

I te Kōti Matua o Aotearoa | In the High Court of New Zealand  
Te Whanganui-a-Tara Rohe | Wellington Registry  
**CIV-2025-485-**

under The Judicial Review Procedure Act 2016 and Part 30  
of the High Court Rules 2016

in the matter of an application for Judicial Review

between

**LAWYERS FOR CLIMATE ACTION NZ INCORPORATED**

a duly incorporated society having its registered office at  
Level 13, 70 Shortland Street, Auckland  
First Applicant

and

**THE ENVIRONMENTAL LAW INITIATIVE**

a charitable trust board having its registered office at 75  
Taranaki Street, Wellington  
Second Applicant

and

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**STATEMENT OF CLAIM**

10 JUNE 2025

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**THE MINISTER OF CLIMATE CHANGE**  
Parliament Building, Wellington  
Respondent

## STATEMENT OF CLAIM FOR JUDICIAL REVIEW

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The Applicants by their solicitors say:

### PARTIES

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1. The First Applicant is an incorporated society of lawyers who use the law to enable more effective action in Aotearoa New Zealand on climate change. It was incorporated on 23 May 2019.
2. The Second Applicant is a charitable trust board. It was incorporated on 17 October 2019. The Second Applicant was established for charitable purposes, including to:
  - (a) preserve, conserve, protect and enhance the natural and cultural resources and to protect them against harm, misuse, depletion, unsustainable use, and destruction;
  - (b) take action that will positively reduce or mitigate against the impacts of human-induced climate change; and
  - (c) promote and encourage environmental laws and policies for the conservation, protection, and enhancement of the natural or cultural environment.
3. The First and Second Applicant have no private interest in the issues at stake in this proceeding. This proceeding is brought in the public interest, having regard to the serious threat that the climate crisis poses to all New Zealanders and the importance of the Government responding adequately to that threat.
4. The Respondent is the Minister of Climate Change (**Minister**), who has responsibility for various powers, duties and functions under the Climate Change Response Act 2002 (**Act**) including preparing and publishing an emissions reduction plan under s 5ZG.

### FACTS UPON WHICH THE APPLICATION IS BASED

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#### The climate crisis

5. The Intergovernmental Panel on Climate Change (**IPCC**) is the United Nations body tasked with assessing the science related to climate change.
6. The IPCC published a synthesis of its Sixth Assessment Report in March 2023 (**IPCC Synthesis Report**).
7. The findings of the IPCC Synthesis Report include that:
  - (a) Human activities, principally emissions of greenhouse gases, have caused global warming.
  - (b) Global surface temperatures have increased by approximately 1.1°C on average above pre-industrial levels.

- (c) Climate change is a threat to human well-being and planetary health.
  - (d) Human-caused climate change has already had adverse consequences around the world including extreme weather patterns leading to droughts and flooding, sea level rises and loss of biodiversity.
  - (e) There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all.
  - (f) Deep, rapid and sustained reductions in emissions this decade are required in order to limit warming to 1.5°C with no or limited overshoot.
  - (g) Every increment of global warming will intensify multiple and concurrent hazards.
8. These findings have been part of the scientific consensus for well over a decade.

#### **Aotearoa New Zealand's emissions**

9. New Zealand's Greenhouse Gas Inventory (**GHGI**) is the official annual report of all anthropogenic emissions and removals of greenhouse gases in Aotearoa New Zealand.
10. On 18 April 2024, Manatū Mō Te Taiao | Ministry for the Environment (**MFE**) published the 2024 GHGI covering anthropogenic emissions and removals from 1990 to 2022 (**2024 GHGI**).<sup>1</sup>
11. In climate accounting, “gross” emissions refers to anthropogenic emissions of greenhouse gases from transport, agriculture and other sectors. “Net” emissions also take into account land use, land-use change and forestry (**LULUCF**).
12. In Aotearoa New Zealand, the most significant LULUCF factor has been the conversion of marginal sheep and beef farm land to exotic plantation forests. As these forests grow they sequester carbon and produce negative emissions in the LULUCF sector. Accordingly, our net emissions have typically been 20-25 per cent lower than our gross emissions over the last three decades.
13. As set out in the 2024 GHGI:
- (a) Between 1990 and 2022, Aotearoa New Zealand's gross greenhouse gas emissions increased from 69.0 to 78.4 megatonnes of Carbon Dioxide Equivalent (**Mt CO<sub>2</sub>-e**) (a 13.7 per cent increase).

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<sup>1</sup> The 2024 GHGI contains the emissions and removals data from 1990 to 2022. The GHGI year is 15 months behind the current calendar year to give countries time to collect and process the inventory data. On 15 April 2025, the 2025 GHGI was published (1990 - 2023), however the relevant GHGI at the time of decision making was the 2024 GHGI.

