



## Advice on the adequacy of the Climate Change Commission's consultation on emissions budgets

Date Submitted:	5 August 2021	Tracking #: BRF-415	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Not Urgent

	<b>Action sought:</b>	<b>Response by:</b>
Hon James SHAW, Minister of Climate Change	Read ahead of ENV meeting on 12 August.	9 August 2021

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE.
Number of appendices and attachments 1	1. Appendix 1: High-level summary of the Commission's consultation and information used for assessment of adequacy

### Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Freya Farrar		
Responsible Manager	Kate Whitwell	s 9(2)(a)	✓
Director	Lisa Daniell		

# Advice on the adequacy of the Climate Change Commission's consultation on emissions budgets

## Key Messages

1. The purpose of this briefing is to provide advice on the adequacy of the consultation on emissions budgets undertaken by the Climate Change Commission (the Commission). This briefing also provides you with a high-level summary of the Commission's consultation and information used to assess adequacy (Appendix 1).
2. As previously advised, we are providing this advice for you to consider prior to Cabinet consideration of recommendations to agree in-principle to accept the Commission's proposed emissions budgets at ENV on 12 August 2021 [BRF-380 - *Final draft of emissions budgets paper for Ministerial consultation*, refers].
3. The Cabinet paper proposes taking in principle decisions now to clarify the government's intentions for forthcoming consultation over the contents of the emissions reduction plan (ERP). As the paper proposes agreeing-in-principle to the Commission's recommendations, it does not propose any specific further consultation on emissions budgets, pending final review of the adequacy of the Commission's consultation.
4. Our review is now complete, and following consideration of the Commission's consultation processes, the information they provided to the public, the depth of outreach, and the degree to which their advice reflected submitter feedback, our conclusion is that the Commission's overall consultation on emissions budgets was adequate.
5. Considering the adequacy of consultation is only one of the statutory matters that needs to be considered when making decisions to set emissions budgets. Our assessment of all remaining statutory matters is ongoing. We expect to complete a full assessment of these matters before the emissions budgets are finally set and gazetted, later in 2021.

## Recommendations


We recommend that you:

- a. **Note** that our review of the adequacy of the Commission's consultation on proposed emissions budgets is now complete. We have concluded that the consultation was adequate.
- b. **Note** that this briefing therefore supports the recommendations in the emissions budget cabinet paper to agree in-principle to the Commission's proposed emissions budgets.

Yes/No

Yes/No

## Signature

Lisa Daniell Director - Climate Mitigation <b>Name of the Team or Directorate</b>	
Hon James SHAW, Minister of Climate Change	
Date	

Proactively released under the Official Information Act 1982

## Purpose

6. You are receiving this paper so you have the information needed to be satisfied that the Commission undertook adequate consultation on its recommended emissions budgets. This is needed before taking a Cabinet paper to ENV on 12 August seeking agreement in principle to accept the Commission's budgets, in order to help satisfy the relevant requirements on the Minister under the Climate Change Response Act 2002 (CCRA).

## Context

7. On 12 August 2021 you are taking a Cabinet paper to ENV recommending that Cabinet agree in-principle to accept the Commission's recommended emissions budgets.
8. On 29 July we provided you with the final draft of the emissions budget Cabinet paper, based on our preliminary view that the Commission's consultation was adequate, and advised that we would provide further advice once assessment was complete [BRF-380 *Final draft of emissions budgets paper for Ministerial consultation* refers].

## Analysis and Advice

*Consultation must be considered adequate when making decisions on emissions budgets*

9. The CCRA requires you, when setting emissions budgets, to consider a range of matters including whether or not consultation has been adequate. Relevant CCRA provisions include:
  - Under section 5ZB(1) the Minister must be satisfied that there has been adequate consultation on the proposed emissions budgets and, if not, must make the proposed emissions budget publicly available, and allow adequate time and opportunity for submissions to be received, heard, and considered (s5ZB(2)). The Commission must provide advice on matters relevant to setting the emissions budgets.
  - Section 5ZC(2)(b)(v) requires that the Commission and the Minister must have regard to the results of public consultation on an emissions budget when advising on, and setting, emissions budgets.

*Assessment considerations*

10. The CCRA also requires that in setting emissions budgets regard must be given to, amongst other things, how the budgets and the 2050 target may be realistically met. The package of advice for mitigating emissions across the economy is inherently linked to the recommended emissions budgets being ambitious and achievable. Therefore, this assessment considers the approach that the Commission took to consulting on the entire package of advice to develop a pathway to achieve its recommended emissions budgets.
11. The CCRA does not provide guidance for how to assess the adequacy of the consultation. However, general principles in respect of meaningful consultation can be considered:
  - Persons consulted with must have a reasonable opportunity to state their views, which includes being provided with sufficient time and information to provide an informed view (including knowing what is being proposed).

