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Chair,
Cabinet Economic Growth and Infrastructure Committee

Paris Climate Change Agreement - Report back to Cabinet and Approval for Signature

Proposal

This paper seeks Ministers' agreement for New Zealand to sign the Paris Agreement on climate change and provides a report-back on the Paris Climate Change Conference as requested previously by Cabinet.

Executive summary

1 The historic Paris Agreement on climate change was concluded at the twenty-first Conference of Parties to the United Nations Framework Convention on Climate Change (COP 21) on 12 December 2015. It ensures, for the first time, all countries will now contribute to the global response to climate change on an equal legal footing. The intended nationally determined contributions (INDCs) pledged under the Agreement cover Parties responsible for 99% of global emissions.

2 I propose New Zealand signs the Agreement on 22 April at the high-level signing ceremony to be convened in New York. Signing signals our intention to be bound by the Agreement. I expect we will be in a position to ratify the Agreement within a 2-3 year timeframe.

3 New Zealand's INDC (for the period 2021-2030) was tabled on a provisional basis pending clarification of rules under the Agreement relating to accounting for land sector emissions and use of carbon markets. New Zealand will not need to communicate its finalised first nationally determined contribution (NDC) until it ratifies the Agreement.

4 The Agreement satisfies the expectations set out in the negotiation mandate approved by Cabinet. In particular, New Zealand's interests are well protected by the excellent outcome on international carbon markets. Provisions on accounting for the land sector and transparency align closely with New Zealand priorities.

5 The Agreement obliges New Zealand to submit and undertake 5-yearly updates of nationally determined (mitigation) contributions (NDCs), and to pursue domestic measures towards achieving them. New Zealand must participate in the Agreement's transparency (accounting, reporting and review) regime. Developed country Parties must collectively continue to provide financial support to assist developing countries' mitigation and adaptation efforts. New Zealand is also required to engage in adaptation planning "as appropriate" for our circumstances.

6 A work programme will flesh out the operational details of the Agreement over the next several years. Clarity about accounting methodologies developed through this work programme is expected to assist New Zealand to finalise its first NDC and thereafter to ratify the Agreement.

7 A draft national interest analysis (NIA) is attached. It is based on the information about the Agreement now available. Progress by the UNFCCC work programme and domestic work to finalise New Zealand's NDC will allow for preparation of a final NIA prior to the Agreement being presented to the House of Representatives for treaty examination.

Background

8 A new global agreement on climate change was adopted by Parties to the United Nations Framework Convention on Climate Change (UNFCCC) on 12 December 2015. New Zealand's mandate for the negotiations was approved by Cabinet on 9 November 2015 [CAB-15-MIN-0199]. The delegation sought an effective, comprehensive and durable global agreement capable of attracting participation by all major emitters. Additional priorities were securing New Zealand's ability to use carbon markets to meet its targets, flexibility to account for forestry emissions in accordance with preferences agreed by relevant Ministers, and ensuring the outcome did not

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Comment

Essential elements of the Paris outcome

9 The successful conclusion of the Paris Agreement represents a historic milestone in the global response to climate change. For the first time developing, as well as developed, countries' commitments to taking action have the same legal status. INDCs

have been pledged under the Agreement by 189 Parties that together are responsible for some 99% of global emissions.

10 The Agreement's purpose is to strengthen the global response to climate change, including by:

- Holding the increase in global average temperatures to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature rise to 1.5°C;
- Increasing the ability to adapt to climate change and foster climate resilience and low greenhouse gas emission development, in a manner that does not threaten food production; and
- Making finance flows consistent with a pathway towards low greenhouse gas emission and climate resilient development.

11 The Paris Agreement sets out obligations and expectations of Parties at a high level, and is accompanied by a Conference of Parties (COP) decision containing additional detail and establishing a forward work programme. The Agreement contains both legally binding obligations ("Parties shall...") and political expectations (provisions that Parties "should", are "invited" or "encouraged" to adhere to).

Mitigation

12 Parties' emission reduction obligations comprise:

- recognising a goal of peaking global emissions as soon as possible, with a view to achieving a balance between anthropogenic emissions and removals in the second half of this century;
- preparing and communicating successive nationally determined contributions (NDCs) that represent a progression from their previous contributions and reflect their highest possible ambition;
- pursuing domestic mitigation measures with a view to achieving their nationally determined contributions; and
- submitting national inventory reports, accounting for and reporting on progress toward achieving nationally determined contributions, and submitting such reports to international review.

