what the atmosphere sees;
 - using a measure that best matches how the rest of the world will judge our performance; and
 - using methodologies that make our climate change response understandable to ordinary New Zealanders who care about the issue and what to understand whether we are making progress or not.
- 4.28. Even if the Commission remains of the view that the ‘modified activity-based’ measure is lawful and the better approach, we see no justification for failing to include the GHG Inventory net figures in the Commission’s advice alongside the ‘modified activity-based’ figures, for the sake of clarity and transparency.

³² Climate Change Commission 2021 Draft Advice for Consultation page 31.

³³ See for example <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/new-zealands-greenhouse-gas-inventory-1990-2018-snapshot.pdf>.

5. 2021-30 emissions and 1.5° Celsius: IPCC consistent emissions should be below 485, not 564, Mt CO₂-e

Introduction

- 5.1. As explained in previous sections, we consider that the Commission is required to set emissions budgets which are compatible with limiting global temperature increases to 1.5° Celsius. If Aotearoa New Zealand does its fair share of emission reductions then we will contribute to achieving this goal; however, if we do less than our fair share then we will contribute to not achieving this goal.
- 5.2. The Commission compares its draft budgets against the 1.5° Celsius goal in chapter 4. This is a qualitative analysis which occurs through a series of graphs. In our view, the graphs give reason for concern, not comfort. We have reviewed and concur with the submission of Dr Paul Winton for the 1Point5 Project that the proposed budgets and therefore implied pathways are years behind average or median IPCC scenarios.
- 5.3. In addition, we consider the draft advice is internally inconsistent in that:
- a) the NDC analysis in chapter 8 reaches the conclusion that to do our fair share to contribute to achieving the 1.5°Celsiusgoal our emissions over 2021-30 must be less than 564 Mt CO₂-e (and in fact much less);³⁴ yet
 - b) the Commission has set budgets and recommended policies which it predicts will result in 628 Mt CO₂-e of emissions over this period.
- 5.4. While the 564 Mt figure starts from our previous international commitments and the 628 Mt figure starts from our current emissions, we consider that the numbers are directly comparable in that our failure to meet past targets through domestic reductions/removals should not result in a more permissive budget going forward.
- 5.5. In this section we set out why we consider that “564” has been miscalculated.

“564” contains a mathematical error

- 5.6. The Commission arrived at the 564 Mt figure by:
- a) determining the 2030 end-point by applying the interquartile range of the IPCC’s required percentage reductions on a split-gas basis to our 2010 emissions;

³⁴ Based on science, our net emissions should be at 52.3 mT in 2030 and no more than 564 for 2021-30. In considering our fair share, the Commission considers that the reductions should be substantially greater.

- b) determining the 2021 emissions level based on our past international commitments;
- c) determining emissions limit for each gas based on these data points for each year between 2021 and 2030 (inclusive);
- d) aggregating these figures into an all gas limit of 52.3 Mt CO₂-e for 2030, and a ten year figure of 564 Mt CO₂-e for 2021-30 (using mid-points of the interquartile ranges).

5.7. The interquartile range for each category of gas from the IPCC is summarised by the Commission in Table 8.1:

Table 8.1: Reductions in greenhouse gas emissions in IPCC model pathways with no or limited overshoot (interquartile range)

	Percentage change relative to 2010		
	2030	2050	2100
Net carbon dioxide emissions	-40 to -58%	-94 to -107%	-121 to -136%
Agricultural methane emissions	-11 to -30%	-24 to -47%	-37 to -60%
Agricultural nitrous oxide emissions	+3% to -21%	+1% to -26%	-6 to -39%

Source: IPCC, Special Report on 1.5°C, Summary for Policymakers, Table SPM.3b. IPCC model results.

5.8. The Commission correctly identifies the percent change required for net carbon dioxide emissions in 2030 relative to 2010 as -40 to -58%. Note that this is a reduction for net carbon dioxide emissions.

5.9. The calculation is recorded in Table 10.2 of supplementary chapter 10 as follows:

Table 10.2: Aotearoa NDC emissions trajectory start and end point calculations by gas

	Start point		End point		
	1990 emissions (kt gas)	2020 target 5% reduction on 1990 (kt gas)	2010 emissions (kt gas)	IPCC 2030 Lower Quartile reductions (kt gas)	IPCC 2030 Upper Quartile reductions (kt gas)
Net carbon dioxide	25,446	24,174	34,958	20,975	14,682
Methane	1,292	1,227	1,373	1,222	961
Nitrous oxide	16.5	15.7	23.1	23.8	18.2

5.10. As explained above, these calculations feed into the 2030 target of 52.3 mT (all gases) and the 564 mT budget.

5.11. However, this methodology and calculation is subject to a maths error:

- a) Although the table is labelled as a reduction in net carbon dioxide, the figure used for 2010 emission is gross CO₂ emissions (source Greenhouse Gas Inventory 1990-2018);
- b) Our net emissions for 2010 were 6,757 kt (source Greenhouse Gas Inventory 1990-2018); and
- c) If we make this correction, then:
 - (i) the 2030 all gases target would drop from 52.3 mT to 37.9 mT; and
 - (ii) the 564mT 2021-30 maximum budget would become 485 mT.³⁵

5.12. We consider that GHG Inventory net (rather than the ‘modified activity-based’ measure) is the correct figure to use since it corresponds to the UNFCCC framework and the IPCC’s analysis.

