



Spatial Intelligence Policy and Process Overview: Section 144 Reviews (Post-1989 Eligibility)

Policy Owner:	Director Forestry and Land Management
Managed By:	Manager Spatial Intelligence
Approval Date:	6 June 2019
Next review:	Two years from approval date

OVERVIEW

PURPOSE

1. This policy applies when the Ministry for Primary Industries (MPI) receives a request under section 144 of the Climate Change Response Act 2002 (the Act) to review a decision it made under section 57¹ or 188(3)² of the Act.
2. MPI will not review a decision it made unless a person has requested that MPI review its decision under section 144 of the Act.

BACKGROUND

3. Section 144 of the Act allows for a person affected by a decision of MPI³ made under Part 4 or Part 5 of the Act (the original decision) to request that MPI 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 MPI allows.⁴
4. MPI will carry out any review under section 144 in accordance with relevant policies.

KEY ACCOUNTABILITIES

5. The Environmental Protection Authority (EPA) has the principal authority under the Act to administer operational aspects of the ETS.
6. The EPA has delegated its authority to the Director-General of MPI to administer aspects of the ETS that relate to forestry. This authority has been formally sub-delegated within MPI to Te Uru Rākau staff (see *Ownership and Responsibilities*).
7. 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.

¹ Section 57 relates to applications to register as an ETS participant in respect of owning or holding a registered forestry right or lease over post-1989 forest land.

² Section 188(3) relates to applications to add one or more carbon accounting area to the applicant's registered post-1989 forest land.

³ Acting under delegated authority from the Environmental Protection Authority.

⁴ See [Operational Policy: Section 144 Requests for Review](#).

8. MPI may confirm, revoke or vary a decision following a review under section 144.
9. Within MPI, the Climate Change Operations Team is responsible for:
 - assessing if a review of the original decision will be completed by MPI after receiving a request under section 144;
 - undertaking a review of an original decision under section 144 and/or analysis to assist the reviewer⁵;
 - 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
 - responding in writing to the requestor of the review under section 144 to inform them of the outcome.
10. Within MPI, 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.
11. MPI 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.⁶

POLICY STATEMENT

12. 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.
13. A review under section 144 will be carried out, where possible, by MPI staff who were not involved in the analysis that supported the original decision nor any previous decisions relating to the ETS registration of any part of the land area that is the subject of the review.
14. In carrying out the review MPI will consider all relevant information available and disregard any irrelevant information.
15. A decision made by MPI following a review under section 144 is final, unless determined otherwise by a court on appeal under section 145 or 146 of the Act.

SCOPE

16. This policy only applies to requests for a review of a decision under section 144 of the Act that are received by MPI relating to:
 - a decision in respect of an application for registration; or
 - addition of post-1989 forest land into the ETS.

⁵ 'The reviewer' means a person leading a section 144 review, usually a Climate Change Operations analyst.

⁶ The Act does not specify a timeframe in which MPI must complete its review of a decision after a request for a review is made under section 144.

LAND ELIGIBILITY REVIEW PROCESS OVERVIEW

- a. When MPI accepts a request under section 144, MPI will review the original decision based on all relevant information available to it. This includes all information submitted in relation to the original decision, any relevant information supplied in support of the section 144 review and any other relevant information that has become available to MPI since the original decision was made.
- b. Although the person requesting the review may submit further information to assist the review, MPI does not guarantee that the information supplied will result in a variation or revocation of the original decision.
- c. Additional information that may indicate that land that was the subject of an application for registration in the ETS is eligible post-1989 forest land includes, but is not limited to:
 - aerial imagery, including the date of capture;
 - planting records showing the stand establishment year;
 - current ground or oblique photographs with an indication of the location and direction of the photographs provided;
 - stand records or land management reports, such as burning permits, scrub cutting, weed spraying;
 - inventory data reports;
 - MPI destructive sampling;
 - MPI site visit reports;
 - evidence of land management practises;
 - forestry consultant reports;
 - council documentation;
 - real estate reports;
 - farm records;
 - ecological reports; and
 - publications about the land in question.
- d. All reviews under section 144 will be carried out independently of the original assessment and will address the specified grounds for review.
- e. The GIS analyst undertaking a section 144 review assessment must document the assessment and its findings in the internal GIS log.
- f. All section 144 review assessments must be internally reviewed by a GIS analyst(s) not directly involved in the section 144 review assessment nor any assessment undertaken as part of the original decision making process. The purpose of internal review is to check the validity of the assessment and to ensure consistency across land eligibility assessments. A GIS analyst reviewing an assessment must record their findings in the internal GIS log.
- g. Following internal review, a GIS analyst prepares a summary of the assessment and provides a recommendation to the reviewer. This recommendation must include details of any differences between the review assessment and the original eligibility assessment, and the reasons for the differences.

OWNERSHIP AND RESPONSIBILITIES

Role	Responsibilities	Delegation
Director Forestry and Land Management	Exercise the delegation in instances where the original decision was made by the Manager Climate Change Operations.	Yes
Manager Climate Change Operations	Exercise the delegation in instances where the original decision was made by the Team Leader Climate Change Operations.	Yes
Manager Spatial Intelligence	Oversee the land eligibility review process.	No
Team Leader Climate Change Operations	Lead a section 144 review.	Yes
Team Leader Spatial Intelligence	Undertake analysis for section 144 review.	No
GIS Analyst Spatial Intelligence	Undertake analysis for section 144 review.	No
MPI Regional Staff	Carry out site visits and provide recommendations where appropriate.	No
Climate Change Operations Analyst	Lead a section 144 review and make a recommendation to the decision maker. Liaise between the person who requested the review and the GIS team. Deliver the outcome of a section 144 request to the person who requested the review.	No
ETS Forestry Contact Centre	None	No

DEFINITIONS AND ACRONYMS

Term/Acronym	Meaning
destructive sampling	Destructive sampling is a method of determining the likely age of a tree by counting rings on cross-section discs taken from trees in different sample sites. Together with photographic evidence, this can be used to determine the date of forest establishment.
site visit	MPI field staff may visit a property to collect information to assist a review. A GIS analyst may recommend to the Team Leader Climate Change Operations that a site visit takes place. If a site visit is to be carried out, the GIS analyst will outline the issues that need to be clarified by the site visit.

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: Post-1989 Land Eligibility Assessments
<https://www.mpi.govt.nz/dmsdocument/34821>
- Operational Policy: Section 144 Requests for Review
<https://www.mpi.govt.nz/dmsdocument/34824>