

Joint Submission on Aotearoa New Zealand's Second Nationally Determined Contribution under the Paris Agreement

6 December 2024

Introduction

1. Article 4(2) of the Paris Agreement requires each party to prepare, communicate and maintain successive domestic climate action plans that it "intends to achieve" to the UNFCCC - known as Nationally Determined Contributions (**NDCs**).
2. This is a joint submission on behalf of Lawyers for Climate Action NZ Inc (**LCANZI**), the Environmental Defence Society (**EDS**), WWF-New Zealand (**WWF-NZ**), and Greenpeace Aotearoa (together, '**we**') on the Government's approach to setting Aotearoa New Zealand's second Nationally Determined Contribution (**NDC2**).
3. We have all already met with the Ministry for the Environment (**MFE**) to provide high-level feedback on NDC2. This submission is in response to MFE's call for public feedback and considers the questions asked by MFE in its discussion document entitled "Opportunity for Public Feedback" (**Discussion Document**).

Question 1: Do you have any comments on the Climate Change Commission's advice?

4. The Commission's advice is a floor for action, not advice that reflects Aotearoa New Zealand's highest possible ambition or a scenario designed to be aligned with 1.5°C consistent pathways.
5. To this end, while the Commission's analysis found that reductions of up to 69% in 2035 are feasible domestically across its scenarios, international 1.5°C-consistent pathways (such as the IEA's net-zero energy scenario) reduce fossil fuel emissions more rapidly than the Commission's scenarios. That rate of fossil fuel reduction would put a 2035 domestic reduction target in the mid-70% range.
6. We strongly support the Commission's advice that the NDC must be in the form of a single all-gases target. It would be unacceptable internationally to put forward a split-gas NDC, even more so if that were accompanied by weakening, rather than strengthening, ambition on methane reductions (such as by adopting a "no additional warming" or GWP* based target using a recent base year). Anyone arguing for a split-gas approach significantly underestimates how poorly this would be received by our international peers and trading partners.
7. Finally, we are concerned by the prospect of calculating NDC2 based on a startpoint of projected 2030 emissions, rather than the NDC1 endpoint. NDC2 must be more progressive than NDC1 - which logically should require NDC2 to pick up on where NDC1 left off. The risk with this possible approach is that it allows NDC2 to look more

progressive than is actually the case, and our understanding is that this would also *not* align with the approach likely to be taken by other parties to the Paris Agreement. A good faith approach to setting NDC2 means Aotearoa New Zealand cannot manipulate its numbers to achieve the highest sounding percentage reduction.

Question 2: What factors should the Government prioritise when setting NDC2?

8. The ultimate objective of the UNFCCC is to “prevent dangerous anthropogenic interference with the climate system”.¹ The Paris Agreement aimed to achieve this by setting a long-term temperature goal that “would significantly reduce the risks and impacts of climate change”.²
9. However, the critical context ahead of Aotearoa New Zealand setting NDC2 is that existing 2030 NDC pledges collectively are insufficient to limit global warming to 1.5°C - even if all parties were to meet their 2030 NDCs, which appears unlikely.³ This is alarming given we know that this is the critical decade for the world to prevent catastrophic climate change.

Core legal requirements cannot be prioritised or deprioritised

10. It is disappointing that in the list of seven factors which MFE has presented in its Discussion Document, it has presented its legal commitments as factors that could be deprioritised for cost or convenience. This is misleading to submitters as it implies choices that do not actually exist. It is critical that NDC2 *first and foremost* meets the core requirements of the Paris Agreement. Other factors should be secondary.
11. The core legal obligations can be summarised as follows:
 - a. Each Party to the Paris Agreement has a procedural obligation to “prepare, communicate and maintain” successive NDCs that it “intends to achieve” (Art 4(2));
 - b. Parties have a further procedural obligation to “pursue domestic mitigation measures” (Art 4(2));
 - c. These obligations are coupled with a due diligence obligation to make best efforts to achieve the objectives of NDCs;
 - d. While the framing and content of NDC are largely left up to parties, certain normative expectations apply. These include:
 - i. developed countries, including Aotearoa New Zealand, must take the lead (Art 4(4));
 - ii. the level of ambition contained in the NDC is expected to align with the global temperature goal (Arts. 4.1 and 2.1(a));

¹ UNFCCC Art 2.

² Paris Agreement, Art 2.1(a).

