Regulatory Impact Statement: Managing farm conversions to exotic forestry

Coversheet

Purpose of Document	
Decision sought:	Cabinet agreement to the primary policy design and next steps to progress the work to manage whole-farm conversions to exotic forestry registered in the New Zealand Emissions Trading Scheme (ETS). Delegated authority is sought for the Minister of Forestry and Minister of Climate Change to make final decisions, in line with the policy changes, and issue drafting instructions to the Parliamentary Counsel Office. The Ministers intend to return to Cabinet in quarter two of 2025 with a draft Bill.
Advising agencies:	Ministry for Primary Industries, Ministry for the Environment
Proposing Ministers:	Minister of Forestry, Minister of Climate Change
Date finalised:	29 October 2024

Problem Definition

Ministers want the ETS to incentivise a balance of land uses to achieve the best outcomes for forestry, agriculture, and the climate. Balancing these objectives requires the Government to consider forestry's contribution to emissions reduction budgets and targets along with the impact of whole-farm conversions across the rural economy.

Current ETS settings and recent New Zealand Unit (NZU)[3] price highs have driven large scale exotic afforestation. These forests provide abatement towards New Zealand's climate change targets but there are wider impacts. High levels of sustained afforestation can present risks to rural communities and agricultural supply chains, with consequent impacts on local employment and economic activity (depending on forest type). There are also risks for New Zealand's long-term land use flexibility, because ETS liabilities for deforestation are a barrier to changing land use in future.

The current settings in the ETS cannot address these impacts because its design does not allow for the precise management of volume or location of afforestation.

Executive Summary

Before the introduction of the ETS in 2008, the profitability of forestry mostly depended on the value of wood products. Now that forests can gain NZUs for the carbon they store, rising NZU prices have driven increasing afforestation rates above what would have been driven by log prices alone.

[3] NZUs are provided for forest growth for forests registered in the ETS and can be sold to other people and businesses - such as sale to emitters who face surrender obligations.

This helps New Zealand to meet its climate change targets. However, expected returns from carbon removals for exotic forests under the ETS drive increased interest in farm-to-forest conversions. Ministers want to incentivise a balance of productive land uses.

At NZU prices of around $15, economic returns for exotic forests in the ETS begin to outperform sheep and beef farming – the main competing land use. Medium-versatility land is suitable for both land uses. Other land uses (e.g., dairy) are more profitable on higher-versatility land, but limitations (e.g., erosion potential) can make harvesting challenging on some sub-classes of Land Use Capability[4] (LUC), e.g., class 7 (LUC class 8 is generally unsuitable for production forestry).

While exotic forests provide many direct benefits, widespread exotic afforestation presents a key concern for rural communities and economies. High levels of sustained afforestation can present risks to rural communities and agricultural supply chains, with consequent impacts on local employment and economic activity. There are also risks for New Zealand's long-term land use flexibility because ETS liabilities for deforestation are a barrier to changing land use in future.

Ministers recognise the impacts of whole-farm conversions to exotic forestry on rural communities, and the importance of pastoral farming to New Zealand. Therefore, it is proposing to restrict whole-farm conversions to exotic forestry from entering the ETS.

Ministers propose to limit ETS registrations to manage whole-farm conversions to exotic forestry. This does not restrict planting that is not registered in the ETS. The proposal involves a moratorium on exotic forestry ETS registrations on high-versatility land (LUC classes 1-5), an annual hectare limit on exotic forestry ETS registrations on medium-versatility land (LUC class 6), and no restrictions on low-versatility land (LUC classes 7 and 8). This proposal provides flexibility for on-farm planting by a 25% exemption to these restrictions. There are a series of design choices within this proposal, and for each design choice there are options on how to proceed.

This proposal uses the LUC class system. LUC is a system of land classification according to its capability for long-term production, based on its physical limitations and site-specific management needs. LUC has been used in New Zealand to help achieve sustainable land management since the 1950s.

Lower LUC classes (LUC classes 1-5) are highly versatile land that are generally suitable for a range of uses. Higher LUC classes have less versatility with LUC classes 6 and above generally suited to pastoral or forestry uses (although LUC class 8 has very severe limitations for all productive land uses).

Limitations and Constraints on Analysis

Overall proposal

Ministers have proposed using LUC class-based restrictions on ETS registrations to manage whole-farm conversions to exotic forestry. These restrictions are outlined in the National Party election manifesto 'Reducing Agricultural Emissions'.[5] This manifesto commitment sets the scope for the options proposed in this regulatory impact assessment. The manifesto commitment is:

[4] A system of land classification according to its capability for long-term production, based on its physical limitations and site-specific management needs.

[5] Reducing Agricultural Emissions, p. 7-8. https://assets.nationbuilder.com/nationalparty/pages/17974/attachments/original/1686536113/Reducing_Agricultural_Emissions.pdf?1686536113

- A moratorium on whole-farm conversions to exotic forestry registering in the ETS for LUC classes 1-5 land for three years.
- An annual hectare limit on whole-farm conversions on LUC class 6 land registering in the ETS with the limit reassessed on a three yearly basis.
- A 25% exemption from the above limits to encourage farmers to continue to plant trees on any parts of their farm that are unsuitable for agriculture (a minimum area threshold is also considered within this analysis).
- No limits for LUC classes 7-8 land.
- No limits for native forests.
- Meeting Treaty settlement obligations regardless of the new limits.

Officials' analysis of the impacts of the proposal on afforestation and greenhouse gas emissions assume an annual hectare limit on LUC class 6 land of between 15,000 and 20,000 hectares under the restrictions proposed above. Ministers have agreed to progress an opening annual hectare limit of 15,000 hectares.

The Minister of Forestry and Minister of Climate Change are seeking Cabinet agreement to the primary policy design and next steps to progress the work to manage whole-farm conversions to exotic forestry registered in the ETS. Ministers have chosen to proceed with legislative change without public consultation. Ministers have agreed officials are to seek input from a small number of people via targeted discussions. These will be people who are affected by the policy and who have appropriate technical ability and experience on the ground. The discussions are intended to improve the workability of the policy and will inform final decisions by Ministers on operational details.

To progress the proposal, delegated authority will be sought for the Minister of Forestry and Minister of Climate Change to make final detailed design decisions, in line with the policy changes agreed by Cabinet, and issue drafting instructions to the Parliamentary Counsel Office. The Ministers intend to return to Cabinet in quarter two of 2025 with a draft Bill.

Other policy options, such as changing the ETS permanent forest category to reduce the incentive for permanent exotic forests relative to production forests, or using the resource management system, could also be considered alongside this proposal. This proposal is intended to apply equally to permanent and production exotic forests.

Proposed policy packages and individual options

Quantifying the full range of costs and benefits under the status quo and under the proposal is not possible at this stage. Officials' understanding of how the high-level proposal, and individual options that make up the proposal, will affect foresters, farmers, and ETS participants is also limited.

Cost recovery

Officials' have not included estimates of cost recovery at this stage, as the cost of administering the new restrictions will depend on the design choices and the details of the primary and secondary legislation. Officials expect that the approach for cost recovery for any new services associated with the proposals would be in line with existing provisions.

Public consultation

Ministers have chosen to proceed with legislative change without substantive prior public consultation. This is somewhat mitigated by the policy being included in the draft second Emissions Reduction Plan. Officials received feedback and questions through that process which has informed the analysis. However, there are still gaps in officials' analysis of the impacts of different design choices. These include:

- **Effects on stakeholders**. How the ETS market, ETS participants, foresters, and farmers will be affected by the proposal.
- **Existing investments**. How to treat people who have already made investments in forestry, and how much time would be needed to complete planting and ETS registration on land where investments have already been made.
- **The interests of Māori in the proposals**. The Crown has an obligation to engage with Māori sufficiently to understand if they have an interest in a proposal, and the nature of those interests, to make informed decisions in good faith.
- **Cost benefit analysis**. Officials' evidence certainty is low for all marginal costs and benefits.

Public feedback would help provide this information. There will be an opportunity for public feedback on the proposed legislative change through the select committee process as well as through targeted discussions with affected parties.

Responsible Manager(s) (completed by relevant manager)	
Sophia Murphy Manager Climate Change – Forestry Policy Ministry for Primary Industries 29 October 2024	Kara Lok Manager ETS Policy Ministry for the Environment 29 October 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for Primary Industries and Ministry for the Environment
Panel Assessment & Comment:	The Regulatory Impact Analysis (RIA) panel (Ministry for the Environment and Ministry for Primary Industries) has reviewed the Regulatory Impact Statement (RIS) "Managing farm conversions to exotic forestry" and considers that it **partially meets** the RIA requirements. The information in the RIS is clear and relatively concise given the technical nature of the proposal. It generally meets the complete and convincing criteria, within the constraints and limitations noted, by identifying the problem, the rationale for the proposal, the full scope of design options and supporting analysis. The exception to this is the inclusion of a recommendation in the Cabinet paper that creates an exemption from the proposed limits on land made available for afforestation on Crown-owned land, but not including land being productively farmed by Landcorp Farming Limited (Pāmu). This was a change requested by Ministers that has not been analysed in this RIS as it is being considered through a parallel policy process. Further

	policy work is underway focused on afforestation of Crown-owned land which the panel has been advised will be informed by a Request for Information process with a report back to Cabinet early 2025, at which point this RIS could be updated in line with Cabinet decisions. The costs and benefits of the preferred option are qualitative, due both to the final design decisions not yet known and lack of public consultation, which could have contributed further information. While it is noted that some consultation is planned, through both targeted engagement and the select committee process, the RIA does not currently meet the consulted criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Forests contribute to achieving New Zealand's climate change objectives.

2. New Zealand is committed to sustainably transitioning to a low emissions economy and contributing to global efforts to limit average temperature rise to 1.5 degrees Celsius above pre-industrial levels. To help achieve these goals, the Climate Change Response Act 2002 (CCRA) sets domestic emission reduction targets that require:

   a) Net emissions of greenhouse gases, other than biogenic methane, to be reduced to zero by 2050.

   b) Emissions of biogenic methane to be 10 per cent lower than 2017 levels by 2030, and 24 to 47 per cent lower by 2050.

3. The CCRA also requires the Government to set net emissions budgets that outline the amount of emissions allowed for each budget period in order to achieve domestic targets for each budget period.

4. Forests contribute to achieving New Zealand's climate change emissions budgets and targets by reducing net emissions.[6] This helps New Zealand to meet its Nationally Determined Contributions (NDC)[7] under the Paris Agreement and reduces the need to purchase offshore mitigation towards the NDC.

5. Removals from forestry can reduce the economic cost of New Zealand's climate change response. They currently provide a cheaper alternative to gross emission reductions (where the cost of gross reductions is high and while the technology to reduce gross emissions is developed and reduces in cost).

6. The Ministry for Primary Industries (MPI) estimates a contribution to emissions budgets from forestry under the status quo of 23.5, 61.4 and 82.3 million tonnes of carbon dioxide (CO_2) removals for the first, second and third emissions budgets respectively. MPI projects that between 0.97 and 1.44 million hectares of afforestation between 2021 and 2050 is needed to meet New Zealand's climate change targets.[8]

[6] Net emissions are gross emissions minus emissions removals from forestry and other activities.

[7] The NDC is New Zealand's climate change target under the Paris Agreement. It proposes a 50 per cent reduction of net emissions below our gross 2005 level by 2030 and covers the period 2021-2030.

[8] https://www.mpi.govt.nz/dmsdocument/56446-2022-LULUCF-Accounting-Projections. Projections consider land that would be economic to convert to forestry at different NZU prices, but do not fully account for other factors that influence afforestation rates such as landowner decisions, land availability, labour and seedling constraints and policy uncertainty.

The New Zealand Emissions Trading Scheme (ETS) incentivises net emissions reductions.

7. The ETS provides an incentive for afforestation by providing New Zealand Units (NZUs) for carbon removals.

8. ETS forestry participants earn NZUs based on the amount of carbon absorbed by forests registered in the ETS. Participants can then earn revenue by selling these NZUs to emitting businesses. Forests can be both a carbon sink (while growing) or a source of emissions (for example, at harvest or deforestation). This therefore means some forestry participants have obligations to surrender NZUs, depending on when their forest was planted and the accounting methodology they use.

9. The ETS is designed to drive least-cost emissions abatement by providing a single price for emissions reductions and removals. There are currently no restrictions on the amount of forests that can be registered in the ETS. All that is required is for forests to meet the forest land definition in the CCRA[9] and the registration conditions outlined in section 187[10] of the CCRA.

Investment returns from the ETS are driving exotic afforestation

10. Prior to the introduction of the ETS in 2008, expected returns from forest products were the primary driver of afforestation rates in New Zealand.

11. The highest historical rates of afforestation were between 1992 and 1998 when on average over 60,000 hectares of exotic forest were planted per year.[11] This afforestation was driven by an unprecedented price spike for forest products.[12]

12. Log prices have decreased in real terms since the 1990s. However, since forestry was introduced into the ETS in 2008, forest land established from 1 January 1990 (post-1989 forests) can voluntarily register in the ETS and gain NZUs as the forest grows.

13. ETS registration provides additional returns based on the value of carbon stored in the forest, over and above revenue earned from the sale of logs/timber.

14. The introduction of forestry into the ETS and rising NZU prices have driven rates of afforestation above those that would have been driven by log prices alone. Total afforestation has increased from around 6,000 hectares planted in 2015, when the NZU price was less than $5, to an estimated 88,000 hectares planted in 2023, when the NZU price was over $70.[13]

15. There is strong evidence that expected returns from carbon removals are driving this land-use change. Figure 1 shows that the afforestation response is highly correlated with the rise in NZU price over time and Table 1 shows the additional economic value provided by the sale of NZUs, over and above revenue from harvest.

16. MPI's afforestation and deforestation intentions survey published in May 2024 estimated around 190,000 hectares of afforestation has occurred over the last three years.[14]

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[9] Forest land definition: post-1989 forest land of an area of land of at least 1 hectare that has, or is likely to have, tree crown cover from forest species of more than 30% in each hectare.

[10] This relates to land ownership, forestry rights, deforestation history and compliance with the RMA.

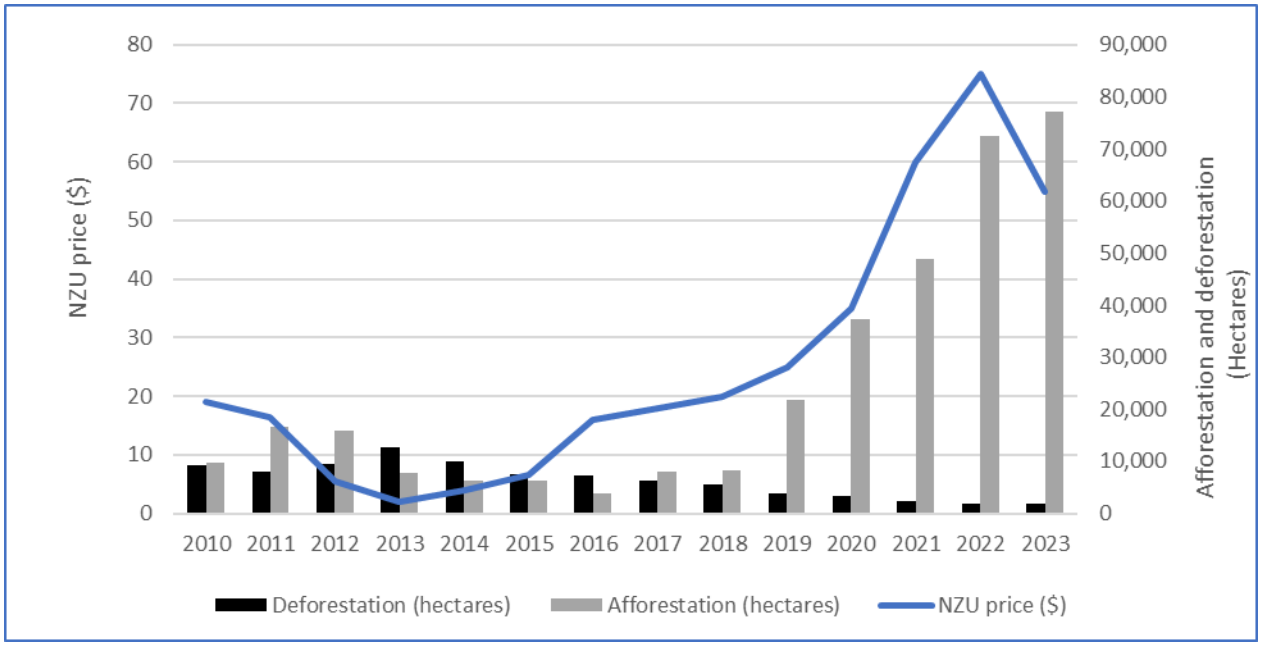
[11] MfE, 2024. Te Rārangi Haurehu Kati Mahana a Aotearoa 1990–2022
New Zealand's Greenhouse Gas Inventory 1990–2022 https://environment.govt.nz/publications/new-zealands-greenhouse-gas-inventory-19902022/

[12] MPI, 2024. Wood product markets data. https://www.mpi.govt.nz/forestry/forest-industry-and-workforce/forestry-wood-processing-data/wood-product-markets-data/

[13] Manley, 2023. Afforestation and Deforestation Intentions Survey 2022. https://www.mpi.govt.nz/dmsdocument/57130-Afforestation-and-Deforestation-Intentions-Survey-2022

[14] There is a two-to-three-year lead time for afforestation, as investors and landowners secure financing, purchase land and order seedlings, meaning that decisions to plant trees in a given year were likely made two to three years earlier, when the NZU price was lower.

Figure 1: Historical NZU price and afforestation and deforestation



17. Information from Te Uru Rākau – New Zealand Forest Service indicates that the largest proportion of ETS registered forestry is on LUC class 6 (54 percent) as at 31 December 2022.[15]

18. This medium-versatility land on LUC class 6 is targeted for both forestry and sheep and beef farming. LUC class 6 is more productive than less versatile land (LUC classes 7 and 8), and lower cost than more versatile land (LUC classes 1-5). Other land uses are more profitable on higher-versatility land (e.g., horticulture, dairy), and limitations (e.g., erosion potential) can make harvesting challenging on some LUC class 7 land. LUC class 8 is generally unsuitable for production.

19. At NZU prices of around $15,[16] economic returns for exotic forests begin to outperform sheep and beef farming, the main competing land use. Without the ETS, economic returns for production forestry are much closer to sheep and beef farming. ETS returns significantly increase the profitability of permanent and production forestry. As NZU prices increase, permanent forestry outperforms production forestry. If a price is introduced for agricultural emissions, this will further increase the profitability of forestry compared with pastoral farming.

20. The impact of the carbon price on the expected economic returns and profitability of exotic forests relative to other land uses is shown in Table 1 below. The economic returns for production forestry, without financial returns from the ETS, is estimated to be much closer to sheep and beef farming with returns[17] around $5,500 per hectare.

Table 1: Comparison of economic returns for exotic forests (permanent and production) at different carbon prices, compared with extensive sheep & beef (alternate land use)

Carbon price (real terms, over life of forest)	Economic returns (NPV) per hectare (range represents forest size and productivity. Returns are EBIT based for forestry and farming)
Permanent exotic forests (less intensive management regime)	
$0	-$3800

[15] Te Uru Rākau – New Zealand Forest Service. Emissions Trading Scheme for Forestry as at 31 December 2022. https://www.mpi.govt.nz/dmsdocument/45232-Emissions-Trading-Scheme-for-Forestry-land-statistics-

[16] Based on exotic forests with harvest returns under averaging accounting using the field measurement approach.

[17] On a Net Present Value basis. Net Present Value (NPV) is a calculation of future investment return. NPV accounts for future streams of revenue and costs resulting from an investment.

$35	$6,500 to $9,500
$70	$16,500 to $22,000
$100	$25,000 to $33,000
Production forestry (range represents forest size and productivity, average harvest returns are included)	
$0	$5,500
$35	$12,500 to $14,000
$70	$18,500 to $22,000
$100	$24,000 to $29,000
Pastoral farming (using Beef + Lamb (2024) and Dairy NZ (2023) economic data and following methodology in Harrison & Bruce, 2019)	
Extensive sheep & beef farming (North Island hard hill, hill country and finishing farms, respectively)	$5,000-$7000, $9,000-11,000, and $12,500-20,000* *Assumes no woodlots are incorporated onto the farm and registered in the ETS.
Dairy farming (bottom quartile)[18]	$28,000

Source: MPI calculations, February 2024.

21. These analyses also indicate that, at current NZU prices and above, the incentive is highest for permanent exotic forests over other forms of land use. Returns for exotic forests, particularly permanent exotic forests, have been cost competitive with pastoral land uses on better classes of land (such as lower productivity dairy) at historical NZU price highs.[18]

22. New information suggests that recent ETS price volatility and policy uncertainty has reduced future afforestation intentions. This uncertainty has encouraged some investors to review their investment plans. Future NZU prices are uncertain, but there remains a strong financial incentive to invest in exotic forestry even at the recent lower carbon prices (as illustrated by Table 1).[19]

23. Investors driving the increased levels of afforestation include domestic companies securing NZUs for their surrender obligations, domestic and international carbon and forestry companies expanding their portfolios, and multinational companies securing future timber supply.

Advice from the Climate Change Commission (the Commission)

24. The Commission is an independent Crown Entity set up under the CCRA to advise the Government on climate change action.

25. A report by the Commission in 2023 provided advice to the Government on the direction of policy required to achieve the second emissions budget (2026 to 2030) and meet longer-term climate targets. [20]

26. In its report, the Commission recommended the Government "*Clarify the intended roles of different types of forests in achieving emissions budgets and targets. The effects of different types of forests on ecosystem services,* ***socioeconomic factors, rural communities****, and resilience to hazards and climate change must be considered in partnership with iwi/Māori under Te Tiriti o Waitangi/The Treaty of Waitangi.*"

27. The Government will consider this advice alongside the advice on the role of the ETS through Emissions Reduction Plan 2.

[18] Dairy NZ farm benchmarking suggests annualised average returns for permanent exotic forests can be similar to the bottom quartile profit for dairy farms at $88 NZU price high.

[19] MPI, 2024. Afforestation and Deforestation Intentions Survey 2023. https://www.mpi.govt.nz/dmsdocument/62313/direct

[20] Climate Change Commission, 2023. 2023 Advice on the direction of policy for the Government's second emissions reduction plan. https://www.climatecommission.govt.nz/public/Advice-to-govt-docs/ERP2/final-erp2/ERP2-Final-Advice-for-web.pdf

28. The Commission also provided advice to Government on auction limit and price control settings for units in December 2023.[21] The Government is required to update these settings each year after considering advice from the Commission.

29. The Government has considered the Commission's advice on auction settings and has decided to retain the current auction floor price, the cost containment reserve price, and current reserve volumes of NZUs in the ETS. The Government also reduced the number of NZUs available at auction between 2025 and 2029, from 45 million to 21 million units, to drawdown the stockpile of NZUs in private accounts.[22] These settings will have wider implications as forestry has been shown to be highly responsive to NZU prices (Figure 1).

Feedback from earlier related consultations

2022 consultation to manage exotic afforestation incentives

30. The previous Government identified concerns following the introduction of the permanent forest category driven by high and rising NZU prices, i.e., that the introduction of this new category could result in large areas of permanent exotic forests that are not intended to be harvested. This could lead to undesirable impacts on rural communities, the transition to a net-zero emissions economy, and the environment.

31. In April 2022, the then Government consulted on proposals to manage exotic afforestation incentives.[23] Most submitters either supported closing the permanent forest category to exotic forests or supported at least some restrictions on exotic forests in the category.

32. Many Māori made strong submissions against changes to the permanent forest category (or at least to any changes on Māori land), citing the disproportionate impact of the proposals on their aspirations, rangatiratanga, and kaitiakitanga.

2023 consultation to redesign the permanent forest category and ETS review

33. The previous Government confirmed that the permanent forest category would open to all forests on 1 January 2023, as legislated, but agreed to carry out further work to redesign the permanent forest category. This consultation was run in parallel with a consultation on a review of the ETS. Feedback on these consultations indicated:

    - Submitters were split on which forests should be allowed in the permanent forest category, with support for native and transition forests,[24] and some exotic forests.
    - Almost two thirds of submitters supported the need for a specific carbon accounting approach for transition forests to reduce the risk of the forest model.
    - Most submitters considered there was a need for management requirements for permanent forests.

34. The ETS review considered whether the ETS should be amended to strengthen the incentive for gross emissions reductions. Feedback on the ETS review was diverse, with some submitters arguing the use of forestry removals to meet emissions reduction targets should be curtailed (to increase the incentive for gross emissions reductions and reduce the impacts of land-use change on rural communities). Others argued that

[21] Climate Change Commission, 2024. Advice on NZ ETS unit limits a price control settings for 2025-2029. https://www.climatecommission.govt.nz/public/ETS-advice/2024/CCC_2024-advice-on-NZ-ETS-unit-limit-and-price-control-settings-2025-2029.pdf

[22] Beehive, 2024. Updated settings to restore ETS market confidence. https://www.beehive.govt.nz/release/updated-settings-restore-ets-market-confidence

[23] MPI, 2022. Managing exotic afforestation incentives by changing the forestry settings in the NZ Emissions Trading Scheme. https://www.mpi.govt.nz/consultations/managing-exotic-afforestation-incentives/

[24] Transition forests are a new forest model where exotic forests are managed to indigenous over time.

forestry was a proven low-cost way of meeting net reduction targets while lower-cost ways of reducing gross emissions reductions were still being developed.

35. The current Government has stopped work on the ETS review. However, the permanent forest category may be considered within the broader package of work needed to achieve the Government's forestry and climate change objectives.

2024 consultation on the second emissions reduction plan

35. This policy was also consulted on at a high level as part of the second emissions reduction plan consultation.

What is the problem?

Summary of problem definition

36. Ministers want the settings for forestry in the ETS to deliver a range of objectives, including meeting New Zealand's climate change targets. Balancing these objectives requires the Government to consider forestry's contribution to emissions reduction budgets and targets along with its impacts across the rural economy.

37. Current ETS settings and recent NZU price highs have driven large scale exotic afforestation. These forests provide abatement towards New Zealand's climate change targets, but there are wider impacts. High levels of sustained afforestation can present risks to rural communities and agricultural supply chains, with consequent impacts to local employment and economic activity. There are also risks for New Zealand's long-term land use flexibility because ETS liabilities for deforestation are a barrier to changing land use in future.

38. The current settings in the ETS cannot address these impacts because its design doesn't allow for influence over the volume or location of afforestation.

39. The Government is considering limits on ETS registrations on high- and medium-versatility land to manage whole-farm conversions to exotic forestry. These proposals are outlined in the National Party election manifesto 'Reducing Agricultural Emissions'.[25]

40. Changes to the ETS permanent forest category to reduce the incentive for permanent exotic forests relative to production forests could also be considered alongside this proposal, although they are outside of the scope of this analysis (which does not favour specific categories of forestry).

Impact on rural communities and economies

41. In New Zealand's land use and economy, production forestry and sheep and beef farming are significant primary industries.

42. Production forestry provided $6.6 billion in export revenue in 2022 and employs between 35,000 and 40,000 people in production, processing, and commercialisation.[26] The sector is particularly important in some regions, with Waikato, Bay of Plenty, Northland, and Nelson/Tasman contributing over 50% of national GDP for forestry (NZIER, 2017).[27] The sector uses 2.1 million ha (8%) of land in New Zealand.[28]

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[25] Reducing Agricultural Emissions, p. 7-8. Available from: https://assets.nationbuilder.com/nationalparty/pages/17974/attachments/original/1686536113/Reducing_Agricultural_Emissions.pdf?1686536113

[26] MPI, 2023. Situation and Outlook for Primary Industries. https://www.mpi.govt.nz/dmsdocument/60526-Situation-and-Outlook-for-Primary-Industries-SOPI-December-2023

[27] NZIER, 2017. Plantation forestry statistics: Contribution of forestry to New Zealand.: https://www.nzier.org.nz/hubfs/plantation_forestry_statistics.pdf

[28] MfE, 2024. Te Rārangi Haurehu Kati Mahana a Aotearoa 1990–2022
New Zealand's Greenhouse Gas Inventory 1990–2022: https://environment.govt.nz/publications/new-zealands-greenhouse-gas-inventory-19902022/

43. Sheep and beef farming is also a key contributor to New Zealand's economy and export receipts. The meat and wool sector provided $12.1 billion in export revenue in 2023 and employs around 76,500 people in the wider supply chain. Like production forestry, the sector is particularly important in some regions, contributing between 10 and 12% to the regional economies of Taranaki, Manawatu-Whanganui, Otago, and Southland. It is a significant land use in New Zealand with 7.4 million ha of pasture (~27%).[29] Much of this land is likely to be suited to afforestation.

44. Statistics NZ estimate declines of 3% and 4% for sheep and beef numbers, respectively, in the year ended June 2023. They state that this reduction in livestock numbers is linked to a long-term drop in grassland due to conversion to exotic forests.[30] Contributing to this, the profitability of sheep and beef farming has reduced in real terms since afforestation has increased from 2019.[31]

45. While the economic contributions of forestry and sheep and beef farming are significant at the national scale, they have varying contributions and importance to local and regional economies. Recent afforestation has been concentrated in certain regions, with the highest concentrations seen in Hawkes Bay, East Coast, southern North Island, and Central North Island (Table 2).[32]

46. This indicates that afforestation is occurring in regions where sheep and beef farming provides a high proportion of regional GDP (e.g., Taranaki, Manawatu, and Whanganui) and/or high levels of meat and wool production (e.g., Hawkes Bay and East Coast).[33]

47. Feedback received during previous consultations suggests that large scale farm conversions, at the pace and scale experienced since 2019, have had a negative impact on regional economic activity. Farm conversions within the Tararua District were found to reduce supply to existing agricultural processing facilities and impact associated local industries and jobs (see case study Tararua District 2019-2021).[34]

48. A 2021 case study explored the social impacts in the region. The issues raised included job losses, flow-on impacts of fewer farms on rural professionals and businesses that support the sector, reduction in rural school rolls, and potential impacts on community infrastructure.[35]

Table 2: Regional concentration of exotic afforestation (2019-2022)

Region	Exotic afforestation (percentage of total afforestation)
Northland	11
Central North Island	13
East Coast	13
Hawkes Bay	15
Southern North Island (east)	13
Southern North Island (west)	10

[29] Beef + Lamb NZ, 2021. Compendium of New Zealand Farm Facts 2021.: https://beeflambnz.com/sites/default/files/data/files/Compendium%202021_digital.pdf

[30] Stats NZ, 2024. Grassland reduction results in declining stock numbers. https://stats.govt.nz/news/grassland-reduction-results-in-declining-stock-numbers/

[31] Derived from: https://beeflambnz.com/industry-data/farm-data-and-industry-production/sheep-beef-farm-survey

[32] Manley, 2023. Afforestation and Deforestation Intentions Survey 2022. https://www.mpi.govt.nz/dmsdocument/57130-Afforestation-and-Deforestation-Intentions-Survey-2022

[33] Stats NZ, 2021. Livestock numbers. https://www.stats.govt.nz/indicators/livestock-numbers/

[34] AgFirst, 2021. Right Tree Right Place: prepared for Tararua District Council. https://www.tararuadc.govt.nz/__data/assets/pdf_file/0017/14903/Provincial-Growth-Fund-Te-Uru.pdf

[35] Heather Collins Consulting, 2021. The Impacts of Afforestation on Rural Communities: A case study in the Tararua District of New Zealand. https://www.tararuadc.govt.nz/__data/assets/pdf_file/0022/14980/The-Impacts-of-Afforestation-on-Rural-Communities-in-the-Tararua-District-March-2021.pdf

Nelson and Marlborough	4
Canterbury	5
Otago	10
Southland	6

Source: Manley, 2023. Afforestation and Deforestation Intentions Survey

Case study: Tararua district 2019-2021

Data collected by Tararua District Council (a district in the southern North Island) shows 26% of the area sold in large property sales in the district between 2019 and 2021 were for conversions of pastoral land to carbon forestry (typically permanent exotic forests).