No basis for using gross CO2 instead of net CO2

5.13. Although we consider this a simple maths error – a % reduction from net CO₂ can only be applied to a net CO₂ figure – we understand that the Commission deliberately used a gross figure for the 2010 starting point.

5.14. Accordingly, we now consider the Commission’s apparent explanation.

5.15. The Commission sets out its reasons as follows:³⁶

³⁵ We have repeated the Commission’s calculations in Tables 10.4 and 10.5 of supplementary chapter 10, but using net CO₂ in 2010 of 6.8 Mt. The resulting interquartile range for 2030 is 33.18 to 45.57 Mt (midpoint = 37.88 Mt) and for 2021-30 is 458,951 to 524,094 Mt (midpoint = 484,766 Mt).

³⁶ Commission Draft Advice, Supplementary Chapter 10, pp 6-7.

Forest accounting

Consistent with the Kyoto Protocol based target accounting approach, forestry is excluded from the base year.

The reductions in carbon dioxide modelled by the IPCC are to net emissions. Under the agreed accounting rules for the Kyoto protocol, emissions and removals of carbon from land use change and by forestry are excluded from the base year in calculating targets if the sector was a net sink of emissions in the base year – which it was in Aotearoa.

This is because carbon removals from new plantation forestry deliver a one-off removal from the atmosphere over the first decades of the life of the forest. After that time, the forest is neither a sink nor a source of emissions as removals from growth are balanced by emissions at harvest. After that time, the forest is neither a sink nor a source of emissions as carbon removals from growth are

balanced by emissions at harvest. Including these emissions removals in the base year would mean an ongoing level of new forest planting would be required to maintain net emissions at a constant level. This does not accurately represent the level of effort in the base year and would not be sustainable indefinitely.

At a global level however emissions from land use change represent additional emissions every year through deforestation and need to be reduced in the same way gross emissions do.

Chapter 3: How to measure progress, provides further detail on this issue.

- 5.16. We do not consider that this justifies using a gross CO₂ figure in place of a net CO₂ figure for the following reasons.
- 5.17. First, the Commission appears to have seen this as an issue to do with gross:net accounting (see explanatory box). However, gross:net accounting relates to how we have chosen to express our international targets. That is, we express percentage reductions relative to gross emissions in the base year but measure our progress in net emissions. It does not relate to the 2030 level of emissions for Aotearoa New Zealand implied by the IPCC's analysis.

What is gross:net accounting?

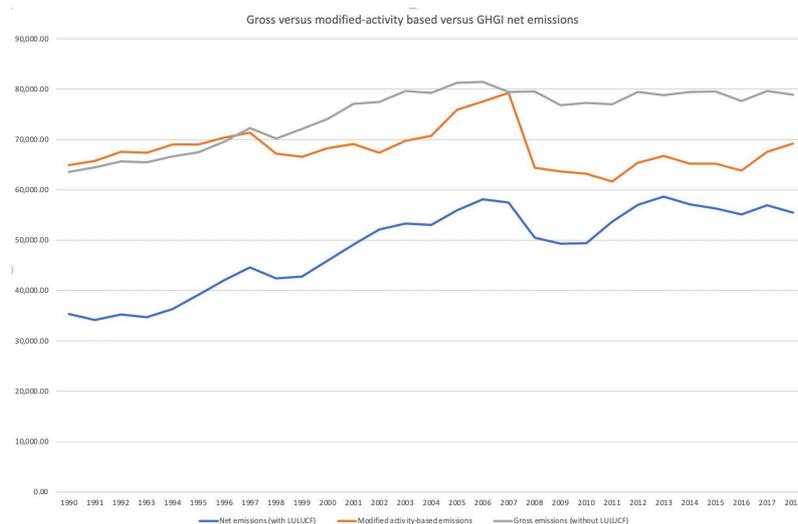
- Our NDC is expressed as “New Zealand commits to reduce greenhouse gas emissions to 30% below 2005 levels by 2030”
- Internationally, gross:net accounting refers to the approach to accounting for annual LULUCF emissions by ignoring the previous years' LULUCF emissions and only measuring the LULUCF emissions accumulating for the current year.³⁷ This was the approach used under the Kyoto Protocol and a version of this has been adopted under New Zealand's current NDC.³⁸
- However, in New Zealand, officials and the Commission have interpreted gross:net as an approach to measuring end emissions targets by

³⁷ Options for accounting under UNFCCC 2013 Prag et al. Table 4.

³⁸ Addendum to New Zealand's Intended Nationally Determined Contribution 22 November 2015.

applying the target % reduction to gross emissions in the base year and measuring progress in terms of net emissions. This is the approach that was taken to end targets under the Kyoto protocol. However, it is not expressly adopted in New Zealand's NDC or any other policy document for targets under the Paris Agreement.

