



## Briefing: Section 5K request on second Nationally Determined Contribution

Date submitted: 31/08/2023

Security level: CLASSIFICATION

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon James SHAW Minister of Climate Change	<p><b>Provide feedback</b> on the draft request and terms of reference for the section 5K request to the Climate Change Commission.</p> <p><b>Agree</b> to formally consult with the Climate Change Commission on the proposed request and draft terms of reference.</p> <p><b>Provide direction</b> on your preferred timing options for the proposed request.</p>	04/09/2023

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment ( <a href="mailto:ministerials@mfe.govt.nz">ministerials@mfe.govt.nz</a> ).

Appendices and attachments
1. Appendix 1: Draft terms of reference

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
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Responsible Manager	Meredith Davis	027 347 0141	
Director	Hemi Smiler		✓

Minister's comments

# Section 5K request on second Nationally Determined Contribution

## Key messages

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1. New Zealand is required to submit its second Nationally Determined Contribution (NDC2) in 2025. We have previously discussed with you the possibility of the Government seeking independent advice from the Climate Change Commission (the Commission) to inform decisions on NDC2.
2. This briefing provides you with a draft request and terms of reference for advice from the Commission on NDC2.
3. We recommend that NDC2 advice from the Climate Change Commission focuses on the impacts on New Zealand of increased domestic emissions reduction.
4. This would best align with the Commission's expertise, mandate and broader advice the Commission is required to provide the Government in 2024. The advice would be a useful, public-facing part of the evidence base to inform the next government's decision on the appropriate level for NDC2.
5. Before making a Section 5K request, you are required to formally consult with the Commission and should also notify Cabinet. It is possible to accomplish this before the election, but timing will be tight. This briefing outlines two timing options and seeks your direction on which to pursue.

## Recommendations

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We recommend that you:

- a. **note** that advice from the Climate Change Commission on the impacts of increasing levels of domestic emissions reduction could help inform the government's decision on the appropriate level for NDC2.
- b. **note** that because of their current limited capacity, a tightly scoped request for advice on NDC2 would be more sensible in practice for the Climate Change Commission.
- c. **provide feedback** on the proposed request and draft terms of reference for the section 5K request to the Climate Change Commission.

Yes | No

- d. **agree** to formally consult with the Climate Change Commission on the proposed request and draft terms of reference, pending any requested changes.

Yes | No

- e. **agree to:**

- i **either** Option one: submit section 5K request in September 2023

Yes | No

- ii **or** Option two: delay section 5K request until after the election.

Yes | No

## Signatures

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Hemi Smiler

**Director Climate Strategy and Mitigation  
Policy**

**30 August 2023**

Hon James SHAW

**Minister of Climate Change**

**Date**

# Section 5K request on second Nationally Determined Contribution


## Purpose

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1. To provide you with advice on a possible section 5K request to the Climate Change Commission (the Commission) to support the Government to make future decisions on the second Nationally Determined Contribution (NDC2).

## Background

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2. Under the Paris Agreement, New Zealand is required to set successive and progressive nationally determined contributions. The Government is required to submit NDC2 in late 2025.
3. New Zealand's NDC2 will cover the period 2031-2035 and is intended to be our highest possible ambition and contribution towards international efforts to limit global warming. Under the Paris Agreement, NDC2 must be a progression from NDC1 (i.e. more ambitious).
4. Determining the appropriate level for New Zealand's NDC is a highly complex and nuanced judgement for the Government to make, which requires balancing a range of factors.
5. In determining New Zealand's highest possible ambition, we must consider both what can be accomplished through domestic mitigation, and how we can contribute to international mitigation efforts. This is particularly important given that New Zealand is a developed country that has historically benefited from high emissions per capita.
6. 9(2)(g)(i) 
7. To support future decisions on NDC2, you expressed interest in formally requesting a report from the Commission providing advice on NDC2 under section 5K of the Climate Change Response Act 2002 (CCRA).
8. Section 5K of the CCRA allows the Minister of Climate Change to request advice from the Commission to the Government on matters related to reducing emissions of greenhouse gases and adapting to the effects of climate change.

