

## SUBMISSION ON DISCUSSION DOCUMENT “OUR CLIMATE YOUR SAY: CONSULTATION ON THE ZERO CARBON BILL”

### SUBMITTER DETAILS

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### 1 INTRODUCTION

- 1.1 This is a submission on the discussion document “Our Climate Your Say: Consultation on the Zero Carbon Bill”, Publication Number ME 1371 (**Discussion Document**).
- 1.2 EDS is a not-for-profit, non-government, national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning in order to promote better environmental outcomes in resource management. EDS is the convenor of the *Australia-New Zealand Climate Change and Business Conference* which is aimed at engaging business in the issues and opportunities of the climate change challenge.
- 1.3 EDS strongly supports adoption of legislation establishing a Climate Commission (**Commission**) and setting a transition pathway for New Zealand to achieve net zero emissions by 2050. This is critical in order to achieve vertical and horizontal policy coherence and action, to provide the certainty required to stimulate investment in low emissions technologies, and to fulfil New Zealand’s obligations under the Paris Agreement. If we don’t take strategic and urgent action on climate change the physical, social, and financial effects will be significant.

### 2 SUBSTANTIVE SUBMISSION

#### 2050 Target

*Q1 What process should the Government use to set a new emissions reduction target in legislation?*

- 3.1 EDS’s preferred position on this important matter is that Parliament should unanimously set a new, long term, emissions reduction target in legislation now because:
- Under the Paris Agreement, to which New Zealand is a party, nation States have committed to the goal of limiting the global temperature rise to well below 2°C, while pursuing efforts to limit the increase to 1.5°C. Carbon neutrality means anthropogenic emissions by source and removals by sinks of the greenhouse gases (**GHG**) are equal. Global carbon emissions must reduce to net zero by around 2050 (or 2060-2080 if we rely

on currently unproven negative emissions technologies), to avoid catastrophic climate change.<sup>1</sup>

- Failure to set a target now risks significant further delay in climate action as the Commission and then the Government considers what that should be. This undermines one of the key positives of the proposed legislation and its clear target; policy stability and certainty to support immediate action.

3.2 However, if a political consensus cannot be reached on the target then EDS would favour enabling the proposed Commission to urgently investigate and advise what it should be, within a clearly defined timeframe. This would diminish the risk of successive governments changing the target and undermining confidence in the transition process.

3.3 EDS also considers that:

- The relationship between the target and the NZETS is presently obscure and needs to be clarified. In particular:
  - a. Currently the NZETS does not have an apparent cap which is inconsistent with a national reduction target.
  - b. The target and any amendment procedures should replace or need to be harmonized with the existing two procedures in the Climate Change Response Act 2002.
- Earlier targets and/or commitments set by various means should be rescinded where they are incompatible with a new target.

*Q2 If the Government sets a 2050 target now, which is the best target for New Zealand?*

3.4 EDS supports Option 3: net zero emissions across all greenhouse gases by 2050 because:

- Table 5, pg 30 of the Discussion Document shows that by some measures the most ambitious target, net zero emissions, is not very different from the other two options (see pg 32) so the most ambitious target seems credible.
- Option 1, net zero carbon dioxide is deeply flawed; it effectively ignores half of New Zealand's emissions profile and would exacerbate tension between different sectors.

3.5 EDS also considers that the long term target should adopt a two baskets approach, setting different pathways for long-lived and short lived GHGs.<sup>2</sup>

3.6 This approach allows the different lifetimes of gases and the implications this has for stabilising global temperatures to be taken into account when setting targets.

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<sup>1</sup> Paris Agreement 2016, Article 2 and 4, Generation Zero "Zero Carbon Act" (2017), OECD (2017), OECD Environmental Performance Reviews: New Zealand 2017, OECD Publishing, Paris, Royal Society (2016) Transition to a low-carbon economy for New Zealand, Vivid Economics (2017) Net Zero in New Zealand.

<sup>2</sup> The PCE and Generation Zero hold a similar view: Simon Upton (2016) 'Managing sources and sinks in the context of New Zealand's response to climate change', Generation Zero "Zero Carbon Act" (2017).

### *Q3 How should New Zealand meet its targets?*

3.7 EDS supports Option 2: providing for some emissions reductions from overseas, but considers that domestic reductions should be preferred, international units need to be subject to strong environmental safeguards, and that phase out of use of international units should be explored, because:<sup>3</sup>

- The situation for international carbon markets will be entirely different from that under Kyoto, and New Zealand should be open to using credits that are genuine, additional, and beneficial for the vendor country and community. New Zealand's situation is so tight that we may be obliged to explore all such options. At the same time we must recognise that the prices of units may be much higher than they were under the flawed Kyoto regime.
- The Commission should be tasked with providing advice on the role international carbon trading could and should play. If the domestic target cannot practically be reached by reducing domestic emissions, international units might be used to meet the domestic target if the Commission recommends that approach.
- Phase out of reliance on international credits may be required in the long term. Reducing New Zealand's emissions is in the best interests and at the centre of a credible climate change response. An early and clear transition to net zero carbon domestically will provide socio-cultural, environmental, and economic benefits, opportunities and certainty to government, business, and individuals.

### *Q 4 Should the Zero Carbon Bill allow the 2050 target to be revised if circumstances change?*

3.8 EDS considers the 2050 target should be able to be revised but only in exceptional circumstances. A clear, legally binding target is the corner stone of a successful legislative transition framework. Emissions' budgets and policy plans to achieve those must be set against the long term target. If that target is a movable feast and can be easily changed based on the political drivers of the current government, certainty, stability, and New Zealand's transition to a low emissions economy will be fundamentally undermined. EDS considers that:

- A change to the 2050 target should only be allowed in exceptional circumstances (e.g. a significant change in scientific knowledge or a significant change in international law or policy) and "fenced in" with substantive criteria that must be met for the statutory power to be exercised. Economic changes should not be a reason for changing the target.
- Any change to the target should be considered only on the advice of the Commission and its reporting publicly on all implications of a proposed change.

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<sup>3</sup> Paris Agreement 2016, Article 2 and 4, Generation Zero "Zero Carbon Act" (2017), OECD (2017), OECD Environmental Performance Reviews: New Zealand 2017, OECD Publishing, Paris, Royal Society (2016) Transition to a low-carbon economy for New Zealand, Vivid Economics (2017) Net Zero in New Zealand

## Emissions' Budgets

*Q5 Do you agree with the Government's proposal that three emissions' budgets of five years each be in place at any given time?*

3.9 EDS supports this proposal. A five year period means that year-by-year fluctuations can be taken into account, matches the five year framework of the Paris Agreement, and draws on experience from the United Kingdom's experience under its Climate Act 2008. Budgets must be prepared in advance to provide long-term certainty for government and business decision-making, and so the community can understand and anticipate impacts. Consistent with a two baskets approach a set of long lived GHG budgets and a set of short lived GHG budgets should be set that are consistent with achieving their respective long term targets. It is imperative that the first three budgets for each are set with urgency after the legislation comes into place, at least with 18 months.

*Q6 Should the Government be able to alter the last emissions budget (i.e. the furthest in the future)?*

3.10 EDS supports Option 2: a change to the third budget should only be available when the subsequent budget is set.

*Q7 Should the Government be able to review and adjust the second emissions budget within a specific range under exceptional circumstances?*

3.11 EDS supports this proposition from a practical point of view so long as circumstances triggering the ability to review are truly exceptional e.g. natural disaster or a significant change affecting the basis on which the budget was originally set. Review and adjustment should not be available on basis of a general economic change.

*Q8 Do you agree with the considerations proposed that the Government and the Commission take into account when advising on and setting the budgets?*

3.12 While EDS agrees with the identified considerations in a general sense, it is critical they are not allowed to undermine the process of setting a budget that shows unequivocally what must be done to stay on a credible pathway. They also fail to:

- Identify Te Tiriti o Waitangi, matauranga maori, or tikianga maori.
- Align emissions' budgets with the NZETS (which is essential for national policy coherence and for the NZETS to be effective).
- Align emissions' budgets with international commitments (which is essential for reconciliation of the two to be transparent and continuous).

3.13 EDS submits that the underlying considerations that should be taken into account in advising on and setting emissions' budgets are:

- That they produce a track that is likely to lead to the achievement of the long term target.

- The importance of early action.

3.14 An approach which employs a hierarchy of considerations, with a different onus on advisors and decision-makers in respect of each should be considered. For example, advisors and decision-makers could be required to “recognise and provide for” the two issues above and then “take into account” other identified considerations.

### **Government Response**

*Q9 Should the Zero Carbon Bill require Governments to set out plans within a certain timeframe to achieve the emissions’ budgets?*

3.15 EDS agrees with this proposal. Budgets alone will not achieve long term targets; policies requiring action to reduce emissions are required. This is the difficult part of climate policy. Accountability and adequacy are critical. The United Kingdom experience reveals that if the legislation is not explicit as to timing for the release of a policy plan, and its content, then there is a real risk of delay in release or that the plan will not be adequate to achieve the relevant budget.<sup>4</sup> As a result, it is imperative that the legislation specifies:

- The date by which a policy plan for achieving an interim budget be released by government. A 6 month timeframe is suggested.
- That the government must identify and publicly report on how its plan will achieve the budget and where it aligns or diverges with any recommendations of the Commission received as part of modelling of the budget with reasons for divergence, who will be affected by each policy, and timing of each policy.
- That once adopted the government must implement the policy plan.

*Q10 What are the most important issues for the Government to consider in setting plans to meet budgets?*

3.16 EDS submits that:

- The policies in a plan must be quantified to determine the emissions reductions that they are likely to produce. All possible relevant policy actions be costed in emissions terms. When that information is combined with information about costs and other benefits, proper judgment can be brought to bear on finding least-cost emissions reductions pathways, and on finding the ways to make other options more feasible and lower in cost in the future. We consider that more work needs to be done on this part of the planning for any legislation.
- Legal obligations must be placed on sectoral regulators and agencies to identify, set, and implement the policies necessary to deliver on the plan and the budget. EDS recognises that this is a major shift, but it is essential that climate change policy be implemented

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<sup>4</sup> EDS meeting with Client Earth, 19 June 2018.

across government and through society and the economy. It considers that more work needs to be done on this part of the planning for any legislation.

- Wider environmental co-benefits of an intervention should also be considered (e.g. decision-making on where the 1 billion trees should go and what should be planted should also consider co-benefits for biodiversity and water quality).
- Equality in the distribution /redistribution of costs and benefits connected with transition to a low emissions future and in each policy package is critical.

### **Climate Change Commission**

*Q11 Do you agree with the proposal that the Commission advises on and monitors New Zealand's progress towards short and long term targets?*

3.17 EDS supports establishing a Commission. The Commission's role should be advisory not executive. Ministerial responsibility for decisions is essential to ensure public legitimacy and accountability, and for the Commission to remain apolitical. Its independency must be carefully protected, including by proper funding. EDS submits that the Commission:

- Should be an independent Office of Parliament reporting to Parliament.
- Should provide expert advice to government regarding targets, budgets, risk assessments, and specific issues which it is asked to consider. Its most immediate duty should be to consider and advise on the long term targets for long and short lived GHGs necessary to achieve a long term target of net zero emissions by 2050.
- Has a critical role in 'running a ruler' over government policy proposals to ascertain whether their contributions to reductions are sufficient, including through (a) publishing annual progress reports on whether the budgets and targets are likely to be met and identifying any issues with the proposed policy package (b) publishing a report after each budget ends about how the budget was or was not met, actions taken by government, and any failures of or issues with the government response. All reports should be provided to the government and made publicly available simultaneously.
- Should have a regional presence including holding meetings with key entities (e.g. infrastructure providers) to gain insight into local problems and solutions and hold public briefings. Climate change is unprecedented and unpredictable. Adaptation will require national leadership and local solutions. Failure to engage on a regional level with key entities facing the reality of the physical impacts of climate change and/or having to develop and implement strategies to reduce emissions, risks development of national policy in a bubble with little or no ability to be applied in practice or with suboptimal implications for communities and business. Communication will be essential to engage communities. Face-to-face opportunities to hear from and advise the Commissioners will assist in the building of trust that the government is acting to protect their future.

- 3.18 The legislation should install a presumption that recommendations from the Commission should be adopted by the Minister in full, not cherry-picking from the list of recommendations. If the Minister departs from its advice, reasons and evidence supporting the adequacy of the alternative budget/policy measures must be provided and made public.

*Q12 What role should the Commission have in relation to the NZETS?*

- 3.19 It is critical that the NZETS is aligned with legislation providing for overall transition as stated above. Again, the Commission's role should be advisory only.

*Q13 Do you agree with the range of proposed expertise that Commission members must represent?*

- 3.20 EDS agrees with the proposed range of expertise. It is important the members also have practical expertise, not only academic (e.g. in financial markets).

### **Adapting to the impacts of climate change**

*Q14 Do you think the Zero Carbon Bill should cover adapting to climate change?*

- 3.21 EDS considers it is critical that any legislation also covers adaptation. Failure to do so:
- Risks a siloed approach to mitigation policy decisions which has the potential to result in mitigation investment in high risk-exposed situations.
  - Would ignore that the impacts of climate change are a key issue, already being felt, and that even if the Paris Agreement goal is reached, changes in climate and associated physical impacts of some degree are unavoidable.
  - Would ignore that national direction and leadership on adaptation is required to help reduce tensions at the local level and to provide the information necessary for decisions to be made for New Zealand to safely adapt to environmental changes associated with climate change.

*Q15 Do you agree with the proposed functions to help New Zealand adapt to climate change?*

- 3.22 EDS agrees with the proposed National Climate Change Risk Assessment, the National Adaptation Plan (**Plan**), regular review of progress towards the Plan, and an adaptation reporting power. EDS submits that:
- The Plan must have legal effect on the work of central government, local authorities, and their agencies. It must have particular effect on decisions under the Local Government Acts' 1974 and 2002 and the Resource Management Act 1991 (**RMA**). Otherwise the Plan will be regarded as a non-binding information source, and its implementation will be slow and patchy.
  - Local bodies need to be helped to address adaptation, in particular in respect of when defence is appropriate and when managed retreat from coastlines or river flood plains (which typically attracts vehement opposition from property owners) is required. The

Commission should investigate and recommend methods for retreat and defence including preferred sources of funding and landowner responsibilities.

*Q16 Should we explore setting up a targeted adaptation reporting power that could see some organisations share information on their exposure to climate change risks?*

3.23 EDS supports an adaptation reporting power and process because decision-making is decentralised.

### **EDS additional comments**

3.24 In addition to the above EDS submits that:

- The legislation should require, or alternatively the Commission should specifically be asked to consider, repeal of ss 70A and 104E RMA so that local authorities are able to consider emissions and impacts on climate change of a proposed activity as part of a resource consent assessment. This is critical for ensuring local authority decision-making and New Zealand's development and use of its resources align with national emissions reduction budgets and the long term target.
- The legislation should require that a cross-departmental National Emissions Target Board should be established, made up of the Chief Executives of each relevant Ministry. This group should be required to meet regularly with the purpose of ensuring that decisions across government portfolios are aligned with and contributing to New Zealand's climate goals. Effective climate action is going to require changes across all parts of society. In the United Kingdom failure by some Ministries to properly consider climate impacts in decision-making has resulted in decisions in some sectors running directly contrary to climate goals (e.g. in respect of Transport and Housing). Requiring communication between Ministries and senior official accountability for climate change-appropriate decision-making should prevent this.<sup>5</sup>
- The legislation must be clearly and simply worded. Requirements on decision-makers must be explicit and matters to be considered must be listed and specified as being exhaustive. This is critical for holding the government to account, including through judicial review. It should be clear that public interest litigants have standing for judicial review.

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<sup>5</sup> EDS meeting with Client Earth, 19 June 2018.