- (b) Between 1990 and 2022, Aotearoa New Zealand's net greenhouse gas emissions increased from 44.6 to 59.2 Mt CO<sub>2</sub>-e (a 32.5 per cent increase).
- (c) In 2022, Aotearoa New Zealand's gross greenhouse gas emissions were comprised of 40 per cent carbon dioxide, 49 per cent methane, 9 per cent nitrous oxide and 2 per cent fluorinated gases.
- (d) In 2022, the agriculture sector, at 53 per cent, and the energy sector, at 37 per cent, were the two largest contributors to Aotearoa New Zealand's gross greenhouse gas emissions.
- (e) In 2022, the LULUCF sector offset 25 per cent of Aotearoa New Zealand's gross greenhouse gas emissions.

### **Aotearoa New Zealand's Climate Legal Framework**

#### *International Obligations*

- 14. Aotearoa New Zealand is a party to the United Nations Framework Convention on Climate Change (**UNFCCC**).
- 15. Aotearoa New Zealand signed the UNFCCC on 4 June 1992 and ratified it on 16 September 1993. The UNFCCC came into force on 21 March 1994.
- 16. The objective of the UNFCCC is to achieve, in accordance with the relevant provisions of the UNFCCC, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- 17. The Paris Agreement is a landmark international agreement under the UNFCCC (**Paris Agreement**).
- 18. Aotearoa New Zealand signed the Paris Agreement on 22 April 2016 and ratified it on 4 October 2016. The Paris Agreement came into force on 4 November 2016.
- 19. The central aim of the Paris Agreement is to strengthen the global response to the threat of climate change, including by holding the increase in the global average temperature to well below 2.0°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C (**Temperature Goal**).
- 20. The first global stocktake under the Paris Agreement took place between 2021 and 2023. On 8 September 2023, the UNFCCC secretariat published a synthesis report on the first global stocktake, the findings of which included:
  - (a) The window to keep limiting warming to 1.5°C within reach is closing rapidly, and progress is still inadequate based on the best available science.

- (b) Global emissions to date are not in line with modelled global mitigation pathways consistent with the global temperature goal of the Paris Agreement.
  - (c) Urgent action and support are needed to increase the implementation of domestic mitigation measures by realising opportunities across all sectors and systems.
21. In December 2023, in response to the first global stocktake, at the 28th meeting of the Conference of the Parties to the UNFCCC<sup>2</sup>, parties to the Paris Agreement, including Aotearoa New Zealand, agreed on the UAE Consensus, which recognised the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5°C pathways, and called on Parties to contribute to global efforts, including to:
- (a) triple renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;
  - (b) accelerate efforts globally towards net zero energy systems;
  - (c) transition away from fossil fuels in energy systems, so as to achieve net zero by 2050 in keeping with the science;
  - (d) accelerate and substantially reduce non-carbon dioxide emissions globally, particularly including methane emissions by 2030; and
  - (e) accelerate the reduction of emissions from road transport on a range of pathways, including through the development of infrastructure and rapid deployment of zero- and low-emissions vehicles.

*Climate Change Response Act 2002 and Zero Carbon Act*

22. In order to meet Aotearoa New Zealand's international commitments, including under the Paris Agreement, the New Zealand Government passed the Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**), which came into force on 14 November 2019.
23. The purpose of the Act, as amended by the Zero Carbon Act, includes to enable New Zealand to meet its international obligations under the Paris Agreement (s 3).
24. The amended Act (s 5Q) sets a target for Aotearoa New Zealand to:
- (a) reduce net accounting emissions of all greenhouse gases (except biogenic methane) to zero by 2050 and for each subsequent year; and
  - (b) reduce emissions of biogenic methane to 24 to 47 percent below 2017 levels by 2050 and for each subsequent year, including to 10 per cent below 2017 levels by 2030.

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<sup>2</sup> Decision 1/CMA.5, taken by the fifth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

### (2050 Target)

25. Section 5X of the Act requires the Minister to set emissions budgets, which must state the total emissions permitted for the relevant emissions budget period.<sup>3</sup>
26. The Minister must ensure that the net accounting emissions do not exceed the emissions budget for the relevant emissions budget period (s 5X(4)).
27. Emissions budgets are to be set 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°C above pre-industrial levels (s 5W).
28. For each emissions budget period, s 5ZG requires the Minister to prepare and make publicly available an emissions reduction plan, which is a plan that sets out the policies and strategies for meeting the relevant emissions budget, and may include policies and strategies for meeting any emissions budgets that have been notified under section 5ZD for the two emissions budget periods after that.
29. Under s 5ZG(3), an emissions reduction plan must include:
  - (a) sector-specific policies to reduce emissions and increase removals; and
  - (b) a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change; and
  - (c) a strategy to mitigate the impacts that reducing emissions and increasing removals will have on employees and employers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action; and
  - (d) any other policies or strategies that the Minister considers necessary.
30. Section 5ZH requires He Pou a Rangi | the Climate Change Commission (**Commission**) to provide the Minister with advice on the direction of the policy required in the emissions reduction plan for that emissions budget period.
31. In preparing a plan and supporting policies and strategies, s 5ZI(1) requires the Minister to:
  - (a) consider the advice received from the Commission under section 5ZH for meeting emissions budgets; and
  - (b) ensure that consultation has been adequate, including with sector representatives, affected communities, and iwi and Māori, and undertake further consultation as the Minister considers necessary.