Most of these conversions are concentrated in the area south of Woodville and amount to approximately 14,500 hectares of land use change in the area.

These estimates may underestimate total land use conversion, as lease arrangements, conversions by existing landowners, and small property sales are excluded from the analysis.

The majority of land use conversion occurred on Land Use Capability (LUC) class 6 land that can be suited to pastoral farming or forestry.

AgFirst estimates of the impacts of afforestation in the district on the community and local economy during 2019 were a reduction of 70,000 stock units in the area and a loss in local spending between $1.7 and $2.1 million per year for the region.

Figure 3: Land use change for large scale property sales Tararua 2019 - 2021

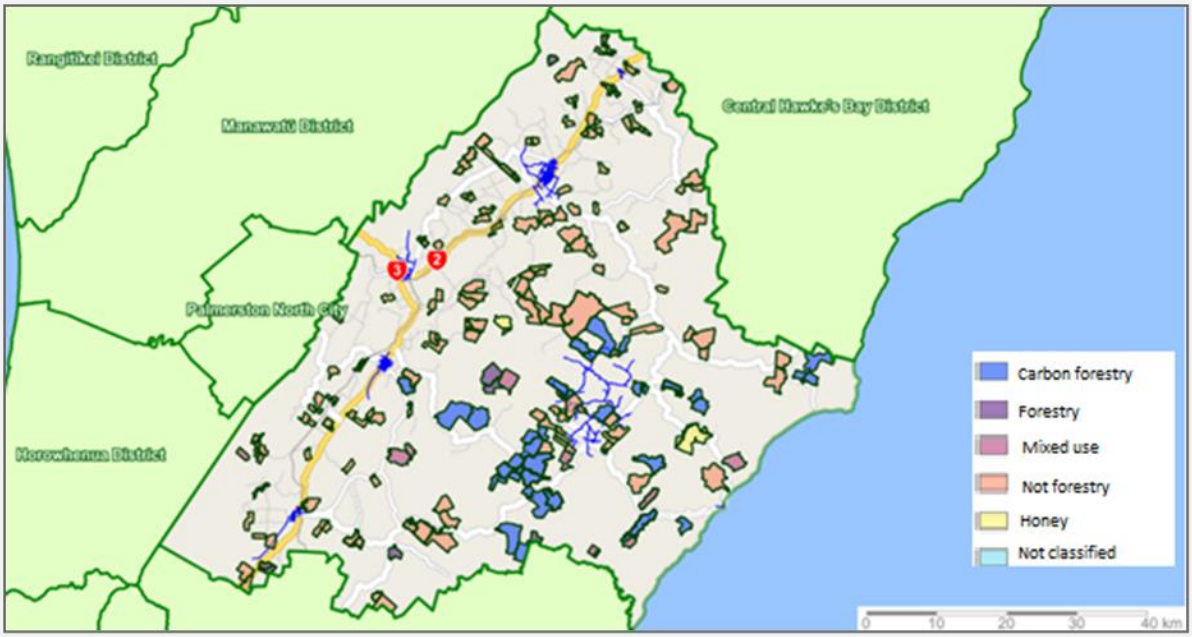


Table 3: Land use change for large scale property sales Tararua 2019 - 2021

Land use type	Number of sales	Area (hectares)
Carbon forestry	24	14,539
Production forestry	6	1,681
Mixed Use	10	2,789

Not forestry	102	33,439
Honey	5	1,810

49. A 2019 report provides further evidence on the regional impacts of afforestation. This research found sheep and beef farming has the highest direct employment and spending in the Wairoa District when compared to production forestry and permanent exotic forests (under a 'plant and walk away' regime).[36]

50. These shifts in land use can also affect agricultural supply chains that rely upon the current land use (for example, affecting the viability of meat processing sites through reduced supply), with consequent impacts to both local employment and economic activity.[37]

51. There are also risks for New Zealand's long-term land use flexibility where exotic afforestation occurs at scale on more productive LUC classes. Deforestation liabilities for ETS-registered forests create very high costs to landowners of switching to alternative uses in the future (because any NZUs earned will need to be repaid).

52. In addition to these local level impacts, production forestry and sheep & beef both provide export revenue, whereas revenue from permanent exotic forests is limited to the sale of NZUs to domestic emitters.

53. The status quo will have ongoing effects on land prices in regions with higher levels of afforestation, as the expected income from the highest economic use of land is capitalised into land price.

54. Anecdotal evidence from forestry and farming stakeholders indicates that returns from exotic forestry have been a large contributing factor in the recent increase in the price of land.

55. This is supported by information provided by Land Information New Zealand that indicates pastoral grazing land valuations have increased by between 45 and 100 percent since 2017 in regions with high rates of afforestation (e.g., Tararua and Wairoa districts). This compares with around 20 percent increases in land valuations in regions with low afforestation (e.g., Selwyn and Marlborough districts).

56. There are trade-offs associated with this increase in land price. Landowners who sell their land will benefit significantly from increased capital gains. However, at high land prices, it is less likely that returns from sheep and beef farming will be able to meet the return on investment required to justify investment. This may see this land use increasingly priced out of the market.

57. These factors can also impact succession planning and the entrance of newer/younger farmers to the sheep and beef sector.[38] Where young farmers seeking to purchase property outside of existing family properties will face significantly higher costs in establishing a farm.

[36] This report found direct spending of $316,000, $247,000 and $27,000 and employment of 7.4, 5.1 and 0.6 FTE for sheep and beef farming, production forestry and permanent exotic forestry respectively within the Wairoa District. https://beeflambnz.com/sites/default/files/Wairoa%20Afforestation_FINAL.pdf

[37] Farmers Weekly, 2023. Meatworks under threat from land use change. https://www.farmersweekly.co.nz/opinion/meatworks-under-threat-from-land-use-change/

[38] Beef + Lamb New Zealand. Farm business succession planning. https://beeflambnz.com/knowledge-hub/module/farm-business-succession-planning

What objectives are sought in relation to the policy problem?

58. Recognising the importance of rural communities to New Zealand and the impacts on rural communities of widespread land-use change to exotic forestry, Ministers are proposing the following objectives for these proposals:

    1. **Reducing whole-farm conversions to exotic forestry and protecting high and medium versatility productive land for farming.** The primary objective of these proposals is to balance productive land uses by protecting high and medium-quality land for farming while directing forestry to land less suitable for agriculture. This is intended to reduce the negative impacts of rapid and extensive ETS driven afforestation of productive agricultural land.

    2. **Forestry supports meeting emissions reduction budgets and targets.** The ETS is a tool under the CCRA to assist New Zealand to meet its international obligations, its 2050 domestic target, and the emissions budgets which step towards this target.[39]

    3. **Support a credible ETS market and provide certainty for ETS participants and forestry investment.** The Government has committed to restoring confidence in forestry investment. While the proposals will involve some change, the aim is to provide more certainty in the ETS in the medium term to support both forestry investment and emissions reductions. This includes provision of clear rules and providing clarity to the market over the long-term direction and role of forestry in the ETS.

    4. **Meet Treaty obligations (including Treaty settlement obligations).** The Government is committed to meeting its Treaty obligations as set out in the CCRA and Treaty settlement agreements.

    5. **Operational workability and managing the costs of administering the ETS.** The proposal must be implemented in a way that is feasible and workable. Any increases in the costs of operation must be proportional to the benefits of delivering the proposals' objectives. The proposal must be administratively efficient and effective for the regulator.

59. The primary policy objective is reducing whole-farm conversions to exotic forestry and protecting high and medium versatility productive land for farming. Officials have therefore weighted this objective and associated criterion more heavily in the analysis.

Disregarded objectives

60. Other objectives that were considered but discarded include:

    - Impacts on the cost of living
    - The balance between production and permanent forests
    - Environmental considerations and impacts associated with exotic forests

61. The objective 'impacts on the cost of living' was discarded because the proposal is limited in the extent that it can manage this and there are other ETS processes that consider this (e.g., the annual updates to ETS auction settings).

62. The objective 'balance between production and permanent forests' was discarded because the proposal is limited in the extent that it can manage this and other measures may be more effective (e.g., changes to the permanent forest category).

63. The objective 'environmental considerations and impacts associated with exotic forests' was discarded because the proposal is limited in the extent that it can manage these

[39] Climate Change Response Act 2002, s3. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158590.html

effects. Other workstreams are investigating this objective (e.g., management of forests under the resource management system).

Trade-offs between objectives

64. There will be trade-offs between objectives, which are identified in the analysis below. Ministers' weighting of priority between objectives will also impact the desirability of different options.

Section 2: Deciding upon an option to address the policy problem.

What criteria will be used to compare options?

65. The objectives above have been translated into proposed criteria to assess the impact of the overall proposal compared with the status quo, and to compare design choices (see Appendix Two) associated with implementing the proposal. These criteria are set out in the table below.

66. In some cases, criteria are different for different design choices (e.g., if a particular consideration does not apply, such as when all options within a design choice meet Treaty obligations). Some design choices need additional criteria; these are detailed in the sections considering specific design choices.

Table 4: Objectives and criteria

Objective	Proposed criteria for comparing status quo with proposed changes
Reducing whole-farm conversions to exotic forestry and protecting high and medium versatility productive land for farming	High and medium-versatility land is protected for farming while directing forestry to land less suitable for agriculture
Forestry supports meeting emissions reduction budgets and targets	Sustained afforestation to meet budgets and targets is provided
Support a credible ETS market and provide certainty for ETS participants and forestry investments	ETS policy certainty supports forestry investment and afforestation for emissions reductions and provides clarity to the market over the long-term direction and role of forestry in the ETS
Meet Treaty obligations (including Treaty settlement obligations)	The proposal is consistent with delivering the Government's Treaty of Waitangi settlement obligations
Operational workability and managing the costs of administering the ETS	Operational workability, cost, and speed of implementation of the proposal is considered for both the regulator and the forester

What scope will options be considered within?

67. The scope of this regulatory impact assessment is limited to Land Use Capability (LUC) class-based restrictions on ETS registrations to manage whole-farm conversions to exotic forestry. These restrictions are outlined in the National Party election manifesto 'Reducing Agricultural Emissions'[40] and described below:

- A moratorium on whole-farm conversions to exotic forestry registering in the ETS for LUC classes 1-5 land for three years (the LUC system is described below).
- An annual hectare limit on whole-farm conversions on LUC class 6 land registering in the ETS with the limit reassessed on a three yearly basis.
- A 25% exemption from the above limits to encourage farmers to continue to plant trees on any parts of their farm that are unsuitable for agriculture.

[40] Reducing Agricultural Emissions, p. 7-8. Available from: https://assets.nationbuilder.com/nationalparty/pages/17974/attachments/original/1686536113/Reducing_Agricultural_Emissions.pdf?1686536113

- No limits for LUC classes 7-8 land.
- Meeting Treaty settlement obligations regardless of the new limits.
- No limits will apply to native trees, and limits on exotic trees will apply equally to harvest and permanent forests.

68. Other changes to the ETS, such as changes to the ETS permanent forest category to reduce the incentive for permanent exotic forests relative to production forests, or using the resource management system, are not in the scope of this proposal. Officials have raised the potential for changes to the permanent forest category and resource management system to complement this proposal.

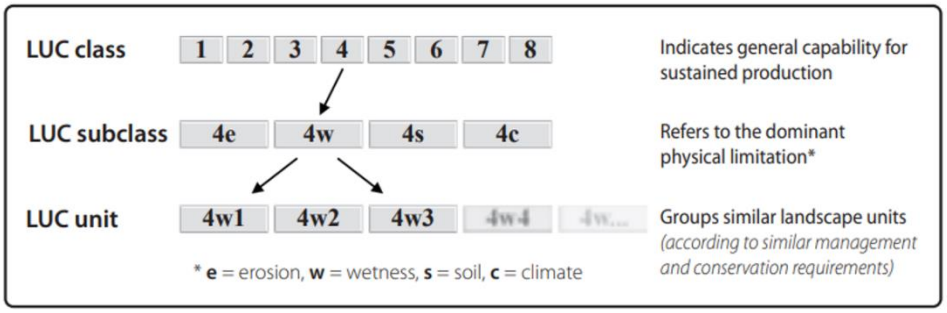
69. Ministers have also indicated their preferred options for some of the design choices. These include:

- A high-trust compliance approach
- National-scale LUC classification approach by default, with an option for applicants to use more detailed farm-scale LUC surveys if they wish to
- A first-in-first-served approach for allocating the annual hectare limit on LUC class 6
- An opening annual hectare limit of 15,000 hectares
- Registration permits for LUC class 6 and the 25% exemption will interact by allowing registration of whatever area is greater – the area allocated through a permit or 25% of the LUC class 6 area
- An exemption from the proposed rules for Māori land under Te Ture Whenua Māori Act 1993, land returned at time of Treaty settlement, and land whose status was changed under the Māori Affairs Amendment Act 1967
- Providing flexibility for people who are in the middle of an afforestation process when the rules change.

The Land Use Capability (LUC) system

70. LUC has been used in New Zealand to help achieve sustainable land management since the 1950s. Land is classified according to its capability for long-term production, based on its physical limitations and site-specific management needs. This provides a reliable basis for promoting sustainable management. The diagrams and information below are drawn from the Land Use Capability Survey Handbook, 3rd edition[41]. The LUC classification has three components: class, subclass, and unit (see Figure 2):

Figure 2: LUC classification components



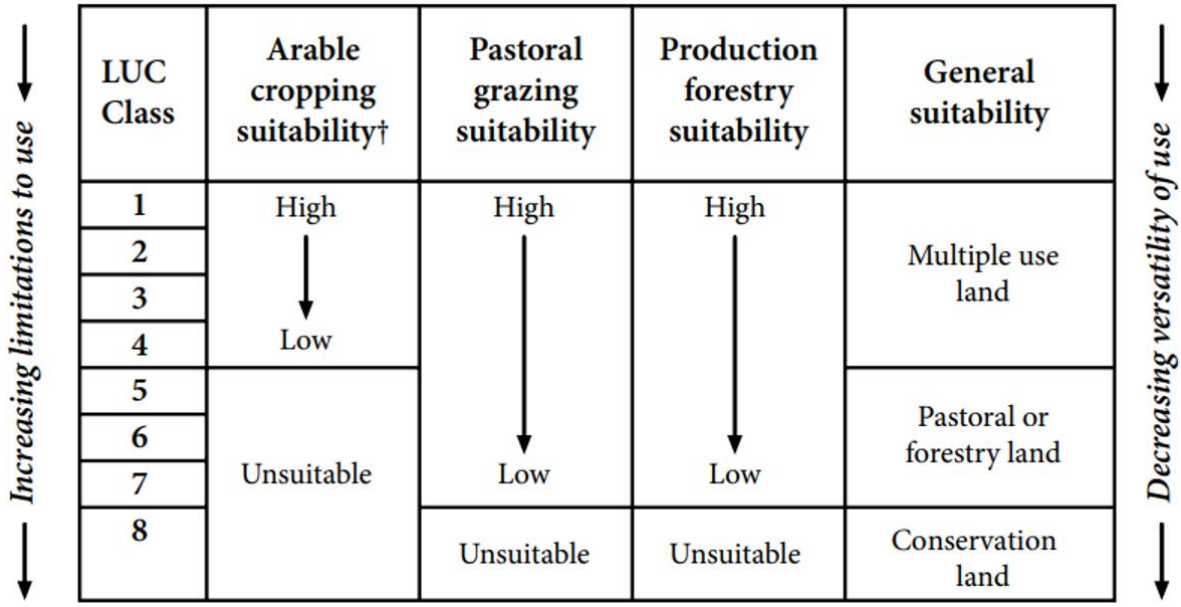
[41] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

71. LUC class assesses the land's capability for use, while considering its physical limitations and versatility for sustained production (see Figure 3). Lower LUC classes are highly versatile land that are generally suitable for a range of uses. Higher LUC classes have less versatility with LUCs 6 and above generally suited to pastoral or forestry uses (although LUC 8 has very severe limitations for all productive land uses).

72. In this regulatory impact statement, LUC classes are defined in the following ways:

- High-versatility productive land is LUC classes 1-5
- Medium-versatility productive land is LUC class 6
- Low-versatility productive land is LUC class 7-8.

Figure 3: LUC classes



What options are being considered?

The proposal package to manage whole-farm conversions to exotic forestry

73. Ministers want to incentivise a balance of land uses to achieve the best outcomes for forestry, agriculture, and the climate. The Government is therefore considering addressing this balance using ETS registrations: limiting the *area* of forests that can register in (enter) the ETS and limiting what *kinds of land* can register in the ETS.

74. Ministers propose to balance productive land uses by protecting New Zealand's most versatile agricultural land. Ministers also propose to exclude unproductive landholdings from the proposed restrictions. This requires a way of identifying farms (individual landholdings) and whether land is farmland.

75. Limits on the kind of land that can be registered also require us to define different types of land. Ministers intend to use the LUC system to differentiate between types of land based on its versatility. Farms are made up of multiple LUC classes, so protecting productive farmland based on its LUC class will help to balance land use for the best outcomes for New Zealand.

76. Ministers want to ensure New Zealand's relatively scarce high-versatility productive land (LUC classes 1-5) is protected for agriculture[42]. Ministers are therefore proposing a moratorium on exotic forestry registrations on this land.

77. On New Zealand's medium-versatility productive land (LUC class 6), Ministers want to create a balance of productive land uses. Ministers are therefore proposing an annual hectare limit on exotic forestry registrations on this land. This is a limit on the area of exotic forests that can register in the ETS.

78. Ministers propose no constraints on New Zealand's low-versatility productive land.

79. Flexibility for registration of on-farm afforestation on land unsuitable for agriculture also needs to be considered as part of the proposal. How to treat Māori land will also need to be considered.

80. The proposal package to manage whole-farm conversions to exotic forestry contains the design choices outlined in Table 5, and the individual design choices are assessed below (and more fully in Appendix Two).

Table 5: The design choices to manage whole-farm conversions to exotic forestry.

Design choice	Options and further choices
Defining a farm	A business or landholding-based farm definition. Defining a farm's spatial boundary. Assessing whether landholdings are unproductive
Using the LUC classification system	National-scale or property-scale LUC assessments. Compliance approach for property-scale LUC assessments.
Managing high-versatility productive land	A moratorium on exotic forestry ETS registrations.
Managing medium-versatility productive land	The annual hectare limit will be allocated through registration permits. Who or what should registration permits be attached to? System to allocate an annual hectare limit on registering exotic forests. Should registration permits be transferable?
Reviewing settings	The process used to make secondary legislation to provide confidence in the decision-making process.
Providing on-farm flexibility	A minimum area threshold or a 25% exemption to the restrictions for medium-versatility land. Managing orphaned land[43]
Low-versatility land	There are no restrictions proposed for low-versatility land.
Recognising some types of Māori land	Exemption options for Māori land

Defining a farm

81. Ministers intend to place limits on whole-farm conversions to forestry on high-quality land to protect local communities. Ministers also want to provide flexibility for farmers to afforest up to 25% of each farm, as per Manifesto commitments. To enable these objectives, a farm or farmland must be defined.

82. To be effective and support the intent of the proposal the definition must be descriptive enough to identify and define farms and identify spatial boundaries.

[42] Around 26% of the country is LUC classes 1-5 (LUC handbook – see footnote 76). Note that highly productive land is considered to be LUC classes 1-3 under the National Policy Statement for Highly Productive Land. See https://environment.govt.nz/publications/national-policy-statement-for-highly-productive-land-2022-amended-august-2024/.

[43] Orphaned land refers to pockets of high-versatility productive land that are surrounded by medium- or low-versatility land, and wouldn't be able to be used for other productive purposes if they became surrounded by forest.

83. The options for creating a legal definition of a farm include:

- **A farming business**, which would capture *all land within a business whose activities include arable, horticultural, pastoral, or agricultural purposes*. This would include corporate and commercial farms with many individual, geographically dispersed landholdings.
- **A landholding**, defined as a geographically discrete landholding whose activities include arable, horticultural, pastoral, or agricultural purposes. All the land within a farm would be geographically contiguous, so corporate and commercial farming businesses with separate landholdings would need to identify separate standalone farms.

84. The land covered by the farming business and the landholding definitions would require the person registering as a participant to be either the landowner or hold a forestry right or a lease where they have the written agreement of the landowner to register as a participant.

85. Defining a farm as a geographically discrete landholding under common ownership is the preferred option as a business definition is more administratively complex (i.e., there is no clear way to determine whether a business qualifies as a farming business) and could enable registration of large-scale afforestation under the 25% exemption. A business definition would also be challenging for forests registered using forestry rights or leases.

Defining spatial boundaries

86. As well as legally defining a farm, the spatial boundaries of each farm need to be defined so the restrictions can be applied. Two options have been identified:

- **Applicant-defined:** The ETS applicant defines the boundaries of the farm, for example, through a digital map at registration.
- **Land parcel (or aggregation of parcels):** The ETS applicant identifies the land parcel(s) associated with the farm extent during registration.

87. A land parcel (or aggregation of parcels) is the preferred option as it can be consistently applied and avoids the risks of inconsistency and subjectivity under the applicant defined option.

Should the restrictions apply to unproductive landholdings?

88. The LUC classification will not capture every limitation that can constrain land use. In particular, there may be areas of LUC class 1-6 land (particularly classes 4-6) that do not have many viable alternate land uses besides forestry. For this reason, it is worth considering whether to exclude unproductive landholdings (i.e., landholdings that are not being actively farmed) from the proposed restrictions.

89. There are two broad options for identifying unproductive landholdings:

- **High trust, significant compliance**: The applicant must provide assurance (e.g., a statutory declaration) that a landholding is unproductive. A high trust model would be combined with significant penalties if trust is breached. The high trust compliance approach is discussed in more detail in Section 3.
- **Regulator assessment**: The regulator must be satisfied that the landholding is not being used productively at the time of application. This could involve assessment of aerial imagery, for example.

90. Ministers prefer a high trust approach. If the Government proceeds with the regulator assessment option, the regulator would need to consider what timeframe the assessment would cover. The assessment could involve assessing aerial imagery or information from the applicant, for example. The Government could consider timeframes from four to 20 years for the assessment of whether land is unproductive.

91. There is no preferred timing option. Shorter timeframes are simpler but longer timeframes may more effectively identify unproductive land but would add complexity and cost.

92. The details of how the assessment would be done (e.g., what criteria would constitute farmed land in an assessment) would be determined in future if the Government proceeds with that option.

Using the LUC classification system

93. Targeting agriculture to higher versatility land, and forestry to land less suitable for agriculture, requires a way of classifying land based on its versatility – the LUC classification (see page 15).

94. This proposal to restrict ETS registrations based on the LUC system has national coverage, but it applies at the farm scale. New Zealand has national-scale LUC mapping for the North and South Islands[44] at a 1:50,000 scale that was prepared between 1975 and 1998. National scale classification is coarser and usually not considered appropriate for farm-scale management decisions (scales as small as 1:500 are considered appropriate).[45] However, detailed farm-scale surveys are expensive.[46]

95. Our preferred option is to allow applicants to opt in with property-scale LUC classification to increase the resolution of the classification for farm-level management decisions. The national-sale classification would also be available for applicants who do not wish to pay for a property-scale classification.

Reviewing property-scale information

96. The assessment technique for LUC classification must be transparent, robust, based on good science, and able to withstand scrutiny. Different surveyors use different procedures, and mapping LUC requires subjective judgements. The Government needs to consider what role, if any, the regulator needs to play in assuring the property-scale information is robust and reliable. Four options have been identified for the level of quality assurance needed for LUC assessments:

    - **High trust/applicant defined**: The regulator has no role in assuring the property-scale information. Legislation would prescribe what definitions or processes applicants are trusted to follow. Applicants could be required to provide a statutory declaration that their property's LUC classification is correct. There would be follow-up compliance (e.g., random audits) combined with significant penalties if a participant was found to be non-compliant.

    - **Prescribes how mapping can be done**: Regulation prescribes what processes property-scale LUC assessment must follow. When assessing applications, the regulator would need to be satisfied that those processes have been followed.

    - **Prescribes surveyor's qualifications or competencies**: Regulation prescribes the qualifications or competencies a surveyor needs to have to provide property-scale LUC information. The regulator would need to be satisfied that the LUC assessment was carried out by someone who met those qualifications or competencies.

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[44] Affected parts of New Zealand outside the North and South Island could be required to submit a property-scale LUC assessment, or could be exempted from the proposed rules.

[45] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. Available from: https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

[46] MPI estimates suggest LUC mapping for sheep and beef farms costs on average $2,580, ranging from $1,400-$7,200 and up to $14,300 for an extensive high-country farm (inflated to present day values based on estimates from the 2020-21 season: $2,170 on average, ranging from $1,200-$6,000 and up to $12,000).

- **Mapping must be checked/carried out by the regulator**: the regulator would need to be satisfied with the quality of the classification. This could involve staff comparing against geographic information systems or visiting the property to ground truth the classification. The regulator could also contract out the entire assessment on behalf of the applicant.

97. Ministers' preferred option is a high-trust approach. This option will have reduced costs and implementation time compared to the other options.

Managing high-versatility productive land

98. Our high-versatility productive land (LUC classes 1-5) is scarce – roughly 26% of New Zealand's total area.[47] Only LUC classes 1-4 are suited for arable cropping.[48] Therefore, Ministers intend to put in place a moratorium on ETS registrations of exotic forests on LUC classes 1-5.

99. The moratorium is intended to stay on until the Government chooses to remove it, but if removed, it could be restored if and when needed, with the review process set out in legislation. This takes an appropriately conservative approach to protecting New Zealand's best land.

100. Other options include the moratorium ending automatically after a set time period with no option for renewal and the moratorium ending automatically unless the Government decides to continue it. The process for this review is discussed later (see 'Reviewing settings').

Managing medium-versatility productive land

101. Our medium-versatility productive land (LUC class 6) is roughly 28% of New Zealand's land area. Afforestation on this land requires careful management as it is important for a range of productive uses.

102. Production forestry may not be a cost-effective use of lower versatility land, because land use limitations (e.g., erosion potential) can make harvesting challenging on some sub-classes of LUC class 7 (and LUC class 8 is generally unsuitable for production forestry). Pastoral agriculture faces similar challenges.

103. MPI projects that between 0.97 and 1.44 million hectares of afforestation between 2021 and 2050 are needed to meet New Zealand's climate change targets.[49] Therefore, afforestation on this land is important to helping New Zealand achieve its climate change emissions budgets and targets.

104. To protect medium-versatility productive land for agriculture, an annual hectare limit on registrations on LUC class 6 is proposed. A moratorium on registrations on LUC class 6 land was also considered but discarded from further analysis due to the importance of this land for production forestry. Officials consider an annual hectare limit provides the best balance to manage medium-versatility land.

Who or what should be permitted?

105. A system for the allocation of the annual hectare limit is required for this proposal. Forests must already be planted before they can be registered in the ETS, and certainty of NZU income is likely to be important for the viability of some afforestation investments. It is therefore proposed that the annual hectare limit be allocated through

[47] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. Available from: https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

[48] LUC class 5 is generally suited to production forestry or pastoral grazing but is relatively scarce (less than 1% of New Zealand's land area)

[49] MPI, 2023. 2022 LULUCF Accounting Projections. https://www.mpi.govt.nz/dmsdocument/56446-2022-LULUCF-Accounting-Projections

registration permits. These permits would entitle the permit-holder to register a specified number of hectares of exotic forest land in the ETS.

106. Using registration permits requires consideration of who, or what, the permit should be attached to. Four options are provided for this:

- **Person (the landowner)**: the registration permit applies to any land owned by the permit holder.
- **Person (the prospective ETS participant)**: the registration permit allows the permit holder to register any land they have rights to.
- **The land parcel**: the registration permit enables the land parcel it is associated with to be registered in the ETS. If the land is sold the permit remains attached to it.
- **A specific category**: in addition to one of the previous three options, the permitted forest land must be associated with a particular ETS category (e.g., permanent forestry, averaging forestry).

107. The key difference between these options is who they give certainty to. Attaching the permit to the prospective ETS participant would mean the person has a guarantee that any LUC class 6 land they acquire will be able to be afforested and registered (provided the rest of their application meets eligibility requirements).

108. Where a permit is attached to the land, all parties involved in a particular transaction over LUC class 6 land (e.g., sale and purchase, lease) would have certainty that afforestation on the land would be able to be registered. However, this would mean that prospective ETS participants would need to secure land before they can register. This requirement is likely to add significant risk to some land transactions where ETS registration is the intent.

109. Ministers' preference is a combination of options: registration permits should be attached to the person (the prospective ETS participant) and the land to provide certainty. Providing flexibility for if the prospective ETS participant cannot obtain land to afforest requires considering whether permits should be tradeable and what should happen to unused permits. This is discussed below.

How long should registration permits last for?

110. The permits need to be time-limited so that afforestation and registration take place in a timely manner to ensure New Zealand's climate change targets and emission budgets are met. Once a permit expires, it cannot be used to register forest land in the ETS; a new permit would be required if the permit holder wanted to register land after expiry. Officials suggest that the permit holder will need to have submitted their application for registration before the associated permit expires, and that the application will need to be full and complete.