## Analysis and advice

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### Role of the Commission in supporting NDC2

9. As an independent expert body, the Commission can play a key role in supporting government decisions on NDC2 by providing evidence-based advice. However, it is not within the Commission's remit to determine the appropriate level of ambition for NDC2.
10. You previously requested advice from the Commission to support revising the ambition of NDC1 in 2021. Specifically, you requested a report on New Zealand's first NDC, including:
  - i advice on whether New Zealand's NDC is compatible with contributing to global efforts under the Paris Agreement to limit the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels; and
  - ii recommendations on any changes to the NDC required to ensure New Zealand's NDC is compatible with such global efforts under the Paris Agreement.
11. In their response, the Commission expressed concerns they were being asked to effectively determine a level of NDC that would be compatible with limiting temperature increases to 1.5 degrees Celsius above pre-industrial levels. The Commission was clear in its response that it is the Government's role to consider the wide range of factors that determine a Paris-compatible NDC that is appropriate for New Zealand, not the Commission's.
12. The Commission is currently preparing advice on New Zealand's fourth emissions budget, the 2050 target, inclusion of international shipping and aviation in the 2050 target. The Commission has limited capacity and there are several potential topics that could benefit from their focus.
13. Therefore, we recommend that any request under section 5K be tightly defined to reflect the Commission's mandate, and their capacity. A tightly scoped request will also enable the Commission to deliver this advice alongside other relevant advice and align its public consultation processes.

### Proposed request to the Commission

14. We propose requesting the Commission to provide:

*Advice on expected impacts to New Zealand of domestic emissions reductions over the period 2031 - 2035 (under New Zealand's NDC2), considering:*

- *ambition as advised by the Climate Change Commission for New Zealand's third emissions budget period;*
- *a further reduction of domestic emissions of 10% over that same period;*
- *a further reduction of domestic emissions of 25% over that same period.*

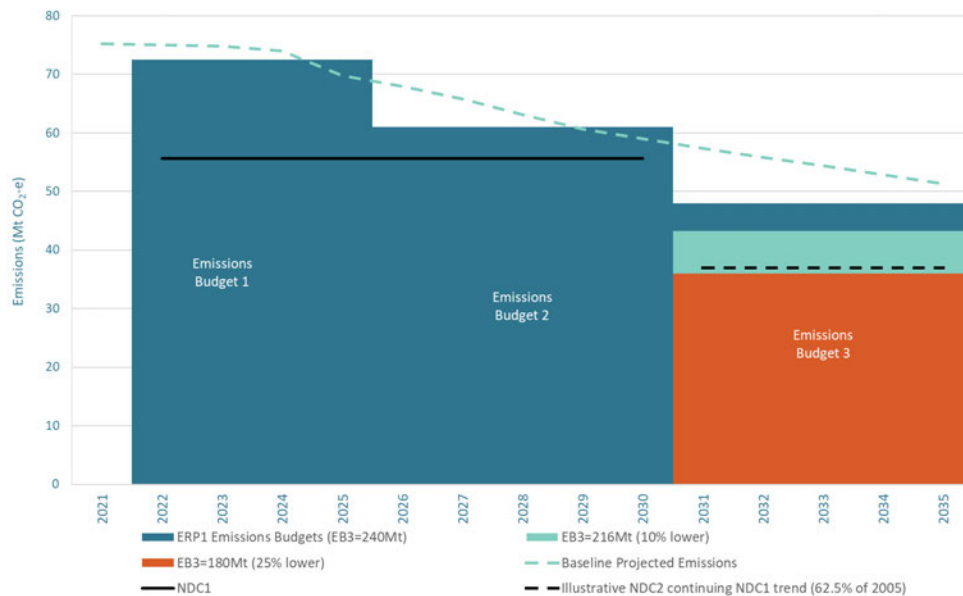
15. The impacts considered will be those outlined under section 5M of the CCRA, which requires the Commission to consider, where relevant:
  - i current available scientific knowledge
  - ii existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand
  - iii the likely economic effects
  - iv social, cultural, environmental, and ecological circumstances, including differences between sectors and regions
  - v distribution of benefits, costs and risks between generations
  - vi the Crown-Māori relationship, te ao Māori and specific effects on iwi and Māori
  - vii responses to climate change taken or planned by parties to the Paris Agreement or to the United Nations Framework Convention on Climate Change.
16. In its advice, we also recommend the Commission consider the way we account for NDC2. Separate results should be provided on the basis that:
  - i the NDC1 target accounting approach will continue to apply to the Land Use, Land-Use Change and Forestry (LULUCF) sector
  - ii a net-net accounting approach will apply to the LULUCF sector for NDC2.
17. Advice on different accounting approaches will quantify the potential impacts of a shift to net-net accounting, which will inform future decisions on NDC accounting rules. However, the Commission has noted that this will add practical challenges to the request that will need to be worked through as part of formal consultation with the Commission.
18. Note that the request refers to “*ambition as advised by the Climate Change Commission for New Zealand’s third emissions budget period*” rather than the current EB3, to ensure alignment with the Commission’s forthcoming advice on emissions budget 4, which could also include advice on emissions budgets 3.