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<sup>3</sup> The first three emissions budgets have been determined, and are set out at paragraph 37 below.

32. Section 5ZI(3) provides that the Minister may at any time amend the plan and supporting policies and strategies to “maintain their currency” by using the same process as required for preparing the plan (unless it is a minor or technical change which can be made without repeating the process used for preparing the plan).
33. The Minister is required to publish emissions reduction plans in the *Gazette*, present a copy to the House of Representatives, and make them publicly available (s 5ZI(2)).

*Commission’s monitoring role*

34. Section 5ZJ provides that the Commission must regularly monitor and report on progress towards meeting emissions budgets and the 2050 Target (in accordance with ss 5ZK and 5ZL).
35. Section 5ZK provides that the Commission must prepare an annual monitoring report that includes:
  - (a) for the most recent year of the emissions budget period for which data is available from the GHGI:
    - (i) measured emissions; and
    - (ii) measured removals; and
  - (b) the latest projections for current and future emissions and removals; and
  - (c) an assessment of the adequacy of the emissions reduction plan and progress in its implementation, including any new opportunities to reduce emissions.
36. Under s 5ZK(4), the Minister is required to respond to this report, and must:
  - (a) set out the Minister’s response to the report and recommendations;
  - (b) describe the progress made in implementing the current emissions reduction plan; and
  - (c) note any amendments to the relevant emissions reduction plan.

**Aotearoa New Zealand’s emissions budgets**

37. On 16 May 2022, the Minister published Aotearoa New Zealand’s first emissions budgets in the *New Zealand Gazette*, covering the period 2022 to 2035:
  - (a) the emissions budget for the 2022 to 2025 emissions budget period is 290 Mt CO<sub>2</sub>-e (**EB1**);
  - (b) the emissions budget for the 2026 to 2030 emissions budget period is 305 Mt CO<sub>2</sub>-e (**EB2**); and
  - (c) the emissions budget for the 2031 to 2035 emissions budget period is 240 Mt CO<sub>2</sub>-e (**EB3**).

38. The fourth emissions budget must be set and notified by 31 December 2025.

### **Aotearoa New Zealand's First Emissions Reduction Plan**

39. On or around 16 May 2022, the Minister published Aotearoa New Zealand's First Emissions Reduction Plan (**ERP1**).
40. ERP1 set out a range of policies and strategies to meet EB1, as well as incorporating sector sub-targets.
41. ERP1 also included policies and strategies that were intended to apply to future budgets, and set sector sub-targets that covered EB2 and EB3 periods.
42. ERP1 included 33 policies and measures quantified across the different sectors. These quantified policies include:
- (a) a clean vehicle standard and a clean car discount (including vehicle fuel economy labelling);
  - (b) decarbonising all public transport buses by the end of 2035;
  - (c) a light EV road user charge exemption;
  - (d) standardisation of residential kerbside collection - provisions of food scraps collections; and
  - (e) the State Sector Decarbonisation Fund (Energy and Industry component).
43. Based on numbers in the ERP1 Technical Annex, it was estimated that ERP1 policies and strategies would:
- (a) reduce gross emissions (that is, emissions at source) by between:
    - (i) 5.1 to 11.6 Mt CO<sub>2</sub>-e in the EB1 period;
    - (ii) 28.1 to 91.9 Mt CO<sub>2</sub>-e in the EB2 period;
    - (iii) 51.3 to 114.2 Mt CO<sub>2</sub>-e in the EB3 period; and
  - (b) generate removals in the LULUCF sector (assuming exotic forests are not restricted from registering in permanent post-1989 ETS category) of between:
    - (i) 3.7 to -2.3 Mt CO<sub>2</sub>-e in the EB1 period;
    - (ii) 0.8 to -15.3 Mt CO<sub>2</sub>-e in the EB2 period; and
    - (iii) -13.5 to -83.4 Mt CO<sub>2</sub>-e in the EB3 period.

### **The new Government changes climate policies**

44. Following the October 2023 election, a new Government was sworn in on 27 November 2023.

45. In its first eight months, the new Government discontinued or delayed various policies and actions provided for under ERP1, including, but not limited to:
- (a) Cancelling numerous policies targeted at reducing emissions at source during EB1 and future emissions budget periods, including, but not limited to:
    - (i) the clean car discount, aimed at incentivising the uptake of low- and zero-emissions vehicles;
    - (ii) the Government Policy Statement on Land Transport requirement for investment to be consistent with ERP1;
    - (iii) the funding decarbonisation of industry and heat through the Government Investment in Decarbonising Industry Fund;
    - (iv) the Climate Emergency Response Fund, intended to finance emissions reductions;
    - (v) the development of gas transition plan to manage the phase-out of fossil gas;
    - (vi) the development of a circular economy and bioeconomy strategy;
    - (vii) the NZ Battery Project;
    - (viii) the development of an emissions pricing mechanism, and pricing agricultural mechanisms by 1 January 2025;
    - (ix) the development of an action plan for decarbonising the industrial sector.
  - (b) Delaying the implementation of an agricultural emissions pricing policy from 2025 to 2030.
46. The new Government did not consult with the public before cancelling or delaying these policies.
47. The new Government did not amend ERP1 in concert with considering whether to cancel or delay these policies or consider how the cancellation or delay of these policies would need to be offset to ensure that EB1 and subsequent emission budgets would be met.