- As such gross:net target accounting appears to be an informal assumption that has been adopted by government officials, and, in turn, the Commission, for Paris Agreement targets.
- On this basis, the Commission interprets our NDC as follows: "New Zealand commits to reduce our net greenhouse gas emissions to 30% below 2005 levels of gross greenhouse gas emissions by 2030".
- This is not clear on the face of the NDC, but is how MfE officials and Commission staff understand it. The thinking seems to be that CO2 removals due to forestry in base years should be disregarded when setting future targets because new plantation forests deliver one-off removal over first decades only.
- We consider that gross:net accounting is misleading. Starting a % reduction from gross (grey line) but measuring performance in net (orange line = the 'modified activity-based' measure; blue line = GHG Inventory) makes our NDC target look more ambitious than it really is since removals are counted in the target but not in the base. That is, we get off to a head start because the other two measures of emissions both start at or below gross emissions in the base year.



- Furthermore, there is no need to use gross:net accounting. We can just say that our current NDC target for net emissions in 2030 is to be below 56.9mT.
- If we do express it in gross:net terms then we should be clear that we are measuring progress in net emissions and that the target represents:

(i) a 30% reduction relative to 2005 gross emissions (81.3 mT); but (ii) a 2% increase relative to 2005 net emissions (55.9 mT).

- 5.18. Secondly, the assertion that removals from forestry should not be counted because they are time bound but that deforestation should count because that represents additional emissions perpetually does not make sense. If afforestation is a transitory removal of emissions, how can deforestation be treated as a permanent increase?
- 5.19. Finally and most importantly, simple mathematical logic requires the percentage reductions to be applied to net GHG Inventory CO₂ emissions because they were determined on that basis. That is, unlike gross:net accounting using a gross figure is not an available option here. Applying the IPCC's percentage reductions to our gross CO₂ figures as compared with Kyoto LULUCF net emissions is an apples-with-oranges error. You can see this by asking what would happen if every country ignored 2010 forestry removals? In this scenario the IPCC % reductions would not achieve sufficient reductions. Putting this around the other way, if the IPCC had disregarded forestry removals in 2010 then the % reductions would have been higher.
- 5.20. In conclusion, "564" has been wrongly calculated and the IPCC consistent number for 2021-30 should have been 485 Mt CO₂-e.

6. What should our NDC be?

Introduction

- 6.1. The NDC should reflect New Zealand’s maximum ambition to reduce emissions. This is reflected in the requirements for the NDC to reflect its “maximum possible ambition” and to “pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”.³⁹
- 6.2. The NDC needs also to be geared to meet the long term temperature goals set out in the Paris Agreement.⁴⁰ In this regard the Act has made a commitment to contribute to the target of keeping global temperature increases to less than 1.5°Celsius above pre-industrial levels.
- 6.3. The NDC must also reflect Aotearoa New Zealand’s obligation under the Paris Agreement as a developed nation to take the lead in achieving these targets.⁴¹
- 6.4. On this basis the starting point is that the NDC should be at least equivalent to the level of reductions in global GHGs between 2010 and 2030 stipulated by the IPCC as being necessary to meet the 1.5°Celsius target, applied to Aotearoa New Zealand’s net 2010 emission levels. As calculated above, this translates to a 2030 target of 37.9 Mt and a 2021-30 budget of 485 Mt. There should then be consideration as to whether New Zealand as a developed nation should take the lead⁴² and set a target for an even greater reduction in GHG. The Commission’s advice is that it should (although it does not quantify this). We agree and comment further on this below.
- 6.5. There should then be an assessment as to whether reaching this target represents Aotearoa New Zealand’s ‘highest possible ambition’ as required under Article 4(3). If not, an even more ambitious target should be set to match New Zealand’s maximum ambition.
- 6.6. If on the other hand it is assessed that even with maximum ambition Aotearoa New Zealand cannot reach the 1.5°Celsius consistent level of emission cuts then the target should be set at the maximum ambition level and the NDC should state that although it is at present expected Aotearoa New Zealand cannot reach a 1.5°Celsius consistent level of emission cuts it will explore how settings can be changed so that greater cuts may be possible and will revise the NDC target accordingly at the 2025 review.
- 6.7. Given the suggested approach of setting the NDC in parallel with the emission budgets the issue of what the current NDC should be at the level of Aotearoa

³⁹ Article 4 (2) and (3).

⁴⁰ Article 4(1).

⁴¹ Article 4(4).

⁴² Article 4(4).

New Zealand's maximum ambition can be assessed as part of our suggested approach to setting the budgets as set out below.

Commission's approach and fair share considerations

6.8. The "564/485" figures discussed are based on global averages. However, as per the Paris Agreement, each country's fair share will be different. Determining Aotearoa New Zealand's "fair share" involves consideration of:

- a) responsibility for past emissions;
- b) per capita sharing of the remaining global budget; and
- c) our capability to reduce.

