

Part A

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s 9(2)(a)
To: Rod Carr
Cc: Jo Hendy; s 9(2)(a) s 9(2)(a) @mfe.govt.nz; s 9(2)(a)
Subject: RE: Climate Change Commission - Extension to the Statutory Deadlines for Emissions Budgets
Date: Friday, 10 July 2020 2:57:53 pm
Attachments: image001.png
image002.jpg
Letter from Dr Rod Carr to Minister James Shaw - Extension to the statutory deadlines for emissions budgets - 24 June 2020.pdf
Final letter to the Commission extending the timeframes.pdf

Kia ora Rod,

Thank you for your letter of 24 June, seeking an extension to the statutory deadlines for emissions budgets and the emissions reduction plan.

Please find attached a letter from Minister Shaw formally granting the extension.

Many thanks,

s 9(2)(a)



s 9(2)(a)

Private Secretary, Climate Change

Office of Hon. James Shaw

Minister for Climate Change | Minister of Statistics | Associate Minister of Finance
Level 7, Bowen House, Parliament Buildings, 80 Lambton Quay | Private Bag 18041 | Wellington 6160 | New Zealand

E: s 9(2)(a) @parliament.govt.nz

P: s 9(2)(a)

The information contained in this email message is intended only for the addressee. It may be legally privileged. If you are not the intended recipient you must not use, disclose, copy, or distribute this message or the information in it as this may be unlawful. If you have received this message in error, please email or telephone the sender immediately.

From: Rod Carr [mailto:Roderick.Carr@climatecommission.govt.nz]
Sent: Wednesday, 24 June 2020 2:26 PM
To: Hon James Shaw <James.Shaw@parliament.govt.nz>
Cc: Rod Carr <Roderick.Carr@climatecommission.govt.nz>; Jo Hendy
s 9(2)(a) @climatecommission.govt.nz; s 9(2)(a) @climatecommission.govt.nz;
s 9(2)(a) @mfe.govt.nz; s 9(2)(a) @mfe.govt.nz
Subject: Climate Change Commission - Extension to the Statutory Deadlines for Emissions Budgets

Kia ora James

Please find attached letter from the Climate Change Commission to seek an extension to the Statutory Deadlines for Emissions Budgets.

I look forward to discussing this further with you.

Ngā mihi

Rod

Dr Roderick Carr | Chair
Climate Change Commission Board



M s 9(2)(a)

E roderick.carr@climatecommission.govt.nz

W climatecommission.govt.nz

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Level 21/1 Willis Street
Wellington 6011, New Zealand

www.climatecommission.govt.nz
enquiries@climatecommission.govt.nz

Hon James Shaw
Minister for Climate Change
Parliament Buildings
Wellington

24 June 2020

Dear Minister Shaw

I am writing to formally request amendments to the statutory deadlines for emissions budgets and other requested work in light of the effects of Covid-19.

The Commission proposes the following timeframes for approval:

- The Commission will issue a draft report on the proposed first three emissions budgets and emissions reduction plan by 1 February 2021 and then will consult on that draft report.
- The Ministry for the Environment will co-ordinate officials attending the Commission's consultation process as observers, so that the Government can hear and understand the issues raised.
- The Commission will provide its final report on the first three emissions budgets and the emissions reduction plan to you by 31 May 2021.
- The Commission will also provide its advice on potential reductions in biogenic methane and New Zealand's Nationally Determined Contribution that you have requested by 31 May 2021.

Now that we are in Level 1 for Covid-19, the Commission is confident that our consultation and engagement processes can support the development of high-quality analysis and advice to the Government.

Yours sincerely

Rod Carr

Dr Rod Carr
Chair, Climate Change Commission
On behalf of the Climate Change Commission

Hon James Shaw

Minister for Climate Change
Minister of Statistics
Associate Minister of Finance

Minita mō Te Rerekētanga o Te Āhuarangi
Minita Tatauranga
Hoa Minita Tahua Moni



Reference: 20-M-01271

Dr Rod Carr
Chair
Climate Change Commission

10 July 2020

Dear Rod,

Thank you for your letter of 24 June to formally request an extension to the statutory deadlines for emissions budgets and other requested work in light of Covid-19.

With respect to the statutory deadlines, I have agreed to shift the date for the Commission to provide its final report on the first three emissions budgets and the emissions reduction plan out to 31 May 2021. A notice to bring the new deadline into force has been submitted for publication in the *New Zealand Gazette* on 14 July 2020.

With respect to the two additional pieces of advice I have requested on biogenic methane and on the Nationally Determined Contribution, the timing for these was already set to coincide with the advice on the first emissions budget. I confirm this deadline is therefore now also extended to 31 May 2021.

I note your letter also re-confirms that the Commission will issue a draft report on the emissions budgets and emissions reduction plan by 1 February 2021, and that officials will participate as observers in the Commission's consultation on the draft report.

Thank you for your reassurance of the Commission's consultation and engagement, high quality analysis and advice to the Government within the new timeframes.

Nāku noa, nā,

A handwritten signature in blue ink, appearing to read 'James Shaw'.

Hon. James Shaw
Minister for Climate Change

Part B

- Doc 2 - PPT for Board – 29 July 2020 - Withheld in full under s 9(2)(g)(i)
- Doc 3 - PPT for Board - not dated - Withheld in full under s 9(2)(g)(i)
- Doc 4 - PPT for Board Meeting - 9-10 June 2020 -Withheld in full under s 9(2)(g)(i)
- Doc 5 - Board Paper - 2 June 2020 - Withheld in full under s 9(2)(g)(i)
- Doc 6 - Board Paper - 11 February 2020 - Withheld in full under s 9(2)(g)(i)
- Doc 7 - Board Paper - 31 January 2020 - Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Part C

- Doc 8 - File Note - 18-19 May 2021 - Withheld in full under s 9(2)(g)(i)
- Doc 9 - Emails - 22 Dec 2020 - Withheld in full under s 9(2)(g)(i)
- Doc 10 - Cover Note for Board Paper/Presentation - 13-14 Oct 2020 - Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Part D

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

- Doc 11 Emails -26 May 2021 - Withheld in full under s 9(2)(g)(i)
- Doc 12 Email and attachments -21 May 2021-Withheld in full under s 9(2)(g)(i)
- Doc 13 Emails-21 May 2021-Withheld in full under s 9(2)(g)(i)
- Doc 14 Email and attachments-18 May 2021-Withheld in full under s 9(2)(g)(i)
- Doc 15 Email-17 May 2021-Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s 9(2)(a)
Sent: Thursday, February 11, 2021 5:49 PM
To: Michael Sharp
Subject: RE: [UNCLASSIFIED] Paris Agreement - NDC - Domestic Mitigation

[UNCLASSIFIED]

Hi Michael

Yes, article 4(2) does say parties need to take action at home.

