

Chair
Cabinet Environment Energy and Climate Change Committee

Improving the Emissions Trading Scheme for Forestry Participants Part One: Key decisions for permanent forests and operational improvements

Proposal

1. We are seeking policy approval for the first set of forestry changes to the Climate Change Response Act 2002 (CCRA) and the Forests Act 1949. This will enable drafting to commence for changes to improve the way the New Zealand Emissions Trading Scheme (ETS) supports forestry participants [ENV 18 Min 0033 refers].
2. These decisions are important for supporting New Zealand to transition to a low-emissions and climate-resilient future. They form part of a package of climate change initiatives we are introducing to support this transition and the implementation of the Paris Agreement.
3. The proposals in this paper include:
 - a. disestablishing the Permanent Forest Sink Initiative and creating a new permanent forest activity in the ETS; and
 - b. introducing a package of operational changes to improve the way the ETS works for forestry participants and support the establishment of a range of forest types including permanent and rotation forests.
4. Alongside these decisions, the Minister for Climate Change is also proposing amendments to the CCRA, and is seeking approval for the first of these in an accompanying paper 'Amendments to the Climate Change Response Act 2002: tranche one.'
5. Further proposed amendments to the CCRA will be provided in subsequent Cabinet papers in March 2019. We expect all the amendments to result in a single bill amending the CCRA, which would be introduced to the House in mid-2019.

Executive Summary

These decisions are part of a programme of Government action on climate change and also will help us deliver other key objectives

6. New Zealand is committed to taking action on climate change. In 2016, New Zealand ratified the Paris Agreement, which creates an expectation for all countries to reduce domestic emissions and transition to a low-emissions future.
7. To ensure New Zealand can transition to a low-emissions and climate resilient future, we have been working on a package of climate change focused proposals. These include the 'Climate Change Bill' and a series of changes to the CCRA to ensure that the ETS is a fit-for-purpose tool to support the transition.
8. The ETS is the Government's key tool for supporting New Zealand to meet emission reduction targets. This paper introduces decisions that will help us improve the ETS specifically for forestry participants and support the delivery of the following objectives:
 - simplify the way the ETS works for participants;
 - provide better incentives for afforestation and support the right trees being planted in the right place; and
 - better align domestic and international approaches to future carbon accounting, so that fiscal cost to the Crown is minimised.

These decisions will improve operational aspects of the scheme and introduce better provisions for supporting the establishment of permanent forests

9. The Permanent Forest Sink Initiative (PFSI) offers owners of forests established in 1990 or later the opportunity to earn emission units for the carbon absorbed by their forests. Participants enter into a covenant with the Crown, in perpetuity, with the right to terminate after a minimum term of 50 years.
10. We know that the PFSI and some of the operational aspects of the ETS are complex and inefficient for participants and present a barrier to the ETS incentivising new forests to be established. We also know that supporting people to establish more permanent forests will be important for New Zealand. These forests will help us meet a range of wider policy goals (including clean water, hazard management¹, climate change objectives and biodiversity).
11. We propose to introduce changes that will reduce administrative barriers and make it easier for participants to financially benefit from the carbon stored in their forests.
12. The specific proposals include:
 1. creating a new permanent forest activity in the ETS and disestablishing the PFSI (supporting the establishment of new permanent forests); and
 2. introducing a package of operational changes to improve the way the ETS works for forestry participants (supporting the establishment of all types of forest) specifically:
 - a. four significant changes to operational processes; and

¹ This includes, for example, flood risk management and erosion control

- b. a package of 16 minor and technical improvements that will enable more effective and efficient administration of the forestry aspects of the ETS.

13. The four significant changes to operational processes are:

- a. Improving pre-1990 forest land offsetting to allow greater flexibility of land use;
- b. Simplifying the process to access exemptions for deforestation liabilities for areas of tree weeds (including wilding conifers);
- c. Excluding post-1989 land which predominantly contains tree weed species (from being eligible to be registered in the ETS and earn NZUs); and
- d. Improving access to exemptions for land in multiple-ownership, for example, land administered under the Te Ture Whenua Maori Act 1993.

These proposals were well supported during consultation

- 14. The forestry ETS decisions we present in this paper were well supported in our public consultation process that finished in September of this year [ENV 18 Min 0033 refers]. We received 147 submissions on the forestry proposals and these proposals draw on the submissions.

Making decisions now will be important for progressing our programme of action on climate change and will also help us deliver other key objectives by the end of 2019

- 15. Making decisions today on the first part of the ETS forestry package will enable the Parliamentary Counsel Office to begin drafting legislation, and will mean that a Bill can be finalised in 2019.
- 16. We are confident that these decisions can be progressed independently of the other forestry related proposals. We intend to bring a further set of CCRA forestry amendments to this Committee in March 2019, these will include changes to the accounting approach for forests in the ETS.
- 17. While the second set of forestry ETS amendments will also involve drafting complexity, further policy work and analysis needs to be undertaken before policy decisions can be made on them. ^{s 9(2)(g)(ii)}

- 18. At that time, all of the proposed changes will be integrated into a single bill to amend the CCRA to improve the ETS and support the transition to a low-emissions and climate-resilient New Zealand.

Context

New Zealand's forests can play an important role in New Zealand's commitment to climate change action

19. New Zealand is committed to action on climate change. As our most significant source of domestic emissions mitigation, afforestation is a key mechanism to realise our climate change ambitions and transition to a lower carbon economy.

The ETS is New Zealand's primary tool for incentivising increased forestry to support achieving our international climate commitments

20. The ETS was introduced in 2008 to help New Zealand to drive emissions reductions, by putting a price on greenhouse gas emissions and removals which incentivises investment in lower emissions technologies and practices, including forestry as a carbon sink. This means that all sectors of New Zealand's economy must report their emissions and (apart from agriculture) buy New Zealand units (NZUs) that they can surrender to the government to cover their emissions.
21. The Minister for Climate Change is also proposing to introduce a Climate Change Bill to provide the framework for the transition to a low-emissions and climate-resilient New Zealand. The ETS will play a key role in assisting New Zealand to meet domestic emission budgets under the Climate Change Bill. The proposals in this paper will also help support meeting these targets by increasing domestic emission removals through promoting the establishment of new forests.

The ETS 2015/16 review identified areas for improvement in the way the ETS works for forestry participants

22. In 2015, a review of the ETS was initiated alongside international climate change negotiations that led to the creation of the Paris Agreement. Part of the focus for this review was to ensure that the ETS would be fit-for-purpose to support the delivery of climate change commitments in the 2020s.
23. This review concluded in 2017 and identified some key issues with the overall ETS, and its forestry rules, and indicated a range of potential improvements [CAB-17-MIN-0369 refers].

We have recently consulted on improvements to support the ETS to enable greater afforestation

24. Earlier this year, we consulted on a package of forestry decisions to make the ETS work better for forestry participants [ENV 18 Min 0033 refers]. These improvements included:
- changing how forestry participants earn NZUs in the ETS through introducing a simpler accounting approach;
 - introducing a mechanism for recognising carbon stored in harvested wood products (could promote increased afforestation and greater use of wood products in our economy);
 - creating a new permanent forest activity in the ETS; and

- introducing a package of operational changes to improve the way the ETS works for forestry participants.

The group of forestry ETS proposals we are discussing today were supported through consultation

25. The Ministry for the Environment (MfE), the Ministry for Primary Industries (MPI) and Te Uru Rākau publicly consulted on a package of proposed changes to the New Zealand Emissions Trading Scheme (ETS) in August and September 2018. Over 575 attendees attended the roadshows and a separate Māori Leaders Workshop was also held in Wellington as part of the consultation.
26. We received 147 submissions on the forestry proposals and our current proposals draw on these submissions. There was strong support for the introduction of a permanent post-1989 forest activity into the ETS, including among existing permanent forest owners, and generally good support for the proposed detailed design of this policy.
27. Submissions from all sectors consistently stated that regulatory certainty is very important to underpin confidence in the ETS. Submissions from iwi and Māori recognised that the proposals support positive outcomes and opportunities for Māori foresters and Māori land owners.

Making decisions on some of these proposals now will bring a range of benefits

28. Progressing decisions on some of the forestry ETS proposals now will provide a clear signal from government that ETS forestry changes are being introduced. It will mean the ETS is better able to support the forestry sector to increase planting rates and establish new forests. This will help us to achieve the level of new forest cover required to support our climate change targets.
29. The changes we propose today are intended to incentivise increased carbon storage in a range of forest types including permanent forests. There are two main approaches to establishing forests in New Zealand, permanent forests² and commercially harvested rotation forests and both will be important for helping New Zealand mitigate our domestic emissions. We know that Māori will play a key role in the establishment of new forests, currently owning around 40% of commercially planted forest land in New Zealand (with further increases expected as Treaty of Waitangi settlements conclude).
30. Incentivising these new forests will also support the government's target to plant one billion trees in the next 10 years. The One Billion Trees Programme also aims to achieve other co-benefits such as regional economic development, and improve erosion control and other land use outcomes.

² Permanent forests can be either indigenous or exotic species or a mix of both. They are important for the long-term sequestering of carbon and provide an option for the permanent retirement of land in highly erosion-prone areas.

Some of our forestry ETS proposals are not 'decision ready' at this time, as they will require further impact analysis before decisions can be made to implement them

31. We have decided to phase consideration of the improvements for forestry participants in the ETS. The remaining policy decisions will be brought to you for consideration in early 2019 to enable sufficient time for further research and analysis to be completed following consultation. These will include:
- a. the introduction of averaging accounting;

s 9(2)(g)(ii)

Comment

We propose a package of ETS decisions regarding permanent forests and operational improvements

32. We propose introducing the following changes:
1. create a new activity to encourage permanent forests in the ETS and discontinue the PFSI;
 2. introduce four significant operational improvements to the ETS for forestry and 16 minor and technical amendments to the ETS.
33. We also propose that Cabinet devolve delegated authority to the Minister of Forestry and the Minister for Climate Change, to jointly make decisions within the direction provided by this paper. This would enable drafting to continue if any policy questions arise before Cabinet meets to progress the second tranche of CCRA changes (for the wider ETS framework) and the second part of the forestry proposals next year.

Proposal one: Introducing a new permanent post-1989 forest activity into the ETS and discontinuing the Permanent Forest Sink Initiative (PFSI)

34. This package of decisions will outline the future shape of a new Permanent Post-1989 Permanent Forest Activity in the ETS. This would involve introducing a new activity for growing permanent post-1989 forests into the ETS and discontinuing the PFSI under the Forests Act 1949.
35. The policy intent of this proposal is to reduce barriers for people seeking to establish permanent forests, for example, Māori land owners seeking to increase their investment in the forestry sector. Making these policy decisions now will support those wishing to establish a permanent forest, enabling them to plant with greater confidence.

Consultation response to this proposal – risks & mitigations

36. In consultation most submitters supported MPI's preferred policy approach for creating a new permanent forest activity in the ETS (refer Appendix Three for detailed summary). The proposed new provisions for accounting for carbon loss following adverse events³ were particularly valued by submitters.
37. Although both previous reviews and the most recent public consultation shows strong overall support for the new Permanent Post-1989 Forest activity, there may be a risk that in disestablishment of the PFSI the Crown is perceived as breaking covenants⁴ (i.e. a form of property right). Consultation feedback indicates this is unlikely to be an issue for PFSI participants, though objections could emerge from wider interested parties.
38. s 9(2)(h) [REDACTED] We note that officials are developing options for landowners that wish to take out a private covenant on their forest land with partner organisations such as the QEII Trust and Nga Whenua Rahui Programme.

Background

39. New Zealand currently incentivises carbon stored in permanent forests and other co-benefits through the PFSI under the Forests Act. Two reviews of this scheme in 2013 and 2015 consistently recommended integrating the PFSI into the ETS.
40. This is primarily because the PFSI is more complicated to engage in than the ETS, since it is administered separately through the Forests Act 1949 and legal covenant documents between the Crown and participants. As a result, the PFSI costs participants an average of around \$5000⁵ to enter than the ETS (whereas ETS registration costs around \$600).
41. The PFSI has underperformed and only has 60 participants and around 15,500ha of permanent forest registered. The last participant registered with the scheme in 2014, and there are currently more native and permanent forests registered in the ETS than there are in the PFSI. Participants and officials agree that this is due to the complexity and costs of participating in the PFSI.
42. Enabling owners of permanent forest to earn NZUs in the ETS instead of the PFSI will reduce barriers to establishing permanent forests. The intent of this proposal is to:

³ The application of adverse events cover to permanent forests (once registered in the ETS) addresses an ongoing issue where the cost of insurance to cover the NZUs that need to be repaid in the event of an adverse event (e.g. a forest fire) often exceeds the income from the forest.

⁴ A covenant is a promise which creates a legal obligation by someone to do, or not to do something in respect of that land. This promise is tied to the ownership of the land.

⁵ The \$5,000 figure is based on the feedback received during the 2013 and 2015 reviews from current PFSI participants regarding the increased cost of registering their covenants compared to the ETS. The \$600 figure represents the cost of ETS registration for an area of forest land as post-1989 forest.

- make permanent forest a more attractive and viable option for land owners by making it easier to access revenue while their forest is growing;
- simplify, and reduce the costs of, the administration of permanent forests for participants and the Government;
- introduce co-benefits from managing both permanent and rotation forests under the CCRA, this will, for example, make it easier for rotation forests to transition into permanent forest (e.g. if they prove unsuitable for harvesting).

Decision 1: Creating high level settings for permanent forests in the ETS

43. We propose establishing a new class of activity in the ETS for owning, holding a registered forestry right, or being the leaseholder of Permanent Post-1989 Forest (Schedule 4 of the CCRA).
44. The Permanent Post-1989 Forest Activity would be created as a voluntary category in the ETS. This means that post-1989 forest owners will continue to have a choice about whether they choose to register their forest land in the ETS.
45. We propose to apply the current Post-1989 carbon stock change ETS forest carbon accounting approach to forests in the new ETS category. This enables permanent forests to earn NZUs in line with the increase in carbon stored in them over time. This means that if permanent forests are managed to sequester more carbon the participant will be able to realise the full economic value of the additional carbon.
46. We propose that registering a forest in the ETS as a Permanent Post-1989 Activity will mean that the forest land in question remains subject to other relevant forestry laws and regulations, such as the Forests Act 1949 for managing indigenous forestry on private land.

Decision 2: Repeal the PFSI provisions in the Forests Act 1949 and transition all participants out of the scheme

47. With the establishment of the Permanent Post-1989 forest activity within the ETS, there is no need to maintain the PFSI as an option for carbon forestry. The new Permanent Post-1989 Forest activity is intended to:
 - deliver the same NZUs in exchange for carbon stored to the forest owner; while
 - being simpler and less costly for the participant (and the Crown to administer); and
 - offering wider benefits from being in the ETS (e.g. better conditions for requirements following adverse events).

48. We propose to remove the PFSI provisions from parts of the Forests Act once the CCRA changes come into force. A suitable transition period will be given to existing PFSI participants (60 land owners) with forests registered in the PFSI. These participants will then have two options:
- transition into the new Permanent Post-89 ETS category at no cost to the participant (MPI will support participants in making this transition); or
 - deregister from the PFSI and exit the scheme⁶.

Decision 3: Continue unit tagging for the identification of permanent forests

49. One of the key benefits for a forest owner with forests registered in the PFSI (instead of in the ETS) is that NZUs earned in this scheme, like all other NZUs, are 'tagged' with information about where they have come from. This means that they are identifiable as NZUs earned from a permanent forest, rather than NZUs from rotation forests. Participants may then be able to access a premium for these NZUs as they are from forests that provide greater environmental co-benefits. Confirming that 'unit tagging' will continue for forests registered under the proposed Permanent Post-1989 category will allow permanent forests to continue to access this benefit.

Decision 4: Transitioning permanent forests into the new category

50. The intention for this decision is to support people to establish permanent forests (during this MERP) before the Permanent Post-1989 Activity is created in the ETS.
51. Prior to the establishment of this new category in the ETS we propose that applicants seeking to join the new category register their post-1989 forest land in the Post-1989 ETS category and transition over to the new Permanent Post-1989 Activity once the new category is established. Under this approach, they will face reduced administrative costs and receive the same number of NZUs.
52. We propose that upon transition into the new category, forest owners will be able to:
- earn NZUs back to start of the current Mandatory Emissions Return Period (MERP)⁷; and
 - avoid the need for their forest land to be remapped/reassessed.
53. Additionally, we propose to avoid new PFSI participants registering in the scheme before it is phased out next year⁸. This means that we intend to decline applications for any new PFSI covenants once these ETS forestry policy decisions are made. This avoids unnecessary administrative burden to both the land owner and the Crown.

⁶ More detail on the consequences of doing so are covered in the RIS attached as Appendix One

⁷ This provision will enable participants to be able to claim their full balance of NZUs identified as being allocated to a permanent forest once the Permanent Post-1989 Activity is created

⁸ Since 2014 there have been no new applications for the PFSI with only one application to add area to an existing covenant.

Decision 5: How restrictions on clear fell harvest for forests registered in the new category will be applied and the approach to covenants

54. We propose that forest land registered in this category will be subject to a restriction that precludes clear fell harvesting and de-registration from this ETS category within 50 years from the date the forest land is first registered in the ETS under the Permanent Post-1989 Forest Activity category.
55. Forests will have to maintain at least 30% canopy cover, as is required currently for post-89 forests registered in the ETS. Sustainable, selective harvesting in these forests will be enabled if a minimum level of canopy cover per hectare is maintained.
56. These decisions reflect the status quo approach in the PFSI covenants and was supported in consultation. Our approach will also allow land under the Te Ture Whenua Maori Act 1993 to be easily registered in the category, as restricting activities on this land for over 50 years is administratively complex.
57. To enable this provision to be implemented, we propose 'clear fell harvesting' includes: felling; harvesting; burning; removing trees by mechanical means or other human activity that results in a contiguous area greater than a hectare becoming temporarily deforested.
58. We propose that legal covenants are not a requirement of registering forest land in the new category. ^{s 9(2)(h)}
- However, we acknowledge the benefits covenants can provide. Accordingly, officials are working with a range of organisations to identify opportunities for permanent forest owners who would like a covenant to apply to their land.

Decision 6: The process for dealing with forests registered in the permanent forest category in the ETS after the 50-year 'no clear fell period' expires

59. We propose that once forest land registered in this ETS activity reaches the end of the 50-year 'no clear fell period', the participant will have three options for future ETS registration of the land⁹. This is intended to provide some land use change flexibility to participants. They can:
- sign up for another non-harvest period of 25 years¹⁰ and remain registered under the Permanent Post-1989 Forest Activity; or
 - repay NZUs in order to be registered as a post-1989 forest; or
 - repay all the NZUs they have earned in the ETS and exit the scheme entirely.

⁹ Should a participant fail to make this decision the carbon accounting area will be de-registered from the ETS and the participant be liable for the NZU balance. The participant will be offered 30 working days to notify MPI of the decision to avoid deregistration of the area.

¹⁰ We intend that participants will be able to sign up to further 25 year non-harvest periods once their 25 year renewal period expires.

60. At this stage we do not propose to offer forest offsetting¹¹ to permanent forests (either during or at the end of 50 year 'no clear fell period'). We expect forest land registered in the Permanent Post-1989 activity to be primarily native forest, and/or land best suited to remain in forest cover. We consider that offering offsetting for forests registered in this category may undermine the benefits (carbon and non-carbon) we expect from these forests.

Decision 7: The process for participants (in special circumstances only) needing to remove forest land from the permanent post-1989 forest category activity prior to the end of the 50-year non-harvest clause

61. The policy intent of this provision is to enable participants with a significant reason for exiting the Permanent Post-1989 Activity to do so, without penalising them for having registered a permanent forest. A bespoke penalties and compliance regime is being developed for the Permanent Post-1989 forest category. This will be presented to Cabinet in March, and will provide penalties for participants who breach the restrictions for exiting the scheme early.
62. We propose that provisions are drafted in the CCRA so that regulations may allow part, or all of, a Permanent Post-1989 forest registered in the ETS to be withdrawn during the 50 year 'no clear fell period', provided that the Minister is satisfied that it would be unreasonable in the circumstances to require the participant to maintain their registration in the scheme; and if so, the Minister considers that:
- a. the removal of this forest will not materially undermine the environmental integrity of the Permanent Post-1989 forest Activity; and
 - b. the removal of this forest will not materially undermine the environmental integrity of the ETS; and
 - c. the desirability of minimising any compliance and administrative costs associated with the ETS; and
 - d. the relative costs of allowing the withdrawal or not allowing it, and who bears the costs; and
 - e. any other matters the Minister considers relevant.
63. For clarity, should early withdrawal be allowed, the forest owner will be required to surrender all the NZUs earned from that land from the date it was originally registered.

Decision 8: Enable forest land registered in the ETS under the Permanent Post-1989 Forest Activity to access special provisions for carbon accounting after natural or adverse events

¹¹ Forest offsetting increases land use flexibility by allowing an area of exotic forest to be deforested, if an alternative area of the same size is planted and reaches equivalent carbon stock within a set time period.

64. We propose special provisions for forest land registered in the ETS Permanent Post-1989 Forest activity that enable a new approach to managing carbon accounting after natural or adverse events.
65. The policy intent of this provision is to reduce a barrier to establishing permanent forests. It responds to an ongoing issue where the cost of insurance covering the NZU repayment due to be repaid following an adverse event often exceeds the income from the forest.
66. This approach responds to the permanent nature of forests registered in this category and excludes forest owners with land registered under the new activity from any requirement to repay NZUs in event of temporary carbon loss following an adverse event. We propose that this exemption is introduced subject to the meeting of certain criteria, including that the forest is either replanted or left as regenerating forest post the event.

Proposal two: Operational changes to improve the way the ETS works for forestry participants (and minor and technical amendments)

67. We also propose introducing a package of operational changes for forestry ETS participants to address the issues identified by the 2015/2016 ETS Review. The review found that operational complexity was preventing some people from joining the ETS, and meant people were not taking the carbon price (i.e. the financial benefit for the carbon stored in forests) into account when making investment decisions. This (combined with other challenges with the scheme) have reduced the potential of the ETS to incentivise the establishment of new forests, particularly by small forest owners and farm foresters.
68. We believe these technical and operational changes will help further strengthen and improve the operation of the ETS specifically for forestry. These proposals were well supported in consultation. Further detail on consultation feedback for the four operational changes and the minor technical changes in this proposal is contained in Appendix Three.

We propose a phased approach by taking some operational decisions now and the remaining operational decisions next year to align with decisions on forestry carbon accounting in the ETS

69. In the recent consultation, we consulted on 26 proposals for operational improvement to the forestry aspects of the ETS. At the moment, we propose only making decisions on those operational change proposals that do not relate to changing the forest carbon accounting approach.
70. Decisions around the future of forest carbon accounting will be considered early next year, therefore we propose making decisions on operational changes to support the new accounting approach at that time.
71. For ease of decision making we have divided the operational proposals into two parts: 'significant' and 'minor and technical'.

Significant operational change decisions

72. We propose that decisions be made on the following four significant operational proposals:
1. improving pre-1990 forest land offsetting to allow greater flexibility of land use;
 2. simplifying the process to access exemptions from deforestation liabilities for areas of tree weeds (including wilding conifers);
 3. excluding post-1989 land that is predominantly tree weeds from the ETS; and
 4. enabling simpler access to an existing exemption from deforestation liabilities for multiply owner Māori land (and other land in similar situations).
73. Further information on the specific changes proposed is provided in Appendix Four.

Decision 1: Improvements to the rules around pre-1990 forest land offsetting to allow greater flexibility of land use

74. Pre-1990 forest offsetting allows a forest of equivalent area and carbon stock to be planted elsewhere to reduce the cost of converting pre-1990 forest land to other uses. For example, if land received in a Treaty of Waitangi settlement is under pre-1990 forest, but is more suited to another land-use, the cleared area of forest could be compensated for by establishing an equivalent forest elsewhere. This avoids the cost of repaying the carbon liabilities.
75. The policy intent of this proposal is to provide pre-1990 landowners with greater flexibility over their land, while maintaining New Zealand's long term carbon stock. It is particularly important for Māori landowners and farm foresters. These groups hold large areas¹² of pre-1990 forest land which may be suited to another land use.
76. Current offsetting provisions have scope for improvement, and are rarely used. For example, if any part of the offsetting application fails, the entire application is revoked. This can lead to situations where if 0.2 hectare of offset forest fails in a 100 hectare application, and the applicant becomes liable for all deforestation from their application (roughly \$1.3 million¹³ for an average 100 hectare block).
77. The proposed improvements will make offsetting more effective to allow flexible use of pre-1990 forest land and will apply enforcement action only to the actual areas of forest land that fail to establish.

¹² The most recent Deforestation intentions survey estimates that 13,000ha would use offsetting (at \$25 per NZU) between now and 2030. Previous surveys went as high as 2,000ha per year at the peak of the dairy prices

¹³ Based on 100 hectares of forest, with an average carbon stock of 650 tonnes per hectare. Should this be deforested the land owner would be liable to surrender 65,000 NZUs. With a carbon price of \$20 per NZU, this would be \$1.3million, at \$25 per NZU, this would be \$1.6million.

Decision 2: Simplifying the process to access exemptions from deforestation liabilities for areas of tree weeds (including wildings conifers)

78. We propose to introduce changes to the CCRA to enable better management of tree weed exemptions. These changes are intended to enable the ETS rules to support the management and removal of tree weeds species in compliance with regional pest management plans, and without incurring a financial liability to the landowner under the ETS.
79. Limiting the spread of tree weed species, and eliminating the seed source, is important for New Zealand as most tree weeds species spread very fast and cause a range of economic and ecological problems. These exotic conifers are able to modify and rapidly invade New Zealand's natural ecosystems so that native plants and animals are adversely affected by loss of habitat.

Decision 3: Excluding post-1989 land with tree weeds

80. We propose excluding all future Post-1989 and permanent post-1989 forest land registrations for sites that contain predominantly tree weeds, regardless of who applies to register.
81. We propose that forest land that is registered in the ETS and is in a tree weed species can remain registered as forest land eligible for earning NZUs. This is because a very small number of participants have registered tree weeds in the ETS and are using the income from their land to pay for management of the tree weeds.

Decision 4: Improving access to exemptions for land in multiple-ownership

82. Exemptions from all, or proportions of, the emission costs associated with deforesting pre-1990 land are available for landowners under the CCRA [Refer Sub18-0132] to allow some flexibility under unforeseen circumstances¹⁴.
83. Currently, landowners with less than 50 ha of pre-1990 forest land can apply for an exemption from deforestation liabilities. However, due to the way the exemption is constructed it is very difficult to apply to multiply owned land in trusts and Maori freehold land under the Te Ture Whenua Māori Act 1993. The proposal in the consultation document, and decisions we now seek, is to allow a subsequently appointed or professional trustee to apply for the exemption (rather than each landowner from 1 September 2007).
84. To enable owners of land that is in multiple ownership to access the same provisions as the legislation intends for land in single ownership situations, we propose a series of changes to the CCRA.

¹⁴ However, due to restrictive drafting, land with multiple ownership, particularly Maori multiply owned land under the Te Ture Whenua Māori Act, struggles to access the provisions

85. In consultation, support for the land in multiple ownership proposal was non-conclusive with 43% in favour, 18% opposed and 40% not sure (based on 40 submissions). Those opposed or unsure did not elaborate their reasoning, they either commented on pre-1990 deforestation more generally or disagreed with the underlying exemption policy. No issues were raised that related specifically to this change to the exemption policy.

Minor and technical operational change decisions

Decision 5: Introduce 16 minor and technical operational changes

86. We propose to introduce 16 minor and technical changes to the Climate Change Response Act to improve the general operation of the scheme, improve efficiency for the Crown and make the scheme more accessible for forestry ETS participants. These include, but are not limited to, changes to enable:
- a. a simpler process for enacting existing exemptions from emissions liabilities; and
 - b. a simpler process for transfers of post-1989 forest land following a change in legal ownership.
87. These minor operational and technical changes to the ETS are fully detailed in an attached table (see Appendix Two). They do not introduce significant change.
88. A few minor and technical changes will be applicable to non-forestry sectors in the ETS, and are noted in Appendix Two. As forestry has the majority of participants (around 90% by number), and a high frequency of interaction with the regulators, the issues these minor and technical changes seek to address were first discovered for forestry participants. However, in developing the proposed solutions following consultation, we identified that extending the solutions to the non-forestry sectors would enhance the flexibility of the ETS to respond to potential issues in the future. These provisions do not introduce significant change to the non-forestry sectors.

Next steps

89. The policy decisions taken in this paper will provide the basis for drafting instructions for the Parliamentary Counsel Office.
90. We intend to bring a further set of CCRA amendments to this Committee in March 2019. ^{s 9(2)(g)(ii)} [REDACTED]
- [REDACTED]
- [REDACTED]
91. We intend all these proposed changes to be integrated into a single Bill to amend the CCRA to support the transition to a low-emissions and climate-resilient New Zealand. This Bill is expected to be introduced by mid-2019.

Enabling parallel work to develop regulations to implement these improvements

92. We propose that officials lead the development of regulations to support the implementation of the operational improvements set out in this paper. These regulations would establish new forestry settings by the end of 2019 for the period beginning in 2020.
93. Establishing these regulations as soon as practicable will provide confidence for ETS forestry participants on the direction of travel for the ETS, and improve the ability for businesses to estimate the likely financial return for forest carbon. We intend to consult the public on the forestry regulations, in mid-2019 when the Bill is being considered by Select Committee, and seek decisions from Cabinet by the end of 2019.

Consultation

Public consultation

94. In August, Cabinet approved public consultation on proposals for improving the ETS [ENV-18-Min-0033 refers]. From 13 August 2018 to 21 September 2018, officials from the Ministry for the Environment (MfE), the Ministry for Primary Industries (MPI) and Te Uru Rākau conducted a joint public consultation on two packages of proposed improvements to the CCRA.
95. To ensure widespread engagement with the proposals, officials organised a national roadshow for stakeholders and Māori in ten locations across New Zealand. More than 575 people attended, representing a range of sector groups including transport, electricity, energy, forestry, local government and agriculture. Individuals and stakeholders from business associations, community groups, NGOs, and academics also attended.
96. There were 253 submissions received during the consultation period; 162 submissions were received on the NZ ETS framework improvement proposals and 147 were received on the forestry proposals. Approximately 60 submitters commented on both sets of proposals.
97. Submissions were generally very supportive of the proposals we are focusing on in this paper. Both creating a new permanent forest activity in the ETS and introducing operational changes received high levels of support. Our current proposals draw on these submissions.

Engagement with Treaty Partners

98. A separate Māori Leaders hui was held in Wellington and several key points were discussed. Attendees at the hui emphasized the importance of considering the impacts on Māori of these proposals with a particular focus on those living in rural communities. They stated that the Government should ensure that Māori are not disadvantaged in any way. They requested that Māori should be involved, represented and influential in all decision-making arrangements and noted that stable and enduring policies are required to support investment decisions.
99. Submissions from iwi/Māori expressed a range of views on the detailed proposals, and included similar messages to those heard at the hui regarding consideration of impact on Māori and the importance of involving Māori in decision-making.
100. Feedback was received from a range of Māori organisations and individuals on the Permanent post-1989 forest option. Many were supportive of the permanent post-1989 activity, but provided commentary that a 50 year 'no clear fell period' as a significant positive commitment to carbon forestry. A number of these saw value in a 25 year period for the second 'no clear fell period' as it allows reconsideration of carbon forestry after each generation.

Agency Consultation

101. This paper was drafted by Te Uru Rākau, the Ministry for Primary Industries and the Ministry for the Environment. The following agencies were consulted on this paper and Regulatory Impact Statement: The Department of Prime Minister and Cabinet, The Treasury, The Ministry for Foreign Affairs and Trade, Te Puni Kōkiri, the Ministry of Justice, the Ministry of Business, Innovation and Employment, the Department of Conservation and the Environmental Protection Authority.
102. Feedback from Te Puni Kōkiri, noted that 'Māori and iwi have a strong interest in forestry, as well as the ETS and a number of the proposals will result in positive outcomes and/or opportunities for Māori foresters and Māori land owners, including addressing issues that have been an ongoing source of frustration or concern, and helping to give effect to Te Tiriti o Waitangi settlements'.
103. Feedback from the Department of Conservation was provided as follows 'We support the intent of the new forest activity 'permanent-post 1989' to reduce barriers to establishing permanent forest. Healthy permanent forest cover can more effectively deliver co-benefits for biodiversity, freshwater, and soil health than rotational plantation forestry can. We also support simplifying the process to access exemptions from deforestation liabilities for areas of tree weeds (including wildings conifers), which could enable more effective control of these weeds.'

Risks and impacts of delaying decisions

104. We recommend progressing this set of Cabinet decisions as soon as possible. It is important that drafting work on a CCRA amendment can start in time to allow the bill to be presented to the House in mid-2019.
105. This is already a tight timeframe, primarily due to the complexity of the legislative drafting required to implement these changes. Collectively, these decisions represent the most comprehensive amendment to the CCRA since its inception. A delay to legislation would also delay the date on which these amendments can take effect via regulations. Delaying this may contribute to the perceptions of regulatory uncertainty, which these proposals are intended to address.

Financial Implications

106. I am not seeking approval for any new funding in this paper. The proposed first tranche amendments to the CCRA may have some financial implications, it is expected that these will be met from the Ministry for Primary Industries existing baselines.
107. Any additional funding, if required, for implementing the final policy decisions will be noted as part of the Climate Change Forestry Package in March 2019.

s 9(2)(g)(ii)

Human Rights

108. None of the proposals in this paper have human rights implications. As we work towards final policy decisions next year, officials, from MPI and MfE, will work with the Ministry of Justice toward ensuring the consistency of any legislative amendments with the Bill of Rights Act.

Legislative Implications

109. The policy decisions from this paper will require legislative change to be progressed through amendments to be made to the Climate Change Response Act 2002 (CCRA) and the Forests Act 1949, as well as revoking the Forests (Permanent Forest Sink) Regulations 2007. A range of further CCRA regulations will be required in 2019 to implement these proposals.

Regulatory Impact Analysis

110. The Regulatory Impact Analysis requirements apply to most of the proposals in this paper. A Regulatory Impact Statement has been prepared and is attached at Appendix One. This was subject to QA by a panel composed of Treasury, Ministry for Primary Industries and Ministry for the Environment representatives.

111. A Quality Assurance Panel with representatives from the Regulatory Quality Team at the Treasury, Ministry for the Environment, and the Ministry for Primary Industries has reviewed the Regulatory Impact Assessment “ ” produced by Te Uru Rākau and dated 21 November 2018. The Quality Assurance panel considers that this partially meets the Quality Assurance criteria.
112. The RIA is very technical and the presentation could have been tightened to make the content clearer and concise. However, the problem definition and opportunity are clear, the proposal has been well consulted and the feedback from stakeholders is reflected in the analysis. The RIA acknowledges that the extent to which the potential benefits are realised is dependent on the uptake of the activity, which is uncertain. It will be important to develop a detailed implementation and monitoring plan.
113. The Regulatory Quality Team at the Treasury has determined that impact analysis is not required for regulatory decisions on the technical operational changes proposed in this paper because they will have only minor impacts on businesses, individuals, or not-for-profit entities.

Treaty of Waitangi implications

114. The proposals in this paper are intended to support Māori landowners to increase the benefits they can realise from their forestry estates. This includes a new provision to better support owners of small parcels of land that is in multiple ownership to access exemptions from deforestation liabilities. The design for the Post-1989 Permanent Forest activity has been carefully drafted in recognition of complexities introduced by the Te Ture Whenua Maori Act 1993.

Gender Implications

115. This paper has no gender implications.

Disability Perspective

116. This paper has no disability implications

Publicity

117. A full summary of the submissions on the CCRA change proposals will be published before a Climate Change Response Act amendment bill is introduced to the house.

Recommendations

118. These recommendations are provided in two parts. All the recommendations that can be made without detailing a long list of small changes have been included in this section.
119. The recommendations for minor operational and technical changes to the Emissions Trading Scheme (ETS) are provided in an attached table for your review (see Appendix Two). This additional detail is required to support the Parliamentary Counsel Office to accurately draft the improvements.
120. The Minister of Forestry and the Minister for Climate Change recommend that the Committee:
1. **Note** that stage II of the Emissions Trading Scheme (ETS) review assessed the overall operation and design of the ETS, and identified a range of issues that were particularly relevant for Emissions Trading Scheme forestry participants
 2. **Note** that there is a wider package of climate change work underway across Government that is related to improving the ETS.
 3. **Note** that final policy and implementation decisions on the remaining package of ETS settings will be included in one bill that draws together all the proposed Climate Change Response Act 2002 (CCRA) changes.
- Proposal one: Introducing a new permanent post-1989 forest activity into the ETS and discontinuing the Permanent Forest Sink Initiative (PFSI)*
4. **Note** that these decisions enable a change to the way owners of permanent forests can access New Zealand Units for the carbon stored in their forests.
 5. **Note** that this proposal is intended to greatly reduce barriers to establishing permanent forests. The intent of this proposal is to:
 - a. make permanent forest a more attractive and viable option by making it easier for participants to financially benefit from the carbon stored in their forests ;
 - b. simplify the administration of permanent forests for participants and the Government;
 - c. align the administration of carbon crediting for permanent forests with other types of forest registered in the Emissions Trading Scheme;
 - d. increase the amount of permanent forest registered in the Emissions Trading Scheme to reduce the incentive to deforest; and
 - e. make it easier for rotation forests to transition into permanent forest (e.g. if they prove unsuitable for harvesting).

6. **Note** that making this policy decision now will support those wishing to establish a permanent forest in the near future, enabling them to establish forests with greater confidence.
7. **Agree** to establish a new voluntary activity in the ETS for Permanent Post-1989 Forest to enable the future carbon crediting of permanent forests in the ETS.
8. **Note** that forest land registered in the ETS Permanent Post-1989 Forest Activity will not be exempt from the laws that apply to other New Zealand forest land including the provisions in the Forests Act 1949, the Resource Management Act 1991, and the National Environmental Standards for Plantation Forestry.
9. **Note** that registering forest land in the ETS Permanent Post-1989 Forest Activity will not require a covenant being placed on the land because covenants create a needless administrative burden and do not add value in terms of the legal protection of a forest.
10. **Agree** to amend the Forests Act 1949 to remove the Permanent Forest Sink Initiative and update other parts of the Forests Act 1949 that refer to Part 3B to refer to "an area registered as permanent post-1989 forest land under the Climate Change Response Act 2002."
11. **Note** that forests registered under the proposed Permanent Post-1989 Forest category will continue to earn NZUs tagged with information that identifies that they are from a permanent forest (as is currently the case for a forest owner with forests registered in the PFSI).
12. **Agree** CCRA regulation making powers will be amended to enable forest land registered in the Permanent Post-1989 Forest Activity category to be subject to a forest carbon accounting approach that results in an allocation of NZUs equivalent to those that would have been received under the carbon stock change crediting approach in the PFSI.
13. **Agree** the CCRA is amended to ensure that the following existing provisions (that already apply to participants undertaking the activity of post-1989 forest land in the ETS) will also apply to forests registered in the ETS Permanent Post-1989 Forest Activity:
- 13.1. how forest land is defined and described
 - 13.2. who may be a participant and the registration processes for registering forest land in the Emissions Trading Scheme
 - 13.3. the reporting and unit claim process for carbon change in the forests (including the use of regulations)
 - 13.4. the monitoring of the carbon in registered forests, including the timing of emissions returns
 - 13.5. the exclusion of tree weed species from registration in the Emissions Trading Scheme

- 13.6. provisions that limit the number of New Zealand Units the participant is liable to surrender
- 13.7. other provisions relating to post-1989 relating to the transmissions of interest, and information about land status, and notifications.
14. **Agree** that when a participant with a registered post-1989 forest transfers an area of forest into the Permanent Post-1989 forest activity the participant will submit a Mandatory Emissions Return for the area being transitioned.
15. **Agree** that the Permanent Post-1989 Forest Activity exclude the requirement to repay New Zealand Units in event of short term carbon loss subject to the meeting of certain criteria including that the forest is either replanted or left as regenerating forest post the event, and no New Zealand Units are earned until the carbon stock recovers.
16. **Agree** that if forest land registered in the ETS Permanent Post-1989 Forest Activity is subject to 'clear fell' within a 50-year timeframe from the date of first registration of this land in the ETS Permanent Post-1989 Forest Activity that area of forest land will be considered non-compliant.
17. **Agree** that clear fell includes the following: any felling, harvesting, burning, or removing of trees by mechanical means or other human activity, which results in an area greater than a hectare falling below 30% canopy cover.
18. **Note** that we do not intend forest offsetting to be offered to permanent forests registered in the Permanent Post-1989 activity in the ETS.
19. **Agree** that the Minister may allow part or all of a registered permanent post-1989 forest to be withdrawn prior to the 50-year no clear fell requirement being fulfilled, provided that the Minister considers:
- It would be unreasonable in the circumstances to require the participant to maintain their registration in the scheme;
 - the removal of this forest will not materially undermine the environmental integrity of the Permanent Post-1989 forest Activity;
 - the removal of this forest will not materially undermine the environmental integrity of the ETS; and have regard to:
 - the desirability of minimising any compliance and administrative costs associated with the greenhouse gas emissions trading scheme established under this Act; and
 - the relative costs of allowing the withdrawal or not allowing it, and who bears the costs; and
 - any other matters the Minister considers relevant.
20. **Note** that the participant will be required to surrender New Zealand Units equal to the unit balance of any forest land that is subject to withdrawal from the Permanent Post-1989 Forest Activity prior to the fulfilment of the 50-year no clear fell clause.

21. **Agree** that following the establishment of the Permanent Post-1989 Forest Activity, those participants who transition post-1989 forest land (which was first registered after 1 January 2018) to the Permanent Post-1989 Forest may claim tagged units back to 1 January 2018, by removing the land from the ETS and adding it back (with no eligibility assessment) so they claim Permanent Post-1989 Forestry tagged units for carbon stock increases that occur after 1 January 2018. This option will be available until the end of the Mandatory Emissions Return Period.
22. **Agree** that once an area of Permanent Post-1989 Forest, Carbon Accounting Area reaches the end of its 'no clear fell period' the participant will have to make the decision to move a Carbon Accounting Area into one of the three options:
- 22.1. Sign up that area of forest for another non harvest period (of 25 years) and be re-registered in the Permanent Post-1989 category;
 - 22.2. Transition the forest to a post-1989 forest in the Emissions Trading Scheme, and repay New Zealand Units in line with agreed approaches; or
 - 22.3. Repay all New Zealand Units earned in the scheme for this area of forest land and exit the Emissions Trading Scheme.
23. **Agree** the decision in recommendation 22 will be made when the participant submits their first Emissions Return after the 50 year period is concluded, and until such return is submitted the forest is considered to remain permanent post-1989 forest.
24. **Agree** that should a participant fail to make the decision in recommendation 22, or submit an Emissions Return with this information in it, the carbon accounting area will be de-registered from the ETS and the participant be liable for the unit balance of the carbon accounting area. The participant will be informed this will occur, and be offered 30 working days to notify MPI of the decision to avoid deregistration of the area.
25. **Agree** that for Permanent Forest Sink Initiative forests which move over to the Permanent Post-1989 Forest, they will have been assumed to have registered as a Permanent Post-1989 Forest from the date of their Permanent Forest Sink Initiative registration for the purposes of the 50 year no clear fell period.
26. **Note** we will seek to transfer Permanent Forest Sink Initiative participants into the new Permanent Post-1989 Forest once it is introduced.

Proposal two: Operational changes to improve the way the ETS works for forestry participants (and minor and technical amendments)

27. **Note** that the operational proposals bring together a group of decisions that will introduce changes to the Climate Change Response Act and associated regulations to further strengthen and improve the operation of the Emissions Trading Scheme specifically for forestry participants.

28. **Note** the Ministers' intention to publicly consult on related regulations while the bill is in Select Committee, enabling the public to consider the package as a whole.
29. **Agree** to amend the Climate Change Response Act to enable the ability to update and improve the administration of pre-1990 forest land offsetting and allow greater flexibility of land use. The provisions will include the following changes:
- Extending the time frame for offsetting to allow four years from the application date or clearance (whichever comes first) to establish the new forest (effectively four planting seasons) in all cases; and
 - Allow a one-off opportunity to adjust the areas of land being 'deforested' and established (to a smaller area), once the application has been approved, provided the offset forest still meets the conditions around maintaining forest area and carbon stock; and
 - Making it clear that the land owner is liable for only the deforestation which is not offset once the adjustment (if any) is completed; and
 - Allowing the land owner to 'carry over' any new forest not already used into a new application (this new application will be within a time frame set in regulation).
30. **Agree** to create a regulation-making power for tree weed deforestation exemptions, moving the relevant Act detail to regulations, and:
- Removing the need to publish a public notice prior to tree weed removal;
 - Enabling applications to be submitted at any time;
 - Removing the criterion that the land has not been the subject of unit allocations under the pre-1990 forest land allocation plan;
 - Removing quantitative limits on emissions from tree weed clearance; and
 - Ensuring regulations can determine relevant operational details.
31. **Agree** to amend the Climate Change Response Act to improve access to existing exemptions for multiple-ownership land by:
- allowing the trustees, in respect of a land title (that existed on 1 Sept 2007) who were trustees appointed after 1 September 2007 to apply to have the pre-1990 forest land contained within the title to be declared exempt provided the forest area (as at a 1 September 2007) was less than 50 hectares.
 - applying the 50 hectare threshold for the exemption to the land title rather to every individual for exemptions on multiply owned land
 - allowing an agent appointed by the Māori Land Court in respect of a block of Māori freehold land may apply for this exemption, and provided the application is within the scope of the agent's powers, it be considered by the Environmental Protection Authority.

- d. allowing access to access these provisions the land title (as at 1 September 2007) if it had at least 10 owners at 1 September 2007, or be subject to the Te Ture Whenua Māori Act. (For clarity the owners of land under the Te Ture Whenua Māori Act may continue to apply in their own right (provided the declarations can be obtained from all owners on 1 September 2007).)
 - e. Land that has received a forest allocation plan allocation will continue to not be eligible for this exemption.
 - f. Remove the deadlines for submitting <50ha exemption applications (so that we can consider applications from multiply-owned land that are now eligible and others).
32. **Agree** to preclude the registration of post-1989 forest land where the forest species on the land is predominantly naturally regenerated tree weeds unless the EPA is satisfied that the risk of tree weed spread from the land that is the subject of the application for registration is low. This will not, however, revoke the registration of post-1989 forest land that has already been registered.
33. **Note** that a range of minor and technical changes to the Climate Change Response Act are required to improve the general operation of the scheme, improve efficiency for the Crown and make the scheme more accessible for forestry ETS participants. These changes include, but are not limited to, changes to enable:
- a. a simpler process for enacting existing exemptions from emissions liabilities; and
 - b. a simpler process for transfers of post-1989 forest land following a change in legal ownership.
34. **Agree** to amend the Climate Change Response Act (and, if required, draft associated regulations) that will enact the design features detailed in Appendix Two to implement minor and technical changes to improve operational aspects of the Emissions Trading Scheme.
35. **Note** some decisions in the minor and technical changes will be applied to the non-forestry sectors in the ETS to ensure that there is consistency in treatment for the different sectors.

Financial recommendations

36. **Note** the above proposed first set of amendments to the Climate Change Response Act may have some financial implications. It is expected that these will be met from the Ministry for Primary Industries existing baseline.
37. **Note** any additional funding if required for implementing the final policy decisions will be noted in the Climate Change Forestry Package expected in March 2019. ^{s 9(2)(g)(ii)}

Other recommendations

38. **Agree** the Minister of Forestry will proactively release this paper on the Ministry for Primary Industries' website, subject to redactions equivalent to withholdings under the Official Information Act 1982.
39. **Invite** the Minister for Climate Change, in consultation with the Minister for Forestry as appropriate, to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper.
40. **Authorise** the Minister for Climate Change, in consultation with the Minister for Forestry as appropriate, to further clarify and develop policy matters relating to the amendments proposed in this paper, in a way not inconsistent with Cabinet's decisions.
41. **Agree** the Minister for Climate Change and Minister of Forestry may share this Cabinet paper, drafts of further Cabinet papers on related issues, drafting instructions to the Parliamentary Counsel Office, subsequent drafts of amendments to the Act or regulations, and related documents, with the Environmental Protection Authority, as a key agency in the proposed amendments.

Authorised for Lodgement

Hon Shane Jones
Minister of Forestry
/ / 2018

Hon James Shaw
Minister for Climate Change
/ / 2018