### **Benefits of proposed request**

19. This request will explore the impacts of increasing our domestic emissions reduction ambition beyond what was previously considered for NDC1, or in the development of the Commission’s demonstration pathway.
20. Additional reductions of 10% and 25% above those required by the third Emissions Budget (EB) represent substantial increases in ambition, but would more closely align with the possible requirements of NDC2.

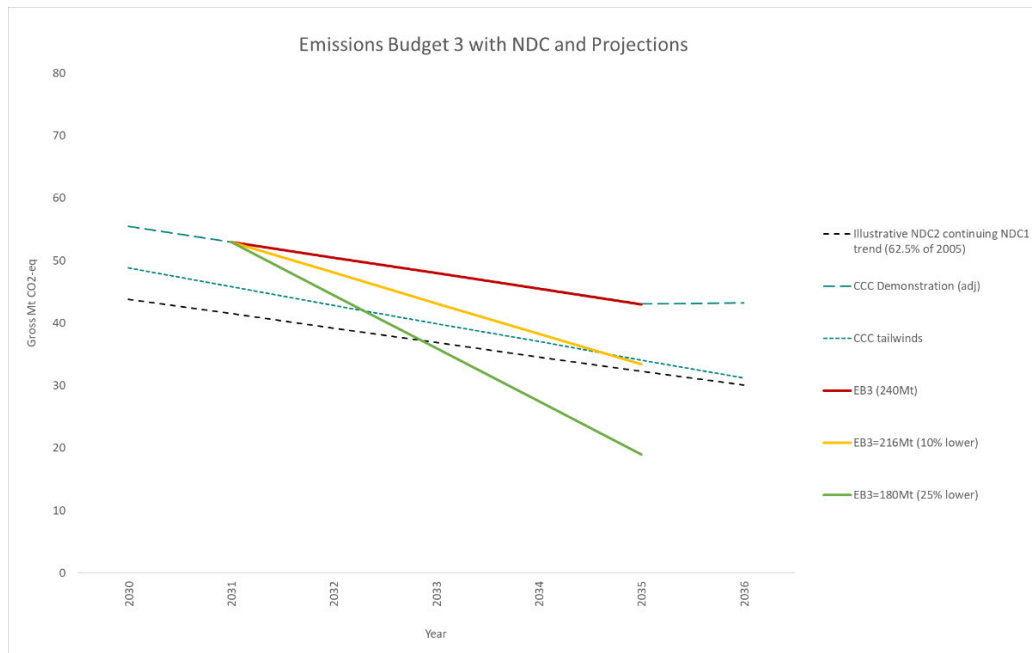
21. Figure 1 below compares total emissions for the period under these scenarios with previous EBs, and an illustrative NDC2 figure<sup>1</sup>.

Figure 1: Increased domestic emissions reduction scenarios under NDC2



22. Figure 2 below shows the rate of change within the NDC2 period (2031-2035) to achieve these levels of domestic emissions reduction. These trajectories are only possibilities and could differ in reality, particularly if we are able to overachieve on emissions reduction during EB2.

Figure 2: Trajectories of emissions reduction scenarios within NDC2 period



<sup>1</sup> This illustrative figure is derived by continuing the reductions required by NDC1 in a straight line through to net zero emissions in 2050. It represents a 62.5% reduction of net emissions below our 2005 gross emissions by 2035.

23. Analysis of these scenarios would provide help us understand their impact on New Zealand, and how those impacts would be distributed. It will help answer, according to varying levels of ambition, how far we would be stretching ourselves economically, how we would expect New Zealanders to adapt, and where these impacts would be most felt.
24. The Commission's advice on this topic will form part of a broad evidence base to inform the next government's decision on the appropriate level for NDC2.
25. The Commission's report will be published and available to the public shortly after it is delivered to the government. It can help prompt public awareness and consideration of the possible trade-offs involved in setting NDC2 and reassure that the impacts of NDC2 decisions are being thoroughly explored.
26. The nature of this request would set a good foundation for wider consultation on NDC2 in 2025 by clearly outlining some possible impacts of various levels of domestic emissions reduction under NDC2.
27. Exploring the possible implications of stretching our domestic mitigation is key to aligning the ambition of domestic and international targets over time.