111. Two options are provided for the length of time that registration permits should last:

- **Three years**. Three years is likely to be a minimum viable amount of time for a registration permit to last, to give the recipient enough time to acquire land and seedlings, plant trees, and for the trees to be eligible to register.
- **Five years**. Five years will provide more time for a recipient to go through the steps needed to afforest and register their forest in the ETS.

112. A longer time period gives more time to afforest and register the forest land in the ETS and provides greater investment certainty.

How should the annual hectare limit be allocated?

113. Registration permits could be allocated through four allocation system options:

- **First-in-first-served**: Registrations are granted until the annual limit is reached based on the order of when an application is submitted. This could include rolling

over unsuccessful applications to subsequent rounds so applicants maintain their place in the queue.

- **Lottery**: Registrations are randomly selected to be granted until the limit is reached.
- **On-demand/pro rata**: Registrations are allocated based on the proportion of total area requested by each applicant (e.g., if all applicants' requests added to a total of 100,000 hectares of exotic forest registrations and the limit was 50,000 hectares, an applicant who wanted 10,000 hectares would be granted 5,000 hectares).
- **Auction**: The limit is allocated based on a competitive bid system.

114. These four options have different strengths and weaknesses: First-in-first-served is the simplest; lottery can avoid equitability concerns and could also be simple to run; on demand is transparent and can provide certainty; and auction can avoid equitability concerns but can add significant administrative complexity and cost.

115. Ministers' preferred option is first-in-first-served due to its greater operational workability.

What should happen with unallocated or unused registration permits?

116. Unallocated or unused registration permits could be rolled over to the next year or cancelled. Officials' preference is to cancel unused registration permits.

Should registration permits be tradable?

117. To provide permit-holders with flexibility and to increase confidence in the allocation system, the Government could allow registration permits to be fully transferable. This would allow a secondary market for permits to form. This means that applicants may be more willing to engage with the allocation system, particularly if participation is expensive, even if they are not completely confident in their afforestation project – because they will be able to sell the permit afterwards.

118. Adding another secondary market to the ETS adds extra complexity and cost to both the regulator and permit holder. Therefore, the preference is that registration permits will not be tradable.

119. Registration permits will need to be able to be transferred in some circumstances, for example, to allow for succession, changes in trustees of a trust, or unincorporated body changes.

Reviewing settings

120. Officials propose that the level of the annual hectare limit and the status of the moratorium would be included in regulations to give the Government the ability to adjust it to respond to changing circumstances. Therefore, we need to consider what process should be used in making the secondary legislation to provide the public with confidence in the decision-making process. Options include:

    - **No additional requirements specified**: Only requirements that apply to all secondary legislation (e.g., publication, consultation) would apply.
    - **Consideration of particular matters**: Legislation would specify particular matters that Ministers must consider when reviewing settings. These could include emissions budgets, NDCs, and the 2050 target; the proper functioning of the ETS; the pace and scale of rural land use change; economic considerations associated with land use change; and any other matters Ministers consider relevant.
    - **Consultation**: The Ministers must be satisfied that there has been adequate consultation, including with representatives of iwi and Māori.
    - **Timing**: The Ministers can only recommend changes if certain timing conditions are met, for example a certain length of time before the next ETS auction, or a certain length of time before the end of the mandatory emissions return period.

- **Climate Change Commission**: The Climate Change Commission would be required to provide advice on the moratorium and the annual hectare limit.
- **s160 review**: s160 of the CCRA sets out requirements for the review of the operation of the ETS which could be used for reviewing the moratorium and the annual hectare limit.

121. Settings would also need to be consistent with the purpose of the Climate Change Response Act. Officials' preference is that Ministers should consider particular matters when reviewing settings. This approach provides the public with assurance about how settings will be determined while keeping costs low.

Providing on-farm flexibility

122. The primary objective of the proposals is to balance productive land uses, while protecting high- and medium-versatility land for farming, and direct forestry to land less suitable for agriculture. It is important to ensure there is enough flexibility so that farmers can afforest areas of their farms that are unsuitable for agriculture. Officials have identified the following options:

- **No exemption**: the only way to register exotic forests on LUC class 1-6 in the ETS would be under the annual hectare limit for LUC class 6.
- **A 25% exemption based on whole farm area:** This option enables farmers to register forest land on up to a quarter (25%) of their whole farm area on LUC class 1-6 land. A 400-hectare farm with 200 hectares of LUC class 1-6 land would be able to register 100 hectares (25% of 400).
- **A 25% exemption based on LUC class area:** This option enables farmers to register forest land on up to a quarter (25%) of the LUC class 1-6 land on their farm. A 400-hectare farm with 200 hectares of LUC class 1-6 land would be able to register 50 hectares (25% of 200).
- **A minimum area threshold:** This option provides for registrations under an area threshold (e.g., 50 hectares) so they do not need a registration permit to enter the ETS and are exempt from the moratorium.

123. There are strengths and weaknesses to each approach. The minimum area threshold is easy to understand and simple. However, there is a risk that this option risks the overall effectiveness of the policy, as it could be possible to split large areas of land into 50-hectare blocks and register them separately. The 25% exemption options can mitigate for the risks within the minimum area threshold but have greater operational complexity.

124. Ministers' preference is a 25% exemption based on LUC class area. An example of how the 25% exemption options could work in practise is provided in Appendix Two (Table 9). The calculation will be based on a baseline year with the date defined in legislation.

How should the 25% exemption interact with registration permits?

125. The 25% exemption for registration of on-farm afforestation will interact in some way with any land allocated by a registration permit on LUC class 6. Maximum afforestation able to be registered on LUC class 6 could be:

- **Cumulative**: 25% of on-farm LUC class 1-6 area plus any additional area with a permit
- **Whatever area is greater**: 25% of LUC class 1-6 area or the area with a permit

126. A cumulative option could risk more conversion of farmland, but other options could add complexity for applicants. On balance Ministers prefer whatever area is greater.

Managing orphaned land

127. The preferred approach above of constraining registration to whatever area is greater could result in orphaned pockets of highly versatile land. Orphaned land is where highly versatile land becomes surrounded by exotic forestry and cannot be used for another productive purpose. Preventing these patches from being registered in the ETS does not protect productive land, as the land cannot be used for agriculture.

128. The preferred approach above prevents a registration permit from being used in combination with a 25% exemption. This means if a farmer wants to afforest their LUC class 6 land, but there are pockets of LUC class 1-5 land within the LUC class 6 land, orphaned land would result.

129. There are options for how to mitigate this issue. Options to provide flexibility on high-versatility land include:

- **No allowance for LUC classes 1-5:** Under this option, there would be no additional allowance for the registration of forests on LUC classes 1-5 in the ETS.
- **Percentage allowance for LUC classes 1-5**: Under this option, there would be a percentage allowance (e.g., 10% or 25%) alongside a registration permit to allow for small areas of LUC classes 1-5 to be ETS registered. For example, with a 10% allowance, an applicant permitted to register 100 hectares of LUC class 6 could also register 10 hectares of LUC class 1-5 as part of that forest.
- **Minimum area allowance for LUC classes 1-5:** Under this option there would be a minimum area allowance for LUC classes 1-5 (e.g., 5 hectares) rather than a percentage.

130. The preferred approach is a percentage allowance. This provides more certainty and flexibility for farmers to register small pockets of LUC classes 1-5 as part of a larger forest and manages unintended outcomes of the preferred options for registration permits.

131. Officials' complete analysis of the individual options outlined in this proposal is set out in Appendix 2.

Delivering Treaty of Waitangi obligations

132. Different types of Māori land have the potential to be disproportionately impacted by the proposal due to their physical characteristics, ownership structures, and other constraints. The Government has also heard from Māori landowners in previous consultations that Māori land is often suited to forestry and that Māori want the full range of viable options for their land to enable them to exercise tino rangatiratanga as guaranteed by the Treaty of Waitangi.

133. Māori submitters have also suggested the negative outcomes discussed above (section 1) are less likely to be associated with afforestation on Māori land because Māori landowners are concerned about the impacts of land-use on jobs and income in their local communities and factor these impacts into land use decisions, and Māori land will not be sold or abandoned.

134. There are options for how to meet Treaty of Waitangi obligations and Treaty settlement obligations. These are:

- No differentiation to recognise the unique character of Māori land
- Exempt Māori land from the proposed restrictions
- Consider how Māori aspirations could be provided for within the different design choices.

135. The preferred approach is to exempt Māori land from the proposed restrictions. Māori land would be defined as whenua Māori under Te Ture Whenua Māori Act 1993, land returned at time of settlement, and land affected by the Māori Affairs Amendment Act 1967.

How does the proposal compare to the status quo?

	Status quo	Proposal (preferred)
Protect high and medium quality land for farming	**0** The status quo is estimated to have driven around 190,000 hectares of afforestation over the last three years. About 38,000 hectares per year of exotic afforestation is expected over the long-term under the counterfactual. However, the Government has no control over swings in the levels of afforestation over time.	**++** The Government has control of the rate of afforestation and the type of land it occurs on under the proposal. The proposed limits determine the type of land to be afforested based on LUC class. About 28,000 hectares of exotic afforestation is estimated annually over the long-term under the proposed restrictions with the opening annual hectare limit of 15,000 hectares, but the Government can adjust this over time.
Meeting emissions reduction budgets and targets	**0** Forestry emissions under the status quo are based on the government's central projections.	**0** The proposal is estimated to have no impact on achieving emissions budgets and targets because the proposed limits on LUC classes 1-6 are estimated to be higher than projected afforestation rates. However, the quantum of afforestation can be aligned to the amount required to achieve emissions budgets and targets, and this will avoid the wider impacts of higher than projected rates of afforestation.
Support a credible ETS and provide certainty for ETS participants and forestry investment	**0** No regulatory change will maximise policy certainty, but there is existing uncertainty about supply and demand in the ETS and therefore future NZU prices.	**-** Regulatory change will undermine certainty until the new rules are implemented and prospective participants understand them. The proposal is expected to constrain afforestation if demand on LUC class 6 exceeds the annual hectare limit. This is expected to provide the ETS market with more predictable NZU supply and place upwards pressure on the ETS price.
Meet Treaty obligations (including Treaty settlement obligations)	**0** The CCRA requires consultation with iwi and Māori on decisions in which they have an interest to give effect to Te Tiriti principles.	**0** With an exemption for Māori land there will be minimal change from the status quo, but Māori-owned land not covered by the definition used for the purpose of the exemption will be restricted.
Operational feasibility and managing the costs of administering the ETS	**0**	**-** The proposed rules will need to be assessed as participants register, adding complexity for the regulator and participant. The allocation system and review propose will also add operational complexity.
Overall assessment	**0**	**0**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

136. Officials consider the combined design choices in the proposal will address the problem, meet the policy objectives, and deliver higher net benefits over the status quo due to their ability to better deliver the primary objective of protecting high and medium

quality land for farming. There are a range of individual design choices and options within the proposal to manage complexity and cost while delivering Ministers' objectives. The individual design choices are not mutually exclusive; any combination of design choices could be combined in final policy decisions.

137. The proposal gives the Government influence over the rate of afforestation and the type of land it occurs on. Therefore, the proposed restrictions protect high and medium-versitility land for farming while directing forestry to land less suitable for agriculture.

138. Government control over the rate of whole-farm conversions could align with the level of afforestation that is needed to achieve New Zealand's emissions reduction budgets and targets. This approach enables the broader impacts of afforestation across rural economies and communities to be managed if afforestation rates are greater than projected.

139. The proposal will reduce certainty for ETS participants and forestry investment over the short-term compared to the status quo. Any regulatory change reduces certainty until new rules are implemented and understood.

140. The proposal is consistent with meeting Treaty of Waitangi settlement obligations regardless of the new limits. However, Māori-owned land not covered by the exemption will be restricted.

141. The proposal adds complexity and cost compared to the status quo. A new system will be needed at registration to assess the proposed rules, adding complexity and cost for participants and the regulator.

142. Managing the allocation system also adds complexity. Some options within the design choices could add additional complexity if there were progressed (e.g., property-scale mapping and quality assurance system).

143. On balance, the proposal is the preferred approach due to it meeting Ministers' primary objective (protect high and medium quality land for farming) better than the status quo. This primary objective has been weighted more heavily in officials' analysis.

144. The detailed design choices within the proposal are discussed in more detail in Appendix Two. How the preferred options would play out in practice for a farm with mixed LUC classes is shown in Appendix Three.

Impacts of the proposed limits

145. Officials estimate that annual exotic afforestation will be between 28,000 hectares and 36,000 hectares under the proposed limits, depending on the size of the LUC class 6 annual hectare limit.

146. This estimate is made up of the LUC class 6 annual hectare limit, contributions from LUC classes 7 and 8, and on-farm plantings (i.e., up to 25% of farms). See Table 6 for a breakdown of the components.

Table 6: Estimated exotic afforestation under the proposal

Annual afforestation	**15,000 hectares on LUC class 6 (ha)**	**17,500 hectares on LUC class 6 (ha)**	**20,000 hectares on LUC class 6 (ha)**
LUC class 1-5	0	0	0
LUC class 6	15,000	17,500	20,000
LUC classes 7 and 8	10,000	11,500	13,000
Farm conversions sub-total	25,000	29,000	33,000
On-farm afforestation (25% exemption)	3,000	3,000	3,000

Total annual afforestation	28,000	32,000	36,000

147. These estimates were derived by:

- Annual afforestation on LUC class 6 will be at the annual hectare limit set by the Government
- Afforestation on LUC classes 6-8 will continue in the same proportions as in historic ETS registrations. This assumption would not hold if the restriction on LUC class 6 incentivises more planting in higher LUC classes.
- On-farm planting under the 25% exemption will continue as it has historically. Officials used ETS registrations below 100 hectares as a proxy for on-farm planting.

148. These estimates compare to a long-term average of 27,000 hectares per year in MPI's most recent afforestation projections[50]. New information suggests that recent ETS price volatility and policy uncertainty have reduced future afforestation intentions[51]. Therefore, it is likely that the LUC class 6 per year limits would not be fully subscribed in the near-term. However, even at recent lower NZU prices (e.g., $60) there remains a strong financial incentive to invest in exotic forestry. Higher NZU prices and/or stronger scheme certainty would likely see greater levels of afforestation than projected.

149. Ministers have selected an opening annual hectare limit of 15,000. Lower limits may be expected to put upwards pressure on the NZU price, which would increase the cost of meeting emissions targets by requiring higher cost abatement. However, the actual conversion rates of permits to afforestation and registrations will not be clear until the system is up and running. It will be too soon to tell the extent to which the level of the annual hectare limit influences the NZU price path until the system has been operational for several years.

150. Ministers are proposing to review the level of the annual hectare limit over time. One option (see 'Reviewing settings') is for Ministers to consider emissions budgets, the nationally determined contribution, and the 2050 target, as well as the proper functioning of the ETS. This could include future observations about the effect of the annual hectare limit on the NZU price and what NZU price is desired, for example, to drive reductions in gross emissions.

151. The proposed limits could have potentially unforeseen consequences by reducing land-use optionality and restricting some more profitable land uses. For example, they could impair the ability of sheep and beef farmers to exit the industry at a fair price – if parts of their farms are not able to be converted to ETS-eligible exotic forestry, the property value could be affected. Effects on land sale prices and land values could make this a contested proposal, particularly without public consultation.

[50] MPI, 2024. 2023 LULUCF Accounting Projections. https://www.mpi.govt.nz/dmsdocument/62023-LULUCF-Accounting-Projections-2023

[51] MPI, 2024: Afforestation and Deforestation Intentions Survey 2023. https://www.mpi.govt.nz/dmsdocument/62313/direct

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
ETS forestry participants	Ongoing increase in costs, as any increased administration costs for the regulator may be recovered. Changes may also result in increased wait times for registrations and emissions returns.	**Medium** Administration costs Currently applying to register post-1989 forest land costs $488.89-$4,125 (depending on area).[52] (All costs exclude GST.) There are additional fees and charges for other services (e.g., emissions returns). In 2022 administering the forestry ETS was estimated to cost $29.8 million per annum on average. Officials will need to consider any cost-recovery of administration costs if they were to increase because of this proposal.[53]	**Low** Size of the impact will depend on detailed design choices and will be improved on prior to final policy decisions taken (e.g., once implementation progresses and the impact on registration processing times and costs of administering the ETS are known)
Farmers	Reduced land use optionality for individual farmers. Reduction in land values if restrictions reduce the market for farms with lower LUC classes.	**Medium** Opportunity cost (NPVs of alternative land uses) Move from forestry ($18,500-$27,000 per hectare) to sheep and beef ($7,000 per hectare)[54]	**Low** Public consultation would provide more evidence on this impact.

[52] Climate Change (Forestry) Regulations 2022. Schedule 6. https://www.legislation.govt.nz/regulation/public/2022/0266/latest/LMS709918.html

[53] See *Cost Recovery* on page 37

[54] See Table 1.

		<u>Change in land value</u> Farmers with land suitable for forestry may face a reduction in land values due to the reduced option value for the land[55].	
Foresters	Reduced afforestation optionality. Foresters will need to consider how best to afforest within the LUC based restrictions (adding complexity to any afforestation decisions) For foresters who try to avoid the restrictions by targeting LUC class 7-8 land, afforesting will become more expensive as the land is more marginal. For foresters who focus on LUC class 6 land, they were incur the costs of working to secure an allocation. Foresters will face increased uncertainty which may make more marginal investments riskier and less attractive.	**Low/Medium** Increase in up-front costs	**Low** Public consultation would provide more evidence on this impact.
Māori landowners	Likely to be reduced land use optionality for some Māori landowners, as not all Māori land will be captured by the definition	**Low/Medium** Increase in up-front costs and a possible reduction in land use optionality depending on final policy decisions.	**Low** Size of impact on Māori landowners depends on whether Māori land is exempt (and how this is defined). Public consultation would provide more evidence on this impact.
The regulator	The high-level proposals in the paper will likely require some changes to the forestry ETS registry IT system to implement	**Medium** Te Uru Rakau – New Zealand Forest Service has estimated the cost of IT system changes to be between $500,000 and $2,000,000.	**Medium** There is reasonable certainty that IT system costs would fall within this cost range, but less certainty on the location within that range. This cost estimate will be further refined as the detailed policy design is completed.
Others	Other groups are potentially affected. <u>Taxpayers</u> If the proposals affect the contribution of forestry to carbon removals (depending on alignment of the proposals' settings with domestic emissions budgets and impacts on investor confidence and certainty),	**Low/medium** More mitigation in other domestic sectors or offshore mitigation could be needed to be purchased to meet New Zealand's NDC	**Low** The size of the cost of mitigation in other domestic sectors or offshore mitigation will depend on the level of achievement of domestic emissions budgets and the price paid for reductions. The future price of international

[55] Anecdotal evidence from forestry and farming stakeholders indicates that the expectation of returns from forestry has been a large contributing factor in the recent increase in the price of land suitable for sheep and beef farming. This is supported by information provided by Land Information New Zealand that indicates pastoral grazing land valuations have increased by 45-100% since 2017 in regions with high rates of afforestation (e.g., Tararua, Wairoa) compared with around 20% increases in land valuations in regions with low afforestation (e.g., Selwyn, Marlborough).

	more offshore mitigation could be needed to be purchased to meet New Zealand's NDC. This cost could be borne by taxpayers.[56] ETS participants (not forestry) While the magnitude is uncertain, the new proposals may make new afforestation more difficult/less profitable and thus, all else being equal, could make the cost of NZU supply from forestry more expensive. This could increase the NZU price, increasing the cost to those required to purchase NZUs to meet surrender obligations (and providing a stronger incentive to reduce emissions).	(depending on alignment of the proposals' settings with domestic emissions budgets). The increase in costs from the proposed restrictions is expected to slightly increase costs for ETS participants.	reductions is unknown, reflecting that many markets are at early stages or yet to be developed. NZU price dynamics in the ETS are highly uncertain, and it is likely that added costs would be marginal.
Total costs		**Medium**	**Low**
Additional benefits of the preferred option compared to taking no action			
Rural communities and economies	Under the status quo, permanent exotic forests may displace more productive and versatile uses. This excludes the impact of revenue from NZUs as it is not possible to determine whether and how ETS returns are directed back within rural communities.	**Medium** (will vary by region) Permanent exotic forests (low management input) contribute 2 FTEs and $0.8 million to GDP per 1000 hectares. Production forestry contributes 38 FTE and $4.8 million to GDP per 1000 hectares. The meat and wool sector contributes17 FTEs and $1.7 million to GDP per 1000 hectares[57].	**Low** Impact depends on the extent to which the design choices affect the incentives for different types of forestry.
ETS forestry participants	By increasing the cost of forestry, the long-term NZU price is expected to be higher than under the status quo (as over the long term in a market the cost of a commodity reflects the lowest-cost form of supply of that commodity). New entrants will incur both the increased costs of afforesting by complying with the restrictions as well as the benefit of the higher NZU price (which on average, are expected to net to zero because costs are likely to be passed on to ETS participants with surrender obligations).	**Low/medium** The increase in costs from the proposed restrictions is expected to slightly increase costs for ETS forestry participants.	**Low** The size of the impact will depend on the detail of design choices and how foresters adapt their businesses models to the restrictions. NZU price dynamics in the ETS are highly uncertain, and it is likely that added costs would be marginal. Therefore, officials don't expect the added costs from this policy will have a significant impact on NZU price.

[56] The Treasury and MfE, 2023. Ngā Kōrero Āhuarangi Me Te Ōhanga – Climate Economic and Fiscal Assessment 2023. https://www.treasury.govt.nz/sites/default/files/2023-04/cefa23.pdf

[57] PwC New Zealand, 2022. *Employment impacts of different rural land uses: A report for New Zealand Carbon Farming.* March 2022.

	(Note that incumbents/those already holding NZUs would benefit from higher NZU price without incurring the increased costs of afforesting, as noted in the benefits section above.)		
Others (e.g., wider govt, consumers, etc.)	Other groups are potentially affected Taxpayers Permanent exotic forests, production forests, and the meat and wool sector make different contributions to GDP.	**Medium** (will vary by region) Permanent exotic forests contribute $0.8 million to GDP per 1000 hectares. Production forestry contributes $4.8 million to GDP per 1000 hectares. The meat and wool sector contributes $1.7 million to GDP per 1000 hectares[58].	**Low** Impact depends on the extent to which the design choices affect the incentives for different types of forestry.
Total benefits		**Medium**	**Low**

[58] PwC New Zealand, 2022. Employment impacts of different rural land uses: A report for New Zealand Carbon Farming. March 2022.

Section 3: Delivering an option

How will the new arrangements be implemented?

152. Te Uru Rākau – New Zealand Forest Service (Te Uru Rākau), a business unit within the Ministry for Primary Industries, currently administers the forestry components of the ETS for forestry under delegated authority from the Environmental Protection Authority (EPA).

153. The EPA will need to decide whether to delegate each of the proposed new functions. Throughout this document, officials have used "the regulator" to refer to the implementing agency. Either the EPA or Te Uru Rākau will likely be responsible for implementing these proposals. The functions may also be shared among agencies.

Implementation and application of rules

154. It is proposed that rules are assessed at registration (rather than after registration at a participant's first emissions return, for example). This means that when a person applies to register post-1989 forest land in the ETS, the regulator will assess whether the land is captured by the farm definition, what the land's LUC classification is, and what rules apply to its different LUC classes (e.g., if an applicant is seeking to register forest land on LUC class 6, whether they have a registration permit or it is under 25% of the farm area). Officials expect that the assessment at the time of registration will help provide investment certainty for the applicant.

155. There is the possibility of rules changing over time (e.g., a moratorium being turned on and off). There can be a backlog of applications for the regulator to work through and assess, so rules could change after an application is submitted before the regulator makes a decision. It is proposed that the rules will take effect based on what rules were in place at the time an application is submitted.

156. People can also have draft applications in train at the time when rules change. In this situation, the applicable rules would still be the rules at the time the application is submitted.

157. The regulator rejects applications for a range of reasons. If an application is rejected and the forest land needs to be resubmitted and the rules change at this time, the new rules would apply based on the new date of submitting the application. If the regulator needs to request further information to support an application but does not reject the application, the original submission date would apply.

158. Registration permits allocated under the LUC class 6 annual hectare limit would be a permit to apply to register the allocated number of hectares of forest land on LUC class 6 in the ETS. Once forest land is registered in the ETS, the registration permit would be effectively 'spent' (i.e., it could not be used again). The allocation of registration permits would therefore happen ahead of the registration process.

Additional compliance required to implement the proposal

159. The proposed limits and rules are proposed to be assessed at registration, which could reduce the need for compliance action. This is because an incomplete or incorrect application would be rejected at registration.

160. However, compliance may be needed in some situations if some options were progressed when final policy decisions are taken (e.g., quality-assuring property-scale LUC classifications and assessing whether land is farmed or not).

161. A high-trust compliance approach at registration can avoid the cost and complexity of quality-assuring property-scale LUC classifications and the regulator assessing whether land is farmed by placing trust in applicants to properly assess the land. Officials could rely on statutory declarations or prescribed information to be provided with applications, for example.

162. To ensure the rigour of the system, this high-trust model at registration will need to demonstrate that there are real and credible consequences for applicants who engage in misleading conduct, including de-registration and additional penalties. These penalties would need to be sufficiently severe to discourage people from taking advantage of the high-trust approach. However, the appropriate tools will depend on the wider design choices being used.

163. Participation in the ETS brings significant benefit to those who register forest land. The placement of the restrictions on the ability to register forest land creates an incentive to undertake misleading conduct, especially under the proposed high-trust model.

164. Officials expect to be able to develop a set of consequences and penalties that discourage the abuse of the high-trust model, but need to consider the operational implications, including the likely 'pushback' from those the penalties apply to. Without sufficient compliance and penalty options, the ability of the high trust model to meet policy objectives to limit whole-farm conversions will be undermined.

165. There is a difference between consequences and penalties due to the wider operation of the ETS. For example:

- The consequence of de-registering forest land is that the unit balance needs to be surrendered[59]. For one hectare of averaging accounting *Pinus radiata* this could be around 530 NZUs, or around $33,400[60]. For even small areas of forest, there are significant financial consequences for the forester from deregistration.
- The application of the penalty is a separate consideration, designed to discourage negative behaviour. Examples of this in the CCRA are the inclusion of penalties based on the value of NZUs being overclaimed (above the entitlements) and failing to submit an emissions return.

166. A key question for the compliance regime will be whether officials believe the consequences of action (e.g., deregistration) will be sufficient to discourage the behaviour, or is an additional penalty required. Options could include a penalty that scales to the size of the benefit gained, or a breach: a small accidental breach only attracts a small penalty, whereas a larger or deliberate breach attracts a significant penalty.

167. As the wider policy design is progressed officials will be testing and proposing a compliance and penalty regime which balances the Legislation Design and Advisory Committee (LDAC) guidance[61] for enforcement design, including:

- Considering the harm and benefit gained
- The enforcement of objectives to ensure the integrity of the high-trust model
- Practical considerations around implementation and the ability of the sector to comply or not comply, including resourcing demands from the compliance actions and if this will act to discourage enforcement action
- Fairness, including the ability to seek challenges, including if the current approach in the CCRA is appropriate.

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59 This is to ensure the integrity of removals in the ETS.

60 This is based on the area-weighted Field Measurement Approach Pinus radiata curve at age 16 (530 tons), with a secondary market price of $63 rounded to the nearest $100.

61 LDAC, 2021. Legislation Guidelines. https://www.ldac.org.nz/assets/Guidelines/LDAC-Legislation-Guidelines-2021-edition.pdf

168. Due to the range of design choices in the larger proposal and the interactions which can result from these, it is inappropriate at this stage to propose specific compliance or penalty actions, as they may not meet LDAC guidance.

169. Officials will also need to consider how to address issues where the forest land was registered to one participant, but has subsequently undergone a transmission of interest (e.g., been bought in good faith). If the forest land was found to be non-compliant after the transfer of participation, but the previous participant breached the rules, we would need to ensure penalties were applied appropriately.

Timing, legislative and regulatory change

170. Implementation of these proposals will require amendments to the CCRA, as well as subsequent secondary legislation. An amendment bill to the CCRA will be needed in 2025 to progress the proposals at pace.

171. Any consultation on secondary legislation would then need to follow (likely in 2025-2026), with implementation (including IT and digital system build, discussed below, as well as staff training and new operational procedures) following.

172. The changes will come into effect most likely in 2027 at the earliest. A more precise date will be determined following further policy design, as the detail of the primary and secondary legislation will determine the details of the IT build and the cost and time required. This indicative timeline is in Table 7 below.

173. **Table 7**: Indicative implementation timeframes

Indicative date	Milestone
Late 2024	Policy direction announced
2025	Amendment bill passed
2026	Consultation on secondary legislation Secondary legislation passed Implementation begins (e.g., IT system build, staff training, new operational procedures)
2027 onwards	Implementation continues Changes come into effect

174. Arrangements could be phased in over time. If all arrangements come into force once the legislation is in force, this could stall afforestation for several years as people wait to be allocated registration permits. This could be managed by staging the restrictions (e.g., so the moratorium and 25% exemption pathways come into place first, and the annual hectare limit comes into place once an allocation round has happened, and some applicants hold registration permits).

175. Options could also be considered for people who have already made investments in forestry. Preventing people who have already afforested with the expectation of NZU income from registering does not support the policy objective, as Ministers' intention is to stop incentivising future whole-farm conversions. This could be done through a temporary exemption.

Operational model including IT system

176. These proposals will require upgrades to the ETS forestry IT system, including incorporating LUC classification. This will have budget implications. The time and cost to build will depend on secondary design details.

177. New operational policies and procedures and staff training will also be required. Depending on which options are chosen for design choices, staff training or recruitment of new experts may also be required (e.g., if mapping of property-scale LUC must be checked by the regulator).

178. Implementation will include:

- Updates to and new standard(s), operational policies, business processes and procedures as required;
- Communicating changes and educating permit applicants and forestry ETS participants;
- Putting in place compliance and assurance processes; and
- Recruiting and training staff to implement the changes.

Indigenous forests

179. The proposed limits do not apply to indigenous forests. However, a participant could register forest land as indigenous, then transition it to exotic forest over time and switch categories. In this situation, it is suggested that the regulator would need to de-register the forest land, require that NZUs are surrendered, but allow the participant to re-register the forest as exotic forest land within the rules. A high-trust compliance approach would be suitable here, as the incentive to transition to exotic forest would be to take advantage of the fast rate of receiving NZUs, and receiving those NZUs would require informing the regulator of the change in forest type.

180. There is also the possibility of an applicant submitting mixed carbon accounting areas of exotic and indigenous forest. In this case, it is suggested the onus be on the applicant to not submit exotic forest on LUC classes 1-6 unless it is within the rules (LUC class 6 registration permit, 25% exemption).