**The Commission publishes its advice on policy direction for the second emissions reduction plan**

48. On or around 12 December 2023, the Commission published its “2023 Advice on the Direction of Policy for the Government’s Second Emissions Reduction Plan” (**ERP2 Advice**).
49. In the ERP2 Advice, the Commission:

- (a) emphasised the importance of reducing gross emissions to meet the emissions budgets and 2050 Target;
- (b) recommended that the fastest and most substantial emissions reductions are possible in electricity and heat production, through new renewable energy generation and moving away from coal and fossil gas heating;
- (c) recommended that the main opportunities across other sectors include increasing electric vehicle uptake, shifting to low-carbon transport, ongoing improvements in farming practices, and reducing organic waste disposal to landfills; and
- (d) warned that decisions made in the EB2 period will impact Aotearoa New Zealand's ability to meet EB3.

**The Commission publishes its first monitoring report**

- 50. In July 2024, the Commission published its Monitoring Report (**Monitoring Report**). The Monitoring Report was based on policy as of 1 April 2024.
- 51. The Monitoring Report warned that there are “significant risks” to meeting EB2 and EB3 under existing policies, and in particular:
  - (a) Most areas show risk of underachievement against benchmark outcomes or goals, with 22 per cent of total emissions reductions across EB2 and EB3 showing “significant risk”;
  - (b) Agriculture and transport sectors show the largest risks, and insufficient action to reduce emissions in these sectors will put EB2 and EB3 at risk;
  - (c) If there are insufficient reductions in gross emissions for EB2, this cannot be made up by increased removals of carbon dioxide through forestry as additional planting will no longer make any difference for this period;
  - (d) The way the New Zealand Emissions Trading Scheme (**NZ ETS**) operates means that it cannot be relied on to ensure that EB2 and EB3 will be met; and
  - (e) A policy approach centred on the NZ ETS with few complementary emissions reduction policies increases the risks of not meeting EB2.
- 52. In October 2024, the Minister published his response to the Monitoring Report.

**The Government consults on Aotearoa New Zealand's second emissions reduction plan and amendments to the first emissions reduction plan**

- 53. From 17 July 2024 to 25 August 2024, MFE conducted public consultation for the second emissions reduction plan (**ERP2**) and amendments to ERP1.

54. MFE published a discussion document (**Discussion Document**) accompanied by a summary of the discussion document, and a Discussion Document Technical Annex (**Discussion Technical Annex**) (together, **Consultation Materials**).
55. Among other things, the Consultation Materials:
- (a) favoured a focus on carbon removals through forestry rather than on reducing gross emissions on the basis that it is the least-cost and most flexible option;
  - (b) was based on the assumption that removals can be treated “as equivalent to preventing the emission of one tonne of carbon dioxide in the first place” (**Offset Equivalence Assumption**);
  - (c) contained a quantified estimate of 4.1 Mt CO<sub>2</sub>-e of reductions in net emissions over the EB2 period from new ERP2 policies; and
  - (d) referred to a modelled “emissions baseline” which projected net emissions for 2026-2030 to be 70.9 Mt CO<sub>2</sub>-e lower than 2018-2022 net emissions, but did not include adequate information to assess where these reductions were projected to come from.
56. In relation to the consultation on amendments to ERP1, the Discussion Document:
- (a) listed 41 discontinued ERP1 actions and policies (in Appendix 3); and
  - (b) sought minimal feedback by asking only high level questions about the proposed amendments to ERP1 which took the changed policy settings as a given.
57. The First Applicant wrote to the Minister on 19 July 2024 outlining concerns with the Consultation Materials, and requesting additional information.
58. MFE released some additional information following the First Applicant’s letter, before the consultation period closed.
59. The First Applicant wrote to the Minister on 5 August 2024, acknowledging the release of the additional information, but noting that the material provided was still inadequate for a meaningful consultation.
60. Consultation on ERP2 included 40 events or discussions with stakeholders, and MFE received 1,836 written submissions.
- The Government publishes Aotearoa New Zealand’s second emissions reduction plan and amendments to the first emissions reduction plan**
61. On 11 December 2024, the Minister published ERP2 and a supporting Technical Annex (**ERP2 Technical Annex**).
62. The Minister also published a separate amendment to ERP1, removing 41 actions and policies (**ERP1 Amendment**).