#### **Link to international mitigation**

28. We recommend only focusing on the impacts of domestic emissions reduction in this request. This will help provide more focused advice and align better with the Commission's expertise and existing work programmes.
29. Advice on an appropriate level of international cooperation on mitigation will continue to be developed jointly by the Ministry for the Environment and the Ministry of Foreign Affairs and Trade through the International Emissions Reduction Plan.
30. Final decisions on NDC2 will require consideration of both our maximum domestic and international ambition.

#### **Steps needed to make the request**

31. Prior to making a request for advice under section 5K you must consult the Commission on the draft terms of reference for the requested report.
32. Additionally, it is recommended that you inform Cabinet before formally requesting any report from the Commission, given the wide-ranging possible implications of the Commission's advice on other portfolios.
33. This could be an oral item to Cabinet, given the limited remaining meetings of Cabinet before the election.
34. Once they receive the final request, the Commission is required under the CCRA to make the terms of reference public as soon as possible.



## Timing options

### Alignment with broader NDC timelines

35. The Government is required to submit NDC2 to the UNFCCC in late 2025.
36. This would require final Cabinet decisions on New Zealand's NDC2 by late 2025.
37. Advice on NDC2 and public consultation will take place in the first half of 2025.
38. In order to feed into broader policy work on NDC2, the Commission will need to deliver advice by the end of 2024.
39. To align with these timelines there are two options for progressing this request—pre or post-election. The steps for each option are outlined below.
40. Progressing this request pre-election is preferred by the Commission as they could better align public consultation on this request with that for other related advice. However, timing to accomplish this is tight and if there are any delays in the formal consultation with the Commission or taking this matter to Cabinet, we will need to default to the post-election option.

### Option one: Pre-election

41. If you intend to make the request pre-election, timing is constrained and there are only two opportunities to take this before Cabinet – 4 September and 18 September. Given timeframes, we recommend formally consulting with the Commission in advance of consulting Cabinet.

Date	Step
Aug-Sep	Informal engagement with the Commission on proposed request
4 Sep – 15 Sep	Formal consultation with the Commission on draft terms of reference. This allows the Commission to consider the request at their Board meeting on 13 September
18 Sep	Consulting Cabinet Business Committee on proposed request and ToR via oral item
25 Sep	Send formal section 5k request and final terms of reference to the Commission
Sep/Oct	The Commission to make the terms of reference publicly available as soon as practicable, as per CCRA requirements
Nov 2023 – March 2024	The Commission prepare draft response on NDC2

April - June	The Commission to undertake public consultation on draft response late March/Early April (aligned with wider advice on EBs and 2050 target)
31 December 2024	Final advice on NDC2 due to the Government

42. Following the election, the Minister of Climate Change could choose to change the terms of reference or withdraw the request.

### Option 2: Post-election

43. If the request is made post-election, timing is more flexible, but must still proceed quickly to enable the Commission sufficient time to deliver advice on NDC2 that is aligned with broader related advice in 2024. Below is an ideal timeline.

Date	Step
Aug-Sep	Informal engagement with the Commission on proposed request
Nov	Approval from Minister of Climate Change of draft terms of reference
Dec	Consulting Cabinet on proposed request and ToR via Cabinet paper or oral item
Dec/Jan	Formal consultation with the Commission on draft terms of reference
Dec/Jan	Send formal section 5k request and final terms of reference to the Commission
Jan	The Commission to make the terms of reference publicly available as soon as practicable, as per CCRA requirements
Jan - March	The Commission to prepare draft response on NDC2
April - June	The Commission to undertake public consultation on draft response late March/Early April (aligned with wider advice on EBs and 2050 target)
31 December	Final advice on NDC2 due to Government

## Te Tiriti analysis

44. No Tiriti issues are associated with the proposals in this briefing.

## Other considerations

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### Consultation and engagement

45. We have informally tested this request with the Commission, and they noted it would be useful for any request to be within their mandate, valuable for any Government setting NDC2, and align well with their existing work programmes. Initial advice from the Commission has been incorporated into the wording of the draft Terms of Reference.
46. We consulted on this request with the Climate Interagency Directors' group. We received feedback from the Ministries of Foreign Affairs and Trade, Business, Innovation and Employment, Primary Industries, Transport, the Department of Conservation and the Treasury. The Department of Prime Minister and Cabinet was informed.
47. Most feedback was supportive of getting additional information on the impacts of domestic emissions reduction, but noted the opportunity cost of progressing this request and there were questions as to what extent this request would impact decisions on the overall NDC2 level. The framing of the request was tightened as a result of agency feedback.