How will the new arrangements be monitored, evaluated, and reviewed?

181. MPI, MfE, and/or the EPA will periodically evaluate and review the effectiveness of the preferred option for meeting the objectives, by both reviewing settings and reviewing implementation.

Review of settings

182. Two of the proposals outlined above include regular review of settings (the continuation or not of the moratorium on LUC class 1-5, and the level of the annual hectare limit on LUC class 6). These reviews will enable the evaluation of the total level of farm conversions registering in the ETS and consideration of whether this level meets the Government's objectives. If the preferred option (see 'Reviewing settings' in Appendix Two) is progressed, officials' analysis of the criteria in supporting Ministers' review of the settings will provide a subsequent evaluation process on how well the proposal is delivering on its intended objectives.

Review of implementation

183. The proposed policy changes will be monitored via existing Government programmes, reports and datasets collected to estimate forestry and land conversions for production and permanent forestry. These include MPI's regular Afforestation and Deforestation Intentions Survey, which provides recent historic and estimates of near-term future rates of exotic afforestation and deforestation. This will help show what impact the proposal is having on afforestation, and how the impact differs from our estimate (see 'Impacts of the proposed limits').

184. From when the changes have been implemented, the regulator may have access to greater data about farm conversions, depending on what information is collected from applicants and participants and confidentiality requirements.

185. Currently, all information collected by the regulator must be kept confidential, unless it is used for statistical information that is sufficiently aggregated so as not to identify any individual[62]. Current legislation is likely sufficient for this policy, unless more specific

[62] Climate Change Response Act 2002, s99. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM1662665.html

information about farm conversions is needed to review the implementation of this policy in the future.

186. The regulator would need to be able to track how actual registrations on LUC class 6 compare to the annual hectare limit. This could be tracked by ensuring that registrations on LUC class 6 are attached to the registration permit, which would require that the registration permit be easily identifiable.

Review of the effectiveness of the regulator and other actors

187. Any new systems, that are built will need to be monitored, for example to ensure they are working efficiently and fairly. This could include the review of property-scale LUC information, the operation of the allocation system, and the use of registration permits and the secondary market (if permits are transferable).

188. If property-scale LUC information is used and the option of using accredited professionals is progressed, the effectiveness of those professionals will also need to be monitored.

189. These reviews will also improve officials' understanding of the impact of the proposal on ETS applicants.

Cost recovery

190. The Government tends to recover the costs of goods and services from those who benefit from the services it creates or the risks that are being managed. Any cost recovery proposals will be made in accordance with the guidance set by MPI and the Treasury[63] and the provisions within the CCRA.[64]

191. While current analysis suggests that ETS participants should pay for any costs incurred under the current proposal, this preliminary view would not necessarily pre-determine any cost recovery proposals. Proposals for cost recovery will be determined later once the details of the proposal are decided.

Appendix One: Key terms

Accounting / Accounting approach	In the ETS this refers to the method used to count and report carbon stored in registered forests. The method used determines what activities and factors are considered in determining the calculation and reporting of emissions and removals. This is equated into NZUs that are provided to the participant or required to be surrendered (paid back to the regulator).
Afforestation	The establishment of forest on land that did not previously have tree cover and will therefore be considered a 'new forest'.
Averaging	Averaging accounting is a method to account for carbon storage in forests intended to be harvested that are registered in the ETS. Forests will earn NZUs up until the age the forest is expected to reach its long-term average carbon stock over multiple rotations of replanting and harvesting. No NZUs are required to be paid back when the forest is harvested and replanted.
Carbon price	The cost of one emissions unit (an 'NZU') in the ETS. One NZU represents one tonne of carbon dioxide equivalent.
Carbon dioxide equivalent (CO2-e)	Carbon dioxide equivalent, abbreviated as CO2-e, is a metric measure used to compare the emissions from various greenhouse gases on the basis of their global-warming potential, by converting amounts of other gases to the equivalent amount of carbon dioxide with the same global warming.

[63] MPI guidance can be found here: https://www.mpi.govt.nz/dmsdocument/30855-Ministry-for-Primary-Industries-Cost-Recovery-Policy-Guidance ; and the Treasury's here: https://www.treasury.govt.nz/publications/guide/guidelines-setting-charges-public-sector#when-this-guidance-should-be-used

[64] Climate Change Response Act 2002, s167 https://www.legislation.govt.nz/act/public/2002/0040/latest/whole.html#DLM1662744

Carbon sink	Natural and artificial processes which take carbon dioxide from the atmosphere and store it are known as 'carbon sinks'. Forests are a good example of a carbon sink, as they take in and store carbon dioxide through the process of photosynthesis.
Carbon revenue / emissions revenue	Where NZUs are sold to another person or business to make revenue (e.g., selling of NZUs earnt by foresters).
Carbon stock	Carbon stock (in the context of forests) means the amount of carbon that has been removed from the atmosphere and is now stored within the forest. Calculation of carbon stock in a given year is calculated based on attributes of the forest (such as the area of the forest and tree species) using a relevant accounting approach (refer definition above).
Climate Change Response Act 2002	The Act that provides a legal framework to enable New Zealand to meet its domestic targets and international obligations and targets. The Act also provides for the implementation of the ETS.
Climate Change Response (Emissions Trading Reform) Amendment Act	The 2020 Amendment Act that amended the Climate Change Response Act 2002 by adding new accounting approaches and categories for forestry in the ETS (including the permanent forest category).
Deforestation	Means: a) to convert forest land to land that is not forest land; and b) includes cleared forest land, where section 179 of the Climate Change Response Act applies.
Emissions	Greenhouse gases released into the atmosphere from human activity.
Emissions Reduction Plan (ERP)	The Emissions Reduction Plan (ERP) sets out New Zealand's domestic emissions budgets and how it will meet these. It is a key report setting out the Government's policies and measures on climate change.
Exotic forest	Exotic forests in this document mean forests that are predominantly made up of exotic tree species (e.g., Radiata pine).
Field Measurement Approach (FMA)	The field measurement approach (FMA) uses information collected about a forest to create participant-specific look-up tables (refer definition for look-up tables below). These tables are used to calculate the carbon stock of the forest in a given year.
Gross emissions	Gross emissions mean New Zealand's total emissions from the agriculture, energy, industrial processes and product use, and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory).
Harvest	When trees within a forest, or part of a forest, are cut down.
Indigenous forest	Indigenous forests in this document mean forests that are predominantly made up of indigenous tree species. For example, a forest whose tree crown consisted of 90% tall mature Totara trees (an indigenous species) and 10% pine trees (exotic species) spread throughout the forest would be an indigenous forest.
Look-up tables [or Yield tables]	Tables used to calculate the amount of carbon stock stored in a forest, or the amount of remaining residue carbon stock after a forest is harvested. Look up tables are used for participants in the ETS to calculate their change in total carbon stock each time they report to the regulator. This is used to help calculate the amount of NZUs they will earn or be required to payback (surrender).
Nationally Determined Contribution (NDC)	NDCs are New Zealand's climate change targets under the Paris Agreement on Climate Change. New Zealand's NDC for the period 2021-2030 requires New Zealand to achieve a 50 per cent reduction of net emissions below our gross 2005 level by 2030.
Net emissions	Net emissions mean the total of gross emissions, and emissions from land-use, land-use change, and forestry minus removals, including from land-use, land-use change, and forestry (i.e., forests storing carbon as they grow) and off-shore mitigation.
Net present value (NPV)	A calculation of investment return for a decision used to calculate the cumulative value today of future streams of revenue and costs resulting from that decision. NPV calculations are often used to compare alternative investment options (where a higher NPV means an option has a higher value today).

New Zealand Emissions Trading Scheme (NZ ETS)	The ETS is a market-based emissions pricing scheme. This is the key tool used by New Zealand for reducing emissions. Under this scheme, emitters must report and pay for their emissions. Participants who remove emissions from the atmosphere (including foresters) can earn units (NZUs) that can be sold.
New Zealand Units (NZUs)	A unit issued by the Registrar of the ETS that can be used to meet obligations by participants of the ETS or sold to make revenue (sometimes referred to as 'carbon revenue').
Participant	In this context, it refers to a person, persons or entity that: • participates in a forestry category in the ETS; or • participates in another category covered by the ETS. A participant must report on emissions (or on carbon removed) and may need to pay for units (termed 'surrender') to cover their emissions or receive an entitlement of units for carbon removed from the atmosphere.
Permanent exotic forest	A forest which will not be clear-fell harvested for at least 50 years and consists predominantly of exotic trees. In this document, permanent exotic forests include forests established as exotic forests and transitioned over time to indigenous through progressive harvesting or regeneration (this specific forest model is also termed transition forests). Once a transition forest consists predominantly of indigenous trees, it would no longer be a permanent exotic forest.
Permanent forest category	A new category in the CCRA. It requires the forest to: • not be clear-felled for at least 50 years after they are registered, and • limited harvesting will be allowed without penalty if at least 30% tree crown cover remains in each hectare of the forest. Permanent forests in this category participate using stock change accounting. They will earn NZUs for as long as the forest is in the ground and the carbon stock is increasing.
Plant and walk away, or Plant and leave	A forest is established, but little active management occurs thereafter.
Post-1989 forest	Post-1989 forest land is land which meets the forest land criteria, and: • was not forest land on 31 December 1989; or • was forest land on 31 December 1989 but was deforested between 1 January 1990 and 31 December 2007; or • was pre-1990 forest land that was deforested on or after 1 January 2008, and any NZ ETS liability has been paid. Post-1989 forest land can be registered in the ETS to earn NZUs. Post-1989 forest land can include exotic and/or indigenous forest species.
Post-Settlement Governance Entities (PSGE)	The representative organisation established after a Treaty settlement with the Crown that has the purpose of representing iwi members and managing any assets resulting from the settlement.
Pre-1990 forest	Pre-1990 forest land: • was forest land on 31 December 1989; remained as forest land on 31 December 2007; and • contained predominantly exotic forest species on 31 December 2007. Land that was indigenous forest land on 31 December 1989, and remained so on 31 December 2007, is not pre-1990 forest land and is not subject to ETS obligations. Pre-1990 forest land is considered part of New Zealand's baseline emissions and removals in our NDC for 2021-2030. Pre-1990 forest land cannot earn NZUs for carbon stored in the NZ ETS (as of August 2022). Pre-1990 forest landowners can harvest and replant their forest without any liability. However, if pre-1990 forest land is deforested, it must be registered in the ETS and the landowner must buy NZUs for deforestation emissions.

Register	In the context of ETS forestry, entering an area of eligible forest land into the NZ ETS as standard or permanent post-1989 forest land.
Removals	The uptake and long-term storage of carbon dioxide from the atmosphere (for example, in vegetation).
Stock change accounting	Stock change accounting accounts for short-term changes in carbon storage. Using this method, ETS participants gain units as the forest grows and return units when it is cleared.
Whenua Māori / Te Ture Whenua Māori	Whenua Māori is defined under Te Ture Whenua Māori Act to include Māori freehold and customary land. It is held collectively by Māori kin groups, and is generally land that has never been alienated (in contrast with land that has been returned under Treaty settlements).

Appendix Two: Individual options analysis

What individual options are being considered?

192. The proposal package to manage whole-farm conversions to exotic forestry contains the design choices outlined in Table 5.

What criteria will be used to compare options?

193. The criteria to assess the individual options are provided in Section 2 (see Table 4). Some criteria are more relevant than others within this section (e.g., operational workability and managing the costs of administering the ETS). This is because the proposals described in Section 2 have a greater impact on some of the higher-level criteria and objectives than the individual options.

194. In this section, some individual options have not been assessed against some criteria where they are not relevant. Some individual options have also been assessed against additional criteria (e.g., Delivering Treaty of Waitangi obligations).

Defining a farm

What scope will options be considered within?

195. The scope of options includes:

- How should a farm be defined?
- How should farms be spatially delineated?
- Should the restrictions apply to unproductive landholdings?
- Over what timeframe should landholdings be considered unproductive? (if they are to be excluded from the restrictions.)

196. The definition will need to be able to be consistently applied in the situation where a farm boundary changes, and the applicant wishes to apply to register an additional area of forest in the ETS.

197. Farm boundary changes could occur following the sale or purchase of land. In this situation, it is intended that the farm definition would only be assessed over the revised farm boundary at future registrations (i.e., when an applicant seeks to register afforestation on newly purchased land) to ensure the rules are consistently applied through time. Officials do not propose that de-registration would be needed; for example, if land is sold and registered forest land area then exceeds the 25% exemption. Other options, including ongoing assessment during emissions returns, were discarded due to their added complexity.

How should a farm be defined?

198. There are several existing definitions in current legislation or regulations that describe farmland, farmers, or the activity of farming. These include the current definition in the CCRA, the Income Tax Act 2007 (ITA), Resource Management Act 1991 (RMA) and the Overseas Investment Act 2005 (OIA). These definitions have different ways to define farming activities, farmland, or a farm unit depending on the intent of the policy and therefore are likely to have varying applicability to the intent of this proposal. The existing definitions include:

    - Farming, raising, growing, or keeping animals for reward or the purpose of trade (CCRA)[65].
    - Land being worked, or is capable of being worked, in the farming or agricultural business of the land's owner (ITA)[66].
    - Land used exclusively or principally for arable, horticultural, pastoral or agricultural purposes (OIA)[67].
    - A landholding whose activities include agriculture (RMA)[68].

199. Two options have been provided for defining a farm based on consideration of existing farm definitions. These include:

    - A farming business which would capture all land within a business whose activities include arable, horticultural, pastoral or agricultural purposes. This definition would apply at the business level and would include all land within the business whose activities include arable, horticultural, pastoral or agricultural purposes.
    - A landholding is defined as a geographically discrete landholding whose activities include arable, horticultural, pastoral or agricultural purposes. Under this definition, a landholding would be defined as an individual geographically contiguous property under common ownership.

200. Under these definitions, leased land would be excluded, but forestry rights within farms would be included. This would enable all land under common ownership (e.g., by the business or the farmer) to be considered within the definition.

201. These definitions would apply at the time of application and registration and would not be re-assessed if the farming business or landholding increased or decreased farm area in the future.

Option One – A farming business

202. Farming businesses are highly variable in scale and can include corporate farms, commercial farms, and small holdings.

203. This definition would apply at the business level and would include all land whose activities include arable, horticultural, pastoral or agricultural purposes.

204. This definition could include corporate and commercial farms with many individual properties that are geographically dispersed.

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65 Climate Change Response Act 2002, Schedule 3 Part 5. https://www.legislation.govt.nz/act/public/2002/0040/87.0/DLM1662841.html

66 Income Tax Act 2007, sYA 1. https://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1520575.html

67 Overseas Investment Act 2005, s6. https://www.legislation.govt.nz/act/public/2005/0082/latest/DLM356891.html

68 Resource Management (National Environmental Standards for Freshwater) Regulations 2020, s3. https://www.legislation.govt.nz/regulation/public/2020/0174/latest/whole.html#LMS364209

Option Two – A geographically discrete landholding under common ownership

205. Under this definition a farm would be defined as an individual landholding under arable, horticultural, pastoral or agricultural use. All the land in the farm would be geographically contiguous and under common ownership.

206. Corporate and commercial farms would need to identify individual standalone landholdings rather than applying the definition across their business or enterprise under this definition.

Comparison of options

	Option One – A farming business	Option Two – A landholding (preferred)
Protect high and medium quality land for farming	- This option is likely to be less effective when applied to businesses with multiple geographically dispersed properties because entire landholdings (farms) could be converted and registered as part of the 25% exemption.	+ This option identifies individual properties or farms so high and medium quality land can be protected.
Provide certainty for ETS participants and forestry investment	+ The farm definition is clearly defined, but interpretation may differ across entities.	++ The farm definition is clearly defined.
Meets Treaty of Waitangi obligations	- This option is unlikely to work well for Te Ture Whenua blocks.	- This option is unlikely to work well for Te Ture Whenua blocks.
Operational feasibility and costs	- - This option increases complexity and cost compared with the status quo as the regulator must consider multiple land holdings. Challenging to verify from an operational perspective	- The option increases complexity and cost compared with the status quo
Overall assessment	-	+

Note, the criterion ‘meeting budgets and targets’ is excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

207. The primary objective of the proposal is to protect high and medium quality land for farming, and directing forestry to land less suitable for agriculture and/or a proportion of farmland. Farms are highly variable in scale and can include corporate farms, commercial farms, small holdings, and livestock blocks.

208. Defining a farm as a business presents challenges for the effectiveness of the proposal where corporate and commercial farms have multiple properties that are geographically separate. A farming business definition level may enable registration of large-scale afforestation, or complete conversion to forestry, of the individual properties under the 25% exemption. This would support economies of scale for forestry and would provide commercial farm operators with more flexibility of where to afforest, but carries a greater risk of more versatile LUC classes being afforested.

209. Defining a farm as a business is expected to be more complex and costly for both the applicant and the regulator as multiple properties will need to be identified and confirmed as part of a farming business.

210. Further, businesses can be removed from the companies register, shareholders changed, and associated businesses easily created. This could undermine the intent of the proposal. There would also need to be consideration of how forestry rights and grazing leases were treated under this option, as they would effectively increase the area under the management of a farming business.

211. If Māori land is not exempt from the proposed restrictions (the preferred option) officials would need to consider how the definition of a farm affects Māori land. (The definition of Māori land is discussed above in the section on 'Delivering Treaty of Waitangi obligations'.) Māori land under the Te Ture Whenua Māori Act 1993 is disproportionately held in fragmented parcels. For example, some 16,400 blocks have no clear structure and are an average of 14 ha in size.[69] This often means individual blocks often cannot be used as discrete businesses or land holdings and must be used with other land (which may not be contiguous or under common ownership). It is not clear that the above rules are sensible for these blocks.

212. Land held by post-settlement governance entities is more likely to be in landholdings that are viable business units (because these landholdings have been actively chosen by those entities).

213. Defining a farm as an individual geographically contiguous property under arable, horticultural, pastoral or agricultural use is likely to meet the primary objective because it identifies individual landholdings rather than multiple landholdings within a farming business.

214. Defining a farm as an individual geographically contiguous property under arable, horticultural, pastoral or agricultural use is the preferred option, combined with an exemption for Māori land given the challenges described above. If Māori land is not exempt, an area threshold below which the rules do not apply may be appropriate.

How should a farm be spatially delineated?

What options are being considered?

215. The spatial delineation of the farm will determine the total farm area, i.e., the denominator for the 25% exemption. Under the 25% exemption, the area of exotic forest land on LUC classes 1-6 divided by the total farm area must be less than 25%. To effectively apply the 25% exemption, the geographical extent of a farm must be correctly and consistently identified.

216. The farm extent will need to be clearly defined to ensure it is consistently applied across applicants and has clear rules on what must be included or excluded within the extent.

217. An option with the ability to exclude areas of unproductive land, such as indigenous forests, within the farm extent was discarded due to its complexity for the regulator and limited benefit to applicants. Discussion of whether to exclude unproductive landholdings from the restrictions below.

Option One – Applicant-defined

218. The farm extent is defined by the applicant. Under this option, the applicant could consider management and/or ownership elements when assessing the farm extent. For example, at registration the applicant would provide the farm extent on a digital map or application.

[69] Harmsowrth, G., 2017. Unlocking the potential of Māori land: A Kaupapa Māori approach to using and developing integrated knowledge, models, and tools. MPI Link seminar, Wellington, 4 May 2017. https://www.landcareresearch.co.nz/events/link-seminars/

Option Two – Land parcel (or aggregation of land parcels)

219. The farm extent is defined by land parcels or an aggregation of land parcels that are geographically contiguous and under common ownership. Under this option the applicant would be required to identify land parcels associated with the farm extent during registration.

Comparison of options

	Option One – Applicant defined farm extent	Option Two – Land parcel (or aggregation of land parcels) (preferred)
Protect high and medium quality land for farming	0 This option may be effective at correctly identifying the extent of farms but is open to gaming due to being applicant defined.	+ This option will be effective at correctly identifying the extent of farms.
Provide certainty for ETS participants and forestry investment	- There may be variation between applicants in how farm extent is defined	+ The farm extent is clearly, and consistency defined
Operational feasibility and costs	- This option increases complexity and cost compared with the status quo.	- This option increases complexity and cost compared with the status quo.
Overall assessment	-	+

Note, the criteria ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

220. Applicant-defined farm extents (option one) may allow for inconsistencies between applicants in how farm extents are defined. This option could also be open to gaming depending on the level of checking of farm extents by the regulator.

221. Defining the farm extent by land parcels (or aggregation) (option two) avoids the potential for gaming or inconsistent application in option one and removes any subjectivity in the assessment of the farm extent.

222. Option two is the preferred option as it can be consistently applied and aligns with the intent of the proposal to protect productive land.

Should the restrictions apply to unproductive landholdings?

What options are being considered?

223. Farmed land could be identified geospatially or through information supplied by the applicant. For example, using a geospatial assessment, pasture could be defined as farmland, but scrubland would not be (although scrubland is likely to be in LUC classes 7-8 and would be excluded from the restrictions). Information supplied by the applicant could include receipts from when the land was last farmed or other evidence proving the land is unproductive.

224. As this assessment is likely to be technically complex, they are more suitable to include in secondary legislation, and would be subject to consultation.

Option One – all landholdings are included in the LUC based restrictions

225. All landholdings are included in the LUC based restrictions regardless of whether it is farmed or not.

Option Two – landholdings that aren't farmed are excluded from the restrictions

226. The application of the LUC based restrictions considers whether the landholding is farmed or not. This would include whether the land was fallow or unproductive for an extended period prior to planting (e.g., was not farmed for five years or longer). This would not include time lags between land purchase, preparation and planting or while land management decisions are made.

Comparison of options

	Option One – all landholdings are included in the LUC based restrictions	Option Two – landholdings that aren't farmed are excluded from the restrictions
Protect high and medium quality land for farming	+ This option will be effective at correctly identifying productive farmland, but restrictions will also apply to unproductive land. However, the impact on unproductive land is likely to be mitigated by exclusion of LUC classes 7 and 8 from restrictions.	++ This option will be effective at correctly identifying productive farmland, and land that isn't farmed is excluded from the restrictions.
Provide certainty for ETS participants and forestry investment	++ This option provides certainty on where rules apply.	+ This option provides certainty on where rules apply but defining unproductive land may be subjective.
Operational feasibility and costs	0 All land is included in the LUC based restrictions regardless of whether it is farmed or not, so no further costs and complexity is added.	- Increases cost and complexity compared with option one as there will be increased scrutiny required for the regulator to identify unproductive land. Unproductive land may be difficult for the regulator to identify geospatially.
Overall assessment	+	+

Note, the criteria 'meeting budgets and targets' and 'meet Treaty obligations' are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

227. The options are equally likely to address the problem. Option Two will be effective at correctly identifying productive land, but the identification of unproductive land may be difficult and subjective.

228. Further, Option Two will likely have a marginal impact over Option One because unproductive land holdings are likely to be on higher LUC classes (e.g., LUC classes 7 and 8) that are not covered by the restrictions. If option two is progressed, officials will need to consider how the assessment is undertaken. This is discussed next.

How should farmed land be assessed?

What options are being considered?

229. This option would apply if landholdings that aren't farmed are excluded from the restrictions (see above). There are two broad options for assessing whether land is farmed land:

Option One – High trust

230. The applicant must provide assurance (e.g., a statutory declaration) that a landholding is unproductive. A high trust model would be combined with significant penalties if trust is breached. This could be through a follow-up compliance approach (e.g., random audits of a certain number of registrations each year).

Option Two – Regulator assessment

231. The regulator must be satisfied that the landholding is not being used productively. This could involve assessment of aerial imagery, for example.

Comparison of options

	Option One – High trust (preferred)	Option Two – Regulator assessment
Protect high and medium quality land for farming	+ If penalties are significant enough to be a deterrent, this option could be effective at correctly identifying unproductive land.	++ This option will be effective at correctly identifying unproductive land.
Provide certainty for ETS participants and forestry investment	+ While a high trust approach could create uncertainty in applicants as to whether they are compliant, on balance it is expected to provide more certainty of outcomes.	- A regulator assessment could require discretion and add uncertainty for ETS applicants.
Operational feasibility and costs	++ Less up-front impact on registration processing time as the regulator does not need to assess every application.	-- Increased complexity due to longer assessment timeframe.
Overall assessment	+	**0**

Note, the criteria 'meeting budgets and targets' and 'meet Treaty obligations' are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

232. A high trust option is more likely to best address the problem as it takes a pragmatic approach to assessing whether land is farmed land without adding as much operational complexity and cost as a regulator assessment. However, if the Government proceeds with a regulator assessment, we will need to consider what timeframe it should cover.

Over what timeframe should landholdings be considered unproductive?

233. The productive use of landholdings can change over time, and it may be important have a temporal component to the assessment of whether land was farmed to accommodate this.

234. This could consider marginal land that could have been farmed up until it is no longer economically viable; time lags between land purchase, preparation and planting; or while land management decisions are made.

235. Under this design choice, a landholding would be considered unproductive if it didn't meet the definition of a farm (e.g., predominantly under arable, horticultural, pastoral or agricultural use) over a period (as explored in the options below).

236. This could be assessed by the regulator geospatially or through information supplied by the applicant. For example, using a geospatial assessment, pasture could be defined as farmland, and scrubland or indigenous forest as unproductive areas. The applicant could provide evidence such as receipts for the historic sale of stock units to support their application. The applicant could provide further assurance (e.g., a statutory declaration) that a landholding is unproductive.

237. The following options are aligned with the timing associated with the treatment of deforestation within the CCRA (i.e., the shortest duration is the time the CCRA currently legislates for re-forestation)[70].

Option One – The assessment considers the land use over the previous four years

238. The assessment considers whether the land was predominantly unproductive over the previous four years prior to planting.

Option Two – The assessment considers the land use over the previous 10 years

239. The assessment considers whether the land was predominantly unproductive over the previous 10 years prior to planting.

Option Three – The assessment considers the land use over the previous 20 years

240. The assessment considers whether the land was predominantly unproductive over the previous 20 years prior to planting.

Comparison of options

	Option One – Considers land use over the previous four years	Option Two – Considers land use over the previous 10 years	Option Three – Considers land use over the previous 20 years
Protect high and medium quality land for farming	+ This option will be effective at correctly identifying unproductive and, but assessment will be limited to the previous four years.	++ This option will be effective at correctly identifying unproductive land.	++ This option will be effective at correctly identifying unproductive land
Provide certainty for ETS participants and forestry investment	+ Provides certainty on when rules apply.	+ Provides certainty on when rules apply.	+ Provides certainty on when rules apply.
Operational feasibility and costs	- Simplest option as the assessment timeframe is limited.	-- Increased complexity compared with option one due to longer assessment timeframe.	-- Increased complexity compared with option one and two due to longer assessment timeframe.
Overall assessment	+	+	+

[70] Climate Change Response Act 2002, s179. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM1662763.html

Note, the criteria 'meeting budgets and targets' and 'meet Treaty obligations' are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

241. All options are equally likely to meet the policy objectives. The preferred option depends on whether relative operational simplicity (Option One) or greater certainty in correctly identifying unproductive land (Options Two and Three) is preferred.

Use of Land Use Capability

242. Design choices around the use of LUC underpin the proposals – as the proposal restricts ETS registrations for exotic forestry based on the land's LUC class (see *The Land Use Capability (LUC) system* for a description of the system**)**.[71] New Zealand has national-scale LUC mapping for the North and South Islands at a 1:50,000 scale that was prepared between 1975 and 1998.

What scope will options be considered within?

243. The scope of options for the use of LUC includes:

- What scale of LUC should be used.
- If property-scale information is used, how it should be reviewed.

244. There are no other databases that classify land based on its productive potential.

What scale of LUC should be used?

What options are being considered?

245. Scale is an important consideration when classifying LUC and when using existing LUC information. The mapping scale is usually based on the smallest area of interest. At the farm-scale, this is the smallest area of land that can be managed differently – such as two different soil types within a paddock. However, such detailed scales are less suitable for mapping projects that involve extensive areas.

246. These proposals have national coverage but apply at the farm scale. National scale LUC mapping exists for the North and South Islands[72] at a scale of 1:50,000, but at this scale LUC is coarse and is not usually considered appropriate for application at the property scale. Scales as small as 1:500 are more appropriate for some farm applications.[73] However, detailed surveys to compile farm-scale LUC information can be expensive (discussed further below).

247. Some organisations maintain regional-scale LUC information, for example, Hawkes Bay Regional Council.[74]

Option One – National-scale only

248. Option One will require all applications to register farmland in the ETS to use national-scale LUC information.

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[71] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

[72] National LUC mapping is available from https://lris.scinfo.org.nz/layer/48076-nzlri-land-use-capability-2021/.

[73] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

[74] Hawkes Bay Regional Council. Land Use Capability Tool. Available from: https://www.hbrc.govt.nz/environment/farmers-hub/how-we-can-help-you/luc/

Option Two – National/regional scale

249. Option Two will require applications to register farmland in the ETS to use national-scale LUC information, unless regional-scale information is available that has been developed via a sound process. In that case, the layer used to assess registrations would be updated with the regional-scale information.

Option Three – Property-scale only

250. Option Three would require an applicant to provide their farm-scale LUC classification when they apply to register afforestation in the ETS.

Option Four – National scale by default, property scale on request

251. Under Option Four, applicants could choose which scale they wish to use. Applicants could use freely-available national scale information, or could choose to pay for property scale information.

252. One scale would need to be used consistently to avoid gaming, so an applicant could not use the national-scale for one block and property-scale for another.

Comparison of options

	Option One – National scale only	Option Two – National/regional scale	Option Three – Property scale only	Option Four – Property scale on request
Protect high and medium quality land for farming	+ LUC classes may be coarse and miss information but will be effective at a national scale.	+ LUC classes may still miss information but are less coarse than at the national scale.	++ All farmlands will be classified appropriately.	+ Farmland will be classified appropriately if the landowner chooses to use property scale classification, but there are risks of gaming
Provide certainty for ETS participants and forestry investment	++ Provides consistent information for all landowners seeking to afforest and register in the ETS	++ Provides consistent information for all landowners seeking to afforest and register in the ETS	- Landowners will not know how the restrictions will affect land and whether they can afforest until they have incurred costs of mapping	+ Landowners will have consistent information on the likely application of the restrictions. They can choose to take on the uncertainty of property scale information.
Operational feasibility and costs	++ Simplest approach and uses freely available information. Fastest to implement and least cost for applicant.	+ Simple approach and uses freely available information, but ongoing administrative costs of updating the layer as regional classifications are developed.	- - Regulator required to manage inputs of property scale classification. Significant time to implement and costly for applicant.	- Regulator required to manage inputs of property scale classification. Significant time to implement. Applicants have choice.
Overall assessment	++	+	-	+

Note, the criteria ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

253. Option One is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits. It will provide consistent information for all landowners seeking to afforest and register in the ETS. However, the LUC classification may be coarse, and pockets of more versatile land within less versatile land may be missing. This could result in high-versatility productive land being converted to forestry when it should be protected or could result in low-versatility land being mistakenly protected.