6.9. As a result, developed countries such as Aotearoa New Zealand are expected to do more than merely the global average. The Commission accepts this in its advice and states that New Zealand must make "significantly deeper" reductions than the global average. However, the Commission fails to recommend a particular level for our fair share. We consider it is required to do so, having regard to both the specific request from the Minister, and also the need to comply with the purposes of the Act.

6.10. In terms of what this means in practice, we broadly agree with Oxfam's (2020) analysis (referred to by the Commission) that our fair share would involve an 80% reduction from 1990 emission levels by 2030.⁴³ While this is a dramatic number, we consider it follows from taking "fair share" and "highest possible ambition" seriously.

6.11. We set out below two further reasons why Aotearoa New Zealand's fair share must be a much larger reduction than the global average: methane and our failure to reduce emissions to date.

Extra reason #1 to do more: Methane

6.12. Aotearoa New Zealand has a unique emissions profile, with half of our emissions coming from agricultural methane.

6.13. In calculating "564/485" the Commission looks at methane and CO₂ separately. Because: (a) the IPCC predicts slower reductions in methane (-11 to -30%) than in net CO₂ (-40 to -58%) between 2010 and 2030; and (b) such a high share of our

⁴³ Oxfam Briefing Paper: *A Fair 2030 Target for Aotearoa*, September 2020. Available at: <https://www.oxfam.org.nz/wp-content/uploads/2020/09/Oxfam-NZ-Briefing-A-Fair-2030-Target-for-Aotearoa.pdf>

emissions come from methane, our target percentage reduction is lower than the global average when expressed in terms of all gases.

- 6.14. While we are not opposed to the split-gas approach per se, we are concerned that the Commission treats this range (-11 to -30%) as a normative target when it was just an estimate of a global average. Furthermore, using the GWP₁₀₀ gives methane a 25x multiplier for CO₂ equivalent purposes, but this underweights its impact in terms of temperatures over the next three decades. On a GWP₂₀ basis there is a 85x multiplier for the extra warming effect of methane.
- 6.15. As the Commission notes, methane has a very high short-term warming effect but a faster breakdown than CO₂. This is illustrated by the following charts from the draft advice:

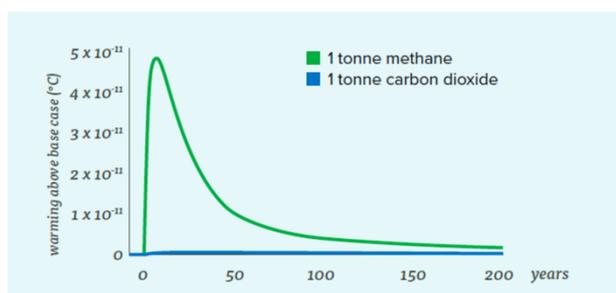


Figure 4.1: The warming effect of a tonne of methane and a tonne of carbon dioxide.

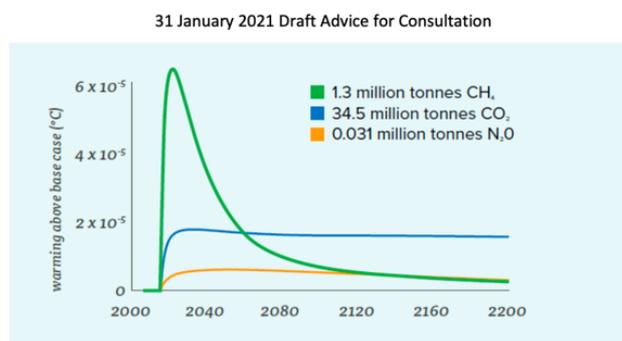
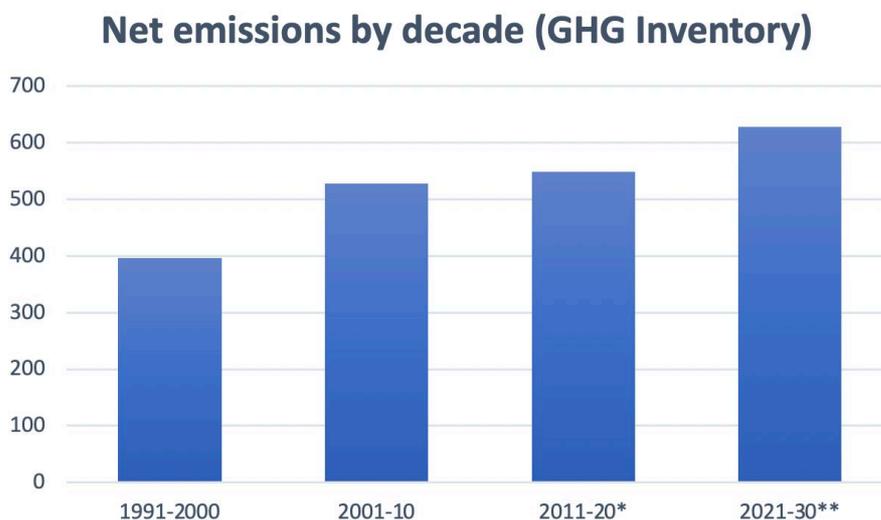


Figure 4.2: The effect of the country's yearly emissions of carbon dioxide, methane and nitrous oxide on warming. Note: This figure is based on 2016 emissions in Aotearoa.