### Risks and mitigations

48. Delaying the request past the election will tighten timeframes for the Commission to prepare their report on this request, and could risk:
  - i missing the opportunity to align with wider advice on the 2050 target and emissions budgets
  - ii negatively impacting on the quality and depth of their advice.
49. Progressing the request before the election will mean that the Commission will be required to publicise the terms of reference shortly before the election.<sup>2</sup>
50. Although the proposed request is intended only to provide neutral evidence for a decision that New Zealand has already committed to, it could still raise questions around specific NDC levels and appropriate ambition close to the election. We have aimed to frame this request so it will be useful for any incoming government.
51. Following the election, the Minister of Climate Change could choose to change the terms of reference or withdraw the request.

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<sup>2</sup> Under section 5(k)(3)(a) of the CCRA, on receiving a request from the Minister of Climate Change, the Commission must as soon as practicable, make the terms of reference publicly available.

## Legal issues

52. None.

## Financial, regulatory and legislative implications

53. No financial, regulatory, or legislative implications are associated with the proposals in this briefing.

## Next steps

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- 54. We invite your feedback on our proposed section 5K request and draft terms of reference and seek your direction on your preferred timing option, pre or post election.
- 55. If you decide to progress this request before the election, we will engage with your office to formally consult with the Commission, subject to your agreement on the proposed request and terms of reference.
- 56. We would recommend taking the request to Cabinet Business Committee on 18 September.
- 57. We recommend that you engage with your ministerial colleagues on this request in advance of Cabinet.
- 58. If you decide that the request should be progressed after election, we will continue to engage informally with the Commission on this request and engage further on this with the Minister of Climate Change in November.

## Appendix 1: Draft terms of reference

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The Minister of Climate Change requests under s5K of the Climate Change Response Act 2002 (the Act) that the Climate Change Commission (the Commission) provides a report on the expected impacts on New Zealand of domestic emissions reduction under NDC2, considering different levels of domestic emissions reduction.

### Purpose of the work

The New Zealand Government is required to determine the level of New Zealand's second Nationally Determined Contribution (NDC2), as per the Paris Agreement requirements.

This advice will support the Government's future decisions on appropriate NDC2 ambition by providing information on the impacts of domestic emissions reduction, alongside wider analysis and advice.

### Advice requested

The Minister requests that the Commission provide a report analysing expected impacts to New Zealand of domestic emissions reductions over the period 2031 - 2035 (under New Zealand's NDC2), considering:

- ambition as advised by the Climate Change Commission for New Zealand's third emissions budget period;
- a further reduction of domestic emissions of 10% over that same period;
- a further reduction of domestic emissions of 25% over that same period.

In developing its scenarios, the Commission should also consider the way we account for NDC2. Separate results should be provided on the basis that:

1. the NDC1 target accounting approach will continue to apply to the Land Use, Land-Use Change and Forestry (LULUCF)
2. a net-net accounting approach will apply to the LULUCF sector for NDC2.

### Considerations

In developing its advice, the Commission must consider relevant matters under s5M of the Act.

### Mode of work

In preparing the report, the Commission must act independently, as per s5O of the Act. The Commission may engage with relevant persons as provided for by s5N of the Act.

Relevant officials will be available to engage with the Commission and will share related information and data to inform the Commission's work.

### Timeframes

The Commission's advice on these matters, in the form of a final report, is to be provided to the Minister of Climate Change by 31 December 2024.

The Commission will brief officials on its final advice after it has been provided to the Minister, but prior to the public release of the report.

### Publication

s5L of the Act applies, meaning the Minister of Climate Change must present a copy of the report to the House of Representatives no less than ten working days after the Minister receives it, and the Commission must make it publicly available as soon as practicable thereafter (but no later than 20 working days after providing it to the Minister).