However Article 6 explicitly allows for countries to trade mitigation in nationally determined contributions. Read together, we read that as Article 4 saying you must take some action at home, with a view to achieving your NDC, but you can use traded mitigation to meet it so long as you are using it to increase your ambition not just do nothing at home. I've pasted the wording of Article 6 (1)-(3) below (apologies for the image – my version of the Paris Agreement is not text readable)

New Zealand is complying with Article 4(2) through the emission budgets process where we are taking action on domestic emissions and removals, and offshore mitigation allows us to increase our overall ambition beyond our domestic budgets consistent with Article 6.

Article 6

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.

Regards

s 9(2)(a)



s 9(2)(a)

Principal Analyst

s 9(2)(a)

climatecommission.govt.nz

[UNCLASSIFIED]

From: Michael Sharp s 9(2)(a) @michaelsharp.co.nz>

Sent: Thursday, 11 February 2021 5:15 pm

To: s 9(2)(a) climatecommission.govt.nz>

Subject: [UNCLASSIFIED] Paris Agreement - NDC - Domestic Mitigation

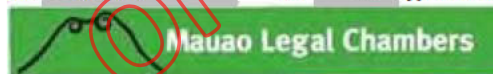
Hi s 9(2)(a) further to our discussion on the LZANZI meeting today this is the Article of the Paris agreement which seems to suggest that we need domestic mitigation measures to meet our NDC. Are you interpreting "with the aim of achieving" as allowing for the addition of offshore mitigation?

- (a) *Article 4 (2)* Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

Michael Sharp – Barrister

s 9(2)(a)

M: s 9(2)(a) E: s 9(2)(a) @michaelsharp.co.nz W: www.michaelsharp.co.nz



From: s 9(2)(a) @climatecommission.govt.nz>

Sent: Friday, 6 November 2020 4:24 pm

To: Rod Carr <Roderick.Carr@climatecommission.govt.nz>; Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>;

Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Bryce

Lyall s 9(2)(a) @lyallthornton.com>

Subject: [UNCLASSIFIED] MfE analysis of NDC

[UNCLASSIFIED]

Kia ora koutou

Thanks for taking the time to meet with us this afternoon.

As I mentioned, earlier this year the Ministry for the Environment analysed the compatibility of the existing NDC with 1.5 degree pathways. Their briefing has been published on their website at the link below. While it glosses over any considerations of New Zealand's relative contribution, it does usefully describe how the emission reductions modelled by the IPCC at a global level can be downscaled to New Zealand.

<https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/briefing-notes/scientific-analysis-of>

Kind regards

s 9(2)(a)

**CLIMATE
CHANGE
COMMISSION**

s 9(2)(a)

Principal Analyst

s 9(2)(a)

W climatecommission.govt.nz

Out of Scope

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Dear Rod

As Paul has said, I'm President of Lawyers for Climate Action NZ, which is a group of over 300 lawyers advocating to ensure NZ meets its commitments under the Paris Agreement and achieves net zero emissions as soon as possible. We would very much like the opportunity to meet with you and the rest of the Climate Change Commission to discuss your role under the Climate Change Response Act and your current work on the first emissions budget, emissions reduction plan, and review of the NDC.

By way of a quick introduction to our thinking on the Commission's role, as Paul has mentioned it below, we see this as being defined by the purpose of the Climate Change Response Act, as set out in s3 of the Act. The first limb of that purpose, as you know, is to provide a framework for policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels. Everything that is done under the Act, including by the CCC, must be consistent with that purpose (see s3(2)).

Therefore, in producing its recommendations the CCC needs to take into account not only the 2050 target but also the need for NZ to pursue emissions cuts and adopt an NDC consistent with NZ doing "its share" of the work to keep global warming below 1.5C.

This is not only sound policy, but a legal requirement, in our view.

Please let me know when would suit you to meet – I am based in Auckland but happy to come down to Wellington and I will try to make myself available on a date that suits you and any other members of the Commission who would like to attend. I would likely bring one or two of my fellow committee members to the meeting.

Kind regards

Jenny Cooper QC | President

LAWYERS FOR CLIMATE ACTION NZ INC.

TS 9(2)(a) E admin@lawyersforclimateaction.nz Level 13, 70 Shortland Street PO Box 4338, Auckland 1140, New Zealand www.lawyersforclimateaction.nz

[UNCLASSIFIED]

- Doc 17 Emails - 27 Oct 2020 - Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Part D - Legally Privileged

- Doc 18 Emails and attachment - 10 May 2021 - Withheld in full under 9(2)(h)
- Doc 19 Emails and attachment - 10 May 2021 - Withheld in full under 9(2)(h)
- Doc 20 Email and attachment - 15 Feb 2021 - Withheld in full under 9(2)(h)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Part E

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

- Doc 21 Email and attachments - 21 May 2021, 3.16 pm - Withheld in full under s 9(2)(g)(i)
- Doc 22 Email and attachment - 21 May 2021, 9.37 am - Withheld in full under s 9(2)(g)(i)
- Doc 23 Email - 20 May 2021 - Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s 9(2)(a)
To: ["Michael Sharp"](#)
Cc: [James Every-Palmer](#); [Jo Hendy](#)
Subject: RE: [UNCLASSIFIED] Gross-net accounting and the Kyoto Protocol
Date: Wednesday, 24 February 2021 10:30:00 am
Attachments: [image003.png](#)
[image004.jpg](#)

[UNCLASSIFIED]

Hi Michael

I think you've raised an important distinction.

When we talk about gross/net accounting we are talking about the approach of setting a target based on gross emissions, and using net emissions to meet it. That is the only thing that gross/net refers to.

Separately from that, LULUCF accounting rules in some cases exclude some sets of emissions and removals and differentiate between reporting and accounting emissions. For example the Kyoto Protocol dictated that a subset of LULUCF activities be accounted for (afforestation, reforestation and deforestation) while emissions from other activities and land-uses are reported, but not accounted for (pre-1990 forestland, non-forestland such as wetlands and croplands). This basket of distinctions is generally referred to as our forestry accounting or LULUCF accounting.

The rationale and conceptual basis for the two is similar so they are often lumped together, but they are separate things.

The current NDC

The wording of the current NDC says: "New Zealand's assumed accounting for the forestry and other land use sector will be based on a combination of the 2006 IPCC Guidance and the 2013 IPCC Kyoto Protocol Supplement, providing for Kyoto Protocol accounting approaches to be applied to the greenhouse gas inventory land based categories. New Zealand's existing activity start year of 1990 will continue to apply, ensuring continuity of action with previous commitments."

You could read that as referring only to the accounting approaches to LULUCF and not to the gross/net approach to setting targets.

The NDC being net/net would be a major change from how the government has set and communicated its targets in the past, and given surrounding material is not what the government intended. I believe that the government intended to set the NDC on a gross/net basis and believes it is implied in the language of applying the Kyoto Protocol accounting approaches, and the language that refers to continuity of action with previous commitments. In part – I can say that because I was working at MfE when the NDC was set, but you can look at what the government has said and done outwardly as well for confirmation.