63. In relation to EB2 (2026-30), ERP2 projects net emissions of 303 Mt CO<sub>2</sub>-e against the EB2 budget of 305 Mt CO<sub>2</sub>-e.
64. Compared with actual net emissions for 2018-22 of 371 Mt CO<sub>2</sub>-e, this represents a projected 68 Mt CO<sub>2</sub>-e reduction in net emissions through to EB2.
65. Of this projected 68 Mt CO<sub>2</sub>-e reduction in net emissions, only 3.2 Mt CO<sub>2</sub>-e (4.7 percent) is attributed to specific ERP2 policies, namely:
- (a) Electrify NZ;
  - (b) the enabling of carbon capture, utilisation and storage;
  - (c) setting a target of 10,000 public electric vehicle charging points by 2030;
  - (d) implementing an agricultural emissions pricing system and mitigation technologies;
  - (e) investing in resource recovery through the waste minimisation fund;
  - (f) improving organic waste management and landfill gas capture;
  - (g) introducing a regulated product stewardship scheme for refrigerants;
  - (h) promoting afforestation on Crown-owned land; and
  - (i) assessing impacts of updated NZ ETS settings not captured elsewhere.
66. The remaining 95.3 per cent (64.8 Mt CO<sub>2</sub>-e) of the projected reduction in net emissions through to EB2 is attributed to existing policies in a scenario referred to as the “emissions baseline”.
67. ERP2 is based on the Offset Equivalence Assumption and states that it will continue to treat forestry New Zealand Units in the same way as other units in the NZ ETS, “recognising that one tonne of carbon dioxide removed from the atmosphere makes the same contribution to our targets as one tonne equivalent (CO<sub>2</sub>-e) of emissions reductions”.
68. In terms of the balance between gross emissions reductions and emission removals in ERP2, of the projected 68 Mt CO<sub>2</sub>-e reduction in net emissions in EB2 (2026-30) versus actual net emissions in 2018-22:
- (a) gross emissions for EB2 (2026-30) are projected to be 47 Mt CO<sub>2</sub>-e lower than in 2018-2022 (363 versus 410 Mt CO<sub>2</sub>-e); and
  - (b) the balance of 21 Mt CO<sub>2</sub>-e is projected to come from an increase in the level of emissions removals from forestry.

69. The ERP2 Technical Annex states that “under the central projection, net emissions are on track to achieve the second emissions budget, but a significant uncertainty margin remains”.
70. In order to manage ongoing risks to delivery, ERP2 purports to rely on an “Adaptive Management Approach”, whereby the Government will actively “monitor and respond to meet [EB2] and support meeting future budgets” over three stages:
- (a) Tracking policy delivery and leading indicators;
  - (b) Reviewing projections and risks, evaluating progress against the emissions budget; and
  - (c) Responding when necessary to stay on track for EB2.
71. The Adaptive Management Approach does not include any specific responses which might be implemented if necessary to stay on track for EB2 and accordingly does not assess the likely quantity of emissions which could be reduced, the timeframe for implementation nor the likelihood of successful implementation.
72. ERP2 projects that emissions during EB3 will exceed the budgeted amount by 9.2 Mt CO<sub>2</sub>-e.

**FIRST CAUSE OF ACTION: ERRORS RELATING TO ERP1**

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The applicants repeat paragraphs [1] to [72].

73. When the new Government was sworn in on 27 November 2023, Aotearoa New Zealand was partway through the EB1 period (being 2022 to 2025).
74. Under the Act:
- (a) A purpose of Subpart 3, which covers the preparation of emissions reduction plans, is to provide “greater predictability for all those affected, including households, businesses, and investors, by giving advance information on the emissions reductions and removals that will be required” (s 5W);
  - (b) Emissions reduction plans apply for the entire duration of each respective emissions budget period (s 5ZI(4));
  - (c) Emissions reduction plans are to remain current (ss 5ZI(3), 5ZK(4) and 5ZN(c)); and
  - (d) Where an emissions reduction plan is amended for the purpose of “maintain[ing] [its] currency”, the Minister is required to use the “same process as required for preparing the plan” (for anything other than a “minor or technical change”) (s 5ZI(3)).
75. The Minister followed an unlawful process in relation to amendments to ERP1.

**First error – failure to keep ERP1 current (error of law)**

76. ERP1 was not updated between November 2023 and December 2024 despite the new Government discontinuing various policies and actions provided for in ERP1 and introducing a “revised approach to reducing emissions”.

*Particulars*

Paragraphs [45] - [47] above

Discussion Document at p. 31, p. 118 - 119

77. Accordingly, between November 2023 and the publication of the ERP1 Amendment on 11 December 2024, the Minister failed to keep ERP1 current.

78. The Minister’s failure to provide timely updates was inconsistent with the purpose and scheme of the Act, which includes providing a framework for New Zealand to “develop and implement *clear* and *stable* climate change policies” that stretch across political cycles (s 3).

**Second error – errors in process to amend ERP1 (error of law; procedural impropriety)**

79. When the Minister eventually addressed amendments to ERP1:

- (a) The changes were more than “minor or technical”;
- (b) When consultation did occur, it was *ex post facto* and so was not meaningful, and did not follow the same process used for preparing the plan;
- (c) The Minister did not consider how the cancellation or delay of existing policies would be offset to maintain the same level of surety that EB1 and subsequent emission budgets would be met; and
- (d) The Consultation Materials contained insufficient information to enable the public to be adequately informed about the effects of the proposed changes to ERP1 and provide informed responses.