- 6.16. In places the Commission seems to emphasise the lower long term impact of methane. However, in our view the contribution that methane will make to peak temperatures this century, combined with Aotearoa New Zealand's high share of methane relative to other countries, creates a special responsibility in terms of reducing our all gases emissions substantially more than the global average.

Extra reason #2 to do more: Our failure to act to date

6.17. In the Introduction we set out Aotearoa New Zealand’s “Net emissions by decade (GHG Inventory)” chart. We repeat it here for convenience.



Source: Greenhouse Gas Inventory 1990-2018. See explanatory notes in the Introduction.

6.18. This is how the world will see our emissions looking back as at 2031 if the Climate Change Commission’s current draft budgets are adopted. This would rightly be seen as a failure. We would have increased our net emissions decade-on-decade at a time when global emissions need to more than halve between today and 2030 to have a reasonable chance of limiting global temperature rise to 1.5 degrees.⁴⁴

6.19. As discussed in previous sections, we cannot avoid this outcome by choosing a different way of measuring our emissions that will make 2011-20 look worse than previously reported. Rather, we can only prevent this outcome by adopting much more ambitious budgets and much more radical policy solutions.

6.20. Our failure to make any progress despite knowledge of climate change and our portrayal of ambition internationally creates a further special responsibility to significantly reduce our emissions now.

Conclusion on our fair share

6.21. The Commission does not put forward a number that corresponds to doing our fair share, having regard to our far higher than average historic and current emissions. We consider that it is required to do so and that an NDC of 400 Mt

⁴⁴ See UNEP 2020 Emissions Gap Report.

for the period from 2021-2030 would be a minimum level of ambition to reflect our fair share. This would return our emissions to the level they were in 1991-2000.

How should we express our NDC?

- 6.22. Once we have arrived at a figure for our NDC in terms of the 2030 level and the 2021-30 budget, we need to consider how we express it. We submit that the Commission should use a net:net approach.
- 6.23. A net:net approach appears to be most consistent with the Paris Agreement, given that an objective of Article 4, under which NDCs are set, is to make emission reductions while achieving “a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases”. It is implicit that in order to achieve the balance over the NDC period, net emissions in the base year and the target year need to be taken into account.
- 6.24. This seems to be the approach taken by other parties to the Paris Agreement. Although some but not all of the parties have expressed their NDC targets on a net:net basis, this seems to be the approach that nearly all parties are taking – especially large comparable parties such as Australia, Canada, the U.S. (when they were a party) and the EU.⁴⁵
- 6.25. So, for example, we have calculated the 2030 net level as no more than 37.9 Mt (before adjusting for our fair share). This figure can be expressed simply as a number. If it is expressed as a percentage relative to 2005, it should be expressed as a 32% reduction relative to 2005 net (56.9 Mt). It can also be expressed as a 53% reduction relative to 2005 gross (81.3 Mt).

7. What should our domestic emissions budgets be?

- 7.1. For the reasons already discussed, we do not consider that the Commission has adopted the correct approach to setting the three emissions budgets over 2022-2035. In particular it has failed to set the budgets in line with what is required to limit warming to 1.5°Celsius or with Aotearoa New Zealand’s highest possible ambition as required by the Paris Agreement.
- 7.2. In assessing what the ‘highest possible ambition’ requirement involves the Paris Agreement stipulates that this “should reflect the country’s common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”⁴⁶ It also requires that efforts should balance further factors of equity, sustainable development and efforts to eradicate poverty.⁴⁷

⁴⁵ *Wonky carbon accounting hides NZ’s feeble Paris commitment* P Whitmore, September 2017

⁴⁶ Article 4(3)

⁴⁷ Article 4(1)

- 7.3. The High Court in *Thomson v Minister for Climate Change Issues* commented that in assessing issues of highest possible ambition account should be taken of the costs of New Zealand dealing with the effects of climate change.⁴⁸ This type of cost/benefit analysis enables the benefits of mitigating the effects of climate change to be offset against the costs of the mitigation.
- 7.4. This cost/benefit approach has been used by the Commission in the ENZ model – under which likely costs and benefits of the reduction options are assessed. Emission values (based on an assigned value of \$250 per tCO₂e) are weighed against assessed abatement costs for particular mitigation measures.⁴⁹
- 7.5. However, it is not obvious from the Commission’s recommendations how this type of cost/benefit has been applied to select the appropriate budget. In the supporting material the Commission has identified four possible pathways towards meeting 2050 targets.⁵⁰ From this basis, it has selected a pathway to base the emission budgets on.⁵¹ However, the budgets pathway chosen does not appear as ambitious as some of the potential pathways. It also appears that within the chosen path there is potential for further ambition which the Commission has decided not to pursue. For example, the pathway for agricultural emissions is set on the basis that this is to be driven purely with improved farm practices developing and without any further government restrictions on agricultural practices.⁵² Also, it is noted the first budget to 2025 only requires a fairly small reduction from present levels of emissions. Overall, it does not appear that the Commission has focused on Aotearoa New Zealand’s highest possible ambition in setting the emission reduction budgets.
- 7.6. We have set out above our concern that the emission budgets do not set Aotearoa New Zealand on a pathway towards meeting the 1.5°Celsius goal and why we consider that a 1.5°Celsius consistent budget should be no more than 485 Mt CO₂-e, and no more than 400 Mt CO₂-e in terms of our fair share.
- 7.7. The exercise of setting Aotearoa New Zealand’s first two emission reduction budgets under the Act should be essentially the same as setting our NDC. Having the 2030 NDC and subsequent Paris Agreement targets matching our relevant emission reduction budgets would allow for consistency and transparency across all targets that will ultimately promote New Zealand being able to meet its Paris Agreement obligations. While the NDC budget starts with our previous international commitments, we do not consider that the emissions budgets should be higher simply because we have chosen to use international offsets