13 The Paris Agreement moves away from the distinction between developed and developing countries reflected in the Kyoto Protocol (where developed countries took on legal obligations while developing countries acted on a voluntary basis). Nonetheless, the Agreement creates a strong expectation developed country Parties will continue taking the lead in the global response to climate change by undertaking economy-wide

absolute emission reduction targets. Developing countries are encouraged to move toward economy-wide emission reduction or limitation targets over time (but many, including most major emitters, have defined their contributions in economy-wide terms already).

Markets

14 Access to a liquid international carbon market is critical to ensuring New Zealand can make contributions that satisfy the expectation to demonstrate progression over successive contributions. New Zealand's INDC was decided on the basis markets would be used. Without this access, any progression on our 2020 target is potentially unachievable because New Zealand's domestic abatement potential is currently limited, and because new technology that could enable us reduce emissions cost effectively is unlikely to be available in time.

15 The Agreement provides two ways to buy and sell emission reductions to help achieve contributions. Parties may trade bilaterally, or regionally. The Agreement also establishes a new centralised market mechanism (expected to enable Parties or project developers to finance projects to generate and sell emission reductions). Both routes are subject to standards and guidelines on accounting for transfers of emission reductions between Parties that are still to be agreed. Developing these standards and building a supply of emission reductions ahead of contributions taking effect in 2021 will be challenging. New Zealand has built up a club of countries prepared to collaborate in undertaking this work, including the 18 countries that endorsed New Zealand's Ministerial Declaration on Carbon Markets in Paris.

Forestry and land use

16 The Paris Agreement aligns fully with New Zealand's interests on forestry and other land use. Forest sinks are recognised as a legitimate mitigation effort. Parties can nationally determine how they account for emissions and removals from forestry and other land use, subject to guidance to be developed in the future by the UNFCCC. Existing accounting methodologies (eg, Kyoto Protocol forestry accounting rules) are accepted as relevant but not locked in. Moreover, a non-retroactivity provision means any UNFCCC guidance will be mandatory only for New Zealand's second and subsequent targets (ie post-2030). New Zealand is free to account for forestry emissions the way proposed in the addendum to our 2030 INDC. Nonetheless, it is possible the guidance will create opportunities to account in a way that suits New Zealand's circumstances even better.

Agriculture

17 The Paris Agreement does not distinguish between agricultural and industrial emissions specifically. It creates an expectation that economy-wide absolute emissions reduction targets will be set by all developed countries and that developing countries will also move to economy-wide targets over time. This means New Zealand will be expected

to continue to take responsibility (be liable) for all of its agricultural emissions as it does currently.

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New Zealand will continue to look for opportunities to work with agricultural allies [redacted]
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[redacted] S9(2)(j) However, I judge it unlikely Parties will agree to consider methodologies for agricultural emissions [redacted] S9(2)(j)
[redacted] S9(2)(j). I propose to revisit New Zealand's strategy for advancing this discussion once the nature of the accounting work programme is better understood.

Finance

19 The Agreement has not explicitly broadened the donor base beyond developed countries. Developed-country 'leadership' overlays all aspects of provision, mobilisation, and transparency; with other countries only encouraged to do so on a voluntary basis. Developed countries are required to:

- provide financial resources to assist developing countries to mitigate, adapt and build capacity to implement the Agreement;
- mobilise finance from public and private sources, representing a progression beyond current efforts (the Paris outcome continues the collective \$100 billion target per annum by 2020 agreed at COP15 through to 2025, at which point it will be revised upwards);
- aim to achieve a balance between adaptation and mitigation in provision of financial resources; and
- report on finance provided and, as available, projected levels of public financial resources.

Adaptation

20 The Agreement establishes a global goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change and commits all Parties to engage in domestic adaptation planning processes and action (although how this is done is not prescribed). There is an expectation that Parties will report on action taken, and will cooperate in sharing information and strengthening the scientific knowledge to support decision-making on adaptation.