In both the first commitment period under the Kyoto Protocol and our 2020 target New Zealand's target was based on a gross/net approach. For the 2020 target, that was taken outside

the Kyoto Protocol but we said that we would apply Kyoto methodologies, and that included the gross/net approach to setting the budget. That the 2020 target was done outside the Kyoto Protocol but applied Kyoto methodologies is a strong precedent for the NDC. You can read about that in the initial report MfE issued.

<https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/New%20Zealand%27s%20Initial%20Report%20July%202016.pdf>

Secondly – the government talks about the target as if it is gross/net.

On the MfE website it refers to our 2030 target as “New Zealand’s target under the Paris Agreement is to reduce greenhouse gas emissions by 30 per cent below **gross** emissions for the period 2021-2030.” [emphasis added]

<https://www.mfe.govt.nz/climate-change/climate-change-and-government/emissions-reduction-targets/about-our-emissions>

In the Fourth Biennial report and in the latest webpage from MfE on reporting against our targets (<https://www.mfe.govt.nz/climate-change/emissions-reduction-targets/projected-emissions>) MfE describes the current emissions budget based on the NDC to be 601 Mt CO₂-e. This is the figure that you reach if you calculate the emissions budget based on the gross/net approach, using the inventory from 2019 and the Kyoto Protocol calculation methodologies. Any other approach will reach a different figure.

Lastly, the NDC is often described by the government as “30% below 2005 levels (equivalent to 11% below 1990 levels)” (for example on MfE’s website about targets referenced above). Both figures are provided for easier comparison with other targets (both ours previously and other countries’). However they also add to the evidence that the targets are based on gross emissions, as they provide the same target level in 2030 *only* if applied to gross emissions levels. If applied to net emissions, the figures are quite different.

So, while the NDC does not state outright that it uses the gross/net approach, given it’s the same approach as our previous two targets, and the government’s wider communications about the target are based on that approach, we’d need some pretty good evidence to say that the current NDC is not set on a gross/net basis.

Other countries

For both gross/net target setting and the rules applied to LULUCF, there are a range of approaches available and countries are to some extent free to elect the approach for them. The regime is more ‘elect and explain’ than a hard set of rules. If we were to say we were applying the Kyoto ruleset and then we did something markedly different we would be called out for that. But here we are applying the rules that were internationally agreed. We are unlikely to attract criticism for using gross/net approach in the Kyoto Protocol. Instead, international attention will be on the level of the NDC. That is where the main judgment arises.

I had a look at the UK and EU. The UK applies a net/net approach to setting its target. The UK applying a net/net approach is consistent with the same Kyoto rules that specify that we take a gross/net approach, as in the UK LULUCF was a net source of emissions in 1990. The EU updated their NDC recently and say they are taking a gross/net approach

(<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/E>

[U_NDC_Submission_December%202020.pdf](#)), although it appears ambiguous to me whether they actually mean that they are zeroing out pre-1990 forests as part of their baseline (what I've referred to a LULUCF accounting) or whether the target itself is set on the basis of gross or net emissions. However I would not be surprised if the EU did take a gross/net approach to setting the target given that like NZ, in the EU LULUCF was a net sink in the base year, and the EU has generally been very committed to applying Kyoto Protocol methodologies. This is the kind of issue that will be elucidated through time through the international transparency and review process.

Gross/net and the IPCC modelling

Where the consideration of gross/net makes the most difference for the Commission's advice though, is in applying the IPCC modelling. Remember that we were asked to assess whether the current NDC is compatible with contributing to limiting warming to 1.5 degrees. As the IPCC have done the most authoritative body of work on pathways to limit warming to 1.5 degrees we started there. Using that modelling we set a marker for what compatibility with 1.5 degrees looks like, if we were following the reductions modelled at a global level for what would keep warming to 1.5 degrees.

In applying the IPCC's modelling to New Zealand to assess the science part of that question we applied it on a gross/net basis – mostly because we felt that targets should be set on the same basis on which they are accounted for. However there are other ways to do it, principally applying it on a net/net basis to CO2, and we're very open to considering alternatives in our advice.

We've clearly heard from you that that is your preferred approach and we'll be looking closely at that.

We'll also be keen to read the feedback we get in your submission, and from others throughout the consultation, before we finalise our advice to government.

Hope that helps

Regards

s 9(2)(a)



s 9(2)(a) **Principal Analyst**

M s 9(2)(a)

E s 9(2)(a) [@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)

W climatecommission.govt.nz

[UNCLASSIFIED]

From: Michael Sharp s 9(2)(a) @michaelsharp.co.nz>
Sent: Saturday, 20 February 2021 11:35 pm
To: s 9(2)(a) @climatecommission.govt.nz>
Cc: James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>
Subject: RE: [UNCLASSIFIED] Gross-net accounting and the Kyoto Protocol

Thanks s 9(2)(a) The 2011 UNFCCC technical paper you referred to at page 11 sets out the gross- net approach to accounting for LULUFC – where you ignore the base year and account for emissions as they occur (Article 3(3)) . It also notes that exception where there were net emissions in the base year where that net is counted as part of base year emissions (Article 3(7)). However, in NZ NDC this paper is not mentioned.

What is detailed (Addendum 25 November 2015) is the 2006 IPCC Guidance (which set general rules around accounting for land use emissions) and the IPCC Kyoto Protocol Supplement (which for the second commitment period changed the rules about accounting for forestry management activities but left gross- net accounting for post 1990 forests unchanged).

Nowhere in the accounting methodologies adopted by the NDC for LULUFC is the Kyoto approach of using a gross emissions base year adopted. And as I have noted below, the EU is an example of a party to the Paris Agreement who have similarly adopted gross- net accounting for forestry but have still used net emissions for the base year.

It may be that in NZ there has developed confusion between gross- net accounting for LULUFC and a gross net approach to base and target years.

I may well be wrong about this. But given the importance of the issue would it be possible to ask the Government for clarification on what is their view on the correct interpretation of the NDC in this regard?

Regards

Michael Sharp – Barrister

9 Prince Ave, PO Box 5111, Mount Maunganui 3116, New Zealand

M: s 9(2)(a) E: s 9(2)(a) @michaelsharp.co.nz W: www.michaelsharp.co.nz



From: s 9(2)(a) @climatecommission.govt.nz>
Sent: Friday, 19 February 2021 9:58 am
To: Michael Sharp s 9(2)(a) @michaelsharp.co.nz>
Cc: James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>
Subject: [UNCLASSIFIED] Gross-net accounting and the Kyoto Protocol

[UNCLASSIFIED]

Hi Michael

Just to follow up on our discussion last night.

The rule on using gross-net accounting for targets was actually included directly into the Kyoto Protocol itself. It was reiterated in the guidance on converting targets to budgets described here <https://unfccc.int/sites/default/files/resource/docs/2010/tp/03r01.pdf> (this is the technical document I was referring to yesterday). Page 11 covers the rules for forestry, and the numerical examples in Annex 2 reiterate that gross-net is the default in its approaches.