- The person undertaking the consultation must keep an open mind and be prepared to change its view, including considering whether further consultation is necessary.
- Consideration of submissions must be genuine.

12. In our view the Commission's consultation did give people a reasonable opportunity to state their views, because they provided adequate information and several different ways to engage with consultation over a sufficient period of time. We can also see evidence that the Commission genuinely considered the resulting submissions, as it did change its view on certain matters as a result of submissions, for example the level and pace of ambition in the waste sector. Appendix 1 provides more detail on these assessments.

*We consider the Commission's consulted extensively on its draft advice and have assessed this consultation to be adequate*

13. Emissions budgets can only be set after a full consideration of the key opportunities available to reduce emissions in each sector, including the related risks and uncertainties. The Commission engaged with people extensively on all those aspects within its advice.
14. The Commission faced time-constraint challenges in consulting on draft advice due to statutory deadlines and the continuing effects of the COVID-19 pandemic. Notwithstanding this, an assessment of the Commission's consultation processes, the information provided to the public, the depth of outreach, and the degree to which its advice reflected submitter feedback indicates the consultation was adequate.
15. The Commission's planned approach to engaging with Māori was developed following Te Arawhiti guidance and Treaty partnership principles. The Commission shared that it had to reconsider the approach it planned to take for consulting with Māori due to the continuing effects of the COVID-19 pandemic, however consultation was adapted to address these challenges where possible. A broad range of Māori organisations, businesses and individuals were able to participate in conversations in person and online through public consultation (see Appendix 1).
16. Insights for this assessment were gained from the Commission's final report - *Ināia tonu nei: a low emissions future for Aotearoa*. Additional documents supplied by the Commission,<sup>1</sup> Ministry for the Environment observation of the consultation process<sup>2</sup> and insights from meetings held with the Commission<sup>3</sup> have helped the analysis.

---

<sup>1</sup> Specific documents of use included "Overview – Public engagement, consultation and submission analysis process" (and the eight appendices to this document) and Parts 1-5 of the "Consultation Feedback and Updates" documents.

<sup>2</sup> There was an agreement that officials would be able to observe the Commission's consultation process when the Commission's deadline for final advice was amended on 14 July 2020.

<sup>3</sup> Meeting discussing Climate Change Commission engagement and submission analysis approach held 27 May 2021, attended by officials from MfE and the Climate Change Commission: meeting discussing Climate Change Commission Māori engagement approach and insights held 20 July 2021, attended by officials from MfE, the Climate Change Commission and Te Arawhiti.

## Risks and mitigations

17. The underlying risk surrounding this work is the need to carefully consider and address all the detailed requirements of the CCRA, many of which are being undertaken for the first time, knowing that compliance with these requirements is likely to be subject to judicial scrutiny.
18. There is a risk that the time period for public submissions could be seen to be insufficient, but there are clear mitigating factors:
- the statutory time constraints the Commission had to work within
  - the Commission extending the consultation period by 2 weeks and accepting late submissions.
19. During the Commission's consultation there were some concerns about access to data and modelling information. It is the view of modelling staff at the Ministry for the Environment that the modelling information provided by the Commission was sufficient to engage fully with the draft advice. The Commission held sessions to explain the modelling during consultation. It is likely that accessing the full modelling data would be difficult for most submitters due to the technical resourcing and expertise required to make use of it, for example could require specific software licences.
20. s 9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Our response to this risk would be to carefully analyse and document the rationale for any amendment to the Commission's proposed budgets, clearly explain why further consultation is deemed necessary, and provide appropriate timeframes for consultation in light of the nature and significance of the amendment.
21. As advised in *BRF-85 Ministerial comment on the Climate Change Commission's final report*, engagement with Māori is needed before making final decisions on emissions budgets and cannot be delegated to the Commission. While the Commission is required to possess expertise in Māori knowledge, worldview, language, custom and protocol, and must consider matters such as the Māori-Crown relationship and effects on iwi and Māori when preparing its advice, we consider that Crown is unable to rely solely on the Commission's work when considering whether it has discharged its Treaty obligations. The Commission is not a Treaty partner – the Crown is. When officials are engaging with iwi/Māori on the ERP this year we will ensure emissions budgets are part of the discussion.