254. Figure 4 below shows the difference between national-scale and property-scale LUC mapping for a case study farm. At the national scale, this farm only has LUC classes 3 and 6 land. However, at the farm scale, it also has class 4 and 7 land. Some class 3 and 4 land at farm scale is mapped as class 6 at the national scale. If national scale information is used, the class 4 land could be afforested and registered (if the landowner received a registration permit through the allocation system, discussed later) when it should be protected by the moratorium.

255. The small pocket of LUC class 7 land is mapped as class 6 land at the national scale – resulting in this land being protected by the allocation when class 7 and 8 land should be unconstrained.[75]

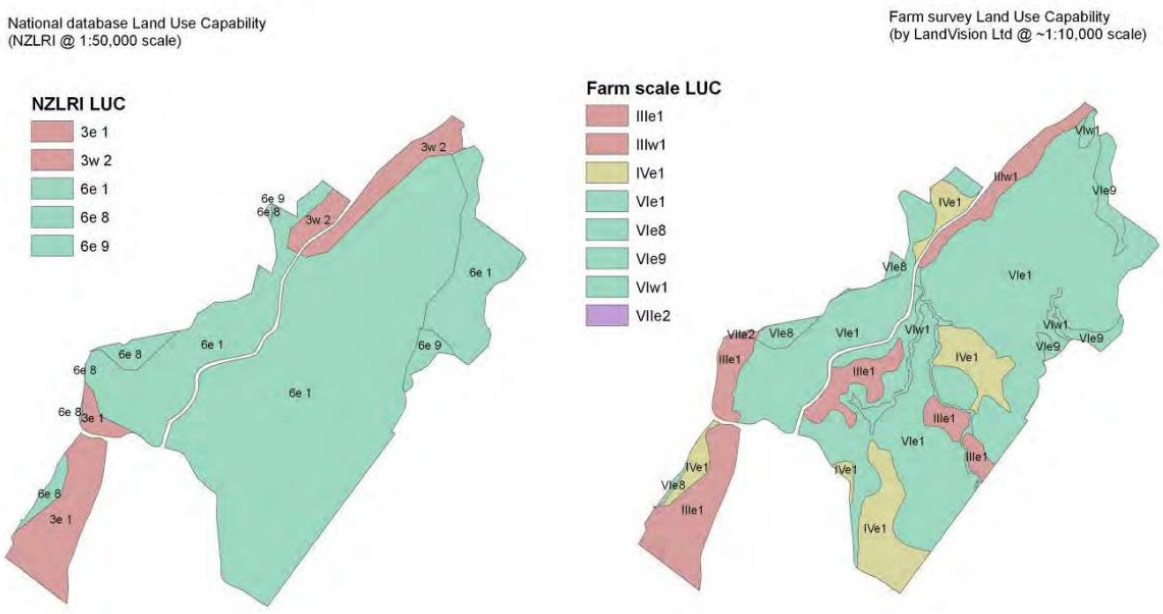

Figure 4: National scale versus property scale LUC classes and subclasses[76]

256. Option Three avoids the risks of Option One. However, farm-level surveys may be too expensive for many farmers because finer scales require a higher density of information (e.g., soil samples).[77] This presents an equity concern as those who cannot pay for a farm-level survey would be prevented from afforesting.

[75] This case study farm is 264 ha. Officials estimate that roughly 30 hectares (11%) was classified as LUC class 6 at the national scale, and as LUC class 3 or 4 at the property scale – resulting in 30 more hectares being protected by the moratorium at the property scale. The small pocket of land that is classified as LUC class 6 at the national scale but LUC class 7 at the property scale is too small to estimate (likely <1% of the farm area).

[76] AgResearch, 2008. FARMS test farms project: Testing the One Plan approach to contaminant management and linking the FARM Strategy to the SLUI Whole Farm Plan design. Available from: https://www.horizons.govt.nz/HRC/media/Media/One%20Plan%20Documents/Land2008FARMS-test-farms-projectAgResearch-small-test1.pdf?ext=.pdf

[77] Manaaki Whenua Landcare Research. Scale matters one size does not fit all. Soils Portal. Available from: https://soils.landcareresearch.co.nz/topics/soil-survey/scale-matters/

257. Option Two avoids the expense of Option Three but can provide higher resolution information than Option One where regional organisations have better local information available (such as higher resolution soil or slope data).

258. Option Four is a middle ground, providing applicants the choice of whether to use property-scale information. This creates some risks. For example, an applicant could procure a property-scale classification, decide that the rules would work more favourably for their farm under the national-scale classification, and not provide the regulator with their property-scale information.

259. Option Four might be the preferred option if the priority is giving flexibility to the applicants in terms of balancing costs with the weaknesses of national-scale LUC. Options One or Two would be preferred if the priority is keeping the cost burden on taxpayers and applicants low. However, Option Three best ensures that high-quality productive land is classified appropriately, most effectively meeting the policy's primary objective (but at increased cost). Option Four is the preferred option.

260. Options Three and Four would require some means of quality assurance for the property-scale information to check that it has been completed robustly or by suitably qualified people. This is discussed next.

Reviewing property-scale information

What options are being considered?

261. The LUC handbook[78] notes that the assessment technique for LUC classification must be transparent, robust, based on good science, and able to withstand scrutiny through the legal system.

262. National-scale and regional-scale LUC information is freely available, transparent, and consistent. For property-scale LUC, different surveyors will use different procedures, and mapping LUC requires subjective judgements. If property-scale LUC information can be used, then it needs to be determined what role, if any, the regulator needs to play in ensuring the property-scale information is robust and reliable.

263. Like the assessment of whether landholdings are unproductive, it is considered that the scale of LUC will need to be defined at registration.

Option One – High trust (no assessment) – applicant defined

264. The regulator could take no role in assessing the quality of property scale LUC classification or the qualifications or competencies of the surveyor at registration.

265. Even in a high trust model, the regulator needs powers to reject property-scale information when it is clearly inappropriate. For example, the regulator would need to be able to request more information or reject the application based on an unreasonable LUC classification. For this and all other options, the regulator will also need mapping standards to ensure consistent mapping approaches that integrate efficiently into existing IT systems.

266. Legislation would still prescribe what definitions or processes applicants are trusted to follow. Applicants could be required to provide a statutory declaration that they have not intentionally falsified their property's LUC classification. There would be follow-up compliance (e.g., random audits) combined with significant penalties if a participant was found to be non-compliant.

[78] Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

Option Two – Prescribe how mapping can be done – applicant defined with prescription

267. Legislation could prescribe what processes the review of property scale LUC information must follow. This could be best practice principles in line with the Land Use Capability Survey Handbook. When assessing an application involving property scale LUC information, the regulator would need to be satisfied that those processes specified in legislation had been followed.

Option Three – Prescribe surveyor's qualifications or competencies

268. Legislation would prescribe the qualifications or competencies a surveyor needs to have to provide property-scale LUC information for registration applications. The regulator would need to be satisfied that the LUC assessment was carried out by someone who meets those requirements. This could be done by a surveyor providing the regulator with evidence that they have met the prescribed qualifications or competencies, or the regulator creating a scheme to accredit surveyors.

Option Four – Mapping must be checked or contracted by the regulator

269. Under this option, the regulator would need to be satisfied with the quality of the property scale LUC classification. This could involve staff comparing geographic information systems with underlying information that influences LUC (e.g., digital elevation models, soil types), and/or visiting the property to undertake a full survey.

270. The regulator could also contract out this assessment (these costs may need to be recovered). This option could also involve the regulator only assessing 'high risk' applications in detail, for example where there is a large discrepancy between the national-scale and property-scale assessment (e.g., more than 50% of the farm area is classified in different LUC classes).

Comparison of options

	Option One – High trust (preferred)	Option Two – Prescribe how mapping can be done	Option Three – Prescribe surveyor's qualifications or competencies	Option Four – Mapping must be checked by the regulator
Protect high and medium quality land for farming	- - Different applicants may have different quality LUC classifications so farmland may be poorly protected.	+ Manages risks of inconsistent quality assessments. Farmland is consistently protected.	+ Manages risks of inconsistent quality assessments. Farmland is consistently protected.	++ Ensures consistent quality assessments. Farmland is consistently protected
Provide certainty for ETS participants and forestry investment	++ Applicants know the classification they provide will hold	++ Applicants know the classification they provide will hold provided good practice was followed	++ Applicants know the classification they provide will hold provided they employed a qualified surveyor	- Final classification depends on the regulator's assessment, adding uncertainty
Operational feasibility and costs	++ No added cost to the regulator. No added implementation time.	0 Adds to workload when assessing applications. Minimal added implementation time	- Adds to workload when assessing applications. Added implementation time to stand up accreditation system for surveyors	-- Significant additional workload when assessing applications. Added implementation time to stand up system for verifying property-scale information

Overall assessment	+	+	+	0

Note, the criteria 'meeting budgets and targets' and 'meet Treaty obligations' are excluded from the analysis as these options have no impact on these criteria

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

271. Option One has the advantage of being cost-effective for both the regulator, the applicant, and the surveyor. The regulator does not need to spend resources assessing the mapping quality, the applicant has the option of assessing their LUC classification themselves, and the surveyor does not need to spend time and resources requalifying or registering in a new accreditation system.

272. However, Option One risks different applicants having different quality information. There is also the risk of some applicants gaming the system by purposefully altering their LUC classification in favour of less versatile LUC classes to maximise the amount of land they can afforest.

273. Option Two would be more expensive for the regulator as it would add to their workload when assessing registration applications, and a proportion of these costs may be passed on to applicants. As subjective judgements are involved, it may also involve more reviews of decisions.[79] It may increase costs for the applicant as consistency with specified processes may require them to outsource the survey. Existing surveyors should not need to requalify or upskill if they are already following good practice. While keeping costs low, this option manages the risks of inconsistent quality and gaming by prescribing the processes that need to be followed.

274. Option Three would add costs for the regulator and for surveyors if they have to upskill or register with an accreditation body. If existing accreditation bodies are not fit for this purpose, a new body would be required which would be resource intensive to build and run. These costs may be passed on to applicants. Entry requirements to become accredited should not create competition problems or a shortage of qualified people. This option would help ensure consistent quality of LUC classifications and would manage the risk of gaming.

275. Option Four is the most expensive for the regulator. New staff with LUC expertise would be required, or existing staff would need further training. Depending on cost recovery requirements, the regulator would need to pass on these higher costs to the applicant. Further, applicants who already have a property-scale LUC assessment would have to pay for another one as through the regulator. Application processing time would also increase. However, this approach avoids the risks of gaming the system and ensures consistent quality of LUC classification among applicants.

276. The preferred option is a high-trust approach due to the costs and implementation time associated with the other options.

277. For all options officials will also need to consider whether the assessment should be timebound.

Compliance and enforcement

278. A high trust model, or any other option, could also be complemented by strong compliance powers. This means that if the regulator finds that an assessment has been falsified to permit more afforestation to be registered, they can impose consequences or strong penalties. This could be a strong disincentive for attempting to game the rules even in a high trust model where the regulator does not expend significant resources checking every application.

[79] Section 144 of the CCRA sets out the process for requesting reviews of decisions relating to participation in the ETS. Climate Change Response Act 2002, s144. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM1662716.html

279. For example, the penalty for submitting an incorrect emissions return is set out in section 134C of the CCRA.[80] If a forestry participant submits an incorrect emissions return they have to pay a penalty. A culpability factor is applied so the regulator can adjust the penalty accordingly. This approach could also be considered within the LUC classification options.

Managing high-versatility productive land

280. LUC class 1-5 land is New Zealand's more versatile land. These design choices consider how to restrict ETS forestry registrations on this land. These design choices interact with proposals to provide flexibility on-farm.

What scope will options be considered within?

281. The scope of options for the moratorium on LUC class 1-5 includes:

- Whether a moratorium is needed
- Whether the moratorium ends automatically after a set period or requires an active decision to end or continue.

282. Officials are not considering other options to manage whole-farm conversions on LUC class 1-5, such as an annual hectare limit, because these LUC classes include the only classes suitable for arable cropping and with high suitability for many types of pastoral farming. A moratorium provides certainty that this land will be protected. However, officials are considering when the moratorium needs to come into effect.

Setting the moratorium

What options are being considered?

283. An option to back-date the moratorium was discarded as officials didn't consider it complied with the LDAC guidelines[81], where legislation with retrospective effect must be capable of justification.

Option One – No moratorium

284. This option would see no moratorium being implemented to prevent whole-farm conversions to exotic forestry on LUC class 1-5 from registering in the ETS.

Option Two – Moratorium on LUC class 1-5

285. Under this option, the three-year moratorium would apply. Implementation (e.g., updates to IT system, staff training, developing new operational procedures) would likely take longer than Royal Assent. Registration applications received from the date of Royal Assent could be treated under the new rules, once the system is operational, or secondary legislation could be used to turn on the moratorium once the system is ready.

286. Specific design choices, including the review process for the moratorium, are discussed below.

Comparison of options

	Option One – No moratorium (status quo)	Option Two – Moratorium on LUC class 1-5 (preferred)
Protect high and medium quality land for farming	0	++

[80] Climate Change Response Act 2002, s134C. https://www.legislation.govt.nz/act/public/2002/0040/latest/LMS441377.html

[81] LDAC, 2021. Legislation Guidelines. https://www.ldac.org.nz/assets/Guidelines/LDAC-Legislation-Guidelines-2021-edition.pdf

	Under the status quo there is a risk of afforestation on high-quality land. Forestry became competitive with more productive agricultural land uses at recent NZU prices.	The moratorium will ensure the protection of high-quality land on LUC classes 1-5.
Provide certainty for ETS participants and forestry investment	**0** Farmers and foresters have certainty that they can afforest on any land regardless of LUC class.	**0** Farmers' and foresters' options are restricted, but the moratorium provides certainty of where registration is prohibited.
Operational feasibility and costs	**0** No increase in costs or complexity.	**-** Administering and reviewing the moratorium means the regulator will incur some ongoing operational costs.
Overall assessment	**0**	**+**

Note, the criteria 'meeting budgets and targets'[82] and 'meet Treaty obligations' are excluded from the analysis as these options have no impact on these criteria

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

287. A moratorium on whole-farm conversions to exotic forestry on LUC class 1-5 would help Ministers meet their objective to limit whole-farm conversions on high-quality productive land, but the Government could reconsider registrations on these LUC classes in future.

288. There is currently only a relatively small proportion of ETS registered forests on LUC classes 1-5 (around 10% of registered forests), so a moratorium on this land will have a small impact on afforestation and ETS registrations in the near term.

289. However, restrictions on conversions on this land may become more important in future if access to higher LUC classes is limited and NZU prices increase (see Table 1). Returns for exotic forests have been cost competitive with pastoral land uses on better classes of land (e.g., cattle finishing farms, lower productivity dairy) at historical NZU price highs (Table 1).

290. The short-term risk of afforestation on these LUC classes remains low given current carbon prices (and price expectations), which would support the moratorium being triggered in the future when the risk justifies the limitation on land use. However, this comes at the expense of certainty and cost.

291. A moratorium on LUC classes 1-5 starting as soon as implementation is possible is therefore the preferred option.

What is the default position of the moratorium?

What options are being considered?

292. The moratorium could end automatically after a set period of time, or it could require an active decision to end or continue.

Option One – End automatically

293. Under this approach, the moratorium would automatically end at the end of the specified time period (and could not be renewed).

[82] This is because there is little ETS-registered forest on LUC class 1-5.

Option Two – Stays on unless removed

294. The moratorium would stay in place until actively removed. If it is removed, the power to reinstate the moratorium could remain, and the need for the moratorium could then be re-evaluated as needed if new information comes to light.

295. The power to create the moratorium would be in primary legislation, and the ability to turn it on or off would be in secondary legislation to give the Government of the day the ability to respond to changing priorities and circumstances.

Option Three – Turns off unless continued

296. Under Option Three, the moratorium would automatically end unless there is a decision for it to continue.

- The moratorium would remain in place for another set period of time, then would automatically end.
- If the moratorium turns off, the power to reinstate the moratorium could remain, and the need for the moratorium could then be re-evaluated as needed.

297. Like Option two, the power to create the moratorium would therefore be in primary legislation, and the ability to turn it on or off would be in secondary legislation to give the Government of the day the ability to respond to changing priorities and circumstances.

Comparison of option

	Option One – End automatically	Option Two – Stays on unless removed (preferred)	Option Three Turns off unless continued
Protect high and medium quality land for farming	**0** There is some risk of afforestation of LUC class 1-5 and registration in the ETS once the moratorium ends – E.g., returns for exotic forests have been cost competitive with pastoral land uses on better classes of land at historical NZU price highs	**++** This allows the Government to keep the moratorium in place until the risk is managed. If the NZU price falls and the risk of afforestation declines, the Government could choose to end the moratorium.	**+** This allows the Government to keep the moratorium in place if the risk remains high. This is a less conservative approach than option two as it requires an active decision to continue the moratorium.
Provide certainty for ETS participants and forestry investment	**0** This approach maximises certainty that registration on LUC class 1-5 will be prohibited for three years and then allowed.	**-** The flexibility of the review adds some uncertainty for farmers and foresters	**-** The flexibility of the review adds some uncertainty for farmers and foresters
Operational feasibility and costs	**0**	**0/-** A regular review process will add some administrative costs, but this is not expected to be significantly different form the status quo.	**0/-** A regular review process will add some administrative costs, but this is not expected to be significantly different form the status quo.
Overall assessment	**0**	**+**	**0**

Note, the criteria ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

298. Option two is expected to meet policy objectives because it conservatively manages the risk of afforestation on LUC classes 1-5.

299. The incentive to afforest different classes of land largely depends on the NZU price, as discussed above, which is hard to predict. Ensuring the Government can review the need for the moratorium, and turn it on if needed, means it can respond to the changing risks.

300. One of the attractions of option two is it tends to be easier to take restrictions away than to put them back in place (including the acceptability of restoring the restrictions to the public). A more conservative approach ensures the restrictions will not be taken away prematurely when it may be difficult to justify reinstating it, compared to continuing it.

301. Reviewing the status of the moratorium is discussed later, alongside the review of the annual hectare limit.

302. The duration of the moratorium also needs to be considered, particularly for option one. Previously a three-year moratorium has been discussed, but it would also be worth considering aligning the moratorium with mandatory emissions return (MERP) periods.

Annual hectare limit on LUC class 6

What scope will options be considered within?

303. The scope of options for the annual hectare limit on LUC class 6 includes:

- Whether an annual hectare limit is needed.
- What is being permitted.
- How should the annual hectare limit be allocated.
- How long should registration permits last for.
- What should happen with unallocated or unused registration permits.
- Should registration permits be tradeable.

Is the annual hectare limit needed?

What options are being considered?

Option One – Status quo

304. This option would see no annual hectare limit being implemented to limit whole-farm conversions to exotic forestry on LUC class 6 from registering in the ETS.

Option Two – Annual hectare limit on LUC class 6

305. Under option two, there would be an annual hectare limit on LUC class 6. The area able to be afforested and registered in the ETS would be set in secondary legislation and updated based on criteria. This review process is discussed below.

Comparison of option

	Option One – Status quo)	Option Two – Annual hectare limit on LUC class 6 (preferred)

Protect high and medium quality land for farming	**0** Under the status quo there is ongoing afforestation on LUC class 6 land at current NZU prices.	**++** The annual hectare limit will ensure that registration on LUC class 6 is limited.
Provide certainty for ETS participants and forestry investment	**0** Farmers and foresters have certainty that they can afforest on any LUC class.	**-** Regulatory change and uncertainty about how the annual hectare limit will be allocated among farmers and foresters adds investment uncertainty.
Operational feasibility and costs	**0** The status quo results in no additional complexity and cost.	**- -** Administering and reviewing the annual hectare limit mean the regulator incurs some ongoing operational complexity and costs which could be significant depending on the allocation system design.
Overall assessment	**0**	**0**

Note, the criterion 'meet Treaty obligations' and 'meeting budgets and targets' is excluded from the analysis as these options have no impact on this criterion.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

306. An annual hectare limit on whole-farm conversions to exotic forestry on LUC class 6 would help Ministers meet their objective to limit whole-farm conversions on medium-versatility productive land while leaving some land for production forestry.

307. LUC class 6 is important for production forestry compared to other LUC classes. Production forestry is unlikely to be a cost-effective use of more versatile LUC classes compared to more profitable agricultural uses, and limitations start to make harvest more challenging on LUC classes 7-8. Therefore, ensuring some LUC class 6 remains available for ETS registration is critical if the Government wishes to support growing the production forestry and wood processing sectors.

308. An annual hectare limit is the preferred approach to balance protecting productive agricultural land and meeting the Government's broader objectives.

Who or what should be permitted?

What options are being considered?

309. Officials propose allocating the annual hectare limit through registration permits. A permit would allow a specified number of hectares of forest land on LUC class 6 to be registered in the ETS, and would be surrendered at registration. The permit holder would need to have submitted their application for registration before the associated permit expires, and the application would need to be full and complete. This requires considering what a registration permit will be attached to. This could be the person, the land, or the activity.

310. This relates to the relationship between the ETS participant and the permit holder. The ETS participant could be required to hold the permit themselves, or it could be attached to the land they are seeking to register (either attached to the specific land parcel or the landowner, in cases where the landowner and the ETS participant are not the same person).

Option One – Person (the landowner)

311. The registration permit would be attached to the owner of the afforested land. This would not necessarily be the entity carrying out the afforestation, for example if the landowner leases their land to a forestry company.

312. The registration permit could apply to any LUC class 6 land owned by that person. If the landowner sold LUC class 6 land, they would retain the permit, but they would have to own LUC class 6 land to use the permit.

Option Two – Person (the prospective ETS participant)

313. The registration permit would be attached to the person who would become the ETS participant. If a forestry company is leasing land from the landowner to afforest, the forestry company would hold the registration permit.

314. This approach would allow the prospective ETS participant to afforest any LUC class 6 land they have rights to (e.g., through ownership or lease).

Option Three – Land

315. The registration permit would be attached to the land parcel. It is held by the owner of the land but is only to register the specified area of land. If the land ownership is transferred, the permit would stay with the land parcel.

Option Four – Registration into a specific category

316. The registration permit would be associated with a particular ETS category, for example giving the permit holder the ability to register a certain area of LUC class 6 land in the averaging category or the permanent forest category.

317. This would give the permit holder the ability to register any forest on LUC class 6 land that they have rights to register if they undertook the permitted activity on it.

Comparison of options

	Option One – Landowner	Option Two – ETS participant	Option Three – Land	Option Four – Activity
Provide certainty for ETS participants and forestry investment	+ Landowner has certainty that afforestation on their LUC class 6 land can be registered in the ETS. Prospective participants (who are not landowners) do not have certainty that they will be able to register any LUC class 6 they acquire; this would depend on whether the landowner has a permit.	++ Prospective ETS participant has certainty that they can register afforestation on LUC class 6 land they acquire in the future. Landowners not intending to participate in the ETS do not have certainty about afforestation potential on their LUC class 6 land.	- There is no guarantee that the land is eligible for the ETS even if it has a permit, requiring prospective participants to take the risk of investing in a permit assuming that the land will be eligible.	- The permit can be held by any person and attached to any land, maximising flexibility and certainty over the type of forest, but less certainty over where afforestation will occur.
Operational feasibility and costs	0 Certainty of permit ownership reduces administrative costs as permits could not be transferred	0 Certainty of permit ownership reduces administrative costs as permits could not be transferred	0 Certainty of permit ownership reduces administrative costs as permits could not be transferred.	-- Matching registration to intended activity adds complexity, particularly if this needs to be

				continually monitored and enforced.
Overall assessment	0	+	0	-

Note, the criteria ‘protect high and medium quality land for farming’, ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

318. Option two is likely to best address the problem, meet the policy objective, and deliver the highest net benefits.

319. The key difference between attaching the permit to the ETS participant (option two) or the land (option three) is who receives certainty. In option two, a prospective ETS participant has a guarantee that any LUC class 6 land they acquire within the permitted hectare allocation will be able to be afforested and registered (provided the rest of their application meets requirements). In option three, all parties involved in a particular transaction over a LUC class 6 land parcel will have certainty that afforestation on that land will be able to be registered.

320. Option two is agencies’ preferred option because it gives certainty about future ETS participation and flexibility over where the prospective participant can acquire land, which supports confidence in the allocation system. Attaching permits to landowners or to the land gives certainty about the value of the investment but may be less effective at supporting afforestation due to reduced flexibility over where the afforestation can occur.

321. Issues may arise when a participant changes their intention. For example, under option four, the participant may not carry the obligation to maintain the forest in the same activity (i.e., if they shift from the averaging category to the permanent category). This possibility calls into question the integrity of attaching the permit to the category if there is no guarantee that the forest will be maintained in the category after registration.

322. Combinations of the above options could also be considered. For example, registration permits could be attached to both the prospective ETS participant and the land (options two and three combined). This would give the government certainty over where afforestation will occur and give the certainty over future ETS participation. This is the Ministers’ preferred option.

How long should registration permits last for?

What options are being considered?

323. There is usually a one- to two-year lead time for afforestation, as investors and landowners secure funding, purchase land (if applicable), and order seedlings. Decisions to plant trees each year are usually made one to two years earlier. This means that a registration permit needs to last for several years.

324. Some foresters may be willing to make investment decisions on the basis that they may or may not receive an allocation at a particular point in time, but it is likely that many will not want or be able to afforest unless they have already received a permit. The allocation should therefore consist of a registration permit for a particular number of hectares, that needs to last for enough time for investments to be made and trees planted and reach eligibility to register in the ETS.

325. It is proposed that a registration permit is needed before a forest is registered in the ETS on LUC class 6 land. If an application is made for afforestation on LUC class 6 without a registration permit (and it is not within the 25% exemption, discussed below)

officials propose that the application be rejected, or the applicant be required to revise their application for only permitted afforestation (e.g., on LUC class 7-8 and 25% of LUC class 6).

326. What happens when a registration permit expires needs to be considered. Rules will be applied based on the date of submitting a registration application, so a registration application will be considered if the registration permit was valid at the time of submitting the application. However, to prevent applicants from submitting poor, rushed applications to beat the expiry of their permit, there would be a requirement for applications to be full and complete if they are submitted within a certain period of the permit expiring.

327. This design choice interacts with the preceding discussions. How long registration permits should last for depends on what the permit is attached to. For example, if it is attached to the land or the landowner, how long is reasonable for the landowner to afforest their land, or arrange sale or lease of the permitted land?

Option One – Three years

328. Three years is likely to minimum viable amount of time for a registration permit to last, to give the recipient enough time to acquire land and seedlings, plant trees, and for the trees to be eligible to register.

Option Two – Five years

329. Five years will provide more time for a recipient to go through the steps needed to afforest and register their forest in the ETS. A longer time period has the particular advantage of giving a permit recipient more time to make new arrangements if plans fall through.

Comparison of options

	Option One – Three years	Option Two – Five years
Protect high and medium quality land for farming	++ Will keep the actual annual registrations on LUC class 6 at or below the annual limit	+ Risk of year-to-year fluctuations, but long-term average will equal the annual limit
Meeting budgets and targets	- Minimum viable duration for afforestation investment, so there is a risk of some allocated afforestation not occurring if plans change. This is less of a concern if unused permits are rolled over (discussed later).	0 There is a greater chance allocated afforestation will happen with a longer duration. Greater risk of afforestation happening in a different budget period compared to when it was allocated (could be mitigated by alignment with budgets).
Provide certainty for ETS participants and forestry investment	0 Minimum viable duration for afforestation investment	++ Time for investors to adapt if plans fall through, providing more certainty that they can follow through with afforestation if they receive allocation.
Meet Treaty obligations	- Shorter timeframes may not support decision making within multiple ownership and governance structures if Māori land is not exempt.	0 Longer timeframes are more likely to support decision making within multiple ownership and governance structures, but any time limit could create challenges.
Operational feasibility and costs	0 Similar operational feasibility and costs	0 Similar operational feasibility and costs
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

330. Option Two (five years) provides more investment certainty and makes it more likely that allocated afforestation will happen, supporting New Zealand to meet its climate change targets. However, the longer the time period the more fluctuations there are likely to be in actual area registered each year, although the long-term average would equal the annual limit.

331. Option One (three years) may be too short for some situations – for example, if an expected sale and purchase agreement falls through and alternative plans need to be made.

How should the annual hectare limit be allocated?

What options are being considered?

332. The allocation system will share out registration permits. Each registration permit would allow the owner to register a particular number of hectares of LUC class 6, depending on the area the applicant is seeking to afforest.

333. Additional measures may also be needed to discourage oversubscribing. For example, an applicant could maximise their changes of receiving a permit by submitting multiple applications. This risk could be managed through the cost of applying for a registration permit, or through a stand-down period where an applicant has to wait for a period of time before making a second application.[83]

334. Allocation system options that were considered but discarded due to their complexity and/or equity include:

- merit-based (allocation considers alignment with certain criteria),
- stratified (allocation based on ranked categories),
- local-led (allocation devolved to regional councils) and
- historical (allocation based on historical ETS participation).

Option One – First-in-first served

335. Registration permits would be granted until the limit is reached. The date of submitting a permit application would determine the order and therefore whether the permit is granted. This option could include rolling over unsuccessful applications to subsequent rounds, so applicants maintain their place in the queue.

Option Two - Lottery

336. A lottery system would involve randomly selecting which registrations would be permitted until the limit is filled.

Option Three – On demand/pro rata

337. Applicants would declare how many hectares they hope to afforest. Registrations would then be allocated based on the proportion demanded by each applicant, relative to total demand. This is summarised in the table below, which shows an example of how this would work for five applicants declaring various areas and a total allocation of 20,000 hectares.

Table 8: On demand allocation example

Applicant	Demand (ha)	Proportion (%)	Allocation (ha)

[83] How this measure would be designed depends on who or what is permitted (previous design choice). For example, if the permit is attached to the ETS participant and the same company can have many distinct ETS participants, this reduces the effectiveness of this approach.

Applicant 1	12,500	25	5,000
Applicant 2	2,500	5	1,000
Applicant 3	9,000	18	3,600
Applicant 4	16,000	32	6,400
Applicant 5	10,000	20	4,000
Total	50,000	100	20,000

338. The final permits may have to be corrected to ensure they are all above the minimum area threshold to enter the ETS (1 ha). Applicants with allocations below this area could be rounded up to the minimum (with the risk that the total area permitted would exceed the annual limit) or be denied a permit.