However the technical document is extremely cumbersome to follow and jargon heavy. The rule is much more clearly articulated in the Kyoto Protocol itself – so I'd suggest you start there. <https://unfccc.int/sites/default/files/resource/docs/cop3/l07a01.pdf>

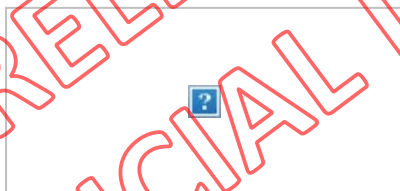
Article 3(3) states that targets are to be met inclusive of the subset of land use change and forestry activities measured since the 1990 baseline.

Article 3(7) – describes that targets are to be set on the basis of gross emissions unless land use change and forestry was a net source of emissions in the base year. (it refers to Annex A, and Annex A of the protocol describes the categories that comprise gross emissions)

Hope that helps!

Kind regards

s 9(2)(a)



s 9(2)(a) | Principal Analyst

M s 9(2)(a)

E s 9(2)(a) [@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)

W climatecommission.govt.nz

[UNCLASSIFIED]

From: [Michael Sharp](#)
To: [s 9\(2\)\(a\)](#)
Cc: [Jenny Cooper](#); [James Every-Palmer](#); [Bryce Lyall](#) ([@9\(2\)\(a\)@lyallthornton.com](#))
Subject: FW: [UNCLASSIFIED] Paris Agreement - NDC - Domestic Mitigation
Date: Thursday, 18 February 2021 12:33:46 am
Attachments: [image003.png](#)
[image004.jpg](#)
[image005.png](#)
[image006.jpg](#)
[image001.jpg](#)

Kia ora [s 9\(2\)\(a\)](#) Thanks for getting back to me on this. We still have some continuing concerns over the CCC's approach to off shore mitigation. I will also make some comment on our ongoing concerns about the CCC's gross – net approach to assessing the requirements of the NDC.

Offshore Mitigation

I accept that Article 4 re the requirement to pursue domestic mitigation measures to meet the NDC does sit uncomfortably with the ability to access offshore credits under Article 6. This appears to be the result of the parties being unable to agree a framework around offshore credits.

But I cannot agree with your interpretation that “you must take some action at home, with a view to achieving your NDC, but you can use traded mitigation to meet it so long as you are using it to increase your ambition not just do nothing at home.” That would mean that NZ for example could do far less than it is reasonably capable of at home and decide to buy mitigation offshore upon the basis that this would still raise global ambition. This would be contrary to the Article 4 requirements re domestic mitigation and Article 3 which requires parties to provide NDCs that are ‘ambitious efforts’. It will be made clearer when the Article 6 rules are settled, but in my view the correct interpretation is that offshore mitigation under Article 6 is only to be accessed if a party cannot achieve its NDC despite ambitious efforts at home.

In any case given that under s 5z the CCRA budgets must be met ‘as far as possible through domestic mitigation’ this effectively means that the same approach must be applied to the NDC.

In your report the CCC have concluded that the budgets for 2021-30 of 628 is maximum domestic ambition and the balance to bring it down to a 1.5 compliant NDC of 564 will have to met with offshore mitigation. Given that 2018 net emissions are already 551 I do struggle to see how it will be ambitious to have a 2030 NDC averaging 58.5 and budget averaging 62.8, but we will leave that discussion for another day.

Gross – Net approach to NDC target

In our recent discussion you justified the CCC using a gross- net approach to assessing NZ's NDC upon the following grounds:

- That it was in line with the Kyoto accounting that NZ had adopted during the Kyoto period up to 2020.
- That it took out the prospect of distorted target arising from a net- net approach caused by unusually high or low levels of forestry emissions in the base year
- That although NZ may be an outlier in using this approach this is warranted by the fact that most other countries have net additions to emissions from forestry.

I have looked into the points you have raised but still have some ongoing concerns which we would appreciate your further response to.

With regard to your first point about Kyoto accounting, we accept that under the NDC as it stands it has been signalled NZ's approach to accounting for forestry and other land will be continued. But the Kyoto accounting for forestry does not relate to quantifying targets – it set out how forestry and other land use emissions are to be accounted for.

Under these rules – as adopted in the second commitment period- emissions from forests established after the base year are accounted for as they arise – either as sinks or emissions- during the target period. Forestry and other land use emissions in the base year are ignored – as contrasted with the alternative net-approach of comparing forestry emissions during the target period with those during the base year. Because of this difference the Kyoto approach to new forests is known as ‘gross-net’.

With forests established before the base year, NZ's NDC has signalled that the Kyoto accounting approach of ‘business

as usual' – with forestry and other land use emissions during the target period being compared with ex-ante estimates of emissions on a business as usual basis and the difference at the end of the period being accounted for as forestry and other land use emissions for the period.

NZ's continuation of Kyoto accounting rules under the NDC is not unusual. For example, the EU has taken a similar approach, including gross- net accounting for new forestry activity.

What is unusual is the approach taken by the CCC in adopting a 'gross-net' approach to calculating what emissions the NDC target equates to- by taking gross total (not just forestry) emissions in the base year and applying the % reduction commitment to arrive at a emission target which is treated as net emissions in the target years.

This is completely different to the Kyoto rules for gross- net accounting for forests i.e. it does not relate to how forestry emissions are calculated but rather to how overall emission target are calculated.

As such the CCC gross- net approach to calculating NZ's NDC targets is not in accordance with the terms of the NDC itself. Rather it seems to have followed the NZ's Government's view of recent times of 'treating' NZs emission reduction targets as being calculated on a gross-net basis. As far as we are aware this is not an official policy. Nor can we follow the logic of this unofficial policy. It is correct that under the Kyoto Protocol targets were in effect gross- net in that units assigned were calculated upon the basis of a % reduction from base year gross emissions but that forestry units were applied to reduce emissions in calculating emissions over the commitment period. But this approach applied to all participants- not just NZ.

By contrast the Paris Agreement calls for nationally determined contribution targets that account for emissions and removals (Article 4(13))- in other words net emissions. These objectives would not be met by not accounting for removals in the base year. As such, as far as we aware, other countries treat their NDC targets as being a reduction in net emissions (with the possible exception of Russia). This includes those who are otherwise adopting a gross- net approach to accounting for forestry emissions – such as the EU.

In this regard we have issues with your claim that NZ can justifiably be an outlier in adopting a gross -net approach to the NDC target because it is one of the few countries that has a net forestry sink. From the indicated outcomes of participants in the Kyoto Protocol, the large majority have a net reductions in emissions from forestry and land other land use. Even if NZ was an outlier in this regard we fail to see how this could justify NZ adopting such a different approach to calculating its NDC.

In this respect we note that under the Paris Agreement accounting for the NDC should Parties "shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency" (Article 4(13)). NZ adopting it own unique gross - net approach to accounting for its NDC target would seem to offend against all these principles. In particular, it would make NZ appear to be doing better than it actually is as compared to the other countries using the normal net-net approach.