21 Loss and damage associated with impacts of climate change is recognised in the Agreement, giving permanence to the Warsaw International Mechanism (WIM) on Loss and Damage that was established by the COP in 2013. The accompanying COP decision

states explicitly that inclusion of the article on loss and damage in the Agreement does not involve or provide a basis for any liability or compensation.

Global Stocktakes

22 The durability, and ultimate effectiveness, of the Agreement is provided for by a 5 yearly global stocktake process, under which implementation of the mitigation, adaptation and finance obligations is reviewed, and collective progress towards achieving the goals of the Agreement is assessed. Parties are expected to take into consideration the outcome of this stocktake when revising their national contributions. The first stocktake under the Agreement will occur in 2023.

New Zealand's Contribution

23 After signing the Agreement, our focus will move to preparing for implementation, to enable ratification. New Zealand is expected to finalise and communicate its first NDC prior to ratifying the Agreement. New Zealand's INDC was tabled on an explicitly provisional basis and that provisionality will need to be removed in order for it to serve as a confirmed contribution. In finalising our NDC we will need to consider the outcome of the work programme and progress in development of a liquid global carbon market.

24 A 2018 facilitative dialogue will take stock on Parties' collective efforts to progress towards the goal of peaking GHG emissions as soon as possible that is contained in the Agreement. This is likely to create pressure for Parties to adjust proposed NDCs upward. In 2020, Parties that have contributions set down to run to 2025 will table contributions for 2026-30 and Parties with 2030 contributions (including New Zealand) will review what they have on the table. At that point New Zealand will have a choice of restating the NDC we table ahead of ratification, or presenting a new one.

25 In 2025 we will need to communicate New Zealand's post-2030 contribution. Every five years thereafter we will be required to communicate a reconfirmed or updated contribution. Whether we elect 5 or 10 year contributions, we will need to table a new contribution for the subsequent period 5 years before each current contribution expires. Our second and subsequent NDCs will be expected to demonstrate progression on the previous contribution and will be subject to any accounting guidance agreed in the work programme. Decision points for New Zealand in the period to 2025 are set out in the table below.

NDC decision points

Timing	Action	Options
Ratification	Communicate (final) 2021-2030 NDC	Remove provisionality from current INDC and submit as confirmed Or submit alternative 2021-2030 NDC
2020	Review 2021-2030 NDC	Restate current NDC

		Or Submit new 2021-2030 NDC
2025	Communicate 2031-2035/40 NDC	Submit 2031-2035 NDC or 2031-2040 NDC that demonstrates progression on the 2021-2030 NDC

Other implementation action

26 As a developed country, New Zealand will be expected to respond positively to the invitation to communicate a long-term low emission development strategy by 2020. We can determine for ourselves how we do so.

27 New Zealand will be required to engage in adaptation planning processes and to implement adaptation actions. How this is done is non-prescribed, but we will be expected to communicate a national adaptation plan in some form. We will also be expected to regularly report on our adaptation planning processes and adaptation actions.

28 New Zealand's existing obligations to provide and mobilise climate finance to assist developing countries will continue, and the Agreement also creates an expectation of a progression beyond previous efforts. Although we have no specific climate finance target, it will be important that we can demonstrate we are contributing appropriately to the collective goal of mobilising US\$100 billion annually.

29 We will retain flexibility over how we provide climate finance to achieve the most effective development outcomes; but will be expected to provide some support through the financial mechanism of the Convention, including the Green Climate Fund which is expected to begin a replenishment round in 2018.

30 Our climate-related finance contribution will be founded on our current efforts:

- We announced \$80m in climate-related support for the Pacific for the 2012-2015 period, but ended up providing \$111m in the Pacific and invested \$190m across the entire aid programme. Actual expenditure spiked because of the Pacific Energy Summit and the extensive commitments we made to supporting renewable energy in the region;
- At the Paris COP, the Prime Minister announced that New Zealand will provide up to \$200m over the next four years in climate-related finance, mainly focused on Pacific Island countries.
- Our current projections suggest that we will now meet this \$200m target in three years rather than four, and we expect to once again exceed our budgeted commitment as other adaptation and mitigation projects come

online. This is a consequence of the conversations we are having in the region and our active approach to identifying additional projects that will help the region respond to climate change.