*Particulars*

The Discussion Technical Annex included quantitative modelling of the effect on emissions during the EB2 period of the changes to only three ERP1 policies, totalling 7.6 Mt CO<sub>2</sub>-e of additional emissions in EB2;

- (i) Removal of the Clean Car Discount was modelled as causing 1.4 Mt CO<sub>2</sub>-e of additional emissions in EB2;
- (ii) Removal of the Government Investment in Decarbonising Industry Fund was modelled as causing 4.3 Mt CO<sub>2</sub>-e of additional emissions in EB2; and

- (iii) Delaying the introduction of an agricultural emissions pricing from 2025 to 2030 was modelled as causing 1.9 Mt CO2-e of additional emissions in EB2;

The Discussion Document and Discussion Technical Annex contained no analysis, quantitative or otherwise, of the effects of removing enabling policies from ERP1 on the likelihood of meeting future emissions budgets.

**Third error – amended ERP1 unlawful and unreasonable as it is incoherent and internally contradictory (error of law; unreasonableness)**

80. Third, ERP1 as amended is incoherent and internally contradictory:
- (a) The Government's emissions reduction plan is now spread across four documents:
    - (i) The original ERP1;
    - (ii) The table of actions associated with the original ERP1;
    - (iii) The ERP1 Amendment; and
    - (iv) The Government's climate strategy.
  - (b) Appendix 1 to the ERP1 Amendment lists the actions that have been discontinued from the original ERP1, but an amended version of the table of actions has not been released.
  - (c) However, the ERP1 Amendment does not otherwise address the status of any other part of the original ERP1, such as the details of the previous Government's overall approach to reducing emissions including sector sub-targets for EB1, EB2, and EB3.
  - (d) The four documents above do not include information about the status of the actions in the original ERP1 that have not been discontinued.
81. This is inconsistent with the requirements of good public administration and inconsistent with the scheme and purpose of the Act, which is to develop and implement clear and stable climate policies (s 3) and provide greater predictability for all those affected, including households, businesses, and investors, by giving advance information on the emissions reductions and removals that will be required (s 5W(c)).

**Relief sought**

- (a) Declarations that:
  - (i) prior to the amendment to ERP1 on 11 December 2024 the Minister erred in law by failing to maintain a current ERP1 that reflected policy changes made affecting the original ERP1;

- (ii) consultation on the amendment to ERP1 was unlawful and did not meet the requirements of s 5ZI(3)(a); and
  - (iii) ERP1 as amended is unlawful because it lacks coherence and internal consistency;
- (b) Such other relief as the Court thinks fit; and
  - (c) Costs.

## **SECOND CAUSE OF ACTION: ERRORS RELATING TO ERP2**

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The Applicants repeat paragraphs [1] to [72].

### **First error – the Minister failed to comply with s 5ZI(1)(b) when making ERP2 (error of law)**

- 82. Relative to actual net emissions for 2018-22, 95.3 per cent (64.8 Mt CO<sub>2</sub>-e) of projected reductions in net emissions in ERP2 are attributed to existing policies in a scenario referred to as the “emissions baseline”.
- 83. The projected reductions in the emissions baseline are the result of modelling assumptions, and not “policies and strategies” for meeting EB2 as required by s 5ZG(1)(a).
- 84. Contrary to the requirement in s 5ZI(1)(b) for the Minister to ensure that consultation on an emissions reduction plan is adequate, the information contained in the Consultation Materials in respect of the projected reductions in the emissions baseline lacked sufficient detail on:
  - (a) the assumptions behind the emissions baseline;
  - (b) which policy initiatives were included and assumed to continue in the emissions baseline, and how they would achieve the projected emissions reductions;
  - (c) the risk of planned reductions not occurring; and
  - (d) contingencies for dealing with those risks.
- 85. While MFE released some further information in response to the concerns outlined by the First Applicant and detailed above at [57] - [59], MFE did not release sufficient additional information to address the concerns.

### **Second error – lack of surety that ERP2 will ensure EB2 is met, and inappropriate reliance on an “adaptive management approach” (error of law; unreasonableness)**

- 86. Section 5ZG(1)(a) of the Act requires the Minister to prepare and make publicly available a plan “setting out the policies and strategies *for meeting* the relevant emissions budget” (emphasis added).
- 87. Section 5ZG(1)(a) provides the basis for the Minister to meet his duty to “ensure” that emissions budgets are not exceeded in s 5X(4).