We also have issues with your claim that a gross- net approach to the NDC target is necessary to deal with abnormal forestry outcomes in the base year. The same issue can arise with abnormal target years. Also, as the CCC has noted itself in its report, with NZ adopting a target which is an average over 9 years, this will in itself iron out any abnormalities in base and target years. We also note that 2005 being the base year for the NDC the emissions from forestry were relatively normal.

The underlying concern we have with the gross- net approach to our target is that it vastly underestimates what NZ needs to do by 2030 to be 1.5 degrees consistent. In the CCC report it calculates that on a gross net basis the NZ NDC at 2030 is an average of 58.5 and that to be 1.5 degree consistent it only needs to drop to 56.4 (Advice p 157-8). But if we apply the NDC target to the 2005 net of 53.5 we get a 30% reduction to 37.5. If we apply the SR15 1.5 2030 requirements to the 2010 net we get 35. Achieving results in these regions will set NZ well on the way to being 1.5 compliant by 2050. By contrast the CCC figures will set NZ for a big mountain to climb (or cut) by 2050.

Looking forward to speaking some time tomorrow as per your email of earlier today.

Regards

Michael Sharp – Barrister

s 9(2)(a)

M: s 9(2)(a) @s 9(2)(a)@michaelsharp.co.nz W: www.michaelsharp.co.nz



From: s 9(2)(a) <[redacted]@climatecommission.govt.nz>
Sent: Thursday, 11 February 2021 5:49 pm
To: Michael Sharp <s 9(2)(a)@michaelsharp.co.nz>
Subject: RE: [UNCLASSIFIED] Paris Agreement - NDC - Domestic Mitigation

[UNCLASSIFIED]

Hi Michael

Yes, article 4(2) does say parties need to take action at home.

However Article 6 explicitly allows for countries to trade mitigation in nationally determined contributions. Read together, we read that as Article 4 saying you must take some action at home, with a view to achieving your NDC, but you can use traded mitigation to meet it so long as you are using it to increase your ambition not just do nothing at home. I've pasted the wording of Article 6 (1)-(3) below (apologies for the image – my version of the Paris Agreement is not text readable)

New Zealand is complying with Article 4(2) through the emission budgets process where we are taking action on domestic emissions and removals, and offshore mitigation allows us to increase our overall ambition beyond our domestic budgets consistent with Article 6.

Text, letter [redacted] Description automatically generated



Regards

s 9(2)(a)



s 9(2)(a) | Principal Analyst
Ms 9(2)(a)
Es 9(2)(a) <[redacted]@climatecommission.govt.nz>
W climatecommission.govt.nz

[UNCLASSIFIED]

From: Michael Sharp s 9(2)(a) @michaelsharp.co.nz>
Sent: Thursday, 11 February 2021 5:15 pm
To: s 9(2)(a) @climatecommission.govt.nz>
Subject: [UNCLASSIFIED] Paris Agreement - NDC - Domestic Mitigation

Hi s 9(2)(a) further to our discussion on the LZANZI meeting today this is the Article of the Paris agreement which seems to suggest that we need domestic mitigation measures to meet our NDC. Are you interpreting "with the aim of achieving" as allowing for the addition of offshore mitigation?

- (a) *Article 4 (2)* Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contr butions.

Michael Sharp – Barrister

9 Prince Ave, PO Box 5111, Mount Maunganui 3116, New Zealand

M: s 9(2)(a) s 9(2)(a) @michaelsharp.co.nz W: www.michaelsharp.co.nz



From: s 9(2)(a) @climatecommission.govt.nz>
Sent: Friday, 6 November 2020 4:24 pm
To: Rod Carr <Roderick.Carr@climatecommission.govt.nz>; Jenny Coopers s 9(2)(a) @shortlandchambers.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>
Subject: [UNCLASSIFIED] MfE analysis of NDC

[UNCLASSIFIED]

Kia ora koutou

Thanks for taking the time to meet with us this afternoon.

As I mentioned earlier this year the Ministry for the Environment analysed the compatibility of the existing NDC with 1.5 degree pathways. Their briefing has been published on their website at the link below. While it glosses over any considerations of New Zealand's relative contribution, it does usefully describe how the emission reductions modelled by the IPCC at a global level can be downscaled to New Zealand.

<https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/briefing-notes/scientific-analysis-of>

Kind regards

s 9(2)(a)

EDDA4B20



s 9(2)(a) | Principal Analyst
M s 9(2)(a)
E s 9(2)(a) @climatecommission.govt.nz
W climatecommission.govt.nz

Out of Scope

Dear Rod

As Paul has said, I'm President of Lawyers for Climate Action NZ, which is a group of over 300 lawyers advocating to ensure NZ meets its commitments under the Paris Agreement and achieves net zero emissions as soon as possible. We would very much like the opportunity to meet with you and the rest of the Climate Change Commission to discuss your role under the Climate Change Response Act and your current work on the first emissions budget, emissions reduction plan, and review of the NDC.

By way of a quick introduction to our thinking on the Commission's role, as Paul has mentioned it below, we see this as being defined by the purpose of the Climate Change Response Act, as set out in s3 of the Act. The first limb of that purpose, as you know, is to provide a framework for policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels. Everything that is done under the Act, including by the CCC, must be consistent with that purpose (see s3(2)).

Therefore, in producing its recommendations the CCC needs to take into account not only the 2050 target but also the need for NZ to pursue emissions cuts and adopt an NDC consistent with NZ doing "its share" of the work to keep global warming below 1.5C.

This is not only sound policy, but a legal requirement, in our view.

Please let me know when would suit you to meet – I am based in Auckland but happy to come down to Wellington and I

will try to make myself available on a date that suits you and any other members of the Commission who would like to attend. I would likely bring one or two of my fellow committee members to the meeting.

Kind regards

Jenny Cooper QC | President

LAWYERS FOR CLIMATE ACTION NZ INC.

T +64 9 929 9292 E admin@lawyersforclimateaction.nz Level 13, 70 Shortland Street PO Box 4338, Auckland 1140, New Zealand www.lawyersforclimateaction.nz

[UNCLASSIFIED]

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>
Sent: Wednesday, 17 February 2021 8:57 pm
To: s 9(2)(a)
Cc: Jenny Cooper; Michael Sharp s 9(2)(a) @michaelsharp.co.nz; Bryce Lyall; Jo Hendy
Subject: Re: [UNCLASSIFIED] RE: Request for meeting

Out of Scope

From: s 9(2)(a) @climatecommission.govt.nz>
Date: Wednesday, 17 February 2021 at 6:07 PM
To: s 9(2)(a) @climatecommission.govt.nz>, James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>
Cc: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>, "Michael Sharp s 9(2)(a) @michaelsharp.co.nz)" s 9(2)(a) @michaelsharp.co.nz>, Bryce Lyall s 9(2)(a) @lyallthornton.com>, Jo Hendy s 9(2)(a) @climatecommission.govt.nz>
Subject: RE: [UNCLASSIFIED] RE: Request for meeting

Kia ora James, Jenny, Michael and Bryce,

Out of Scope

Ngā mihi

s 9(2)(a)



s 9(2)(a)

W climatecommission.govt.nz

From: s 9(2)(a) @climatecommission.govt.nz>
Sent: Monday, 15 February 2021 3:16 pm
To: James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>
Cc: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz) s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>; s 9(2)(a) s 9(2)(a) @climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>
Subject: [UNCLASSIFIED] RE: Request for meeting

[UNCLASSIFIED]

Kia ora James

I'm happy to follow up with you and have a discussion on those questions.

s 9(2)(a) do you mind following up with some possible times that Jo is available to join a discussion this week?