31 We will be expected to contribute to support for developing country capacity-building, including building in-country capacity for greenhouse gas inventory reporting. I intend New Zealand will provide up to \$130,000 out of the Ministry for the Environment's Climate Change Development Fund to help kick-start the new Capacity Building Initiative for Transparency (established under the auspices of the Global Environment Facility). Work under the Global Research Alliance will also support capacity-building.

32 The Agreement also requires New Zealand to continue regular reporting of our greenhouse gas inventory and details of support provided to developing countries (encompassing finance, technology transfer and capacity building). Our reported information will continue to be subject to technical expert review, followed by multilateral assessment.

The post-Paris work programme

33 The work programme will produce modalities, procedures and guidance to operationalise the agreement. We will seek to ensure the output of the work programme allows Parties flexibility to address their national circumstances, and to avoid arbitrary costs. New Zealand is not obliged to apply the guidance agreed in the accounting work-stream to its first NDC, but will have opportunity to do so if this is advantageous. We will look to secure

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34 The markets work programme will provide guidance on accounting for market transactions (in particular avoidance of double-counting and double-claiming of emission reductions) and operationalise the newly established UNFCCC market mechanism. New Zealand will seek to ensure timely completion of the relevant guidelines to enable generation of a sufficient supply of emission reductions at the time Parties' contributions take effect. Some Parties wish to broaden the scope of the markets guidance beyond accounting for transfers of emission reductions between Parties and there is a risk that rules may be developed that constrain our use of markets in the future. It is important the markets work-stream does not compromise

S9(2)(j) [redacted] ensuring that markets have environmental integrity.

35 UNFCCC discussion on markets has progressed relatively slowly in recent years,

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[REDACTED] S9(2)(j) [REDACTED]. We have put considerable effort into establishing bilateral, regional and multilateral relationships to be able to source emission reductions after 2020 at a fair price and develop standards and guidelines for markets that deliver environmental integrity. Achieving widespread agreement on these standards and guidelines will ensure any emission reductions New Zealand buys or sells into the international carbon market can be used to help achieve contributions.

36 The Paris outcome establishes an expert committee to facilitate implementation of and promote compliance with the provisions of the Agreement. The details of this mechanism have yet to be elaborated. New Zealand will seek to ensure the compliance mechanism remains applicable to all, is integrated with the transparency system and that the measures available to address implementation and/or compliance issues are facilitative in nature.

37 The Transparency work programme will address both transparency of action (mitigation and adaptation) and transparency of support. New Zealand will seek to ensure the effectiveness of the new Agreement is not diluted, in particular that building flexibility into the reporting and review guidelines does not result in a resurrection of arbitrary binary differences between developed and developing countries. New Zealand will also seek to ensure we retain control of how and where we channel our climate finance.

38 I propose Cabinet reviews New Zealand's mandate for the UNFCCC negotiations ahead of the twenty-second Ministerial Conference (COP 22) to be held in Marrakech 7-18 November 2016.

Next steps

39 The Secretary-General of the United Nations is convening a high-level signing ceremony on 22 April 2016. I propose New Zealand signs the Agreement at this ceremony. Signing signals our intention to be bound by the Agreement, requiring us to act consistently with our obligations under the Agreement, but the further step of ratification is required to formally commit us to the Agreement and the mitigation target in our final NDC.

40 There are a number of reasons why New Zealand should sign the Agreement now:

- The obligations created by the Agreement are consistent with those taken on by New Zealand as a Party to the UNFCCC and the Kyoto Protocol. National determination, the fact NDCs sit alongside the Agreement, and the safeguards built in, already give us comfort we will be able to ratify and to submit a final NDC that is both credible and appropriate to our circumstances.
- Ensuring political momentum is sustained will reassure stakeholders the Agreement is a success and will be implemented, including domestically.

- The majority of countries, including the US, China, Australia, other G20 and many Pacific Island countries, are expected to sign in New York; indeed the UN Secretary-General is calling on all 196 Parties to the Framework Convention to do so. Standing aside from a critical mass of signatories risks harming our standing in the eyes of these countries.
- There is a reasonable possibility the Agreement will enter into force before the supporting work programme is complete. In this scenario, decision-making for purposes of the new Agreement technically will be limited to countries that are already Parties. If New Zealand has not ratified by that time, our standing to contribute to decision-making will be stronger if we have signed the Agreement and are actively preparing for ratification domestically.