88. Accordingly, the Act requires the Minister to publish a plan that is sufficiently detailed to give the general public confidence that New Zealand will meet the relevant emissions budget, including by having a sufficient buffer for future changes and uncertainties.
89. While ERP2 purports to set out a plan for meeting EB2, it is not compliant with s 5ZG(1)(a) of the Act.
90. The projected emissions under ERP2 do not provide a sufficient buffer for ensuring that EB2 is met.
91. On its own terms, the modelling underpinning ERP2 has a significant degree of uncertainty:
- (a) ERP2's central projection for net emissions in this EB2 period is 303.1 Mt CO<sub>2</sub>-e (which is 1.9 Mt CO<sub>2</sub>-e favourable to the budget);
  - (b) ERP2 also contains "low" and "high" projections for net emissions in the EB2 period of 288.6 Mt CO<sub>2</sub>-e and 321.8 Mt CO<sub>2</sub>-e (**Uncertainty Margin**); and
  - (c) the "low" and "high" projections for net emissions are generated through a sensitivity analysis whereby assumptions in the model (such as population growth, GDP and prices) are varied.
92. In addition to modelling "low" and "high" projections for EB2, ERP2 considers the difference between emissions projections previously estimated and the outturn emissions when measured.
93. The Uncertainty Margin implies that there is a significant risk that EB2 will not be met.
94. ERP2 also projects that emissions during EB3 will exceed the budgeted amount by 9.2 Mt CO<sub>2</sub>-e. Accordingly, on its own terms, ERP2 fails to provide a credible path for meeting future emissions budgets beyond EB2.
95. There are further risks that may prevent EB2 and future emissions budgets from being met which are not accounted for by the Uncertainty Margin or by the historic projection errors. For example:
- (a) long periods of dry weather could reduce renewable electricity supply, leading to more gas or coal use to generate electricity;
  - (b) technologies such as carbon capture and storage may not be deployed as modelled;
  - (c) the effect of a lower NZ ETS price path than the single scenario assumed;
  - (d) the potential for higher coal use in electricity generation and industry due to the impact of gas shortages on gas price and availability on users other than Methanex, which is not included in the modelling;

- (e) the effect of higher nitrogen fertiliser use than the single scenario assumed, due to change in price and/or regulations;
  - (f) any delay to biomass use at the Huntly power station, which is assumed from 2028 in all scenarios; and
  - (g) actual afforestation rates being lower than assumed in ERP2 in circumstances where the assumed rates depend on extensive but unconfirmed new planting on Crown-owned land.
96. ERP2 relies on an Adaptive Management Approach as its principal way of mitigating the risk that the budgeted amount in EB2 will be exceeded.

*Particulars*

ERP2, p. 19.

11 November 2024 Cabinet paper, p. 6.

BRF-5349, p. 3.

BRF-5138, p. 3.

97. The Minister's reliance on ERP2's Adaptive Management Approach is not a lawful or rational way of responding to the risks which ERP2 identifies may prevent EB2 from being met, as he failed to consider, and ERP2 fails to identify, any plausible or credible policies that would respond to the shortfalls in emissions reductions over the EB2 period represented by the Uncertainty Margin.
98. ERP2 states that if a risk emerges, Cabinet will decide on a proportionate response which may include:
- (a) further adjustments to NZ ETS settings;
  - (b) adjusting existing policies;
  - (c) bringing in new policies; and
  - (d) continuing to monitor indicators.
99. However, the Minister had been advised that implementing new policies that lower emissions takes time, that there is often a lag between implementation and effect, and that the NZ ETS needs significant reform if it is to be relied on to drive emissions reductions.

*Particulars*

BRF-5349, p. 14.

Climate Change Chief Executives Board - Quarterly Progress Report (October 2024), p. 4.

BRF-5073, at p. 5 - 6.

Monitoring Report, at p. 99.

100. This limits the extent to which the Adaptive Management Approach can compensate for any shortfall in emissions reductions.
101. Accordingly, no reasonable decision-maker in the Minister's position could be satisfied that ERP2 is sufficient "for meeting" EB2 (s 5ZG(1)(a)), including in light of the Minister's duty to ensure that emissions budgets are met (s 5X(4)).

**Third error – reliance on false equivalence of forestry removals and reducing gross emissions at source (error of law; error of fact; failure to consider a mandatory relevant consideration)**

102. Thirdly, ERP2 proceeds on the basis of the Offset Equivalence Assumption (that is, the assumption that emissions removals through forestry is equivalent to, and fungible with, reducing gross emissions at source).
103. ERP2 relies heavily on offsetting, particularly through exotic afforestation in the emissions baseline. In particular,
- (a) gross emissions during EB2 are projected to be 363.4 Mt CO<sub>2</sub>-e which is projected to be offset by 60.3 Mt CO<sub>2</sub>-e, leaving projected net emissions for EB2 of 303.1 Mt CO<sub>2</sub>-e; and
  - (b) the 60.3 Mt CO<sub>2</sub>-e for 2026-30 is almost double forestry removals for 2021-25 which are projected to be 31.2 Mt CO<sub>2</sub>-e.
104. While EB2 is specified in terms of an amount of net emissions, emissions removals through forestry are not equivalent to, or fungible with, reductions of gross emissions at source in terms of climate science and our international treaty obligations.
105. By proceeding on the basis of the Offset Equivalence Assumption, the Minister made a fundamental error of fact because:
- (a) both natural and human-based risks mean that land-based carbon removals may not be permanent:
    - (i) climate change will continue to exacerbate forest fires, strong winds, storms, floods, droughts, pests, and pathogens, and the risks of these events will increase due to a changing climate;
    - (ii) carbon dioxide removals by forests could be reversed if those forests are harvested or destroyed and not replanted;
  - (b) while policies can reduce some risks of land-based carbon removals, their ability to ensure permanence over the very long term is limited;
  - (c) emissions reductions from source are able to be quantified with more certainty, whereas removals from forestry rely on contestable measurement methodologies;