Option Four – Auction

339. This would involve the quota being allocated on the basis of an auctioning or competitive bid system. There are choices on how complicated the auctions would be. For example, whether to have price floors and ceilings as there are in ETS unit auctions, or simply sell to the highest bidder.

Comparison of options

	Option One – First-in-first served (preferred)	Option Two - Lottery	Option Three – On demand (pro rata)	Option Four – Auction
Provide certainty for ETS participants and forestry investment	+ Predictable process but applicants do not know where they are in the queue. Rollover option could mitigate for this, in part. Simplicity creates transparency.	0 No way to predict outcome of lottery. Simplicity creates transparency.	- Everyone who demands should receive an allocation, but it is not clear how much they will get. May be a lack of clarity about how allocation is calculated.	+ Applicants who are prepared to pay enough have certainty they will receive a permit. Rules and processes should be set out in regulations, creating transparency.
Meet Treaty obligations	- No way to prioritise Māori rights and interests	- No way to prioritise Māori rights and interests	- No way to prioritise Māori rights and interests	- No way to prioritise Māori rights and interests
Operational feasibility and costs	+ Simple system, likely fastest to implement. Could cause a rush to enter. Rollover option could mitigate for this	+ Simple system, likely fastest to implement	+ Relatively simple formula to implement	- Requires setting up auctions which can be complex and costly.
Overall assessment	+	0	-	-

Note, the criteria ‘protect high and medium quality land for farming’ and ‘meeting budgets and targets’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

340. Option One (first-in-first-served) is simple and new entrants are on equal terms with existing foresters. However, where demand exceeds supply there could be a rush to enter as soon as the allocation opens. In international trade this system can create

backlogs at ports[84], and in the initial Covid-19 managed isolated and quarantine (MIQ) booking system this caused website crashes[85]. Similarly, in the context of ETS registrations there is no way to distinguish between types of afforestation or ownership (e.g., Māori-owned land), should the Government wish to do so.

341. Other design elements could help to manage option one's challenges. For example, there could be a limit on how many hectares each applicant can apply for to ensure one business is not allocate the full annual hectare limit. Another example could be a stand down period (discussed above).

342. A first-in-first-served approach with a rollover of applications could minimise concerns about a rush to enter. This would apply when applications are accepted for the first allocation, but as people maintain their position on a waiting list there would be no incentive for this to repeat.

343. A first-in-first served system raises questions about whether applications need to be complete, and how the regulator will manage applications that are missing required information. These could be rejected and the applicant loses their places in the queue, potentially resulting in them missing out on an allocation. The regulator could also provide limited flexibility to allow for small matters to be resolved during the application process. This would avoid the risk of a first-in-first-served system incentivising a large number of rushed, incomplete, low-quality applications.

344. Option Two (lottery) can also be simple to run. The MIQ lobby system was similar to a lottery system as people seeking MIQ places were placed in a randomised queue. This system was found to be inappropriate when supply outstripped demand, as there was no weighting to people who had been delayed longer than others, and the system did not allow individual circumstances to be considered and prioritised where necessary[86]. The approach is also non-transparent and therefore could be seen as inequitable[87].

345. Option Three (on demand) is transparent and provides certainty. However, it risks the effectiveness of afforestation projects. Applicants could declare the number of hectares they could afforest effectively, potentially leaving some orphaned land that cannot be productively used if they receive less than they declared. At the other extreme it is open to gaming where applicants could declare far more hectares than they need to ensure they receive enough for their desired project. This could result in an inefficient allocation result if applicants receive more than they need.

346. Option Four (auction) can add administrative complexity and cost, particularly if the regulator wants to influence price, like the unit limit and price control settings in the ETS unit auctions. Auctions (at least in theory) grant the rights to the user who values it most highly (so support allocative efficiency).

347. The administrative burden of applicants will likely need to be low enough so small foresters can still participate, but high enough to disincentivise spurious applications, for example large entities spamming the allocation system with lots of applications to ensure they receive permits. One complementary method to address this issue would be to have a stand-down period, so a person cannot apply for a registration permit multiple times in a year. A stand-down period could also be based on how much area a person has been permitted; for example, if over four years a person has received over

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84 Food and Agriculture Organization of the United Nations, 2000. Multilateral Trade Negotiations on Agriculture. Market Access II: Tariff Rate Quotas. https://www.fao.org/3/x7353e/X7353e05.htm

85 Ombudsman, 2022. Chief Ombudsman's opinion on Managed Isolation Allocation System. https://www.ombudsman.parliament.nz/resources/chief-ombudsmans-final-opinion-managed-isolation-allocation-system

86 Ombudsman, 2022. Chief Ombudsman's opinion on Managed Isolation Allocation System. https://www.ombudsman.parliament.nz/resources/chief-ombudsmans-final-opinion-managed-isolation-allocation-system

87 Food and Agriculture Organization of the United Nations, 2000. Multilateral Trade Negotiations on Agriculture. Market Access II: Tariff Rate Quotas. https://www.fao.org/3/x7353e/X7353e05.htm

10% (2,000 ha) of the allocative limit they can no longer apply. This would not prevent companies with multiple holdings or many staff members from applying multiple times.

348. A first-in-first-served system is the preferred option.

What should happen with unallocated or unused registration permits?

What options are being considered?

349. The Government also needs to consider what to do with permits that are not allocated to applicants, or permits that are not used before they expire. Unused permits could also apply to parts of a permit that are not used, for example if a person receives a permit for 100 hectares and applies to register 100 hectares, but 10 hectares of the application are rejected for not meeting eligibility criteria.

Option One – Rollover

350. Unused and unallocated registration permits would be rolled over to the next allocation round. The hectare limit for that next allocation round will increase by the area of the rolled over permits.

Option Two - Cancelled

351. Under this option unused permits would be cancelled.

Comparison of options

	Option One – Rollover	Option Two – Cancelled (preferred)
Protect high and medium quality land for farming	0 Under this option the total permitted area of registrations on LUC class 6 will be allowed.	+ This creates further constraints on registrations on LUC class 6 land.
Meeting budgets and targets	++ Supports achieving the level of afforestation needed to meet New Zealand's budgets and targets.	- If the annual hectare limit is set at what is needed to achieve New Zealand's budgets and targets, cancelling unused permits creates a risk the Government will under-achieve.
Operational feasibility and costs	0 Requires tracking permits that are not used and rolling over the associated volume to the next round	+ Requires tracking permits that are not used and cancelling them. Less administrative burden with tracking associated afforestation volumes.
Overall assessment	0	+

Note, the criteria 'meet Treaty obligations' and 'provides investment certainty' is excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

352. Cancelling unused registration permits is the preferred option as this better protects LUC class 6 land and is operationally simpler.

Should registration permits be tradable?

What options are being considered?

353. Another way to provide permit recipients with flexibility if plans for afforestation fall through is to allow registration permits to be tradable. This would give recipients the option of selling their registration permit to others.

354. Whether permits should be tradable interacts with permit duration. The older a permit gets, the cheaper it becomes as it becomes less useful the closer it is to its expiry. Conversely, if permits are tradable, they will likely become easier to acquire as time goes on as there are more cheap permits close to expiry.

355. The Government needs to consider what role, if any, it should play in the tradability of permits.

Option One – Tradable permits

356. Tradable registration permits would give permit holders the option of selling their registration permit to others.

Option Two – Non-tradable permits

357. Under option two, permits would not be tradable, but would still be transferable in some circumstances (e.g., to allow for succession).

Comparison of options

	Option One – Tradable permits	Option Two – Non-tradable permits (preferred)
Provide certainty for ETS participants and forestry investment	+ Recipients have flexibility to sell if plans change so afforestation can be targeted efficiently, but speculation in a secondary market could be encouraged.	- Recipients do not have the flexibility to sell, but risks of speculation are avoided.
Operational feasibility and costs	- - Adds further complexity to the allocation system.	++ Avoids the complexity of a secondary market
Overall assessment	-	+

Note, the criteria ‘protect high and medium quality land for farming’, ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

358. Option One gives recipients more flexibility if plans change and they couldn’t acquire or no longer have LUC class 6 land suitable for afforestation. It also reduces the risks of participating in the allocation system, particularly if registration permits have significant cost, because if the project cannot go ahead, they will be able to recoup costs through selling their permit.

359. Tradable permits could allow for a secondary market for registration permits to form and could encourage speculators to participate in the primary permit market. This could drive up the cost of permits and could add further complexity to the allocation system, and to the ETS. It could also affect property values if land is associated with a registration permit.

360. Non-tradable permits will mean a simpler system, at the expense of flexibility for recipients. Allocation system participants will also take on more risk when entering the

system, particularly if registration permits are costly and LUC class 6 land becomes difficult to procure.

361. The preferred option is not to allow for trading of permits. However, permits will still need to be transferable in certain circumstances (e.g., to allow for succession or where the person applying for a permit cannot become a participant in their own right). Officials will need to consider when and how transfers are checked, and what happens to applications associated with a permit that was not transferred but should have been.

Reviewing settings

What options are being considered?

362. Officials propose that the powers to turn the moratorium on and off and set the annual hectare limit are included in secondary legislation. Officials therefore need to consider what process should be used to make the secondary legislation. This could consider safeguards to ensure an appropriate process. Safeguards provide a check on the exercise of power delegated from Parliament through secondary legislation and promote good law-making, transparency, participation, and accountability.[88]

363. Safeguards can include substantive preconditions or procedural requirements. Standard safeguards which generally apply to all secondary legislation include presentation to the House to ensure Ministerial accountability and Parliamentary scrutiny; review by the Regulations Review Committee and potential disallowance by Parliament; and publication requirements.[89]

364. The relevant safeguards in the Climate Change Response Act 2002 include:

- Consideration of advice from the Climate Change Commission (for emissions budgets[90], emissions reduction plans[91], and unit limit and price control settings for auctions[92])
- Consultation requirements (for the Climate Change Commission[93] and the Minister of Climate Change[94])
- Timing requirements (for unit limit and price control settings, including that settings for the current year cannot be changed and settings for the next and following years can only be changed in certain circumstances[95])
- Section 160 of the Climate Change Response Act 2002 sets out requirements for reviewing the operation of the ETS. The Minister may initiate a review of the operation and effectiveness of the ETS at any time by any method the Minister considers appropriate.

365. It is appropriate for decisions about turning the moratorium on and off and the level of the annual hectare limit to be done through Order in Council on the recommendation of the Minister of Climate Change working with other relevant Ministers. This already ensures some level of consultation and Cabinet scrutiny per the Cabinet Manual.[96]

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88 LDAC, 2021. Legislation Guidelines. https://www.ldac.org.nz/assets/Guidelines/LDAC-Legislation-Guidelines-2021-edition.pdf

89 LDAC, 2021. Legislation Guidelines. https://www.ldac.org.nz/assets/Guidelines/LDAC-Legislation-Guidelines-2021-edition.pdf

90 Climate Change Response Act 2002, s5ZA. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

91 Climate Change Response Act 2002, s5H. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

92 Climate Change Response Act 2002, s5ZOA. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

93 Climate Change Response Act 2002, s5N. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

94 Climate Change Response Act 2002, s5ZB. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

95 Climate Change Response Act 2002, s30GB. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158584.html

96 Cabinet Office, 2023. Cabinet Manual. https://www.dpmc.govt.nz/sites/default/files/2023-06/cabinet-manual-2023-v2.pdf

366. In considering whether additional safeguards are required, the options have been developed based on the precedents in the CCRA discussed above. The preferred option may be a package of safeguards, but officials have not presented every possible permutation of safeguard combinations as discrete options.

Option One – No safeguards

367. Under this approach, there would be no additional safeguards beyond the Cabinet Manual requirements.

Option Two – Ministers must have regard to certain matters

368. Under Option Two, when recommending the making of an Order in Council the Ministers must have regard to certain matters.

369. The CCRA already sets out criteria the Minister of Climate Change needs to consider when updating ETS unit limit and price control settings for ETS auctions.[97] The settings would also have to be consistent with the purpose of the CCRA.[98]

370. The following criteria could be considered when reviewing the moratorium and the annual hectare limit. Included are examples of the kinds of things the Government might consider for each criterion.

- **Emissions budgets, nationally determined contribution, and the 2050 target** – the Government could turn the moratorium off if more afforestation is needed to support New Zealand to meet its nationally determined contribution.
- **The proper functioning of the ETS** – the Government could reduce the annual hectare limit to support management of the stockpile of NZUs.
- **The pace and scale of rural land use change** – the Government could look at data on rural afforestation and keep the moratorium in place if rates are too high.
- **Economic considerations associated with land use change** – the Government could look at information on wood processing output and increase the annual hectare limit if output is too low.
- **Any other matters** the Minister considers relevant.

Option Three – Ministers must be satisfied there has been adequate consultation

371. Under Option Three, when recommending the making of an Order in Council the Ministers must be satisfied that there has been adequate consultation with affected people or people likely to have an interest in the settings (e.g., ETS participants, foresters, farmers) as well as representatives of iwi and Māori.

Option Four – Timing requirements

372. Under Option Four, the Ministers may recommend the making of an Order in Council only if certain timing considerations are met. This could include a certain length of time before the next ETS auction to provide certainty to auction participants, and/or a certain length of time before the end of a mandatory emissions return period (MERP) to manage a rush of applications to beat a change in rules or to ensure that rules are consistent within a MERP.

[97] Climate Change Response Act 2002, s30GC. https://www.legislation.govt.nz/act/public/2002/0040/latest/LMS364586.html

[98] Climate Change Response Act 2002, s3. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM158590.html

Option Five – Ministers must consider advice from the Climate Change Commission

373. Under Option Five, the Climate Change Commission would be required to provide advice on whether the moratorium should be on or off, and the level of the annual hectare limit.

Option Six – s160 review

374. Under Option Six, the Minister of Climate Change would initiate a review of the operation of the ETS focusing on the moratorium and the annual hectare limit in accordance with s160 of the CCRA. Ministers would not be able to recommend the making of an Order in Council until the review has delivered its findings.

Comparison of options

	Option One – No safeguards	Option Two – Have regard to certain matters (preferred)	Option Three – Adequate consultation	Option Four – Timing requirements	Option Five – Advice from Climate Change Commission	Option Six – s160 review
Protect high and medium quality land for farming	**0** The Government would consider matters relevant at the time when adjusting the moratorium and annual hectare limit.	**++** The Government would explicitly be required to consider the pace and scale of rural land use change.	**+** The Government would be required to consult affected people, including those with an interest in ensuring land is being suitably protected (e.g., rural communities, farmers).	**0** Timing requirements do not affect the protection of land compared to the status quo.	**0** Advising on appropriate land use is outside of the Commission's core expertise.	**0** The terms of reference for the review would be based on matters relevant at the time, similar to the status quo.
Meeting budgets and targets	**0** The Government would consider matters relevant at the time when adjusting the moratorium and annual hectare limit.	**++** The Government would explicitly be required to consider emissions budget, the nationally determined contribution, and the 2050 target.	**+** The Government would be required to consult affected people, including those with an interest in New Zealand's climate response (e.g., eNGOs, the general public).	**0** Timing requirements do not affect consideration of emissions reduction budgets and targets compared to the status quo.	**++** The Commission is well-placed to consider how changes to the settings would affect emissions reduction budgets and targets.	**+** The terms of reference for the review would be based on matters relevant at the time. The Government is required to consult.
Provide certainty for ETS participants and forestry investment	**0** The Government would consider matters relevant at the time when adjusting the moratorium and annual hectare limit, potentially resulting in less certainty for participants.	**+** The Government would need to consider certainty and investment within several of the proposed criteria.	**+** Participants have an opportunity to provide feedback and have more notice about the direction the Government is considering.	**++** Participants have more regulatory certainty ahead of important milestones (auctions, end of the MERP).	**+** There is likely to be multiple opportunities to provide feedback (to the Commission and the Government) and see the likely policy direction.	**0** The review terms of reference, if published, would clarify what matters the Government will consider. Publication is not required.
Meet Treaty obligations	**0** Section 3A of the CCRA provides that the	**0** Section 3A of the CCRA provides that the	**0** Section 3A of the CCRA provides that the	**0** Section 3A of the CCRA provides that the	**0** Section 3A of the CCRA provides that the	**0** Section 3A of the CCRA provides that the

	Option One – No safeguards	Option Two – Have regard to certain matters (preferred)	Option Three – Adequate consultation	Option Four – Timing requirements	Option Five – Advice from Climate Change Commission	Option Six – s160 review
	Government must ensure that iwi and Māori have been adequately consulted.	Government must ensure that iwi and Māori have been adequately consulted.	Government must ensure that iwi and Māori have been adequately consulted.	Government must ensure that iwi and Māori have been adequately consulted	Government must ensure that iwi and Māori have been adequately consulted	Government must ensure that iwi and Māori have been adequately consulted
Operational feasibility and costs	**0** There are no added administrative costs.	**0/-** Consideration of certain matters will add some administrative costs, but this is not expected to be significantly different form the status quo	**--** Public consultation is time consuming (for the regulator and for affected parties) and expensive.	**0** There are no added administrative costs.	**--** This adds functions to the Commission which it may not be resourced to service.	**0/--** Additional administrative costs may be minimal, but if a panel is contracted to undertake the review it costs could be significant.
Overall assessment	**0**	**+**	**0**	**0**	**0**	**0**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

375. Option Two is expected to meet policy objectives and deliver the highest net benefits. This is because it explicitly requires the Government to consider matters relevant to the policy objectives, while providing some level of certainty and keeping costs low.

376. Public consultation (Option Three) provides more assurance to the public that their views will be considered, but requiring this explicitly in legislation is unlikely to be necessary given that this is already covered by the Cabinet Manual. Timing requirements (Option Four) are worth considering in combination with Option Two to provide additional certainty to ETS participants.

377. Officials consider this review of settings does not warrant giving additional functions to the Commission (Option Five), considering that some of the relevant considerations are outside of their core role. This would not prevent the Minister of Climate Change from seeking specific advice from the Climate Change Commission if desired[99].

378. Unlike the other options, a s160 review (Option Six) cannot be easily deployed alongside the other options as part of a package, and this approach does not provide additional benefits compared to Option Two.

Providing on-farm flexibility

What scope will options be considered within?

379. Ministers want to provide flexibility for farmers and landowners to afforest and register in the ETS and have proposed an exemption from the LUC based restrictions for up to 25% of LUC class 1-6 land on each farm.

380. The scope of options for providing flexibility includes:

- Whether an exemption is needed
- What kind of land the exemption should cover
- How orphaned land should be managed

381. Other percentages besides the proposed 25% are not provided. Allowing more than 25% could risk the effectiveness of the policy at protecting medium and high-quality productive land for agriculture. Allowing less than 25% could result in an area that is too small to be afforested effectively, which negates the point of the exemption. However, as an alternative, officials have considered a minimum area threshold.

Is an exemption needed?

What options are being considered?

Option One – No exemption

382. Under this approach, the only way to register forests on LUC class 6 land in the ETS would be under the annual hectare limit for LUC class 6.

Option Two – 25% exemption based on whole farm area:

383. This option would allow for forest on LUC class 6 land on up to 25% of a farm's total area to be registered in the ETS, outside of the annual hectare limit. This means farmers can plant trees where it makes sense on their farm.

[99] Climate Change Response Act 2002, s5K. https://www.legislation.govt.nz/act/public/2002/0040/latest/LMS282004.html

384. The denominator for the 25% exemption is the total area of the farm provided by the farm definition as described below. The 25% exemption would also be limited by the area of LUC class 6 land on-farm.

Option Three - 25% exemption based on LUC class area:

385. This option enables farmers to register forest land on up to a quarter (25%) of the LUC class 1-6 land on their farm without being allocated a registration permit.

386. The denominator for the 25% exemption is the area of LUC class 1-6 land on-farm provided by the farm definition as described below.

387. Examples of how options two and three would work in practice are provided in Table 9 below. In these examples, under option two farm one would be allowed the maximum 25% exemption because of its greater area of LUC class 6 and farm two would be limited by its smaller amount of LUC class 6.

Table 9: How the 25% exemption options would work for different farm sizes

Farm area component	Farm One	Farm Two
Total farm area	400 hectares	400 hectares
LUC class 1-6 land on-farm	200 hectares	50 hectares
Option Two – 25% exemption based on whole farm area		
ETS registered forest allowed under 25% exemption	100 hectares (25% of 400)	50 hectares (25% of 400 is 100 hectares, but only 50 hectares of LUC class 1-6 is available)
Option Three – 25% exemption based on LUC class 1-6 area		
ETS registered forest allowed under 25% exemption	50 hectares (25% of 200)	12 hectares (25% of 50)

Option Four – Minimum area threshold

388. This option would mean that registrations under an area threshold (e.g., 50 hectares) do not need to meet any LUC criteria to enter the ETS. As discussed above in the context of farm definitions, this option would work best for Māori land if it is not exempted.

Comparison of options

	Option One – No exemption	Option Two – 25% exemption (farm area)	Option Three – 25% exemption (LUC class area) (preferred)	Option Four – Minimum area threshold
Protect high and medium quality land for farming	++ All LUC class 1-5 land is protected by the moratorium and annual hectare limit.	+ Up to an additional 25% of whole farm area (on LUC class 1-6 land) on each farm could be afforested and registered.	+ Up to an additional 25% of LUC class 1-6 land on each farm could be afforested and registered.	- There is a risk that land could be subdivided to be below the threshold and so game the restrictions.
Meeting budgets and targets	- On-farm registration is restricted to only the	+ On-farm registration is allowed through the	+ On-farm registration is allowed through the	+ On-farm registration is allowed through the

	LUC class 6 allocation and potentially reducing afforestation compared to Options Two and Three.	25% exemption potentially increasing afforestation.	25% exemption potentially increasing afforestation.	minimum area threshold potentially increasing afforestation.
Provide certainty for ETS participants and forestry investment	- Less certainty as ETS applicants and forestry investments need to go through the LUC 6 allocation to afforest on-farm.	+ Increased certainty for ETS applicants and forestry investment on-farm.	+ Increased certainty for ETS applicants and forestry investment on-farm.	+ Increased certainty for ETS applicants and forestry investment on-farm.
Meet Treaty obligations	- Māori less flexibility to plant trees where it makes sense on their land than in Options Two and Three.	+ Māori have flexibility to plant trees where it makes sense on their land.	+ Māori have flexibility to plant trees where it makes sense on their land.	++ Māori have flexibility to plant trees where it makes sense on their land.
Operational feasibility and costs	0 No increase in complexity and cost.	-- Increase in complexity and cost over Options One and Four.	-- Increase in complexity and cost over Options One and Four.	- Increase in complexity and cost over Option One.
Overall assessment	-	+	+	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

389. On balance, the 25% exemption options are the preferred approach. This supports farmers' investment certainty and provides on-farm flexibility, although this comes with increased administration costs.

390. Option Three provides a greater constraint on registrations than Option Two as 25% of LUC class 1-6 land will be less than or equal to the farm area. This option may be preferred due to protecting high- and medium-versatility land better.

391. The 25% exemption will be calculated based on a baseline year, with the date defined in legislation. For example, if the date is 1 January 2026, then the numerator of the 25% calculation will be exotic forests registered from that date onwards. This will add complexity for the regulator in needing to assess aerial imagery for a new set of dates (on top of their assessment of whether forest land is pre-1990 or post-1989 under the status quo). Options of considering existing exotic forests or existing ETS-registered forests were considered but discarded due to the commitment not to affect existing ETS-registered forests with the proposals.

How should the 25% exemption interact with registration permits?

392. The 25% exemption will interact in some way with any registration permit allocated under the allocation permit on LUC class 6. This interaction needs to be defined.

What options are being considered?

Option One – Cumulative

393. Under Option One, the 25% exemption would be fully cumulative. This means total allowable on-farm exotic afforestation eligible to be registered in the ETS on LUC class 1-6 would be:

- Any permitted LUC class 6 received through the allocation system (discussed above)
- An additional 25% of the LUC class 1-6 area

Option Two – Whatever area is greater

394. Under Option Two, the 25% exemption would not be cumulative with the allocation system. This means total allowable afforestation eligible to be registered in the ETS on LUC class 1-6 would be:
    - Any permitted LUC class 6 received through allocation.
    - If the permitted LUC class 6 received through allocation exceeds 25% of total farm area, no additional afforestation is allowed.
    - If the permitted LUC class 6 received through the allocation is less than 25%, additional afforestation is allowed to reach 25% of total farm area.

Comparison of option

	Option One – Cumulative	Option Two – Whatever area is greater (preferred)
Protect high and medium quality land for farming	- Area that can be afforested depends on the LUC class 6 allocation and the 25% exemption. This could allow whole-farm conversions.	+ Area that can be afforested depends on the LUC class 6 allocation.
Meeting budgets and targets	+ Greater area can be afforested through both the LUC class 6 allocation and the 25% exemption than Option Two.	- Less area than Option One can be afforested as the quantum also depends on the LUC class 6 allocation.
Provide certainty for ETS participants and forestry investment	0 Approach is somewhat straightforward, but there are complexities	0 Approach is somewhat straightforward, but there are complexities
Operational feasibility and costs	- Complexities within the exemption system add to administration and registration effort, but sightly simpler than Option Two	-- Complexities within the exemption system add to administration and registration effort
Overall assessment	0	-

Note, the criterion ‘meet Treaty obligations’ is excluded from the analysis as these options have no impact on this criterion.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

395. On balance Option Two is the preferred approach due to protecting LUC class 6 land more effectively than Option Two.

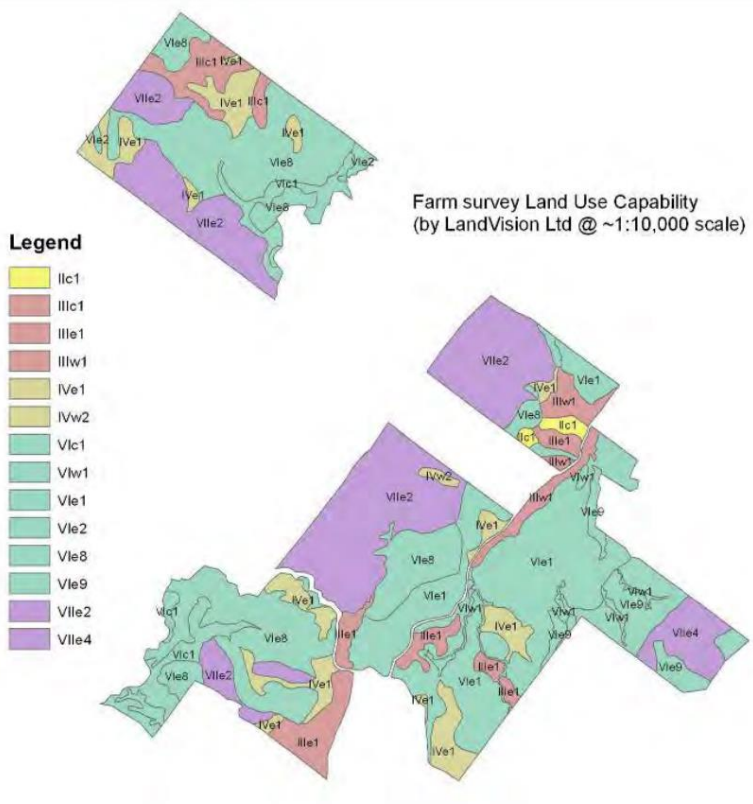
Managing orphaned land

396. The preferred approach above of constraining registration to whatever area is greater between 25% of LUC class 1-6 land on a farm, or the area permitted by a registration permit, could result in orphaned pockets or highly versatile land. Orphaned land is where land becomes surrounded by exotic forestry and cannot be used for another productive purpose.

397. Only 10% of forests currently registered in the ETS are on LUC classes 1-5. Most of this area is likely to be small patches within larger forests on higher LUC classes (see Figure 5).

398. Preventing this land from being afforested would not actually be protecting productive land – as preventing registration of an island of LUC class 1-5 within a forest that is too small to be used profitably by itself is not actually a productive land use. Although these areas are likely to be small, there may need to be to accommodate these issues.

Figure 5: Example of a property-scale LUC farm assessment with small areas of LUC classes 1-5 (yellow, red, brown areas).



399. Preventing a registration permit from being used in combination with the 25% exemption means if a farmer wants to afforest their LUC class 6 land, but there are pockets of LUC class 1-5 land within the LUC class 6 land, orphaned land would result.

What options are being considered?

Option One – No allowance for LUC classes 1-5

400. Under Option One, there would be no additional allowance for small areas of LUC classes 1-5 to be ETS registered.

Option Two – Percentage buffer for LUC classes 1-5

401. Under Option Two, there would be a percentage buffer (e.g., 10% or 25%) alongside a registration permit to allow for small areas of LUC classes 1-5 to be ETS registered.

402. For example, if 100 hectares was allocated through a registration permit on LUC class 6 then 10 hectares would be allowed to be registered on LUC classes 1-5 (based on a 10% buffer) as part of that forest. The 10% buffer would be calculated across all the carbon accounting areas submitted for registration (e.g., some individual CCAs may have more, and some may have less, but on aggregate the 10% buffer cannot be exceeded).

403. The intent would be to accommodate small pockets of LUC classes 1-5 that have been afforested as part of larger forests on LUC class 6.

Option Three – A minimum area for LUC classes 1-5 (e.g., 5 hectares)

404. Option Three is like Option Two but includes a minimum area allowance for LUC classes 1-5 (e.g., 5 hectares) rather than a percentage. The minimum area allowance could be calculated across all the carbon accounting areas submitted for registration.

Comparison of options

	Option One – No allowance	Option Two – Percentage buffer (preferred)	Option Three – Minimum area
Protect high and medium quality land for farming	++ Completely restricts ETS registration on LUC classes 1-5	+ Restricts ETS registration on LUC classes 1-5 to a % buffer	+ Restricts ETS registration on LUC classes 1-5 to a minimum area.
Provide certainty for ETS participants and forestry investment	- No flexibility for stranded islands of land to be able to be ETS registered could create a lack of certainty at registration.	+ Certainty that stranded islands of land will be able to be ETS registered, but the buffer is limited.	+ Certainty that stranded islands of bordering land will be able to be ETS registered, but the minimum area is limited
Operational feasibility and costs	+ No additional steps during registration.	-- Additional step during registration creates additional cost and complexity.	- Additional step during registration creates additional cost and complexity (but simpler than Option Two).
Overall assessment	+	0	+

Note, the criteria ‘meeting budgets and targets’ and ‘meet Treaty obligations’ are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

405. On balance, the preferred approach is a percentage allowance. This provides more certainty and flexibility for farmers to register small pockets of LUC classes 1-5 as part of a larger forest and manages unintended outcomes of the preferred options for registration permits

406. Option Three provides better flexibility for small areas of forests on LUC classes 1-5 when part of a larger forest on higher LUC classes, but results in additional cost and complexity due to more complex registration. Option One does not address the issue of orphaned land.

