

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 38/2025
[2025] NZSC 200

BETWEEN LAWYERS FOR CLIMATE ACTION NZ
INCORPORATED
Applicant

AND CLIMATE CHANGE COMMISSION
First Respondent

MINISTER OF CLIMATE CHANGE
Second Respondent

Court: Ellen France, Williams and Miller JJ

Counsel: J S Cooper KC, J D Every-Palmer KC, M C Smith and S T Coupe
for Applicant
V E Casey KC, S A H Bishop and J W Harrell for First
Respondent
A L Martin and P H Higbee for Second Respondent

Judgment: 22 December 2025

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

Introduction

[1] Between 2021 and 2022 the Climate Change Commission (CCC) advised the Minister of Climate Change and the Minister made important decisions about New Zealand’s response to climate change for the period from 2022 to 2035. The advice and decisions related to setting three greenhouse gas (GHG) emissions

budgets for the period between 2022 and 2035 and amending New Zealand's nationally determined contribution (NDC) under the Paris Agreement.¹

[2] By way of context, s 5Q of the Climate Change Response Act 2002 (CCRA) sets New Zealand's emissions reduction target for 2050. It provides as follows:²

5Q Target for 2050

- (1) The target for emissions reduction (the *2050 target*) requires that—
- (a) net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year; and
 - (b) emissions of biogenic methane in a calendar year—
 - (i) are 10% less than 2017 emissions by the calendar year beginning on 1 January 2030; and
 - (ii) are 24% to 47% less than 2017 emissions by the calendar year beginning on 1 January 2050 and for each subsequent calendar year.

...

[3] This target is to be achieved through emissions budgets set under pt 1B of the CCRA. Section 5W sets out the purpose for which the responsible Minister must set New Zealand's emissions budgets. As relevant to this application, it provides:

5W Purpose of this subpart

The purpose of this subpart and subparts 3 and 4 is to require the Minister to set a series of emissions budgets—

- (a) with a view to meeting the 2050 target and contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; ...

...

[4] The CCC's advice on emissions budgets and the NDC was provided to the Minister pursuant to ss 5J, 5K and 5ZA of the CCRA. The advice was given on

¹ The NDC for the 2021–2030 period had been set in 2016 to reduce New Zealand's net GHG emissions to 30 per cent below 2005 gross GHG emissions by 2030.

² Emphasis in original.

31 May 2021.³ Relying on that advice, the Minister announced his decision to amend New Zealand’s NDC on 31 October 2021,⁴ and on 16 May 2022, he published emissions budgets for the periods 2022–2025, 2026–2030 and 2031–2035 in the *New Zealand Gazette*.⁵

[5] Lawyers for Climate Action NZ Inc (LCANZI) brought judicial review proceedings challenging aspects of the CCC’s advice and the Minister’s decisions. The Courts below rejected LCANZI’s challenges.⁶ LCANZI now seeks leave to appeal to this Court.

Submissions

LCANZI

[6] In its application, LCANZI raises three levels of challenge to the emissions budget advice and decisions. First, LCANZI argues that s 5W sets a bottom-line requirement with operative force (in the *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* sense) to the effect that budgets must be set with a view to contributing to the 1.5°C goal and complying with the Paris Agreement.⁷ Whether a budget contributes to that goal can be assessed and determined. There is an outer limit to the range of possible contributions that are compatible with the goal and New Zealand’s obligations under the Paris Agreement. This interpretation is supported by the presumption of legislative consistency with international law (the Paris Agreement) and the New Zealand Bill of Rights Act 1990 (the right to life). The CCC’s advice and the budgets set by the Minister did not meet that bottom-line requirement. New Zealand needed to reduce its emissions in the relevant budget

³ He Pou a Rangi | Climate Change Commission *Ināia tonu nei: a low emissions future for Aotearoa – Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022 – 2025* (31 May 2021) [*Ināia tonu nei*].

⁴ An amended NDC was publicly announced on 31 October 2021 and communicated under the Paris Agreement on 4 November 2021: *Submission under the Paris Agreement: New Zealand’s first Nationally Determined Contribution* (4 November 2021) [Amended NDC].

⁵ “Emissions Budgets for 2022 to 2025, 2026 to 2030 and 2031 to 2035” (16 May 2022) *New Zealand Gazette* No 2022-go1816.

⁶ *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2022] NZHC 3064, (2022) 24 ELRNZ 358 (Mallon J); and *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80, [2025] 2 NZLR 808 (Cooper P, Gilbert and Goddard JJ).

⁷ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801.

periods by materially greater amounts than those provided for in the advice and final budgets.

[7] Second, in the alternative that a budget's contribution to the 1.5°C goal cannot be determined by the court, LCANZI says the CCC was nevertheless required to make a substantive and reasoned assessment based on cogent evidence of what was required to contribute to the goal. The CCC did not do so.

[8] Third, in the alternative that the 1.5°C goal is not a bottom-line requirement with operative force under s 5W, the CCC and Minister nevertheless misunderstood and misdirected themselves as to the statutory purpose. LCANZI alleges the CCC made numerous errors regarding how the 1.5°C goal should influence the setting of the budgets: it failed to consider the 1.5°C goal separately to the 2050 target; repeated the alleged mathematical or logical error in the NDC advice; made no attempt to assess New Zealand's maximum level of domestic ambition or what budgets this would imply; and did not attempt to assess the costs or benefits of a higher level of ambition than that reflected in the budgets. The Minister, in turn, substantially adopted the Commission's advice. On its face, the CCC's analysis demonstrates its advice was not compatible with the 1.5°C goal. The budgets recommended by the Commission and set by the Minister were not set with a view to contributing to the goal, correctly interpreted, and are unlawful.

[9] As to the NDC, LCANZI's position is that the advice and decision contained a mathematical or logical error. LCANZI says the CCC purported to apply the pathways to achieving the 1.5°C goal as modelled in the 2018 report of the Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5°C: An IPCC Special Report* (IPCC Report),⁸ but the IPCC Report uses a net-net calculation. That is, the IPCC Report pathways begin with net emissions in 2010 for all pathways, and end with net emissions in the target year—2030. The CCC's calculation, by contrast,

⁸ Intergovernmental Panel on Climate Change *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (Cambridge University Press, October 2018).

began with *gross* emissions in 2010 and ended with *net* emissions in 2030—a gross-net approach.

[10] The difference, LCANZI submits, is significant. New Zealand’s gross carbon dioxide emissions in 2010 were 35.0 Mt whereas net emissions in that year were 5.0 Mt. The amended NDC ultimately adopted by the Minister was to reduce net GHG emissions to 50 per cent below gross 2005 levels by 2030.⁹ Regarding carbon dioxide emissions (which were the focus of LCANZI’s submission), a net-net method would have required New Zealand to achieve around 2.6 Mt by 2030 whereas a gross-net method would require only 17.9 Mt. This means, it is argued, the NDC in fact permits a significant increase in net emissions over the relevant period, an outcome which is both irrational and inconsistent with the purposes of the CCRA and Paris Agreement.

[11] LCANZI seeks declarations that the advice and decisions are unlawful, but seeks reconsideration only in relation to the 2026–2030 and 2031–2035 budgets.

[12] LCANZI submits that while the appeal relates to decisions made in 2021 (which is why no relief is sought with regard to the 2022–2025 budget), the intended appeal would determine important principles for future budgets and NDCs, and impact both on budgets currently in force until 2035 and our current NDC which applies until 2030.

The CCC

[13] The CCC submits that although climate change and New Zealand’s response to it are matters of public importance, that does not mean every case relating to climate change will meet the threshold for leave to appeal. It says the issues raised in this case do not meet the threshold for leave because:

- (a) as to the budget ground, the bottom-line submission is not seriously arguable and has insufficient prospects of success to warrant a further appeal, while the alternative submissions are specific to the facts of the

⁹ Amended NDC, above n 4. Note that the CCC’s advice was that reductions of “much more than” 36 per cent were required: *Ināia tonu nei*, above n 3, at 349.

case, do not raise a matter of general or public importance, and are not seriously arguable; and

- (b) as to the NDC ground, the submissions are specific to the facts and “practically moot”, so do not raise a matter of general or public importance, and they are not seriously arguable.

The Minister

[14] The Minister’s submissions in relation to the budget challenge are:

- (a) LCANZI’s bottom-line argument disregards the ordinary meaning of “contributing to”. These words do not specify a level of contribution. This is the domain of New Zealand’s NDC under the Paris Agreement, which is not set by legislation.
- (b) Under the Paris Agreement contributions to the 1.5°C goal are “nationally determined”. The Agreement also does not prescribe what domestic mitigation measures must be pursued and it permits the purchase of offshore mitigation to meet NDC commitments.
- (c) Section 5ZC of the CCRA sets out the guiding parameters for emissions budgets, listing a range of considerations that illustrate the difficult and polycentric decision-making required when setting emissions budgets.¹⁰ The CCRA is not comparable to the statutory regime for granting marine consents in issue in *Trans-Tasman Resources*. There is no “right answer”.

¹⁰ Specifically, the Minister explains that s 5ZC(2)(a) requires the Commission and Minister to have particular regard to how the budget and 2050 target “may realistically be met”, including considering “the key opportunities for emissions reductions and removals in New Zealand” and “the principal risks and uncertainties associated with emissions reductions and removals”. Regard must also be had to considerations including anticipated technological developments; the results of public consultation; the distribution of impacts across regions, communities and generations; and the impact on taxation, public spending and borrowing: s 5ZC(2)(b).

- (d) One of the factors in s 5ZC is “the need for emissions budgets that are ambitious but likely to be technically and economically achievable”.¹¹ This specific language can be contrasted with the phrase “highest possible ambition” used in the Paris Agreement for NDCs.

[15] In relation to the NDC challenge, it is submitted by reference to the Minister’s affidavit that he well understood the gross-net methodology and the value judgements involved. The issue was “of particular interest” to the Minister who obtained specific briefings on the issue. His Cabinet paper, which recommended a gross-net approach, included an annex explaining the rationale for it.

[16] The Minister submitted that, under the Kyoto Protocol forestry accounting framework, it is generally only post-1990 forestry activity that is counted in order to drive new action by States Parties. To penalise or reward them depending on the age structure of pre-1990 forests does not drive changed emissions behaviour. This means that as a country whose land use activities are a net carbon sink, New Zealand’s starting point should exclude standing forests in the base year. Further, including such emissions would lower baseline emissions from which further reductions would need to be made, in a manner that would result in New Zealand (and other countries that were afforesting in 1990) having to continue planting trees to keep net emissions at a constant level (all else being equal). On the other hand, countries that were deforesting in 1990 would have much higher baseline emissions so could take no additional action for their emissions to remain constant.

Analysis

[17] Although New Zealand’s response to climate change is obviously a matter of considerable public importance, we are not satisfied the arguments in relation to emissions budgets and the NDC have sufficient prospects of success to warrant the grant of leave.

[18] As to the budget challenge, we do not consider the bottom-line argument to be tenable given the generalised terms of s 5W(a). Further, the substantive and reasoned

¹¹ Section 5ZC(2)(b)(iv).

assessment argument is essentially a factual matter but, in any event, has insufficient prospects of success given the substantial record of inquiry and consideration undertaken by the CCC and the Minister. The misdirection arguments have insufficient prospects of success for the same reasons.

[19] As to the NDC challenge, the suggestion that a mathematical or logical error was made cannot be sustained on these facts. The CCC explained why it had adopted a gross-net approach in this way:¹²

Gross-net accounting arises from Kyoto Protocol accounting rules. These require that a gross-net approach be taken if a country's land emissions were a net sink in the target base year (1990, in our case).

...

Net-net accounting can be problematic for countries like Aotearoa whose net emissions are strongly influenced by a large area of production forests. Our forests have an uneven age class due to high planting rates over certain historic periods, causing large fluctuations in forest emissions over time ... This means that changes in net emissions between any two years can give a distorted view of the underlying long-term changes in forestry emissions. For example, if a country were at a harvesting peak or trough in the base year, net-net accounting would give an unjustified gain or loss.

Gross-net accounting therefore avoids the counting of gains or losses that are largely arbitrary effects due to the base year chosen. It also helps to track progress in relation to factors that can reasonably be influenced by human interventions now to reduce emissions or safeguard forest sinks, rather than the legacy effects of past decisions.

If viewed over the long term, production forests deliver no additional carbon sequestration benefits after the first rotation, as the carbon sequestered as they grow is emitted after they are harvested. Factoring out the emissions and removals from pre-1990 forests for accounting purposes therefore presents a more accurate picture of our efforts to reduce net emissions so long as the land remains used for forestry on an ongoing basis. However, if these pre-1990 forests are cut down and the land converted to a different use, the deforestation emissions are counted towards targets.

The gross-net approach also recognises that carbon removals by forests are qualitatively different to reductions in gross emissions. Removals by forests can compensate for a fixed amount of gross emissions at a given point in time, but do not reduce the ongoing production of gross emissions in the long term. In this way forests can temporarily offset gross emissions but can never be a permanent solution.

¹² He Pou a Rangi | Climate Change Commission "Chapter 3: How to measure progress" in *2021 Supporting Evidence Consultation Feedback and Updates – Part 1: Our place in the world* (31 May 2021) at Box 3.3.

The Kyoto Protocol acknowledged the importance of reducing emissions at source and differentiated between situations where the land sector was a source or a sink of emissions in the base year. Where land was a source of emissions in the base year, the Kyoto Protocol required targets be set to reduce land emissions on the same basis as gross emissions (net-net). Where land was a net sink of emissions in the base year it recognised that forest sinks could only temporarily offset gross emissions, and so targets are set on the basis of gross emissions levels (gross-net).

Finally, the NDC for Aotearoa will use averaging to account for emissions and removals by post-1989 forests from 2021. This makes the distinction between gross-net or net-net accounting less of an issue. Averaging factors out fluctuations in net emissions by forests to an even greater extent than the Kyoto Protocol accounting used for previous targets. With averaging, the progress tracked is driven primarily by the areas of new forest planted and the amount of deforestation. If this accounting method were extended over forest emissions and removals for Aotearoa back through time, gross and net emissions at the start of 1990 would be the same.

[20] The Minister obtained further advice on the issue from officials. That advice supported the gross-net approach and, ultimately, the Minister and Cabinet accepted it. The record demonstrates that the adoption of a gross-net approach was a considered response to New Zealand's distinctive context. While the methodology for calculating NDCs and emissions budgets is a matter of real importance, we do not consider the arguments in favour of mathematical or logical error have sufficient prospects of success to warrant the grant of leave. It follows that it is unnecessary in the interests of justice for this Court to hear and determine the proposed appeal.¹³

[21] The application for leave to appeal is dismissed.

[22] There is no order as to costs.

Solicitors:

Gilbert Walker, Auckland for Applicant

Luke Cunningham Clere, Wellington for First Respondent

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Second Respondent

¹³ Senior Courts Act 2016, s 74(1).