## Legal issues

22. s 9(2)(h) [REDACTED]  
[REDACTED]

s 9(2)(h) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Next Steps

25. The following table sets out the upcoming steps in considering emissions budgets.

Date	Step
6 August 2021	Lodgement (late lodgement requested for Friday 6 August)
12 August 2021	ENV consideration
16 August 2021	CAB confirmation

## Appendix 1: High-level summary of the Commission's consultation and information used for assessment of adequacy

Commission consultation phase and supporting information	MfE analysis
<p><b>Commission formal consultation</b></p>	
<p>How could people engage with the consultation?</p> <ul style="list-style-type: none"> <li>The Commission held or attended around 200 events during the consultation period, which ran from 1 February to 28 March 2021. Conversations and themes heard at these events supported the submissions and were incorporated in final advice. Many of these were held online as in-person events were impacted by COVID-19 restrictions.</li> <li>The submissions form was designed for three levels of engagement. The “one big thing”, six “big decisions” questions, and a detailed consultation on all areas. Submitters could fill in as much or as little of the form as they wished to.</li> <li>Two of the six high level questions directly related to emissions budgets, these questions sought high level feedback on the pace of change and levels of ambition, and achievability of proposed emissions budgets.</li> <li>The Commission engaged The Hive to run youth engagement. The Hive is a group of young people who run engagements for youth. They are supported by creative agency Curative and the Ministry of Youth Development. The Hive engaged with young people through social media interactions and conversations.</li> <li>The “100 Coastie Voices” campaign targeted engagement from Māori in the Ikaroa-Rāwhiti region. This campaign collected responses through a survey.</li> <li>The Commission also received submissions via its “hello@climatecommission.govt.nz” email address (including a significant number of pro-forma submissions from 18 different organisations) and 39 postal submissions.</li> </ul>	<p>These methods of engagement are assessed to have been appropriate, accessible and diverse.</p>
<p>Was appropriate and sufficient information provided for people to engage with?</p> <ul style="list-style-type: none"> <li>The Commission released its draft advice and supporting evidence on its website on 31 January 2021. The draft advice document was 188 pages long and provided in-depth information in plain English for a general public audience.</li> <li>Webinars and Q&amp;A sessions were held via Zoom during the consultation period. The session allowed for open access</li> </ul>	<p>A large amount of information was provided, and Commission staff were available to the public to provide additional information or clarity where requested. This is assessed to have been sufficient</p>

and recordings were published on the Commission’s website soon after they occurred.

- There was some criticism from a small group of submitters that the Commission did not release all its supporting evidence (particularly modelling information) at the time the consultation opened. Some of these models were not shared as engaging on them would be difficult due to licensing and software restraints.

information to enable the public to understand what the Commission was engaging on.

In the circumstances, the modelling information provided by the Commission was sufficient to engage fully with the draft advice.

Was the consultation period sufficient?

- The consultation ran for an initial six week-period, from 1 February 2021. The consultation was extended by two weeks following requests for extension, including from a group of business stakeholders. The extension was communicated on the Commission’s website, social media, through media and by email. Formal consultation closed 28 March 2021.
- The Commission Board decided to accept late submissions until 2pm 30 March 2021.

This is assessed to be an adequate amount of time for the consultation, particularly as the Commission extended the consultation window and accepted some late submissions in response to requests.

### Commission submission analysis

How were submissions analysed?

- The Commission followed a common process for submission analysis. Analysts read and tagged submissions according to subject themes for technical staff to consider and assess. The process is set out in detail in the Commission’s “*Overview - Public engagement, consultation and submission analysis process*” supporting document.

Overall, the Commission appears to have followed an appropriate process to analyse submissions. It is clear that submissions informed change in the final advice, both in seeing new evidence and based on the views of New Zealanders.

What did they say?

- The Commission discussed themes from submissions through the report and supporting documentation. The Commission does not plan to release a separate submission analysis document, however the analysis in the final document is comprehensive, so is a suitable replacement.
- The Commission released submissions publicly at the end of July 2021.

How did new evidence impact final advice?

- The Commission explained where final advice had changed from its draft advice as a result of the consultation. This information was shared in the report and through the supporting documents. There were a number of changes in the final advice that are accompanied by analysis of what was heard during consultation and submissions.

Did the Commission’s advice reflect the submissions?

- The Commission changed its modelling and recommendations in response to evidence provided through the submissions process. This appears to be a reasonable response to the submissions.

Did the Commission reflect its role (independent and evidence-based) in the analysis of submissions?

- The Commission is an independent, evidence-based body. It sought submissions from a broad range of people and groups.

### Māori consultation

The Commission’s planned approach to engaging with Māori was developed following Te Arawhiti guidance and Treaty partnership principles, it followed a three-phase approach:

- Phase one: focused, the Commission planned to engage with Māori leaders, advocates, networks and critical friends (May – August 2020).
- Phase two: sector specific, here the Commission planned to engage with a range of Māori sector leaders and businesses (September – November 2020).
- Phase three: general, to engage with Māori more broadly (January - May 2021).

The summary of Māori engagement planning and activities provided by the Commission demonstrates a commitment to engaging with Māori, with a caveat that the Commission was not able to engage as broadly as intended. This was due to the time and resource constraints of Māori and the need to move in-person meetings online due to COVID-19 restrictions.

The Commission’s consultation approach prioritised engaging with Māori.

The consultation that the Commission undertook does not discharge the need for the Crown to engage with Māori.