³ [Outcome from the First Global Stocktake](#), FCCC/PA/CMA/2023/L.17 (13 December 2023). Also see A Patts et al, “International Co-operation” in IPCC AR6 “Climate Change 2022: Mitigation of Climate Change”) at 1466

- iii. each successive NDC is to be informed by the outcome of the Global Stocktake (Arts 4(9) and 14(3));
 - iv. each successive NDC must be progressive in its ambition (Art 4(3));
 - v. a strong expectation that each NDC must reflect each Party's highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities in light of different national circumstances (Art 4(3)). This means that NDCs must reflect what is possible, and that each country must do its fair share.
12. While what amounts to "progression" and "highest possible ambition" is not prescribed by the Paris Agreement, or elaborated in the Paris Rulebook, these obligations have been read to imply a due diligence standard.⁴ It is also important to note that "highest possible ambition" is reflected in the procedural requirement that Parties include information in their NDC as to how it considers that its NDC is fair and ambitious in light of its national circumstances, and how it has addressed Art 4(3).⁵
13. Overall, this means that whether Aotearoa New Zealand's next NDC reflects its highest possible ambition, fair share, or national circumstances are not matters that can be prioritised or deprioritised. Rather, they are the key requirements that NDC2 must satisfy.

The government has made international commitments that cannot be prioritised or deprioritised

14. One of the factors MFE considers could be prioritised is the outcome of the Global Stocktake. Again, this is misleading. Aotearoa New Zealand has already agreed to the Global Stocktake recommendations, with Minister Watts reporting to Cabinet that it is critical for Aotearoa New Zealand to play its role - and that this includes setting a 1.5°C aligned NDC2.⁶ This political commitment was reiterated at COP29, including by Aotearoa New Zealand signing on to the High Ambition Coalition statement.
15. Unless the Government has been deliberately misleading the international community, alignment with Global Stocktake recommendations is not something that can be deprioritised (Arts 4(9) and 14(3)).

The importance of integrity and reducing gross emissions

16. Aotearoa New Zealand's response to climate change to date has been a gamble on our international reputation. This is because:
- a. Aotearoa's gross emissions-per-GDP ratio is the third-highest of all advanced economies, behind only Australia and Canada, and the Climate Change Commission has warned that there are "significant risks" to meeting the second

⁴ A Patts et al, "International Co-operation" in IPCC AR6 "Climate Change 2022: Mitigation of Climate Change") at 1466; C Voigt, 'The Power of the Paris Agreement in International Climate Litigation' (2023) 32(2) RECIEL 237 at 241; Benoit Mayer, "The Highest Possible Ambition on climate Change Mitigation as a Legal Standard" (2024) 73(2) International & Comparative Law Quarterly 285.

⁵ Decision 4/CMA.1, "Further guidance in relation to the mitigation section of decision 1.CP.21", (19 March 2019) UN Doc FCCC/PA/CMA/2018/3/Add. See, in particular, Annex 1, para 6(c).

⁶ <https://www.mfat.govt.nz/assets/OIA/OIA-2024/PR-0021-UAE-Dec-23-Combined-docs.pdf>

and third emissions budgets (bearing in mind EB2 is already set at a much lower level than NDC1).⁷

- b. NDC1 is calculated on a gross:net basis, which allows Aotearoa New Zealand to focus on offsetting emissions rather than prioritising gross emissions reductions at source. However, if our NDC was approached on a net:net basis (which is what most other countries do), our current NDC would only amount to a reduction of 15.9 Mt CO₂-e (27.8% below 2005 levels).
 - c. The use of a “modified activity-based approach” to calculate the NDC does not measure what the atmosphere sees, but rather disregards all pre-1990 forestry and from 2021 averages forestry removals. This is unlike the conventional measure required for UNFCCC reporting, and was not a neutral decision but one that nakedly advantages Aotearoa New Zealand.
 - d. Key trading partners are increasingly demanding that Aotearoa New Zealand meet its Paris Agreement obligations, with this being reflected in recent trade agreements with both the UK and EU.
17. Aotearoa New Zealand’s poor performance is starting to be recognised internationally, demonstrated most recently by the fact Aotearoa New Zealand dropped seven places to 41st in the global Climate Change Performance Index.⁸
18. It is critical that the Government approaches NDC2 with integrity and appropriate ambition - rather than using creative accounting to manipulate how progressive and ambitious Aotearoa New Zealand’s emissions reduction efforts appear. This is also most consistent with our Paris Agreement obligations - which require us to approach our obligations in *good faith*.
19. In a similar vein, we strongly support the setting of separate gross/net emissions reduction targets in NDC2. It is well-established that reductions/removals are not fungible. And yet, Aotearoa New Zealand’s climate targets to date have been based on the false assumption of equivalence. For example, the demonstration path for emissions budgets through to 2035 shows reductions in net emissions driven by modest reductions in gross emissions and substantial increases in forestry removals. The false assumption and reliance on forestry to achieve our climate change goals have been central to our climate response since the Kyoto Agreement. But splitting our gross/net targets in NDC2 is an opportunity to change course.