On the first question – if you're referring to the graph in the slides from Thursday – that was showing our **current** NDC, not a possible future NDC, which is why it looked higher than the IPCC range. Our assessment was that the current NDC allowed more emissions than a target aligned with the midpoint of the IPCC range would, which is why we assessed it as not compatible with contributing to the 1.5 degree goal.

The second question I think needs a bit more discussion so would be better to talk about in person.

Ngā mihi

s 9(2)(a)



s 9(2)(a) | Principal Analyst

M s 9(2)(a)

climatecommission.govt.nz

W climatecommission.govt.nz

[UNCLASSIFIED]

From: James Every-Palmer s 9(2)(a) @stoutstreet.co.nz>

Sent: Friday, 12 February 2021 1:12 pm

To: s 9(2)(a) @climatecommission.govt.nz>

Cc: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>

s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>; s 9(2)(a)

s 9(2)(a) @climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>

Subject: Re: Request for meeting

Kia ora s 9(2)(a)

Just following up on two questions from yesterday relating to the Commission's assessment of the maximum allowable emissions over the NDC period (ie 564 Mt CO₂e before taking into account what extra effort our fair share might require).

First, the graph comparing the NDC budget with the ZCA budgets showed the 2030 emissions under the NDC at around 57 Mt CO₂e. We had thought this should be 52.3, being the midpoint between 45.029 and 59.491 as per page 9 of sup chap 10? It would be helpful to understand the discrepancy.

Secondly, the IPCC found that *net* CO₂ emissions should fall by 40 to 58% (interquartile range; 2030 relative to 2010).

At page 8 of sup chap 10, however, the Commission applies these reductions to our 2010 *gross* CO₂ emissions (being 34.958 Mt) in order to set the 2030 target for net emissions (on a modified activity-based measure).

While we understand the rationale for gross:net in terms of how we *express our NDC target* (as per box 8.1 and sup chap 3), the issue of whether the IPCC reduction percentages can be applied to gross CO2 emissions in 2010 is a separate issue.

Our current view is that it is a mistake to apply the reductions to 2010 gross CO2 emissions as this will understate the amount of additional ambition required by the IPCC. Rather, an adjustment is required to this base number to take into account CO2 removal activity as at 2010 (perhaps on an averaged basis).

We understood you to disagree with this, but it would help us to work through the detail if we could have another discussion or receive a short written explanation.

Thanks again for your time, we really appreciate the engagement given the complexity of getting to the bottom of these issues.

Ngā mihi
James

From: s 9(2)(a) <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>
Date: Wednesday, 10 February 2021 at 2:08 PM
To: Jenny Cooper <[s 9\(2\)\(a\)@shortlandchambers.co.nz](mailto:s 9(2)(a)@shortlandchambers.co.nz)>, s 9(2)(a) <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>, Jo Hendy <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>
Cc: James Every-Palmer <[s 9\(2\)\(a\)@stoutstreet.co.nz](mailto:s 9(2)(a)@stoutstreet.co.nz)>, "Michael Sharp" <[s 9\(2\)\(a\)@michaelsharp.co.nz](mailto:s 9(2)(a)@michaelsharp.co.nz)>, Bryce Lyall <[s 9\(2\)\(a\)@lyallthornton.com](mailto:s 9(2)(a)@lyallthornton.com)>
Subject: RE: Request for meeting

Thank you Jenny.

Ngā mihi

s 9(2)(a)

s 9(2)(a)



W climatecommission.govt.nz

From: Jenny Cooper <[s 9\(2\)\(a\)@shortlandchambers.co.nz](mailto:s 9(2)(a)@shortlandchambers.co.nz)>
Sent: Wednesday, 10 February 2021 1:34 pm
To: s 9(2)(a) <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>; Jo Hendy <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>;
s 9(2)(a) <[s 9\(2\)\(a\)@climatecommission.govt.nz](mailto:s 9(2)(a)@climatecommission.govt.nz)>
Cc: James Every Palmer QC <[s 9\(2\)\(a\)@stoutstreet.co.nz](mailto:s 9(2)(a)@stoutstreet.co.nz)>; Michael Sharp <[s 9\(2\)\(a\)@michaelsharp.co.nz](mailto:s 9(2)(a)@michaelsharp.co.nz)>; Bryce Lyall <[s 9\(2\)\(a\)@lyallthornton.com](mailto:s 9(2)(a)@lyallthornton.com)>
Subject: RE: Request for meeting

Apologies, I have just realised that I mistakenly sent you a very marked up draft of our topics for discussion. Here is the correct version.

Kind regards
Jenny

From: Jenny Cooper

Sent: Wednesday, 10 February 2021 9:45 AM

To: s 9(2)(a) <[redacted]@climatecommission.govt.nz>; Jo Hendy <[redacted]@climatecommission.govt.nz>;
s 9(2)(a) <[redacted]@climatecommission.govt.nz>

Cc: James Every Palmer QC <[redacted]@stoutstreet.co.nz>; Michael Sharp <[redacted]@michaelsharp.co.nz>; Bryce Lyall <[redacted]@lyallthornton.com>

Subject: RE: Request for meeting

Dear Jo and s 9(2)(a) <[redacted]>

Please find attached a note setting out our questions about the Commission's draft advice and the topics we would like to discuss when we meet tomorrow. I'm afraid I will need to leave by 5.30pm but that should still allow enough time for a good discussion.

Ngā mihi
Jenny

From: s 9(2)(a) <[redacted]@climatecommission.govt.nz>

Sent: Tuesday, 9 February 2021 2:26 PM

To: Jenny Cooper <[redacted]@shortlandchambers.co.nz>; s 9(2)(a) <[redacted]@climatecommission.govt.nz>; Jo Hendy <[redacted]@climatecommission.govt.nz>

Cc: James Every Palmer QC <[redacted]@stoutstreet.co.nz>; Michael Sharp <[redacted]@michaelsharp.co.nz>; Bryce Lyall <[redacted]@lyallthornton.com>; Joy Haswell <[redacted]@shortlandchambers.co.nz>

Subject: RE: Request for meeting

Kia ora Jenny,

Out of Scope

In the meantime, if you have any questions, please don't hesitate to contact me.