41 Internationally, there is significant support for ensuring the Agreement's early entry into force. Some countries have indicated they will expedite their domestic processes to enable ratification within the year. Many others are expected to sign the Agreement in April, but will require more time for ratification. Entry into force of the Agreement will be triggered once 55 countries accounting for an estimated 55 percent of global emissions have ratified.

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. The post-Paris work programme to be conducted by the UNFCCC over the next 2-3 years will elaborate some aspects of the Agreement that may, potentially, influence its implications for New Zealand. Amongst these issues are the rules for accounting for emissions and removals by forests and other land uses, and for use of carbon markets. I propose New Zealand monitors progress with the work programme to determine when sufficient information about the implications of the agreement is available to enable finalising our NDC and ratifying the agreement. I would anticipate this clarity being possible by the end of 2018 at the latest.

43 Prior to New Zealand's ratification, the text of the Agreement and its National Interest Analysis will need to be presented to the House for Parliamentary treaty examination, in accordance with Standing Order 397. Following completion of the Parliamentary treaty examination process, any necessary implementing legislation may be passed, after which the instrument of ratification may be deposited with the Secretary-General.

44 A draft National Interest Analysis (NIA) is attached as Annex II to this paper. The NIA will be updated and finalised at the time New Zealand is preparing to complete its domestic processes in order to ratify the Agreement. Cabinet approval of the final NIA and authorisation for presentation of the NIA and the text of the Agreement to the House will be sought at that time.

Consultation

45 This paper was prepared by the Ministry of Foreign Affairs and Trade. The Ministry for the Environment, Ministry for Primary Industries and the Treasury have provided input and agree with these recommendations. The Ministry of Justice, Ministry of Transport, Ministry of Business, Innovation and Employment, Te Puni Kokiri, Environmental Protection Authority and Energy Efficiency and Conservation Authority are aware of this paper. The Department of Prime Minister and Cabinet has been informed.

Financial implications

46 Financial and economic implications will result from obligations to take progressively higher emission reduction targets and provide progressively greater amounts of financial assistance to developing countries. The economic cost of New Zealand's 2021-2030 target is estimated at \$36 billion (2012 prices), or 1.20% of RGNDI. The costs of our subsequent targets under the Paris Agreement and future packages of financial assistance to developing countries are unknown.

47 Officials advise that the 2030 target should not be reflected in the Crown accounts at this time. Whether the target will be included in Crown accounts depends on the degree to which the target is internationally binding, as well as the domestic enforceability of the target, including any obligation on the Crown to expend resources to meet the target. Since there is currently no legally enforceable obligation on the Crown to expend resources to meet the target, there is no requirement to reflect this in Crown accounts currently.

Human rights

48 New Zealand's ratification of the Paris Agreement does not appear to create inconsistencies with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. A final view as to whether the proposals will be consistent will be possible once legislation has been drafted.

Legislative implications

49 The Climate Change Response Act 2002 (the Act) is currently New Zealand's primary legislation for addressing climate change. The Act is likely to require substantial amendments to implement and to comply with the Agreement. I note that the NZ ETS is currently under review, with the possibility of consequential amendments to the Act. Where amendments to the NZ ETS components of the Climate Change Response Act are required to implement the Agreement, **these should be progressed alongside the NZ ETS review.** Alternatively, the Act could be repealed and replaced with subsequent legislation that is fit for purpose.

Regulatory impact analysis

50 New regulations or amendments to existing regulations are also likely to be required prior to ratification. Specific details on the measures required to implement the Agreement will be provided once compliance actions have been negotiated and finalised.

51 It is unclear yet as to what changes are required as many of the rules and decisions which may affect both the interpretation of the Agreement and its impact for New Zealand are yet to be negotiated.

52 Domestic measures will be required to implement and deliver the target.

Publicity

53 Signature will attract publicity and I propose to release this paper proactively under the Official Information Act. Some information in the paper could prejudice New Zealand's position in the ongoing climate change negotiations and redactions in accordance with the Act will be required. I do not propose to release the draft NIA proactively at this time.