⁴⁸ *Thomson v Minister for Climate Change Issues* 2017 NZHC 733 [135]-[141]

⁴⁹ Climate Change Commission 2021 Draft Advice for Consultation Chapter 8, pp 6-7.

⁵⁰ Climate Change Commission 2021 Draft Advice for Consultation Chapter 8.

⁵¹ Climate Change Commission 2021 Draft Advice for Consultation Chapter 9

⁵² Climate Change Commission 2021 Draft Advice for Consultation p 120.

rather than domestic reductions in the past. At any rate, this does not affect the target level of emissions for 2030.

- 7.8. Viewed from the perspective of 2030 net emission levels, the budgets are forecast to deliver 2030 net emissions of about 52 Mt CO₂-e⁵³ as compared with our calculation above that to meet the IPCC 1.5°Celsius pathway 2030 net emissions should be around 37.9 Mt CO₂-e.
- 7.9. In our view, the emission budgets over 2022-2035 require much greater cuts to current levels. The budgets should be consistent with the pathways set by the IPCC in order to keep temperature increases to below 1.5°Celsius. They should allow no more than 400 Mt CO₂-e of emissions between 2021-30 and no more than 37.9 Mt CO₂-e in 2030.

⁵³ Climate Change Commission 2021 Draft Advice for Consultation Figure 2.2 p 36.

8. Incorrect treatment of offshore mitigation

- 8.1. The Commission's view is that the gap between the draft budgets for 2021-30 (628) and a 1.5°Celsius compliant NDC for the same period (564) can be bridged by purchasing overseas credits.⁵⁴ We have explained above why 485 is the correct figure (not 564) and why our fair share is not more than 400 Mt over this period.
- 8.2. The Commission's reasoning is that although the Act requires budgets to be met as far as possible through domestic mitigation (s 5z) offshore mitigation can be used meet the NDC.⁵⁵
- 8.3. We consider this approach is misguided for several reasons.
- 8.4. First, as already explained, the Commission is required to recommend emission budgets which are consistent with the 1.5° Celsius objective. In particular, under s 5Z of the Act budgets are required be set in a way that contributes to the global effort to limit temperature increases to 1.5°C *and* that allows the budgets to be met domestically.
- 8.5. Secondly, as noted in section 3, "offshore mitigation" is part of the definition of "net accounting emissions" in the Act. In our view, this means that any offshore mitigation that is proposed for NDC purposes must be accounted for as part of our emissions budgets, and must comply with ss 5Z and 5ZA. The idea that we could have offshore mitigation that stands outside the emissions budgets would, in our view, be inconsistent with the definition of "net accounting emissions".
- 8.6. Accordingly, we consider that the NDC and the emissions budgets under the Act need to be based on the same figures and both should be met domestically as far as possible. The use of any offshore mitigation would need careful justification in terms of ss 5Z and 5ZA.
- 8.7. Thirdly, there are several major risks associated with reliance on offshore mitigation.
- 8.8. Although not mentioned by the Commission in the draft report, it is noted that the current NDC does provide that that in meeting the 2030 target New Zealand can have "unrestricted access to international carbon markets" provided the relevant mechanisms contain provisions ensuring environmental integrity, transparency and avoid double counting.⁵⁶
- 8.9. Also not specifically discussed by the Commission, Article 6 of the Paris Agreement does allow for mechanisms to be developed which could potentially

⁵⁴ Climate Change Commission 2021 Draft Advice for Consultation p155.

⁵⁵ Climate Change Commission 2021 Draft Advice for Consultation p156.

⁵⁶ New Zealand's Intended Nationally Determined Contribution 7 July 2015.

provide parties with access to offshore markets to purchase emission credits. As such, there is at least the potential for offshore mitigation to be used by Aotearoa New Zealand to meet its NDC as envisaged by the Commission.

- 8.10. However, Article 6 mechanisms have yet to be agreed by parties to the Paris Agreement. Whether any such mechanisms should be put in place remains a controversial issue, with many countries taking the view that parties should meet their NDCs through purely domestic mitigation. There have only been eight countries that have stated in their NDCs that international credits can be used to meet their targets.⁵⁷ Among the others, several rule out using these credits altogether, while others suggest using them to go even further than their targets and meet more ambitious goals. Given the limited number of countries that have confirmed they will use international credits, and the fact they are not currently allowed for compliance under most national and regional carbon markets, it is currently unclear how much demand there will be for these credits.⁵⁸ Also, there are indications that any international trading mechanisms agreed may contain restrictive criteria requiring any traded credits to contribute to an overall reduction in global emissions.⁵⁹
- 8.11. Given these reservations about whether there will be a mechanism for the trading of international credits established for the NDC period 2021-30 that Aotearoa New Zealand could meaningfully access to help meet its NDC, it is submitted that the Commission should not base its advice to the Government on the assumption that it can rely on overseas mitigation to meet the significant gap between the NDC and the budgets. There is also a very significant financial risk in this approach, given that there can be no certainty about what the cost of the required international credits would be. Having regard to these risks, the Commission should at least recommend that the Government should put in contingency measures to meet the gap through domestic mitigation.

⁵⁷ Canada, Japan, Liechtenstein, Monaco, New Zealand, Norway, South Korea and Switzerland

⁵⁸ In-depth Q&A: How 'Article 6' carbon markets could 'make or break' the Paris Agreement | Carbon Brief

⁵⁹ Swedish Energy Agency *Article 6 in the Paris Agreement as an ambition mechanism* Options and recommendations, Final report Zurich, 19 June 2019

9. Comments on the recommended policy direction

Introduction

9.1. For the most part, we defer to those with the necessary expertise to comment on the detail of the sector specific recommendations by the Commission. However, we make some brief high-level comments in this section.

Achievability

9.2. We acknowledge that the Commission is not responsible for detailed policy planning. However, we have concerns about whether the intended reductions in gross emissions and increases in removals will be achieved based on the plans outlined, even though we consider these intentions unambitious. In particular:

- a) there is no analysis of regulatory changes needed to implement policy proposals or discussion of the time-path;
- b) many of the proposals are reliant on cooperation and coordination of many players, such as the involvement of local government in supporting low emission transport options; and
- c) we are concerned that the Commission's analysis builds on projected decreases in emissions that would be delivered by our current policy settings when it is not clear what those policies are or how they would have delivered significant reductions.

ETS

9.3. The Commission has focussed on multiple specific policy interventions. It is unclear what role it sees for the ETS.

9.4. We consider that there are significant benefits from having an economy-wide emissions price (either through a carbon tax or a reformed ETS) and building of a specific policy interventions on top of this. Relying only on specific policy interventions would seem to carry a greater risk of failure, for example due to unintended consequences of complex regulations.

9.5. However, the Commission does not describe a major role for the ETS and nor does it address its failings (e.g. linkage to agriculture emissions, addressing the stockpile) which prevent it from delivering a meaningful price signal let alone providing a cap on our domestic emissions.

9.6. It is also unclear whether the Commission has fully explored the connections between its emissions budgets and annual figures for ETS purposes. We understand that owners of post-1989 forests choose whether to participate in

the ETS whereas they will be automatically included in the emissions budgets. We have not assessed whether this issue is likely to be material.

Agriculture

- 9.7. With Agriculture the Commission has adopted the view that the 2030 CCRA methane targets can be met with voluntary improvements over time with farm practices. There are no policy changes of any significance recommended.
- 9.8. We do not consider this to be an appropriate approach. Agriculture is our largest emission sector and if Aotearoa New Zealand is to meet its Paris Agreement obligations there needs to be significant emission reductions in this sector between the present and 2050. There are a range of policy changes that could help achieve these reductions. For example, land use restrictions on the expansion of high emitting agriculture activities such as dairy and beef and sheep, mandatory improvements in high emitting farm practices and a more definitive and demanding entry into the ETS. Against this background, the Commissions approach of effectively giving agriculture a free ride while recommending that the government intervene to restrict emitting activities in other sectors is not appropriate.
- 9.9. We also observe that given the uncertainties inherent in agricultural sector voluntarily making improvements in practices, there must be a high degree of uncertainty over whether the 2030 CCRA methane target will be met. It is also noted that the agriculture sector is a major emitter of NO₂ and CO₂. Lastly, it is our view that the Commissions approach should not just be driven by the need to meet the CCRA targets and needs to also consider the 1.5°C objectives.

Transport

- 9.10. LCANZI belongs to the *All Aboard!* coalition of NGOs campaigning for decarbonisation of Auckland transport by 2030. We have read and support the submission to the Commission by Paul Callister and Heidi O’Callahan: *Decarbonising New Zealand’s transport sector: How to do it and what is stopping us*.
- 9.11. We consider that the Commission’s recommendations with regard to transport are insufficiently ambitious, overly reliant on EVs, and do not go far enough to support the system change that is urgently needed to bring about a rapid and equitable transition to low carbon and active forms of transport, including public transport, walking and cycling.⁶⁰
- 9.12. We also consider that more needs to be done to integrate the efforts of central and local government on transport. At the moment, public transport, walking and cycling infrastructure is largely the responsibility of local government whose

⁶⁰ Climate Change Commission 2021 Draft Advice for Consultation p 107.

past efforts have been hampered by lack of funding, local interest lobbying, and varying strategies. We consider that these issues can be in part addressed by central government national policy statements laying down core requirements and commensurate funding for local government in delivery of public transport, cycling and walking infrastructure.