Ngā mihi

s 9(2)(a) <[redacted]>

s 9(2)(a) <[redacted]>



W climatecommission.govt.nz

From: Jenny Cooper s 9(2)(a) <[@shortlandchambers.co.nz](mailto:jcooper@shortlandchambers.co.nz)>

Sent: Tuesday, 9 February 2021 2:23 pm

To: s 9(2)(a) <[@climatecommission.govt.nz](mailto:s9(2)(a)@climatecommission.govt.nz)>; s 9(2)(a)

s 9(2)(a) <[@climatecommission.govt.nz](mailto:s9(2)(a)@climatecommission.govt.nz)>; Jo Hendy s 9(2)(a) <[@climatecommission.govt.nz](mailto:johendy@climatecommission.govt.nz)>

Cc: James Every Palmer QC s 9(2)(a) <[@stoutstreet.co.nz](mailto:jepalmer@stoutstreet.co.nz)>; Michael Sharp s 9(2)(a)

<[@michaelsharp.co.nz](mailto:msharp@michaelsharp.co.nz)>; Bryce Lyall s 9(2)(a) <[@lyallthornton.com](mailto:lyallb@lyallthornton.com)>; Joy Haswell

s 9(2)(a) <[@shortlandchambers.co.nz](mailto:s9(2)(a)@shortlandchambers.co.nz)>

Subject: RE: Request for meeting

Kia ora s 9(2)(a)

Out of Scope

We are hoping to circulate some notes for discussion ahead of our meeting - we will try to get those to you by the end of tomorrow.

Ngā mihi

Jenny

From: s 9(2)(a) <[@climatecommission.govt.nz](mailto:s9(2)(a)@climatecommission.govt.nz)>

Sent: Tuesday, 9 February 2021 12:24 PM

To: Jenny Cooper s 9(2)(a) <[@shortlandchambers.co.nz](mailto:jcooper@shortlandchambers.co.nz)>; s 9(2)(a)

s 9(2)(a) <[@climatecommission.govt.nz](mailto:s9(2)(a)@climatecommission.govt.nz)>; Jo Hendy s 9(2)(a) <[@climatecommission.govt.nz](mailto:johendy@climatecommission.govt.nz)>

Cc: James Every Palmer QC s 9(2)(a) <[@stoutstreet.co.nz](mailto:jepalmer@stoutstreet.co.nz)>; Michael Sharp s 9(2)(a)

<[@michaelsharp.co.nz](mailto:msharp@michaelsharp.co.nz)>; Bryce Lyall s 9(2)(a) <[@lyallthornton.com](mailto:lyallb@lyallthornton.com)>

Subject: RE: Request for meeting

Kia ora Jenny,

Out of Scope

Ngā mihi

s 9(2)(a)

s 9(2)(a)



W climatecommission.govt.nz

From: Jenny Cooper s 9(2)(a) <[@shortlandchambers.co.nz](mailto:jcooper@shortlandchambers.co.nz)>

Sent: Friday, 5 February 2021 4:57 pm

To: Anne Jonathan s 9(2)(a) @climatecommission.govt.nz>; s 9(2)(a) climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>
Cc: James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>
Subject: RE: Request for meeting

Out of
Scope

Ngā mihi
Jenny

From: s 9(2)(a) @climatecommission.govt.nz>

Sent: Wednesday, 3 February 2021 5:24 PM

To: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>; s 9(2)(a) @climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>

Cc: James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>

Subject: RE: Request for meeting

Out of Scope

Ngā mihi

s 9(2)(a)

s 9(2)(a)



W climatecommission.govt.nz

From: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>

Sent: Wednesday, 3 February 2021 2:01 pm

To: s 9(2)(a) @climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>; s 9(2)(a) @climatecommission.govt.nz>

Cc: James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>

Subject: Request for meeting

Kia ora s 9(2)(a) and Jo

Congratulations on the launch of the Commission's draft advice. It seems to have had an excellent reception so far. I am following up on our meeting in early January to see if it would possible to arrange a time to talk next week. We can send through some points for discussion once we have a date lined up, but in the meantime, one aspect we are particularly keen to understand is how the recommended emissions budgets line up against the goal of 1.5C and SR1.5. When I asked about this on the webinar on Sunday night, Dr Carr seemed to suggest that the domestic budgets weren't intended to and didn't match the 1.5C target, but I think your answer to the same question in the online chat, s 9(2)(a), said that they do align with 1.5C.

We see this as an important issue and would really like to clarify whether the Commission does believe the recommended budgets are consistent with 1.5C and, if so, the basis for this view. If not, it would be helpful to understand what the Commission calculates the gap is between the budgets and what we would have to do to meet the 1.5C target solely on domestic reductions (assuming it is not simply a question of comparing the budget with the recommended NDC).

Could you please let us know if there is a time next week that would suit you?

Ngā mihi
Jenny

Jenny Cooper QC | President
LAWYERS FOR CLIMATE ACTION NZ INC.
T +s 9(2)(a) E admin@lawyersforclimateaction.nz
Level 13, 70 Shortland Street
PO Box 4338, Auckland 1140, New Zealand
www.lawyersforclimateaction.nz

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s 9(2)(a)
Sent: Wednesday, 10 February 2021 5:14 pm
To: Jo Hendy; s 9(2)(a)
Subject: RE: Request for meeting
Attachments: 2021-02-10 Lawyers for Climate Action NZ topics for meeting with CCC - s 9(2)(a) comments.docx

[UNCLASSIFIED]

Hi Jo

I put together some technical responses to Jenny Cooper's issues/questions that we can use as a starting point for talking to at the meeting.

Happy to talk with you ahead of the meeting if you'd like.

Hope all's well in Auckland.

Cheers

s 9(2)(a)

[UNCLASSIFIED]

From: Jenny Cooper s 9(2)(a) @shortlandchambers.co.nz>
Sent: Wednesday, 10 February 2021 1:34 pm
To: s 9(2)(a) @climatecommission.govt.nz>; Jo Hendy s 9(2)(a) @climatecommission.govt.nz>; s 9(2)(a) @climatecommission.govt.nz>
Cc: James Every Palmer QC s 9(2)(a) @stoutstreet.co.nz>; Michael Sharp s 9(2)(a) @michaelsharp.co.nz>; Bryce Lyall s 9(2)(a) @lyallthornton.com>
Subject: RE: Request for meeting

Apologies, I have just realised that I mistakenly sent you a very marked up draft of our topics for discussion. Here is the correct version.