Delivering Treaty of Waitangi obligations

Background

407. The Crown’s Treaty obligations most relevant to the proposal to manage whole-farm conversions to forestry can primarily be found in:

- The articles of the Treaty of Waitangi and Treaty jurisprudence developed by the courts and the Waitangi Tribunal (with the latter two contributing to the evolving Treaty principles).
- The Climate Change Response Act 2002 (CCRA).
- Treaty settlements.

408. A range of guidance has also been developed by Cabinet Office and Te Arawhiti to assist policy development consistent with the Crown's Treaty obligations.

Te Tiriti o Waitangi/Treaty of Waitangi

409. In Te Tiriti o Waitangi, the Crown guaranteed to Māori rangatira and hapū 'te tino rangatiratanga o o ratou wenua o ratou kainga o ratou taonga katoa'. Article Two of the Treaty contains the Crown promise that Māori will have the right to make decisions (exercise rangatiratanga) over resources and taonga they wish to retain. The English version of the Treaty explicitly extends this guarantee of 'full exclusive and undisturbed possession' to their **lands** and estates, **forests**, fisheries and other properties.[100]

410. The CCRA requires the Crown to undertake actions in recognition of the Treaty principles. The principles, which include partnership, active protection and redress, help explain how the Crown should understand and deliver its Treaty obligations.[101]

- **Partnership** means the Crown and Māori have a positive duty to act in good faith, fairly, reasonably and honourably towards each other.
- **Active protection** means that the Crown has a positive duty to protect Māori property interests and taonga (which explicitly includes Māori land and forests in the Treaty text).
- **Redress** means that past wrongs give rise to a right to redress.[102]

411. Te Arawhiti (2022) provides guidance on how the Crown should engage with Māori as a good Treaty partner based on the characteristics of the particular issue.[103] It suggests consultation or collaboration when Māori interests are affected, but wider interests take priority. It suggests co-design when Māori interests are central and other interests are limited.

412. At a more general level, a recent decision by the Waitangi Tribunal found that: 'Given the obligations that flow from the Treaty relationship, and the risk of heightened impact of climate change effects for Māori, consultation with Māori should be thorough, widespread, and meaningful and resulting policy developed to take Treaty principles into account'.[104]

Climate Change Response Act 2002

413. Section 3A of the CCRA includes consultation requirements with iwi and Māori for emissions reduction plans and secondary legislation under particular provisions[105].

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[100] Cabinet Office, 2019. *Te Tiriti o Waitangi | Treaty of Waitangi Guidance*. Cabinet Office Circular CO (19) 5. https://www.dpmc.govt.nz/sites/default/files/2019-10/CO%2019%20%285%29%20Treaty%20of%20Waitangi%20Guidance%20for%20Agencies.pdf emphasis added.

[101] Te Puni Kokiri Ministry of Māori Development, 2001. He Tirohanga O Kawa Ki Te Tiriti O Waitangi: A Guide to the Principles of the Treaty of Waitangi As Expressed by the Courts and the Waitangi Tribunal. https://waitangitribunal.govt.nz/assets/Documents/Publications/WT-Principles-of-the-Treaty-of-Waitangi-as-expressed-by-the-Courts-and-the-Waitangi-Tribunal.pdf

[102] The Lands case; New Zealand Māori Council v Attorney-General (the Broadcasting Assets case) [1994] 1 NZLR 513 (PC); Te Runanga o Te Wharekauri Rekohu v Attorney-General [1993] 2 NZLR 301 (CA).

[103] Te Arawhiti. Crown engagement with Māori. https://www.tearawhiti.govt.nz/assets/Tools-and-Resources/Crown-engagement-with-Maori-Framework.pdf

[104] Te Rōpū Whakamana I te Tiriti o Waitangi / Waitangi Tribunal, Wai 3262 #2.5.6; Wai 2607, #2.5.12 Te Whakataunga ā Tiamana Kaiwhakawā Sarah Reeves, 9 Huitanguru 2024

[105] Climate Change Response Act 2002, s3A. https://www.legislation.govt.nz/act/public/2002/0040/latest/DLM2636665.html

414. Given the nature of the proposals it is reasonable to extend the intent of the above provisions. Therefore, iwi and Māori who have an interest should be consulted, and proposals should recognise and mitigate the impacts on iwi and Māori.[106]

Treaty settlements

415. Treaty settlement deeds and acts (Treaty settlement agreements) set out Treaty settlement redress to address historical breaches of the Treaty rights of specific Māori iwi and hapū. There are several ways in which the proposals might impact on Treaty settlement agreements and entities.[107]

- Iwi and hapū may have included specific blocks of land in their settlement redress package with the intention of planting it in exotic species and registering it in the ETS.
- Treaty settlement entities may have begun investing (e.g., purchasing land or afforesting) with the intention of registering in the ETS.
- Treaty settlement entities may consider planting exotic forest and entering the ETS as part of a suite of possible options for land they may purchase in future, or land their members own.

416. Land returned through settlements (consistent with the Treaty principle of redress) is subject to the Article 2 principle of active protection of taonga.

417. Treaty post-settlement agreements may also acknowledge requirements for the Crown to consult with the Treaty post-settlement entity on policies that affect their areas of interest (and may require specific agencies to outline how this is to occur).

418. Land held by Treaty post-settlement entities is general land owned by Māori[108], but will often be held for different reasons than non-Māori general land. For example, there is often a preference for owning land within tribal boundaries as turangawaewae (a 'place to stand') for the long-term benefit of future generations.

419. A 2009 report commissioned by the Crown Forestry Rental Trust identified that "Māori have a significant stake in the forestry sector. With the return of the Crown Forest licence land to iwi in the Central North Island in July 2009 [as part of Treaty settlements] some 440,000 hectares of exotic forestland will be owned by Māori. Māori ownership is likely to increase to over 700,000 hectares (40% of the 1.8-million-hectare forest estate) over the next few years once the remaining Crown forest licensed lands are settled[109] and returned to iwi."[110]

420. Land held by Treaty settlement entities is, as noted above, general title land and thus not readily identifiable in the way whenua Māori is. The Government has a research project underway to better understand the current use and opportunities associated with land held by settlement entities and Te Ture Whenua Māori land.[111] This work will allow analysis of what LUC classes Māori land is on, and what its current use is.

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106 The Courts have found that even where an act sets out specific decisions or actions where the Treaty principles apply, this should not be read as limiting the relevance of the Treaty principles to those specific decisions, and that "[a]n intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made quite clear." September 30, 2021, Supreme Court decision – Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board and Ors [2021] NZSC

107 Treaty settlement entities are used here to refer to post-settlement governance entities (PSGEs) and their subsidiaries who may be the direct owners of any land or forestry interests.

108 Te Ture Whenua Māori Act 1993 Māori Land Act 1993, s129. https://www.legislation.govt.nz/act/public/1993/0004/latest/DLM291287.html.

109 All Crown forest licensed land is pre-1990 land, so would not be affected by the proposed policy.

110 Dickson, I., Hensen, M. and Madden, P., 2009. Economics of Alternative Land use on Crown Forest Licensed Land. *Crown Forestry Rental Trust (Ngaa Kaitiako Reeti Ngahere)*. https://cfrt.org.nz/wp/wp-content/uploads/2018/05/EconomicsofAlternativeLandUseonCrownForestLicensedLand.pdf.

111 'GHG activity data for whenua land' referenced at: https://www.mpi.govt.nz/funding-rural-support/environment-and-natural-resources/greenhouse-gas-inventory-research-fund/

Whenua Māori (Māori land held under Te Ture Whenua Māori Act 1993)

421. Whenua Māori (Māori land) is defined under Te Ture Whenua Māori Act to include Māori freehold and customary land. It is held collectively by Māori kin groups and is generally land that has never been alienated (in contrast with land that has been returned under Treaty settlements). This land is subject to the Article 2 guarantee of 'full exclusive and undisturbed possession' and the Crown promise that Māori will have the right to make decisions over resources and taonga that they wish to retain.

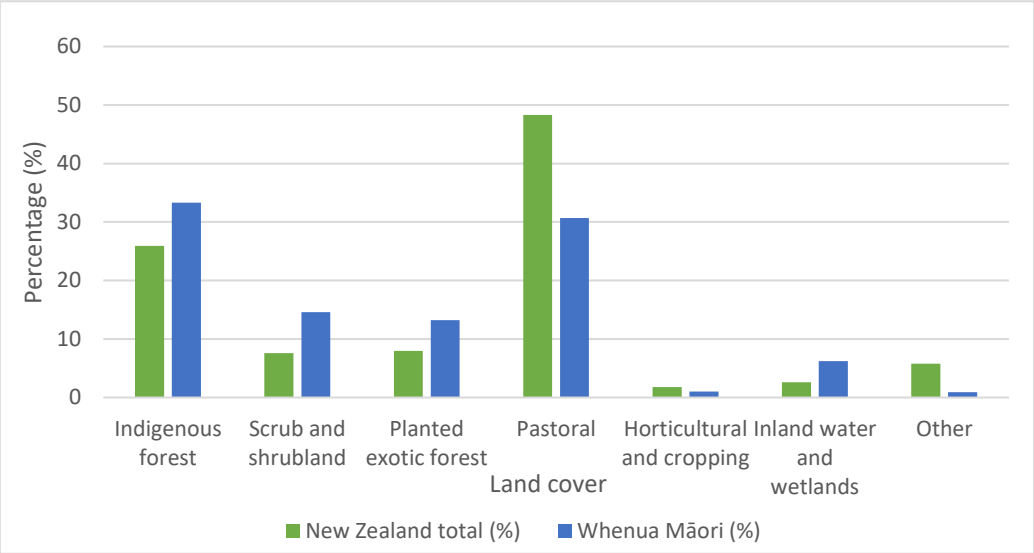
422. Challenges with realising the potential of whenua Māori include[112]:

- Whenua Māori blocks have multiple ownership, and for some, this creates difficulties in establishing governance structures and consequential challenges in planning and decision-making.
- Many absentee owners, as a consequence of multiple owners with small shareholdings moving away

423. Whenua Māori is disproportionately on remote, less versatile land (compared with general land) which makes it well suited to forestry. It is also held in smaller, fragmented titles. This residual land holding reflects the historic role of the Māori Land Court (and its predecessor, the Native Land Court) "to convert customary Māori land into titles which could be acquired, initially by the colonial Government and later by individual settlers" prior to its current focus on retention in Māori ownership.[113]

424. An estimated 46% (625,000ha) of Whenua Māori is in forestry (33% indigenous and 13% planted exotic) and a further 15% is in scrub (196,000ha). The bulk of the remainder is in pastoral uses[114]. Forestry on Whenua Māori is disproportionately pre-1990 with indigenous forest which is not eligible to register and earn NZUs in the ETS (74% compared with 53% for general title).[115] Figure 6 shows the land cover composition of whenua Māori compared to New Zealand overall.

Figure 6: Land cover composition of whenua Māori versus New Zealand overall



[112] Harmsowrth, G., 2017. Unlocking the potential of Māori land: A Kaupapa Māori approach to using and developing integrated knowledge, models, and tools. MPI Link seminar, Wellington, 4 May 2017. https://www.landcareresearch.co.nz/events/link-seminars/

[113] Tō mātou hītori. Our history. *Te Kooti Whenua Māori Māori Land Court.* https://www.xn--morilandcourt-wqb.govt.nz/en/who-we-are/our-history/

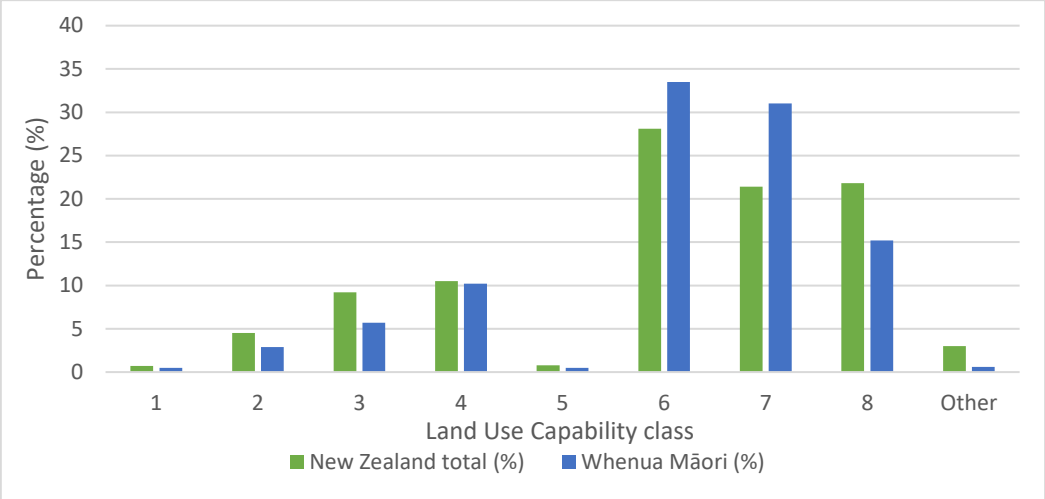
[114] Unlocking the Potential of Māori Land? It's complex… Holden Hohaia. 15 March 2022. https://www.youtube.com/watch?v=ST101A0clvs

[115] Hōngongoi, 2021. Māori economy emissions profile: Climate change mitigation impact on the Māori economy. https://www.mpi.govt.nz/dmsdocument/47929-Maori-economy-emissions-profile-Climate-change-mitigation-impact-on-the-Maori-economy.

Source: Whenua Māori data from 'Unlocking the potential of Māori land'[116] and New Zealand total data from the LUC Survey Handbook[117].

425. Whenua Māori tends to be in less versatile LUC classes compared with general land (65% in land-use classes 6-7 compared with 50% for general land). Some 16,400 blocks have no clear structure and are an average of 14 ha in size.[118] In addition, limits on the alienation of Māori freehold land make it difficult to access finance for development. Figure 7 shows the LUC class composition of whenua Māori compared with New Zealand overall.

Figure 7: LUC class composition of whenua Māori versus New Zealand overall



Source: Whenua Māori data from 'Unlocking the potential of Māori land'[119] and New Zealand total data from the LUC Survey Handbook[120].

426. Whenua Māori has less high-versatility LUC class 1-5 land than New Zealand overall (20% compared to 26%), and more low-versatility LUC class 7-8 land (46% compared to 43%). Whenua Māori also has more medium-versatility LUC class 6 land than New Zealand overall (34% compared to 28%) and is therefore more affected by this policy proposal than non-Whenua Māori land.

427. Approximately 805,344 hectares (53.8%) of whenua Māori is on LUC classes 1-6 and would be affected by the proposed restrictions. Around 123,650 hectares of Māori freehold land have been identified as well suited to afforestation and could qualify for registering in the ETS. Of this, around 71,000 hectares have been identified as remote and marginal to harvest land.[121]

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116 Unlocking the Potential of Māori Land? It's complex Holden Hohaia. 15 March 2022. https://www.youtube.com/watch?v=ST101A0clvs

117 Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

118 Harmsowrth, G., 2017. Unlocking the potential of Māori land: A Kaupapa Māori approach to using and developing integrated knowledge, models, and tools. MPI Link seminar, Wellington, 4 May 2017. https://www.landcareresearch.co.nz/events/link-seminars/

119 Harmsowrth, G., 2017. Unlocking the potential of Māori land: A Kaupapa Māori approach to using and developing integrated knowledge, models, and tools. MPI Link seminar, Wellington, 4 May 2017. https://www.landcareresearch.co.nz/events/link-seminars/

120 Lynn I, Manderson A, Page M, Harmsworth G, Eyles G, Douglas G, Mackay A, Newsome P 2009. Land Use Capability Survey Handbook - a New Zealand handbook for the classification of land. 3rd ed. Hamilton, AgResearch; Lincoln, Landcare Research; Lower Hutt, GNS Science. https://lrp.landcareresearch.co.nz/resources/key-documents/luc-handbook/

121 Based on the LUCAS NZ Land Use Map, analysis undertaken by Te Uru Rākau – Forestry New Zealand in 2022. This estimate included land that was low producing, or grassland with woody biomass on LUC classes 6-8. Various environmental limitations were also overlaid e.g., sufficient rainfall and altitude; limited to slopes less than 40 degrees.

Affected land (Māori Affairs Amendment Act 1967)

428. The Māori Affairs Amendment Act 1967 (the Amendment Act) introduced compulsory conversion of Māori freehold land with four or fewer owners into general land and increased the powers of the Māori Trustee to compulsorily acquire and sell "uneconomic interests" in Māori land:

"The main purpose of this Part of this Act is to promote the effective and profitable use and the efficient administration of Māori land in the interest of the owners."[122]

429. Changes included[123]:

- Allowing the status of Māori land owned by up to four owners to be changed to general land by the Registrar (without the consent of all owners)
- Setting up a new system of Title Improvement Officers
- Changes to provisions relating to Māori incorporations
- Expansion of the powers of the Māori Trustee

430. The Registrar of the Māori Land Court could judge applications which the Title Improvement Officer considered necessary or desirable. If the Court decided the action would not be contrary to the interests of the owners and that adequate consultation had taken place, it could make an order notwithstanding any objections by owners[124]. Some have argued this led to the Court placing more emphasis on profitable land use and effective land management, rather than the wishes of the owners[125].

431. The general theme of the Amendment Act was the commodification of land, enabling its sale to people who would make it productive. Some Māori saw this as the last land grab[126].

432. The Amendment Act was repealed in 1973, but land whose status was changed remained as general land. A 2009 Cabinet paper estimated the amount of affected land at 105,000 hectares, but noted the land is difficult to identify due to incomplete records[127]. Officials therefore do not know the land's LUC class composition or its location.

Māori views on forestry and the ETS expressed in previous engagements

433. The Government has held several previous consultations on the role of forestry within the ETS (as outlined in section 1). In those consultations most Māori landowners stressed the importance of both indigenous and exotic forests for economic returns, customary uses and environmental benefits. They noted that Māori land was often suited to forestry, and that fundamentally they wanted the full range of viable options for their land, to enable them to exercise tino rangatiratanga, as guaranteed by the Treaty. While different Māori collectives favoured different land-uses, they considered that the Māori owners of any piece of land should be the ones to choose between indigenous, production, or permanent forests, or pastoral farming.

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122 Māori Affairs Amendment Act, s15. https://www.nzlii.org/nz/legis/hist_act/maaa19671967n124232/

123 He Pou Herenga Tangata, He Pou Herenga Whenua, He Pou Whare Korero. 150 Years of the Māori Land Court. https://www.xn--morilandcourt-wqb.govt.nz/assets/Documents/Guides-Templates-Factsheets/MLC-150-years-of-the-Maori-Land-Court.pdf p. 71.

124 Māori Affairs Amendment Act, s19.: https://www.nzlii.org/nz/legis/hist_act/maaa19671967n124232/

125 Fraser, C., 2004. Amalgamation of Urewera Lands 1960-1980s. A Report for the Waitangi Tribunal. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_93528449/Wai%20894%2C%20F003.pdf

126 Walker, R., 1990. *Ka Whawhai Tonu Matou – Struggle Without End*. Penguin Books, p. 207.

127 DIA, 2020. Whānau development through whenua – rating matters. https://www.dia.govt.nz/diawebsite.nsf/Files/Whenua-Maori-rating/$file/Regulatory-Impact-Assessment-Whenua-Maori-Rating.pdf

434. Māori submitters suggested there was a low risk that the negative outcomes described above would be associated with afforestation of Māori land, because:

- Māori land is more likely to be on less versatile land which is marginal for pastoral farming.
- Māori landowners were deeply concerned about the impacts of land-use on jobs and income in their local communities in both short and longer term and have factored these impacts into land-use decisions.
- Māori land will not be sold or abandoned, and the ability for the land to support the needs of future generations is a critical factor in land-use decisions.

435. Māori land is a finite quantum[128]. While most Māori landowners who engaged previously emphasised that landowners should be the ones to make choices on what happened on their land, there were exceptions. Some considered that indigenous forests should be prioritised and were opposed to exotic afforestation (particularly permanent exotic forests). Some argued that land should be protected for agriculture, while others argued that agricultural emissions should be reduced as a matter of urgency.

What criteria will be used to compare options to the status quo?

436. The Crown has options on how to give effect to its Treaty obligations in its substantive decisions (i.e., it is not bound to any submission from Māori) but needs to work with Māori in good faith to identify options that can deliver both Government and Māori aspirations. Criteria for analysis options ask how far the options provide opportunities for Māori to exercise rangatiratanga over their whenua, while also delivering Government policy objectives.[129] This is an additional criteria for this option analysis, in addition to those discussed in section 2.

437. The relevant criteria are:

- **Provide options for Māori to exercise rangatiratanga**. This criterion relates to the Crown's Article 2 commitment to protect Māori tino rangatiratanga over taonga.
- **Protecting high-quality land for farming**. This relates to the primary objective of protecting high and medium quality land for farming and directing forestry to land less suitable for agriculture.
- **Impact on reductions of agricultural emissions and forestry removals**. How do options impact **on emissions and removals** and the flow through into budgets and targets over time.
- **Provides investment certainty**. This relates to the objective of providing certainty for ETS participants and forestry investment and minimising the impact of regulatory change.
- **Ease of administration**. This relates to the objective of operational feasibility and managing the costs of administering the ETS.

What scope will options be considered within?

438. Ministers want to meet Treaty of Waitangi settlement obligations, regardless of the proposed limits. For this design choice, exemption options are compared to restrictions with no differentiation in the treatment of Māori land. Officials acknowledge that no

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[128] This is generally true. Whenua Māori can be sold or added to, but the process is difficult and in practice the area is constant. The land held by settlement entities can be sold or added to, and this is taken into account in discussing how Māori land should be defined for an exemption.

[129] This section focuses on providing options for Māori land owners. Te Ohanga Māori 2018 reported however, that the Māori forestry asset base was held predominantly by employers or businesses (69%) rather than collectives (23%) or self-employed (8%). https://berl.co.nz/our-mahi/te-ohanga-maori-2018

restrictions on ETS registrations would provide the most options for Māori, as the recommended definition of Māori land (discussed below) is likely to exclude some land owned by Māori.

439. Three options are considered below:

- Option One: No differentiation to recognise the unique character of Māori land.
- Option Two: Exempt Māori land from proposed restrictions.
- Option Three: Consider how Māori aspirations could be provided for within the different design choices (e.g., within the allocation system).

Option One – No differentiation to recognise the unique character of Māori land)

440. Māori land would be treated the same as other land under the proposed restrictions. This would have the greatest restriction on Māori landowners' options. Māori land would arguably be disproportionately impacted, given its greater suitability for forestry and higher proportion of LUC 6 land compared to the NZ average. Therefore under this policy, Māori land would deliver fewer benefits for rural communities and future generations (given these benefits are already being factored into any decision to afforest).

Option Two – Māori land is exempt from proposed restrictions (preferred)

441. The option to exempt Māori land would maintain options for Māori to exercise rangatiratanga over their whenua.

442. For Māori land to be exempt, decisions are needed on:

- How Māori land is defined for the purpose of exemption, and
- Which proposed restrictions Māori land would be exempt from

443. Māori own land in different ways. We apply the Treaty Article 2 obligation of active protection to land that is owned by Māori collectives: either as whenua Māori as defined under Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) or land that is held by Treaty settlement entities.[130] As noted above, this land is held and managed differently to general title land. The Government could also consider exempting land affected by the Māori Affairs Amendment Act 1967 (affected land). Exempting whenua Māori from the proposed restrictions could be justified on the basis that this land is disproportionately suited to forestry and on less versatile LUC classes and it is already challenging to develop.

444. If land held by Treaty settlement entities was exempt, there are choices on how broad this exemption could be. It could include:

- Land returned at the time of settlement;
- Land already purchased by settlement entities with intent to afforest; or
- All land (including future purchases).

[130] Te Ture Whenua Māori Act 1993 defines Māori land (s 129 and 4) as Māori freehold and Māori customary land, but most is Māori freehold. (There was estimated 1204 ha of customary land in 2020 compared with 1.4mha of freehold land.) Many also use the term 'whenua Māori' for Māori freehold and customary Māori land. This term is used for clarity here when only referring to Māori land as defined by Te Ture Whenua Māori Act. Whenua Māori records are maintained by the Māori Land Court databases and are relatively easy to identify and analysed as a discrete category. Land held by Treaty settlement entities is more difficult to identify, and MPI is awaiting the results of research to identify current holdings and land-use (see footnote 45). Furthermore, some Māori freehold land has been converted to general title land, but this is also not included in the statistical analysis (again, because it is not easily identifiable). It is acknowledged, however, that such may be managed with the same tikanga as Māori freehold land, that is, with an intergenerational focus, for the benefit of the broader whānau, and with a strong resistance to alienation.

445. Exempting land returned at the time of settlement would maintain the land use optionality anticipated at the time settlements were negotiated. This land is a finite area and thus would have a more certain and limited impact than exempting the last category (which is only constrained by settlement entities' ability to purchase land).[131]

446. Land already purchased with intent to afforest would not be subject to the proposed restrictions because of the general commitment that existing investments will not be penalised. A specific exemption is thus not required for this land.

447. Exempting all Māori land carries some risk that further land is purchased by settlement entities in future to circumvent the restrictions. The quantum of land is only constrained by post-settlement governance entities' purchasing power.

448. Officials also support exempting land affected by the Māori Affairs Amendment Act 1967 because if not for the Act, this land would likely be whenua Māori today. This has been the justification for differential treatment of this land in other contexts (e.g., the Local Government (Rating of Whenua Māori) Amendment Act 2021 protected affected land from being leased or sold as abandoned land sales[132]).

449. In past consultations, some Māori have argued that some general title land owned by Māori is held and managed in the same way as whenua Māori. It is within traditional tribal boundaries, unlikely to be sold, and is managed for broader community benefit and intergenerational wellbeing. Including all Māori owned land would make it difficult to distinguish land that is owned by Māori but is held and managed in a similar way to all general title land. As with a definition that included all land owned by settlement entities, this area of land can be increased by new purchases. Due to difficulties in identifying general title Māori owned land and few constraints on its quantum, officials do not recommend exempting this land.

450. Officials therefore propose that the exemption for Māori land include whenua Māori held under Te Ture Whenua Māori, land returned at the time of settlement, and land whose status was changed as a result of the Amendment Act. Officials also propose that the exemption apply to future Treaty settlements, to ensure these groups are not penalised for settling later than their peers. However, officials do not propose that the exemption apply to general title Māori owned land, or land purchased by settlement entities after the new restrictions come into effect. Officials propose that the above described land would be exempt from all of the proposed restrictions..

Option Three – Incorporate into design choices

451. If Māori land were not exempt from the proposed restrictions, then it would be important to ensure the definition of a farm is appropriate for Māori land and consider how the allocation system could deliver Treaty obligations. How far this option provided choices for Māori landowners would depend on the priority that Māori land was given, if any, in the allocation system.

How do the options compare to the status quo/counterfactual?

	Option One: No differentiation	Option Two: exempt Māori land from restrictions (preferred)	Option Three: Consider within design choices
Provide options for Māori to exercise rangatiratanga	**0** Most restrictive - Māori land owners would	**++** Less restrictive	**+**

[131] It is possible to move land from general title to whenua Māori under Te Ture Whenua Māori (s133) but in practice this is extremely rare, given the legislative restrictions in managing whenua Māori. Earlier initial analysis suggests some 60,000ha of whenua Māori on LUC 6 might be affected by the exemption. Analysis of the area of LUC 6 land held by settlement entities is still underway.

[132] TPK, 2022. Changes to the rating of Māori land. https://www.tpk.govt.nz/en/nga-putea-me-nga-ratonga/whenua-maori/proposed-changes-to-the-rating-of-maori-land

	need to bid for an allocation for LUC 6		Less restrictive (how much less depends on degree of priority)
Protecting high quality land for farming	**0** Most protection	**--** Least protection than under status quo	**-** Less protection
Supports meeting emissions reduction budgets and targets	**0** Reduction in removals and increase in agricultural emissions	**++** Least reduction in removals and increase in agricultural emissions	**+** Less reduction in removals and increase in agricultural emissions
Provide certainty for ETS participants and forestry investment	**0** Increased uncertainty for all foresters (unclear if they will be able to access allocation)	**+** Certainty for Māori land owners but uncertainty for others	**0** Increased uncertainty for all foresters (unclear if they will be able to access allocation)
Operational feasibility and managing costs of administering the ETS	**0** less complexity if not differentiating Māori land	**--** More complex than status quo	**--** More complex than status quo
Overall assessment	**0**	**+**	**-**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

452. The option of exempting Māori land best meets the policy objectives. It best provides options for Māori to exercise rangatiratanga and provides certainty for Māori landowners.

453. Officials acknowledge that an exemption results in less land being protected for farming. However, due to the characteristics of Māori land discussed above, the risk of the negative outcomes associated with whole-farm conversions (see section 1) applying to conversions on Māori land is considered low.

Appendix Three: Applying the rules in practice

This section shows how the proposed rules could apply in practice to an example, stylised farm (see Figure 8). Grey is LUC class 7-8, blue is LUC class 6, and light green is LUC class 1-5. This example farm had no pre-existing forest land. Figure 9 shows exotic forest land that could be registered in the ETS on this farm without a registration permit. The farmer could afforest all of their LUC class 7-8 land and 25% of any of their LUC class 1-6 land. Figure 10 shows exotic forest land that could be registered in the ETS on this farm with a registration permit. In this example, the farmer receives a registration permit for all of their LUC class 6 land. As the LUC class 6 land has pockets of LUC class 1-5 within it, this could create a risk of orphaned land. However, with the preferred approach of a 10% buffer, the pockets can also be registered in the ETS. This results in all of the land being able to be used productively.