10. Summary of responses to Commission’s consultation questions

1.	Do you support the principles we have used to guide our analysis? Is there anything we should change, and why?	<p>The relationship of these “principles” to the mandatory considerations set out in the Act is unclear.</p> <p>Principle 1 is focused on 2030 and 2050 targets but needs to also require actions to align with 1.5°C. The Commission appears to misinterpret “contribute to” as meaning any level of reduction in emissions will suffice. We believe this is a fundamental misinterpretation of the both the Act and the Paris Agreement.</p> <p>Principles 2, 3 and 4 give too much weight to minimising near-term economic impact and risk, relative to the importance of avoiding much greater medium and long term economic impacts and irreparable harm through climate impacts.</p> <p>We broadly support principles 5, 6 and 7.</p>
2.	Do you support budget recommendation 1? Is there anything we should change, and why?	No. The budgets are not consistent with 1.5°C or meeting New Zealand’s Paris Agreement obligations. In our view it would not be lawful for the Commission to give this advice to the Minister, nor for the Minister to adopt it.
3.	Do you support our proposed break down of emissions budgets between gross long-lived gases, biogenic methane and carbon removals from forestry? Is there anything we should change, and why?	No, for the reasons set out in detail in our submission. In addition, there are strong argument for greater cuts to methane given its much higher near-term warming effect.
4.	Do you support budget recommendation 4? Is there anything we should change, and why?	Yes.

5.	Do you support enabling recommendation 1? Is there anything we should change, and why?	Cross-party support should not be pursued at the risk of watering down targets or delay. The Commission's job is to provide independent advice, based on the science, not to pursue political consensus.
6.	Do you support enabling recommendation 2? Is there anything we should change, and why?	Yes.
7.	Do you support enabling recommendation 3? Is there anything we should change, and why?	Yes.
8.	Do you support enabling recommendation 4? Is there anything we should change, and why?	Yes.
9.	Do you support enabling recommendation 5? Is there anything we should change, and why?	Yes.
10.	Do you support our approach to focus on decarbonising sources of long-lived gas emissions where possible? Is there anything we should change?	Yes.
11.	Do you support our approach to focus on growing new native forests to create a long-lived source of carbon removals? Is there anything we should change, and why?	Yes.
12.	Do you support the overall path that we have proposed to meet the first three budgets? Is there anything we should change, and why?	No – as explained above and in our detailed submission.
13.	Do you support the package of recommendations and actions we have proposed to increase the likelihood of an equitable, inclusive and well-planned climate	No comment.

	transition? Is there anything we should change, and why?	
14.	Do you support the package of recommendations and actions for the transport sector? Is there anything we should change, and why?	No. It is not ambitious enough and is too focused on EVs rather than cutting transport demand and mode shift. We support the submission to the Commission by Paul Callister and Heidi O'Callahan: <i>Decarbonising New Zealand's transport sector: How to do it and what is stopping us.</i>
15.	Do you support the package of recommendations and actions for the heat, industry and power sectors? Is there anything we should change, and why?	No comment.
16.	Do you support the package of recommendations and actions for the agriculture sector? Is there anything we should change, and why?	No. Agriculture is our largest emission sector and if Aotearoa New Zealand is to meet its Paris Agreement obligations there needs to be significant emission reductions in this sector between the present and 2050.
17.	Do you support the package of recommendations and actions for the forestry sector? Is there anything we should change, and why?	No comment.
18.	Do you support the package of recommendations and actions for the waste sector? Is there anything we should change, and why?	No comment.
19.	Do you support the package of recommendations and actions to create a multisector strategy? Is there anything we should change, and why?	No comment.
20.	Do you agree with Budget recommendation 5? Is there anything we should change, any why?	No comment.

21.	<p>Do you support our assessment of the country's NDC? (1)</p> <p>Do you support our NDC recommendation? (2)</p>	<p>We agree with the Commission's assessment that the current NDC is inadequate but we do not agree with its recommendations for a new NDC. Firstly, the figure of 564 Mt CO₂-e proposed by the Commission contains a maths error and should be 485 Mt CO₂-e. Secondly, the Commission has failed to give a clear recommendation for the figure that should be adopted to reflect our fair share. Thirdly, the Commission's advice places too much reliance on offshore mitigation when the NDC should primarily be met by domestic mitigation.</p>
22.	Do you support our recommendations on the form of the NDC?	See above.
23.	Do you support our recommendations on reporting on and meeting the NDC? Is there anything we should change, and why?	See above.

11. Contact:

For more information about LCANZI and these submissions please contact admin@lawyersforclimateaction.nz