The cost and impact of reducing emissions and corresponding impacts on the economy

20. The costs of reducing emissions, and the impacts of NDC2 on the economy, are necessarily secondary to the core requirements of the Paris Agreement. If we use “least cost” as the starting point, that in our view is contrary to the principles of the Paris Agreement.

⁷ He Pou a Rangi Climate Change Commission, *2024 Monitoring Report* (July 2024) at p. 19.
⁸ <https://ccpi.org/country/nzl/>

21. In addition, the framing of these factors implies that setting an ambitious target necessarily involves more cost and a greater negative impact on the economy than a lower target. However, that is not necessarily true. Investment in mitigation action is made to avoid the far higher costs of climate change impacts. We are already bearing the costs of climate change, and if we do not act urgently they will escalate further.⁹ There are additional economic costs associated with inadequate climate action - such as impacts on our trading relationships, the value of our exports, and our balance sheet.
22. We also note the Commission's CGE analysis that GDP is essentially the same in all of its scenarios (and greater action has significant co-benefits from reduced air pollution). But responding to climate change and embarking on the systemic change required must involve impacts of some sort: this is a necessary economic transition. It is in Aotearoa New Zealand's interests to move with other countries on this and to support affected sectors. Propping up outdated industries to avoid or delay change will just mean more disruptive higher-cost correction later.
23. The reality is that costs are minimised by setting the most ambitious target possible, so this is not a trade-off.

The existence of a 'clear plan for delivering the target'

24. We support the Government adopting a clear plan for meeting NDC2 from the outset, rather than leaving Aotearoa New Zealand in the unsatisfactory position we are currently in with no clear plan for meeting NDC1, other than unspecified commitments to offshore mitigation.
25. However, this should not be a factor that holds up an ambitious NDC2 that meets the core legal requirements for NDCs under the Paris Agreement. Plans already exist for ambitious domestic action. The Climate Change Commission has modelled scenarios for up to 69% reduction domestically in significant detail. Adding in the IEA's well-documented energy transition pathway could take this to the mid-70% range.

Aotearoa New Zealand's relative standing to other comparable countries/economies

26. This is a useful cross-check, but the Paris Agreement requirement and Global Stocktake commitment is for us to do the maximum possible, aligned with 1.5C. Countries that are part of the High Ambition Coalition have committed to this – these would be the most appropriate references for Aotearoa New Zealand.

Question 3: What factors in Aotearoa New Zealand's economic outlook should be taken into consideration when setting NDC2?

27. We refer to our answer above at paragraphs [20]-[23].
28. As a general comment, we strongly encourage the Government to avoid the temptation of using today's economic conditions as an excuse to do less ten years from now. The world is going through a global economic transition to clean energy and industry, and

⁹ See for instance the estimates in the New Zealand Treasury and MFE's report, *Ngā Kōrero Āhuarangi Me Te Ōhanga Climate Economic and Fiscal Assessment 2023* (April 2023).

sustainable food production. Our future economic outlook will depend on how successfully Aotearoa New Zealand makes that transition, rather than continuing with the status quo and not taking the appropriate actions now.

Question 4: What factors do you think are important for deciding a “fair share” for Aotearoa New Zealand for its NDC2?

29. There is no exact science to determining “fair share”, but in our view, key factors include:

- a. Developed countries like Aotearoa New Zealand need to do *more* than the global average and take the lead in addressing climate harm. This is explicitly provided for under the Paris Agreement.¹⁰ In our view, it also ought to prevent grandfathering: allowing future emissions to be allocated based on past and current emissions, which allows those countries that currently emit more to continue emitting more.¹¹
- b. Under international law, the principle of equity is wider than common but differentiated responsibilities, encompassing considerations of inter-generational fairness, as well as the need to support less developed states that are most vulnerable to the effects of climate change.