Recommendations

54 The Minister for Climate Change Issues recommends that the Committee:

Paris outcome

- 1 **Note** the final shape of the new global agreement on climate change agreed by Parties to the United Nations Framework Convention on Climate Change on 12 December 2015 is consistent with New Zealand's negotiation objectives.
- 2 **Note** becoming a Party to the Agreement will require New Zealand to:
 - 2.1 restate or replace our 2021-2030 contribution in 2020;
 - 2.2 prepare, communicate and maintain successive mitigation contributions, representing a progression from previous contributions and reflecting our highest possible ambition;
 - 2.3 submit national inventory reports, account for progress toward achieving contributions and to submit such reports to international review; and
 - 2.4 engage in adaptation planning processes and communicate action taken as we consider appropriate.
- 3 **Note** the Agreement contains provisions that establish expectations New Zealand will:
 - 3.1 finalise our first NDC prior to ratifying the Agreement;
 - 3.2 communicate a long-term low emission development strategy by 2020;
 - 3.3 continue to undertake economy-wide absolute emission reduction targets;
 - 3.4 participate in a cycle of 5-yearly global stocktakes on progress toward achieving the objectives of the Agreement and take the findings of such stocktakes into account in setting subsequent nationally determined contributions;
 - 3.5 recognise loss and damage associated with the impacts of climate change, subject to the stipulation that inclusion of loss and damage provisions in the Paris Agreement does not involve or provide a basis for any liability or compensation;
- 4 **Agree** New Zealand's INDC should remain provisional until we have greater clarity on rules under the Agreement relating to accounting for land sector emissions and use of carbon markets;

- 5 **Invite** the Minister for Climate Change Issues, in consultation with relevant portfolio Ministers, to report-back on these matters by 1 June 2018 at the latest, to inform timing of the initiation of domestic ratification process.

Climate Finance

- 6 **Note** the Agreement continues the obligation on developed country Parties to provide and mobilise climate finance, representing a progression beyond current efforts (the Paris outcome extends the collective goal of mobilising US\$100 billion per annum by 2020 through to 2025, and directs that a new collective goal be set from a floor of US\$100 billion prior to 2025);
- 7 **Note** that New Zealand exceeded by a significant amount the climate finance contribution target from the first reporting phase, and that the Minister of Foreign Affairs expects to significantly exceed the target in the second phase;

Work-programme priorities

- 8 **Confirm** that in negotiations on the work programme to operationalise the Agreement, New Zealand will seek to ensure:

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■ [REDACTED] S9(2)(j)

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- 8.3 the effectiveness of the Agreement is not diluted by reintroduction of bifurcation between developed and developing countries as reporting and review guidelines and the compliance mechanism are developed.

- 9 **Invite** the Minister for Climate Change Issues to review and report back to Cabinet on New Zealand's negotiation mandate for the UNFCCC ahead of the November 2016 Ministerial Conference (COP22);

Joining the Agreement

- 10 **Approve** the text of the Agreement which is attached to the Cabinet paper as Annex I;
- 11 **Agree** that New Zealand sign the Agreement, at the signing ceremony to be held at the United Nations Headquarters in New York on 22 April 2016;

- 12 **Note** the Paris Agreement will enter into force for New Zealand following the deposit of an instrument of ratification once all necessary procedures to give effect to the Agreement have been completed and once at least 55 Parties to the Convention accounting in total for at least an estimated 55 percent of total global greenhouse gas emissions have deposited instruments of ratification, acceptance, approval or accession;
- 13 **Invite** the Minister for Climate Change Issues to determine the appropriate time to consider initiating the domestic processes in order to ratify the Agreement, including Parliamentary treaty examination in accordance with Standing Order 397;
- 14 **Note** that Cabinet's approval will be sought at this later date for an updated final NIA, presentation of the Agreement and the NIA in the House of Representatives for the Parliamentary treaty examination process, authorisation to instruct PCO for any legislation required for implementation and to ratify the Agreement.

Release of paper

- 15 **Agree** to release proactively release this paper, redacted as appropriate in accordance with the Official Information Act 1982, but not to release the draft NIA proactively at this time.

Hon Paula Bennett

Minister for Climate Change Issues