Kind regards
Jenny

Lawyers for Climate Action NZ

Topics for discussion with Climate Change Commission on 11 Feb 2021

1. Are the ZCA budgets for 2022-25 and 2026-30 consistent with 1.5 degrees?

(a) 564 versus 628

- The NDC analysis concludes that IPCC SR2018 pathways for 1.5 with no or limited overshoot require a budget of no more than 564 mT CO₂e for 2021-30.
- Yet, the ZCA budgets will amount to 628 mT CO₂e over this period.
- Are the figures in the NDC analysis and the ZCA budgets directly comparable? If not, what are the differences?

s 9(2)(g)(i)

- Assuming that the two sets of figures are comparable, doesn't the difference of 64 mT CO₂e imply that our ZCA budgets are inconsistent with Paris and SR2018?

s 9(2)(g)(i)

- If so, why isn't this headlined for transparency?

s 9(2)(g)(i)

- Has the Commission considered whether domestic cuts consistent with SR2018 are technically achievable and has it modelled the cost of these?

s 9(2)(g)(i)

- Unless it has done so and it is not achievable and/or the cost is prohibitive, why would the Commission propose a budget greater than 564 mT CO₂e?

s 9(2)(g)(i)

- In contrast, the Commission's analysis at p155 about feasibility and the risk that greater domestic cuts will lead to emissions leakage seems based on conjecture

(note, the same argument was considered and rejected by the Dutch Supreme Court in *The Netherlands v Urgenda*).

s 9(2)(g)(i)

- The NDC and ZCA budgets use different starting points for 2021 emissions (with the NDC budget being based on our previous international target). Given that we are ultimately concerned with limiting cumulative total emissions, does the Commission accept that having higher actual emissions in 2021 shouldn't result in a more generous budget for the rest of the decade?

s 9(2)(g)(i)

- Has the Commission considered the risk of economic and diplomatic repercussions if we adopt a domestic target that falls short of SR2018 and the 1.5 goal?

s 9(2)(g)(i)

(b) Offshore mitigation vs domestic action


- The Paris Agreement requires countries to put in place domestic mitigation measures to meet their NDCs. In the commission accepting that New Zealand will need to resort to offshore mitigation it is also accepting that it New Zealand won't meet its Paris Agreement obligations? If so, should this not be stated in the report?

s 9(2)(g)(i)

- The reliance on offshore mitigation to meet the NDC seems risky given there is no existing mechanism and no possible counterparties have been identified. Has the Commission identified any countries likely to be in a position by 2030 to sell NZ their excess emissions reductions while also meeting their own 1.5 obligations?


s 9(2)(g)(i)

s 9(2)(g)(i)




- While acknowledging the cost of offshore mitigation is uncertain, the Commission appears to assume that it will be cheaper than domestic action (p157). Does the Commission have any evidence to support that assumption?
- Given the multiplier effect identified by the Commission (p157), plus the fact we will need to take sufficient domestic action in due course to get to net zero by 2050, isn't it relatively unlikely that offshore mitigation will ultimately be cheaper?

s 9(2)(g)(i)



- If there is no evidence that offshore mitigation will be available, or cheaper, wouldn't it be prudent to assume that the NDC will have to be met through domestic action, with offshore mitigation as a back-up or additional measure?


s 9(2)(g)(i)



(c) Split-gas approach

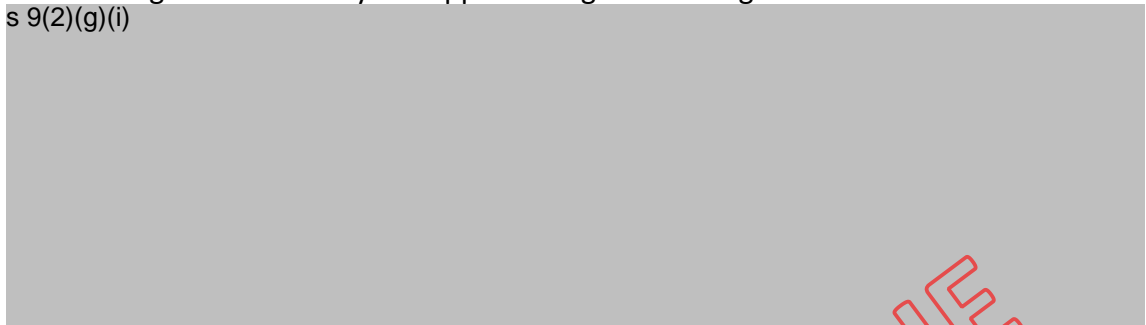
- Given the relatively high proportion of methane in NZ's emissions, a split-gas approach produces a higher allowable level of emissions (564 versus 516 mT CO₂e).
- But, will global aggregate reductions be achieved if each country can choose whether to take a combined or split-gas approach? If each country chooses the approach which produces the least ambition, then we fail in aggregate.

s 9(2)(g)(i)



- Furthermore, is it right to say that the IPCC found that methane did not “need to be reduced ... as deeply or as quickly as carbon dioxide” (p154)? Or was the IPCC simply estimating what was likely to happen on a global average basis as a matter of fact?

s 9(2)(g)(i)



s 9(2)(g)(i)



- If it is feasible to make greater reductions to methane emissions, then doesn't New Zealand have an obligation to do so, given the impact of methane on global temperatures over a 30-40 year timeframe?

That is a judgment that we could make. We would welcome a submission from you with your views on how these emissions should be reduced.

s 9(2)(g)(i)



- Has the Commission considered whether there is a risk of push-back from other countries if we choose to use a split-gas approach rather than the more widely accepted combined gas approach?

s 9(2)(g)(i)




(d) Using SR2018 to set a 2030 target

- We understand the SR2018 1.5 pathway reductions to represent an increase in effort relative to what was occurring in 2010 (that is, they are net:net).

- So, even if there are valid reasons for using gross:net to *express our target*, don't we have to adjust our 2010 gross figures for existing netting activity before applying the SR2018 reductions? This adjustment could be on an averaged basis to avoid particular year anomalies. Otherwise, the 2030 target amount will be insufficiently ambitious.

s 9(2)(g)(i)



2. The role of the ETS


- We agree that the ETS is not a sufficient policy response to achieve our targeted emission reductions.
- However, our thinking to date has envisaged a functional ETS (or a carbon tax) doing the heavy lifting by internalising the cost of emissions and impacting all consumption and production decisions.
- We are not sure how the Commission sees the ETS. While the Commission proposes adjustments to the settings and improved governance for the ETS, it does not analyse the stockpile and the lack of interplay between uncovered methane emissions and auction quantities.

s 9(2)(g)(i)



- Without addressing these issues, the ETS cannot cap annual emissions and is a somewhat clumsy way to put a price on emissions that come within the ETS.
- Has the Commission considered the issues of (i) how to address the stockpile and (ii) how to create a mechanism so that the ETS price responds to excess methane emissions to ensure that the overall emissions target is not exceeded?

s 9(2)(g)(i)



RELEASED UNDER THE
OFFICIAL INFORMATION ACT

- Doc 28 - Emails - 9 Feb 2021 - Withheld in full under s 9(2)(g)(i)
- Doc 29 - Emails - 21 Dec 2020 - Withheld in full under s 9(2)(g)(i)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT