



## Operational Policy: Section 144 Requests for Review

<b>Policy owner:</b>	Director Forestry and Land Management
<b>Policy manager:</b>	Manager Climate Change Operations
<b>Approval date:</b>	13 June 2019
<b>Next review:</b>	Two years from approval date

### OVERVIEW

#### PURPOSE

1. The purpose of this policy is to set out the responsibilities of Te Uru Rākau when a person has requested a review of a decision under section 144 of the Climate Change Response Act (the Act).

#### BACKGROUND

2. Section 144 of the Act allows for a person affected by a decision made by Te Uru Rākau under Part 4 or Part 5 of the Act (the original decision) to request that Te Uru Rākau reviews the original decision. A review under section 144 must be requested within 20 working days of the affected person receiving notice of the original decision, or within any further period that Te Uru Rākau allows.

#### KEY ACCOUNTABILITIES

3. The Environmental Protection Authority (EPA) has the principal authority under the Act to administer the Emissions Trading Scheme (ETS).
4. The Director-General of the Ministry for Primary Industries (MPI) has authority delegated from the EPA to administer all aspects of the ETS that relate to forestry. This authority has been formally sub-delegated within MPI to specified Te Uru Rākau staff (see *Ownership and Responsibilities* below).
5. Te Uru Rākau may confirm, revoke or vary a decision following a review under section 144.
6. Within Te Uru Rākau, the Climate Change Operations Team is responsible for:
  - assessing if a review of the original decision will be completed by Te Uru Rākau after receiving a request under section 144;
  - undertaking a review of an original decision under section 144 and/or analysis to assist the reviewer<sup>1</sup>;
  - preparing a decision paper containing analysis of the original decision undertaken in the review, a summary of the review and a recommendation to the decision maker; and

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<sup>1</sup> 'The reviewer' means a person leading a section 144 review, usually a Climate Change Operations analyst.

- responding in writing to the requestor of the review under section 144 to inform them of the outcome.
7. Within Te Uru Rākau, the Spatial Intelligence Team is responsible for:
    - completing the spatial assessment of land eligibility in relation to a request for review of a decision under section 144; and
    - preparing a summary of the spatial assessment and providing this summary and a recommendation to the reviewer.
  8. Te Uru Rākau staff are responsible for ensuring that all requests for review under section 144 of the Act are considered and determined, and decisions are notified, in a timely manner.<sup>2</sup>
  9. Those with a delegated authority are accountable for any decisions they make under delegated authority, and they must ensure that their decisions are made within the scope of the authority.

#### *POLICY STATEMENT*

10. The original decision that is the subject of a request for review under section 144 remains valid unless and until it is altered as a result of a review.
11. Te Uru Rākau must consider a request for review under section 144 if:
  - the request is received within 20 working days of the requestor receiving notice of the original decision; and
  - the requestor is a person affected by the original decision; and
  - the request sets out the grounds on which it is believed that the original decision should be reviewed.
12. Te Uru Rākau will consider a request for review under section 144 if:
  - the request is received within 60 working days of the requestor receiving notice of the original decision; and
  - the requestor is a person affected by the original decision; and
  - the request sets out the grounds on which it is believed that the original decision should be reviewed; and
  - the requestor had not been informed of the right to request a review, or
  - the requestor has been in contact with Te Uru Rākau to advise their intention to request a review, but were unable to submit their request within 20 working days.
13. If Te Uru Rākau receives a request for review under section 144 more than 60 working days after the original decision was notified to the requestor, the request will only be accepted if the requestor provides a reason for the delay that Te Uru Rākau

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<sup>2</sup> The Act does not specify a timeframe in which Te Uru Rākau must complete its review of a decision after a request for a review is made under section 144.

considers reasonable.

14. If the request for review is submitted by a party other than a person affected by the decision, Te Uru Rākau requires evidence (such as a completed Approved Authorised Representative form) that that party has been authorised to represent the affected person.
15. When a person requests a review of a decision under section 144 the request must set out the grounds on which it is believed that the original decision should be reviewed. Te Uru Rākau may also require the requestor to supply additional information.
16. The decision to confirm, revoke or vary the original decision following a section 144 review must be made by the one-up manager of the original decision maker.

#### SCOPE

17. The purpose of the review is to re-evaluate the result of the original decision on the grounds provided in the request. As part of the review, the process that was used to reach the original decision may also be reviewed.
18. If the review under section 144 requires a geospatial assessment, also refer to [Spatial Intelligence Policy and Process Overview: Section 144 Reviews \(Post-1989 Eligibility\)](#).

## REQUIREMENTS

### Administrative requirements

- The request for review of a decision must be in writing.
- The request does not have to specifically refer to section 144 to be considered as a request for review under section 144.
- The request must set out the grounds on which the requestor thinks the original decision should be reviewed.
- Acknowledgement of receipt of the request for a review will be sent to the requestor within two working days.

### The reviewer

- The reviewer must be a person who was not directly involved in the original decision, including in any analysis that contributed to the original decision.
- Other staff not involved in the original decision may assist in the review (e.g. undertaking analysis).
- Staff involved in the original decision must not be involved in the review (see *Escalation Approach* below).
- The reviewer and any staff assisting with the review must note any conflicts of interest that they have.

### The review

The review should only consider relevant matters and disregard irrelevant matters.

Relevant matters to consider include:

- the reasons for the original decision;
- relevant legislation, regulations, operational policy and guidelines;
- the information used to inform the original decision;
- the accuracy of the information used to inform the original decision;
- any relevant information (e.g. newly available imagery);
- the reason the requestor is dissatisfied with the decision;
- the grounds for review as set out in the request for review; and
- where the original decision diverged from guidelines and/or policy, the reason for the divergence.

### **Decision paper**

Following the review, the reviewer must produce a decision paper containing:

- recommendation(s) to confirm, revoke or vary the original decision;
- the analysis of the original decision undertaken in the review; and
- a summary of the review.

### **Outcome of the review**

- Confirmation, revocation or variation of the original decision (the final decision) following the review under section 144 must be made by the one-up manager of the original decision maker.
- In some cases, particularly those involving significant potential penalties or liabilities, the Director of Forestry and Land Management may make the final decision despite the original decision being made by the Team Leader of Climate Change Operations.
- The final decision must be recorded in the decision paper.
- The requestor must be informed in writing of the final decision. This does not preclude providing a progress update to the requestor before the final decision is made.
- If the original decision was an eligibility assessment, any changes to the areas assessed as eligible following a review under section 144 will be updated in the participant's registration record. If relevant, Land Information New Zealand will be notified to update any affected records of title.

## **PRINCIPLES**

19. To ensure a fair process, the reviewer should:

- deal with issues raised on their merits;
- act independently and have an open mind;
- take measures to address any actual or perceived conflict of interest;
- consider all relevant information carefully;
- disregard any irrelevant information; and
- complete the review within a reasonable time period.

## OWNERSHIP AND RESPONSIBILITIES

Role	Responsibilities	Delegation
Director Forestry and Land Management	Confirm, revoke or vary an original decision following a section 144 review under delegated authority.	Yes
Manager Climate Change Operations	Confirm, revoke or vary an original decision following a section 144 review under delegated authority.	Yes
Team Leader Climate Change Operations	Lead a section 144 review.	Yes
Climate Change Operations Analysts	Lead a review and make a recommendation to the decision maker. Liaise between the person who requested the review and the GIS team. Once the decision has been made, delivers outcome of section 144 request to the person who requested the review.	No
Team Leader ETS Compliance	Lead a section 144 review.	No
ETS Compliance Officers	Lead a section 144 review.	No
ETS Forestry Contact Centre	Forward enquiries relating to requests for review under section 144 to Climate Change Operations.	No

## FURTHER GUIDANCE AND INFORMATION

- Climate Change Response Act 2002  
<http://www.legislation.govt.nz/act/public/2002/0040/96.0/DLM158584.html>
- Climate Change (Forestry Sector) Regulations 2008  
<http://legislation.govt.nz/regulation/public/2008/0355/74.0/DLM1633759.html>
- A Guide to Mapping Forest Land for the Emissions Trading Scheme  
<https://www.teururakau.govt.nz/dmsdocument/4765-a-guide-to-mapping-forest-land-for-the-emissions-trading-scheme>
- Geospatial Mapping Information Standard  
<https://www.teururakau.govt.nz/dmsdocument/4756-geospatial-mapping-information-standard-emissions-trading-scheme-forestry>
- Spatial Intelligence Policy and Process Overview: Section 144 Reviews (Post-1989 Eligibility)  
<https://www.mpi.govt.nz/dmsdocument/34827>
- Spatial Intelligence Policy and Process Overview: Post-1989 Land Eligibility Assessments  
<https://www.mpi.govt.nz/dmsdocument/34821>