Figure 8: Farm prior to afforestation

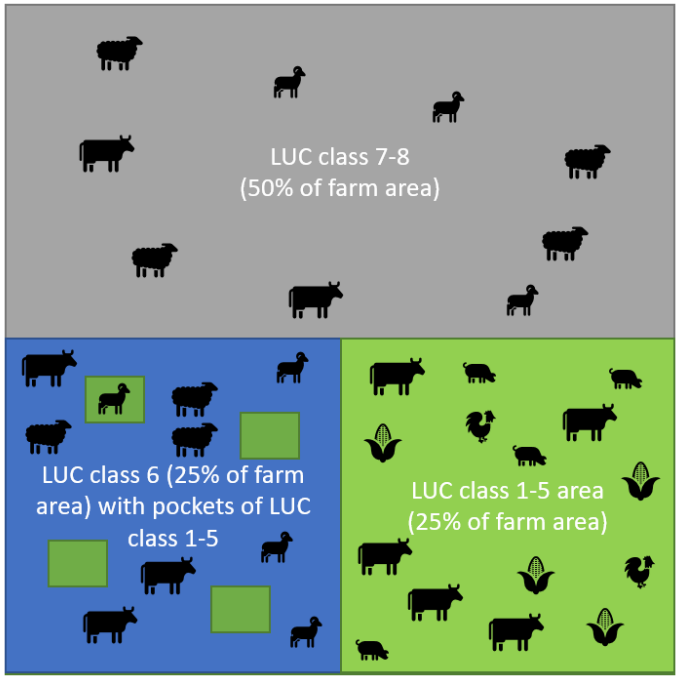


Figure 9: Without a registration permit

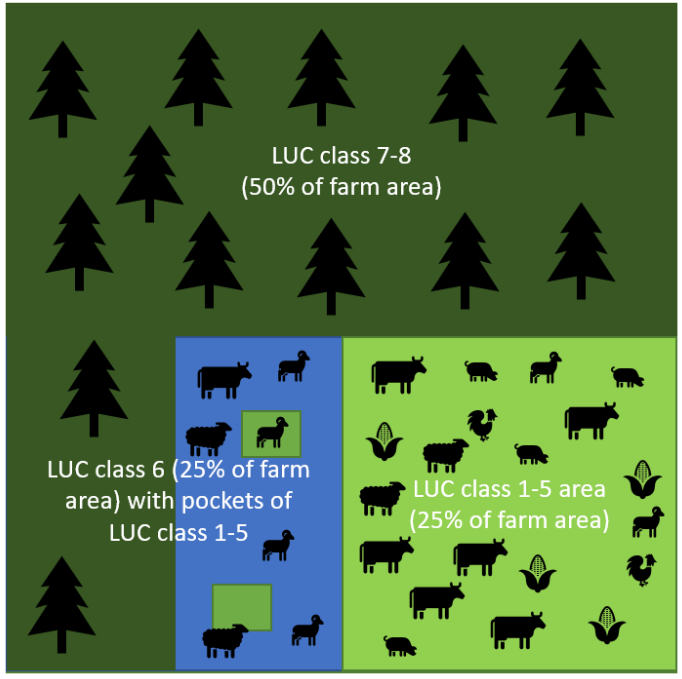
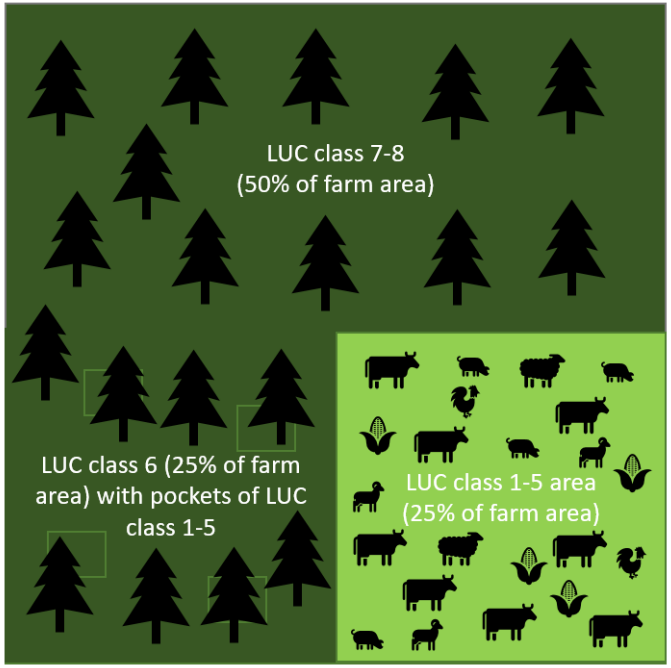


Figure 10: Allowable ETS-registered exotic forest with a registration permit



Appendix Two: Climate Change Response (Emissions Trading Scheme Forestry Conversions) Amendment Bill - Approval for introduction

Appendix 4 to Regulatory Impact Statement: Update to Regulatory Impact Statement on limiting farm conversions to exotic forestry – produced April 2025

Context

1. This appendix includes an update to the Regulatory Impact Statement (RIS) completed on 29 October 2024. The update addresses further policy decisions taken by Ministers.

2. In November 2024, Cabinet made high-level policy decisions to limit farm conversions to exotic forestry registered in the Emissions Trading Scheme (ETS). A RIS was presented to Cabinet with analysis of the key decisions. Cabinet also delegated the Minister of Forestry and Minister of Climate Change to make further, final policy decisions and return with a draft Bill.

3. In March 2025, the delegated Ministers made their final policy decisions. At this time, Ministers made several new policy decisions that were not discussed in the RIS. This update to the RIS assesses the impacts of these additional policy decisions that were not initially analysed.

Substantive new decisions with updated impact analysis

4. The following decisions taken by the Ministers in March were not analysed in the November 2024 RIS. Analysis related to these decisions is included in this appendix:
    - New transitional arrangements that allow people, who made a forestry investment prior to this policy being announced, to be exempt from the proposed restrictions.
    - Additional new exemptions
        - An exemption from the new restrictions for existing forest land
        - An exemption from the new restrictions for all areas without National Land Use Capability (LUC) class maps
        - An exemption from the new restrictions for erosion-prone land
    - Additional detail to clarify the exemption from the new restrictions for specific types of Māori land
    - A solution to reduce a significant risk of gaming in the policy, which involves attaching a notice to land titles to track if land has been registered in the ETS under the proposed allowance to register 25 percent of a farm in the ETS.

Impact on the marginal costs and benefits of the policy

5. The new decisions taken by Ministers do not significantly alter the marginal costs and benefits of the policy assessed in the RIS.

6. There will be a slightly higher cost to ETS participants resulting from the decision to require a notice to be attached to land titles to track if land has been registered in the

ETS under the 25 percent allowance. Adding a notice to a title has a cost recoverable fee of $330 per record of title. The total additional cost for an applicant will depend on how many records of title(s) are included within the 25 percent calculation.

7. Implementing these changes will increase the cost for the regulator to administer the ETS. The exact cost is still unknown, as decisions on regulations, which affect how the policy will be administered, have yet to be taken and agreed by Cabinet.

8. The cost of implementing the overall policy package will initially be funded from within the Ministry of Primary Industries' baseline funding. Ministers have agreed to include a provision in legislation granting the ability to cost recover for the additional direct and indirect costs of administering this policy, but decisions have yet to be taken on whether to introduce new or higher cost recovery fees (for example, for applying for a permit to register LUC class 6 land).

Minor decisions with limited impacts

9. Delegated Ministers made two new decisions in March 2025 that were not considered in the RIS, and are also not assessed in this appendix. These decisions have limited impacts "in scope and type" and are therefore exempt from further impact analysis (as outlined in Cabinet Office Circular CO (24) 7, section 36(2)). These decisions were:
    - to reserve for small foresters a portion of the annual allocation to register LUC class 6 land in the ETS.
    - the proposed compliance provisions in the Amendment Bill.

10. The decision to reserve part of the allocation aims to provide small scale foresters with safeguards to ensure the quota isn't taken wholly by large scale commercial foresters. However, it is not expected to have an effect on the overall level of ETS registration.

11. The compliance measure should have minor effect as no new enforcement tools or penalties are created. Rather, existing penalties in the Climate Change Response Act 2022 are applied to the new provisions.

Transitional arrangements

12. When Cabinet agreed the high-level policy framework for this policy [CAB-24-MIN-0439 refers], it also agreed to "transitional arrangements for foresters who are mid-investment" (Recommendation 3.7). The RIS submitted alongside that Cabinet paper highlighted officials had not yet analysed how to implement this.

13. Cabinet was conscious that some investors will be in the middle of establishing an ETS forest when these policy changes are announced and when they come into force. For this reason, Cabinet agreed to exempt people with evidence of investments, for the purpose of ETS forestry registration, that were initiated within a period of time prior to finalising rules.

What options are being considered?

Option One – liberal approach to investments and evidence, for a limited time

14. Under Option One, the transitional arrangements would:

- take a liberal approach to including a wide range of qualifying afforestation investments and evidence, including;
    i. having obtained, or entered into an agreement to obtain, a forestry right or forestry lease on farmland; or
    ii. having purchased, or entered into an agreement to purchase land; or
    iii. having applied for or received an emissions ruling on whether land is post-1989 eligible land,
    iv. having applied for or received a resource consent or submitted a permitted activity notice under the Resource Management Act 1991, related to forest establishment; or
    v. investments to prepare for afforestation, including ordering seedlings and evidence of land preparation for forestry; or
    vi. receipt of a recognised local or central government grant to afforest; or
    vii. the contracting of a third party to undertake due diligence for the purposes of afforesting farmland or the purchase of farmland with the intent to afforest; and
- constrain the window for qualifying investments to three years prior to announcement (between 1 January 2021 and 4 December 2024) and constrain the time within which people must register their forest in the ETS to three years from the announcement (must be registered in ETS by 31 December 2027), and
- give the regulator the ability to extend the date that the forest must be registered in the ETS to 31 December 2030 if there are temporary adverse weather events or similar circumstances.

15. Taking a liberal approach to the inclusion of qualifying investments would mitigate the risk of excluding significant, genuine investments made prior to the changes being announced. Having a three-year historic window for qualifying investments (between 1 January 2021 and 4 December 2024) constrains how many people could be eligible for an exemption. It also limits investments to a time period in which it may be reasonable to expect they could not have afforested and registered in the ETS prior to new ETS restriction coming into force.

- For example, this time limit attempts to reduce the risk that someone who purchased farmland 10 years ago but has made no recent steps towards afforesting the land, is able to use the transitional arrangements to avoid the new ETS restrictions.

16. The time constraint on registering a forest under a transitional exemption (by 31 December 2027) helps avoid the potential for these transitional arrangements being used to avoid the restrictions in perpetuity. Given it usually takes two to three years to afforest and register in the ETS, the three-year time limit should be sufficient for most intentions to afforest and register to occur within.

    - For example, it is feasible that someone could have one piece of valid evidence of a pre-2024 investment (e.g. a seedling order) – which they use to game the system, by using that seedling order as evidence of intent to afforest multiple properties.

17. The ability of the regulator to extend the timeframe for registration into the ETS acknowledges the possibility that an adverse weather event may require replanting and thus need more time.

Option Two – more prescriptive approach, available for a longer time

18. Under Option Two, the transitional arrangements could be more prescriptive by requiring a narrower set of qualifying investments. For example, by:

    - excluding investments that, on their own, may not represent a clear intention to afforest (e.g. a land purchase), or
    - requiring evidence of multiple qualifying investments to be provided as evidence of intent to afforest (e.g. a land purchase and a seedling order).

19. The key benefits of a narrower set of qualifying investments would be that it:

    - reduces the risk that someone who made an investment (e.g. a land purchase), without the intent to afforest at the time, will be eligible for this exemption
    - could allow for a longer period for the qualifying forest as there would be a reduced risk that qualifying evidence could be used multiple times or in perpetuity.

20. The key downside is that it could potentially exclude people who made significant investments prior to December 2024 (e.g. a land purchase on its own) with genuine (if unprovable) intent to afforest and register in the ETS.

Option Three – case-by-case exemption

21. Under Option three, the transitional arrangements would be assessed on a case-by-case basis. Decisions could be decided by the regulator and must be applied for within a year after the window closes for the standard transitional exemption (i.e. 31 December 2028).

22. In this analysis, the case-by-case exemption has been assessed as a standalone option. However, this option is not mutually exclusive with options one or two. In fact, this could complement either option, enabling investors to apply for a case-by-case exemption if they do not fit the general criteria for transitional arrangements and/or they have been unable to meet the deadline to register in the ETS because of matters outside their control. This could cater to projects where the applicant has either:

    - made a qualifying forestry investment before 1 January 2021 (i.e., the investment was made outside the eligible time window for transitional arrangement investments), but have been unable to register in the ETS prior to the Act being made due to matters outside of their control. For these investments, a case-by-case exemption would allow for application to register in the ETS by 31 December 2027, or

- made a qualifying investment between 1 January 2021 and 4 December 2024 (within the eligible time window for transitional arrangements) but have been unable to apply to register in the ETS prior to 31 December 2027 due to matters outside of their control. For these investments, the case-by-case exemption would extend the 31 December 2027 application to register in the ETS deadline to 31 December 2030.

23. The benefit of this option (either as a standalone option, or in addition to options 1 or 2) is that it addresses edge-cases that the general transitional arrangements do not foresee. For example, officials are aware of investors that made initial investments in farm conversions in the three years prior to 2021 but have been unable to register in the ETS due to lengthy delays in resource consents being issued.
24. The key risk of this option (either as a standalone option, or in addition to options one or two) is that the eligibility criteria are potentially broad and key terms are undefined. For example, neither what qualifies as "matters outside of their control" is yet defined. How many potential farm conversions ultimately proceed through this transitional arrangement will depend on how these terms are eventually interpreted by the regulator.

Assessment of options[1]

	Option One – liberal approach to investments and evidence, for a limited time (preferred)	Option Two – more prescriptive approach, available for a longer time	Option Three – case-by-case exemption
Protect high and medium quality land for farming	- Allowing a broad range of qualifying investments could mean more farmland could qualify for this exemption, and could be converted. However, much of this risk will be mitigated by the time limit on ETS registration.	**0** This option allows for the fewest qualifying investments and therefore would logically result in the least area of farmland being registered in the ETS via this exemption.	**-** The case-by-case exemption is aimed to capture edge cases, but potentially creates a larger gaming risk. Impact on farm conversions is therefore potentially significant given how broad the eligibility criteria are.
Provide certainty for ETS participants and forestry investment	**++** Clear eligibility criteria will increase investors' certainty of whether they will be eligible. Having a broad range of qualifying investments reduces the likelihood that people with sunk costs are disadvantaged.	**0** Clear eligibility criteria increases investors certainty, but the more prescriptive approach increases the chance that genuine investments in afforestation do not qualify and these investors are left out of pocket as they're unable to access the exemption	**0** Provides little clarity for investors given currently broad eligibility criteria; however, it does increase the chance that a broader range of genuine pre-2024 investments are exempt from new restrictions
Operational feasibility and costs	**+** Low administrative burden as it has clear eligibility criteria and is operational for a limited period of time.	**0** Moderate administrative burden, although it has clear eligibility criteria, it is operational for an extended period of time.	- Added complexity for the regulator to define scope of eligibility without clear guidance in legislation or

[1] Key: assessment tables show how each option affect each criteria
++ very positive impact; + positive impact; 0 no impact; - negative impact; - - very negative impact

			regulation. This may expose the regulator to litigation risk.
Overall assessment	**2**	**0**	**-2**

Note, the criteria ‘meet Treaty obligations’ and ‘meeting budgets and targets’ are excluded from the analysis as we consider these options have no material impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

25. When assessed against the RIS criteria, option one is the best standalone option. Accepting a wide range of afforestation investments and related evidence increases the likelihood that people who had genuinely intended to register land in the ETS, prior to the policy being announced in December 2024, are covered by the transitional exemption.
26. Option two better mitigates the risk that the transitional arrangements are gamed (for example, the risk that land purchased (without intent to afforest) prior to this date could be used to obtain a transitional exemption). However, option two is not favoured as this has the potential to exclude significant and genuine investments (i.e. land purchases). This risk is also largely mitigated in option one by the time limited window to register in the ETS in option one.
27. Option three has the benefit of catching edge cases that are not foreseen in option one. Risks remain around the broad eligibility criteria, but these could be resolved through clear guidance created by the regulator.
28. A blend of option one and three is the preferred approach. Option one provides certainty for investors and limits the time window for these exemptions, and is the least burdensome on the regulator. Having an ability to use a case-by-case exemption (option 3) in conjunction with option one provides an avenue to assess legitimate circumstances which sit outside the typical list of investments (which option one would address).

Additional new exemptions / clarifying exemptions

29. When Cabinet agreed to the high-level policy framework for this policy in November 2024, it also agreed to provide exemptions from the proposed restriction on registering land based on its LUC class. This included exemptions for:
    - forests on some Māori land;
    - forests planted on Crown-owned land as part of the public-private partnerships currently being explored by the Government (excluding land being productively farmed by Landcorp Farming Limited (Pāmu);
    - new forests on LUC class 7 and 8 farmland;
    - new indigenous forests; and
    - existing forests already registered in the ETS.
30. The RIS finalised in October included analysis of these exemptions.
31. Subsequently, Ministers agreed to three new exemptions and provide further detail on what types of Māori land are exempt.
32. These new exemptions and the further detail on exempt Māori land are individually assessed below. No other additional options have been considered..

New exemptions

Exemption from the new restrictions for existing forest land

33. Ministers have agreed that existing forest land should also be exempt from the proposed restrictions in this policy. This exemption would capture all land converted to forest prior to the restrictions coming into force.
34. 'Forest land' is land already converted to forestry but not yet entered in the ETS. Applying restrictions to prevent existing forest land from registering in the ETS forest does not achieve the overall policy objective of protecting productive, food producing farms from being converted wholesale into forestry. Allowing existing forest land in the ETS does not result in any further land use change as the land has already been converted.

Exemption from the new restrictions for areas without national-scale LUC mapping

35. Ministers have agreed that areas without national-scale LUC mapping should also be exempt from the LUC restrictions.
36. The existing national-scale LUC map does not cover all New Zealand. Based on the current national-scale map, this would exempt the Chatham Islands, Stewart Island and urban areas from the restrictions. A previously unmapped area would cease to be exempt at the time it is included in an updated map and future ETS registrations on this land would need to comply with the limits.
37. Applying the restrictions to 'areas without national-scale LUC mapping' would require prospective participants to obtain property-scale mapping of their land, which may be considered an unjust financial burden.

Exemption from the new restrictions for land within LUC 1-6 that has a high or severe erosion risk and should be retired from farming to prevent further erosion

38. Ministers have agreed that land within LUC 1-6 that has a high or severe erosion risk and should be retired from farming to prevent further erosion should also be exempt from the

LUC restrictions. The land would need to have been identified through a regional plan process which requires a detailed evidence base.

39. There will be circumstances where farms with LUC 1-6 land require exotic tree cover for erosion control, and the ETS is the best way to finance erosion control. Gisborne is a live example of this.

40. Targeting afforestation on erosion-prone land can assist with climate change adaptation and resilience, as well as delivering other environmental benefits.

    - For example, permanent forests can be a cost-effective solution for severely erosion-prone land and could contribute to meeting the Government's sediment bottom lines under the National Policy Statement for Freshwater Management by improving soil conservation and water quality (Manaaki Whenua, 2019). There is an estimated 1.4 million hectares of land deemed at risk of severe erosion and suitable for permanent forest cover, 840,000 hectares of which is in the North Island (Stats NZ, 2012).
    - Forests can also play an important role in climate change adaptation and resilience. Research on the impacts of Cyclone Bola on the East Coast of New Zealand found that forests with closed canopy (indigenous forest and exotic pines greater than 8 years old) were 16 times less susceptible to land sliding than pasture (and exotic forests younger than 6 years old) (Marden & Rowan, 1993). This is supported by other research that found closed-canopy tall forests reduce landslides in large storms by 70 to 90 percent and forests can also play a role in flood regulation (Basher, 2013).

41. However, these potential benefits may not be realised unless areas of high/severe erosion risks are exempt from these ETS LUC restrictions, as this land may be avoided by investors due to perceived lower productivity and higher risk, particularly without access to additional ETS income for forestry.

Assessment of exemptions

	Exemption of existing forest land	Exemption of areas without national-scale LUC mapping	Exemption of Land within LUC 1-6 that has a high or severe erosion risk and should be retired from farming to prevent further erosion
Protect high and medium quality land for farming	**0** Exempting existing forest land from the restrictions will have minimal to no effect on land use change, as to be exempt the land must already have been converted to forest before the new restrictions come into force.	**0** This will result in a very small amount of farmland (i.e., just the farmland on the Chatham Islands) being exempt from these restrictions. Other areas (urban areas and Stewart Island) do not include significant areas of farmland.	**0** This exemption should have a negligible impact on the loss of high-medium quality farmland. Land captured by this exemption would not commonly be understood as high or medium quality land given its erosion-prone status, but may be identified as such on an LUC map, given such assessments are relatively high-level.
Provide certainty for ETS participants and forestry investment	**+** Provides certainty to investors of existing foresters that they will be exempt. Without this exemption they may qualify for	**+** Any forestry occurring in these areas will proceed under existing ETS rules. This creates a lower financial burden for	**+** This is creates a lower financial burden than the alternative option for farmers wanting an exemption for

	a transitional exemption, but it could be uncertain.	foresters than the alternative of needing to undertake a property scale assessment of farmland.	erosion-prone land (paying the cost of having the land reclassified via a property scale LUC assessment).
Meet Treaty obligations	**0** Māori land returned pursuant to a treaty settlement is already exempt from the restrictions in policy. Further exemptions are unlikely to impact the Crown's obligations.	**0** Māori land returned pursuant to a treaty settlement is already exempt from the restrictions in policy. Further exemptions are unlikely to impact the Crown's obligations.	**0** Māori land returned pursuant to a treaty settlement is already exempt from the restrictions in policy. Further exemptions are unlikely to impact the Crown's obligations.
Operational feasibility and costs	**+** This exemption will be simple for users to apply for and the regulator to assess.	**+** This exemption will be simple for users to apply for and the regulator to assess.	**-** This exemption will add greater complexity to ETS registration system compared to a scenario where there is no exemption for land at high or severe erosion risk.
Overall assessment	**2**	**2**	**0**

Note, the criterion 'meeting budgets and targets' are excluded from the analysis as these options have no impact on this criterion.

Are the exemptions likely to address the problem, meet the policy objectives, and deliver net benefits?

42. Exempting existing forest land protects investments made prior to this policy being announced, provides additional certainty to ETS applicants, and will have minimal to no impact on the loss of productive farmland.
43. Exempting land that does not have an LUC map provides people in those areas with a simple, more equitable, route to ETS participation, while having minimal impact on the loss of productive farmland (relative to a situation where the LUC restrictions were applied to these areas).
44. Exempting land at high or severe risk of erosion will help improve land management outcomes in erosion-prone areas, while having minimal to no impact on the objective of preventing the loss of productive farmland.

Providing more clarity on the Māori land exemption

45. In November 2024, Cabinet agreed to exempt some high-level categories of Māori land. This included:
    - Māori land held under Te Ture Whenua Māori Act 1993;
    - land on which the status was changed to general land under the Māori Affairs Amendment Act 1967; and
    - land returned pursuant to a Treaty settlement.
46. Ministers have subsequently decided to include greater detail regarding the type of land that would fall under each of these categories (as described in the section below).
47. The decision to include further detail on exempt Māori land is assessed below. No other options have been considered as Ministers have already made their decision.

What options were considered?

Provide greater clarity in legislation about what Māori land is intended to be exempt

48. Providing greater clarity in legislation about what Māori land is intended to be exempt will help reduce ambiguity and unintended consequences and ensure alignment with other existing legislation.
49. Te Tari Whakatau provided advice recommending greater specificity regarding the land types of Māori land that might fall under each of the land categories recognised by Cabinet. This analysis was based on a review of Māori land categories made exempt in comparable legislation. The proposed scope of Māori land types to be exempt were then tested with a small number of Māori stakeholders.
50. Ministers chose to include the following types of land consistent with Cabinet's decision to exempt *land returned pursuant to a Treaty Settlement*:
    - land held by a Post Settlement Governance Entity if acquired as Treaty settlement redress or exercising of rights under a settlement;
    - reserves managed wholly or jointly by a governance entity under a Treaty settlement;
    - land that has been declared to be a legal entity/person (including Te Urewera land within the meaning of section 7 of Te Urewera Act 2014); and

- the maunga listed in the Ngā Mana Whenua o Tāmakai Makaurau Collective Redress Act 2014.

51. Ministers chose to include the following types of land consistent with Cabinet's decision to exempt *Māori land held under Te Ture Whenua Māori Act 1993*:
    - Māori customary land and Māori freehold land as defined by section 4 of Te Ture Whenua Māori Act 1993;
    - Māori reservations under Part 17 of Te Ture Whenua Act 1993; and
    - land constituted as a Māori reserve under the Māori Reserved Land Act 1955.
52. Ministers chose to include the following types of land consistent with Cabinet's decision to exempt *land on which the status was changed to general land under the Māori Affairs Amendment Act 1967*:
    - land owned by Māori that was previously Māori freehold land, but ceased to have that status in accordance with Part 1 of the Māori Affairs Amendment Act 1967 or an order of the Māori land court; and
    - land owned by Māori that is beneficially owned by the persons, or by the descendants of the persons, who beneficially owned the land immediately before the land ceased to be Māori land.

Assessment of option to provide greater clarity

	Provide greater clarity in legislation about what Māori land is intended to be exempt
Provide certainty for ETS participants and forestry investment	**+** Greater clarity reduces ambiguity and unintended consequences and provides more certainty for Māori ETS participants.
Meet Treaty obligations	**+** Greater clarity is likely to create better alignment with other existing legislation – and is more likely to ensure land which is not intended to be captured by Cabinet's decision is exempt.
Operational feasibility and costs	**+** More clarity means more simplicity for users and the regulator– less likely to lead to reviews of decisions.
Overall assessment	**3**

Note, the criteria 'protect high and medium quality land for farming', and 'meeting budgets and targets' are excluded from the analysis as these options have no impact on these criteria.

Is the additional detail likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

53. Making the legislation clearer about what Māori land is intended to be exempt is more likely to lead to better outcomes for Māori and the government.

Mitigating the risk of foresters gaming the 25% allowance to undertake whole farm conversions (against the intent of the policy)

54. Cabinet agreed to provide landowners flexibility by allowing 25 percent of LUC 1-6 land on a farm to be registered in the ETS (recommendation 3.4).

55. Farm boundary changes will affect how the 25 percent allowance is calculated.

56. Ministers have agreed that "if the farm area reduces in size, resulting in post-2025 exotic ETS forest exceeding 25 percent of LUC class 1-6 land, there will be no consequence". This is to avoid significant penalties of de-registering ETS forests (which can be very expensive and could lead to significant perverse outcomes).

57. This approach to managing boundary changes, however, creates a risk that ETS participants will subdivide off afforested 25 percent land and then seek a further 25 percent exemption on the remaining land and/or any new land added to a farm.

What options are being considered?

Option One – tagging records of titles

58. To mitigate this risk, a notice could be recorded against the records of title(s) of an individual farm when the 25 percent allowance is registered in the ETS.

59. This would mean that for records of title included in a 25 percent calculation (i.e. identified as part of either the 25 percent of LUC 1-6 land to be afforested, or the 75 percent of LUC1-6 farmland that would not be) a notice would be added.

60. Records of title with this notice on them would not be accepted by the regulator as part of any further 25 percent allowance calculation on ETS registrations in the future.

61. If an applicant subsequently acquires and adds an adjacent record of title to their farm, they could still register land under the 25 percent allowance on this new title as long as the calculation only included land on the new title(s) (and provided the new title(s) was not already subject to a title(s) notice or statutory declaration as applicable).[2]

62. Adding a notice will create additional costs to applicants registering in the ETS via the 25 percent allowance. Adding a notice to a title currently has a cost recoverable fee of $330 per record of title. For registering land under the 25 percent allowance on a typical farm, the cost will depend on how many records of title(s) are included within the 25 percent calculation. For a two-title registration this would double the current registration cost.

63. This approach raises the question of what will happen to a notice on a record of title if that record of title is subdivided or merged with another title without a notice. In these circumstances, the notice is to be transferred in both circumstances; to a subdivided title or a newly merged title.

64. In addition, all land on the newly merged title would not be able to form part of another 25 percent allowance calculation for an ETS registration application. This would have the effect of constraining ETS registration of land under the 25 percent allowance that has not previously been part of a 25 percent calculation, however, the alternative (removing the notice when a title is merged) would create a loophole to merge titles and avoid the restrictions.

65. There is another scenario where two or more titles with a 25 percent notice are merged into one title. Under these circumstances, all existing notices would be added to the

Note added for proactive release: Costings discussed in paragraph 62 are indicative and subject to cost recovery analysis being undertaken, in line with the decision to enable cost recovery through the Bill.

[2] Adding more titles does not increase the total area of a 25% calculation, only 25% of the additional title can be converted.

amalgamated title. This maintains the 25 percent notice on all the merged land, and ensures all notice information is retained.

Option two – statutory declaration

66. Option two would require an applicant to provide a statutory declaration stating the record of title(s) within their chosen farm boundary have not previously been used in a 25 percent allowance calculation (except in circumstances where the applicant had only used part of their allocated 25 percent allowance).

67. This alternative option is simpler and does not incur or pass on additional cost, however, it does carry the risk that an applicant may provide a false or misleading statutory declaration.

Assessment of options

	Option One – tagging records of titles	Option Two – statutory declaration
Protect high and medium quality land for farming	**++** Likely to prevent gaming – and therefore more likely to protect high and medium quality farmland.	**+** Would act as a clear signal to prevent gaming, however, unlikely to be able to easily enforceable.
Provide certainty for ETS participants and forestry investment	**+** Tagging titles would provide a relatively simple and transparent record for people to understand whether a record of title is eligible for the 25% allowance or not.	**0** This is a simple rule to follow – meaning ETS participants will have more certainty that they are following the rules. And may provide ETS participants more confidence that the rules are being adhered to.
Operational feasibility and costs	**-** Will add cost for many ETS participants. Adding a notice to a title currently has a cost recoverable fee of $330 per record of title. For a two-title ETS registration under the 25% allowance, this would double the current registration cost.	**0** Minimal additional costs to implement, however may not actually be enforceable
Overall assessment	**3**	**1**

Note, the criteria 'meeting budgets and targets', and 'meets Treaty obligations' are excluded from the analysis as these options have no impact on these criteria.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

68. The 25 percent allowances on LUC 1-6 land and the proposal to let the 25 percent allowance be recalculated when boundaries change is a risk. These policy settings could result in whole farm conversions in concentrated areas, in a way that mirrors business-as-usual practice for foresters.

69. Option two (requiring ETS participants to provide a statutory declaration) can help to mitigate this risk, and option one (tag the titles used in a 25 percent calculation) reduces

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this risk even further. The options are not mutually exclusive and could be applied together.

70. There are additional costs associated with option one. As notices will need to be added to each title, this may affect how prospective participants engage with the policy overall – and may have unintended consequences.