30. Aotearoa New Zealand is a rich country: our GDP per capita is similar to the European Union. We should not pretend that playing our part is too expensive. We also have one of the highest per-capita emissions in the world, and high historical responsibility for emissions (particularly from land clearance).

31. Aotearoa New Zealand’s energy emissions are about the same as other developed countries, and we need to reduce these emissions just as fast as they do: all countries need to reach near-zero fossil fuel emissions. While Aotearoa New Zealand has a high share of agricultural emissions, we also have far higher potential for reforestation than most developed countries, meaning that our land-sector challenge is similar overall. A high methane share is not an excuse to set a weak NDC if at least part of it is set on a ‘net’ basis including forestry.

Question 5: Should NDC2 be set at a level that is achievable with domestic action only or should it be set at a level that is achievable with a mix of domestic action and international cooperation (offshore mitigation)?

32. Domestic emissions reductions should be the primary focus. This is because:

- a. Aotearoa New Zealand could achieve domestic reductions that are far more ambitious than what has been budgeted for to date. As already noted, a domestic target in the mid-70% range could be feasible and affordable if the government acts with urgency and ambition.
- b. We are concerned that under the current NDC, Aotearoa New Zealand sees offshore mitigation as a substitute for domestic emissions reductions. But that risks kicking the can down the road.

¹⁰ Paris Agreement, Art 4(4).

¹¹ For a critique of grandfathering, see Kate Dooley et al, “Ethical Choices behind Quantifications of Fair Contributions under the Paris Agreement ” (2021) 11 Nature Climate Change 300.

33. New Zealand is well placed to decarbonise our energy system with green innovation, renewable energy, and a circular economy, which would yield a wide range of financial and environmental benefits. There are also a host of demand and supply-side options still available for the government to explore to address our energy security needs – all of which stand to offer significant benefits to New Zealanders. These include incentivising the development of small-scale solar power that can improve community resilience to natural disasters and supporting Kiwis to better insulate their homes to reduce energy leakage and usage whilst improving human health outcomes.
34. With strong domestic ambition, we fully support a domestic-only target. However if the government deliberately sets domestic policies weakly, Aotearoa New Zealand should still contribute its fair share of global emissions reductions. Offshore mitigation should only be seen as a potential backstop, and cooperation must be equitable and high-integrity.
35. We also strongly reject arguments that offshore mitigation should be prioritised as it is more cost-effective. It fails to take into account the moral and economic imperatives to decarbonise in Aotearoa New Zealand, and, despite a recent agreement on rules and standards for trading emission reduction credits under Art 6, significant risks around the integrity of such international units remain.

About the Submitters

36. Lawyers for Climate Action NZ Inc is an incorporated society of lawyers with 370 members, committed to using the law to enable more effective action on the climate crisis. This means ensuring New Zealand meets its Paris Agreement obligations with integrity and appropriate ambition. It was for this reason that LCANZI filed legal proceedings against the Minister for Climate Change and the Climate Change Commission in 2021, on the basis that New Zealand's NDC was set based on advice that was insufficient to achieve the 1.5°C Paris Agreement goal.
37. EDS is an apolitical, not-for-profit organisation dedicated to achieving improved environmental outcomes for all New Zealanders. It is active as a litigator, policy think tank, and conference organiser. It has dedicated considerable resource over the past few decades to examining climate change issues, including having hosted multiple Climate Change and Business Conferences and recently reporting on options for a new Climate Change Adaptation Act.
38. As one of the leading environmental Non-Governmental Organisations (eNGOs) in Aotearoa New Zealand, World Wide Fund for Nature – New Zealand (WWF-New Zealand) supports science-based, pragmatic solutions that can deliver a future where humanity lives in harmony with nature. Globally, WWF international has been a leading voice on the development of tools and approaches to support a nature-positive future, particularly through the negotiation of the Kunming-Montreal Global Biodiversity Framework, as a cofounder of the Taskforce on Nature-related Financial Disclosures, and as a member and convenor of the Nature Positive Initiative.

39. Greenpeace is a global, independent campaigning organisation that acts to protect and conserve the environment and to promote peace. Greenpeace is one of the world's largest and oldest environmental organisations, operating for half a century since 1971, and now works in more than 55 countries. The New Zealand branch of Greenpeace (Greenpeace Aotearoa) was founded in 1974 and has grown to represent 35,000 financial donors and many tens of thousands of supporters.

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