- (d) emissions removals from planting trees have external and intertemporal costs compared to reductions of gross emission at source including the need to permanently afforest, and maintain in perpetuity, large amounts of land that could otherwise be used for other purposes; and
  - (e) achieving and sustaining net zero emissions requires the reduction of emissions at source because the amount of carbon emissions that can be stored on land is limited; and
  - (f) a pathway based heavily on offsetting is not consistent with the Temperature Goal of the Paris Agreement.
106. The Commission and MFE officials have repeatedly advised the Government that it should prioritise enabling gross emissions reductions rather than emissions removals, including because there are risks to over-relying on forestry offsets:
- Particulars, by way of example:*
- ERP2 Advice, p. 5, p. 40, p. 161 - 163;
- Monitoring Report, p. 99, p. 250;
- Ināia Tonu Nei, p. 65;
- BRF-4201 The NZ ETS and its role in reducing emissions, at p. 9 - p. 10;
- BRF-4430 Advice on Climate Change Commission's recommendations to set gross emissions targets, at p. 7 - 8.
107. In setting ERP2, the Minister had to act consistently with New Zealand's international obligations by virtue of the purpose of the Act, which includes enabling New Zealand to meet its international obligations under the UNFCCC and the Paris Agreement, and the requirement that statutory powers are exercised consistently with international law.
108. Article 4(1) of the Paris Agreement provides that in order to achieve the Temperature Goal, the Parties to the Paris Agreement will aim to reach global peaking of greenhouse gas emissions "as soon as possible" and to "undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals".
109. The Offset Equivalence Assumption resulted in a balance of emission reductions and removals in ERP2 which is, or at least may be, inconsistent with acting in compliance with New Zealand's obligations under the Paris Agreement.
110. The Minister was required to have regard to, but failed to have regard to, the fact that the use of the Offset Equivalence Assumption would, or may, result in an emissions reduction plan which is inconsistent with New Zealand's obligations under the Paris Agreement.

**Fourth error – the Minister’s decision was not based on a fair, accurate and adequate report from officials (failure to take into account relevant considerations)**

111. In relation to the 95.3 per cent (64.8 Mt CO<sub>2</sub>-e) of projected reductions in net emissions in ERP2 that are attributed to existing policies in the “emissions baseline”, the advice from officials to the Minister lacked sufficient detail on:
- (a) the assumptions behind the emissions baseline;
  - (b) which policy initiatives were included and assumed to continue in the emissions baseline, and how they would achieve the projected emissions reductions;
  - (c) the risk of planned reductions not occurring; and
  - (d) contingencies for dealing with those risks.
112. In relation to the lack of surety that ERP2 will ensure that EB2 is met, the advice from officials to the Minister failed to contain sufficient warning that:
- (a) there are further risks that may prevent EB2 and future emissions budgets from being met which are not accounted for by the Uncertainty Margin or by the historic projection errors; and
  - (b) the limited extent to which the Adaptive Management Approach could compensate for any shortfall in emissions reductions.
113. In relation to the Offset Equivalence Assumption, the advice from officials to the Minister failed to warn that the balance between gross emissions reductions and emission removals in ERP2 is, or at least may be, inconsistent with acting in compliance with New Zealand’s obligations under the Paris Agreement.
114. Accordingly, the Minister’s decision was not based on a fair, accurate and adequate report from officials.

**Relief sought**

- (a) A declaration that ERP2 does not meet the requirements of s 5ZG and/or s 5ZI(1)(b);
- (b) A declaration that the Minister’s decision to base ERP2 on the Offset Equivalence Assumption:
  - (i) was unlawful because it involved an error of fact; and
  - (ii) was unlawful because the Minister failed to have regard to the potential for that assumption to result in an emissions reduction plan that is inconsistent with New Zealand’s obligations under international law;
- (c) A declaration that the Minister’s decision was not based on a fair, accurate and adequate report from officials;

- (d) An order quashing ERP2;
- (e) In the event the Court orders the Minister to reconsider aspects of ERP2, an order requiring the Minister to re-consult in accordance with the law as set out in the Court's judgment;
- (f) Such other relief as the Court thinks fit; and
- (g) Costs.

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This document is filed by David Bullock solicitor for the first and second applicants of the firm LeeSalmonLong.

Documents for the first and second applicants may be served at the offices of LeeSalmonLong situated on Level 34, Vero Centre, 48 Shortland Street, Auckland.