



# **Ngāi Tahu conditional exemption from participation in the Emissions Trading Scheme under section 60 of the Climate Change Response Act 2002**

## **Regulatory Impact Statement**

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# Impact Summary: Ngāi Tahu conditional exemption from participation in the Emissions Trading Scheme under section 60 of the Climate Change Response Act 2002

## Section 1: General information

<b>Purpose</b>
<p>Te Uru Rākau and the Ministry for the Environment are solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none"><li>• A decision by Cabinet on whether to grant an exemption from participation in the ETS for Ngāi Tahu under section 60 of Climate Change Response Act 2002 (CCRA) in relation to its application for afforestation to offset the deforestation of 1,574,77 hectares of pre-1990 forest land.</li></ul>
<b>Key Limitations or Constraints on Analysis</b>
<ul style="list-style-type: none"><li>• Out of scope is the impact of the market value of New Zealand Units (NZUs) on the liability for carbon emissions from deforestation. This is because the amount of units in question are a very small percentage of the actual amount of units in the market and so have no material impact.</li><li>• The cost to Ngāi Tahu of meeting the deforestation liability will change with the market. The NZU price has not been below \$22.50 for 18 months.</li><li>• Cabinet (ENV-18-MIN-0047) agreed to address the inflexibility in the CCRA legislated timeframes in which to complete the afforestation of approved offsetting forest land. The Climate Change Response (Emissions Trading Reform) Bill (the ETS Bill) is seeking to address the lack of a mechanism to vary the timeframes and area of applications for offsetting forest land (currently in select committee stage). However, the timing of these changes and their commencement in 2022, make any potential retrospective implementation extremely challenging and uncertain.</li><li>• The consultation is limited to Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) as the parties with statutory responsibilities under the CCRA. The reasons for this are that the problem of the CCRA having inflexible legislated timeframes has already been consulted on during the development of the ETS Bill. In addition, Ngāi Tahu factors of significant scale and complexity of forestry activity, across a large and dispersed forest estate are specific and unique. They are not relative to other ETS participants whose smaller scale mean they can comply with the CCRA.</li></ul>

**Responsible Manager (signature and date):**

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31 / 05 / 2023

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26 / 04 / 2023

*To be completed by quality assurers:*

**Quality Assurance Reviewing Agency:**

Ministry for Primary Industries

**Quality Assurance Assessment:**

The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment (RIA) Ngai Tahu conditional exemption from participation in the Emissions Trading Scheme under section 60 of the Climate Change Response Act 2002 produced by the Ministry for Primary Industries and dated March 2020. The review team considers that it meets the Quality Assurance criteria.

The RIA shows clearly that alternative options have been carefully considered, and implementation risks identified and mitigated. The rationale behind targeted consultation is fully explained. The panel notes that this is a unique case and that the underlying issues are being addressed in the Climate Change Response (Emissions Trading Reform) Bill. This will ensure that the lack of a mechanism to vary the timeframes and area of applications for offsetting forest land does not recur in future.

## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

#### **Status quo**

#### *Pre-1990 forest land participation in the New Zealand Emissions Trading Scheme (ETS)*

- Pre-1990 forest land is land that was established in forest before 1 January 1990, and which has remained in forest since that time. There are approximately 1.35 million hectares of pre-1990 forest land in New Zealand.
- The deforestation of pre-1990 forest land imposes mandatory requirements under the ETS. Landowners who deforest more than two hectares of pre-1990 forest land in a five-year period automatically become participants in the ETS, and are required to surrender emission units to the Crown.
- Under the CCRA, deforestation is considered to have occurred when an area of forest greater than two hectares is harvested and the:
  - land use of that hectare changed to something outside of forestry (for example, turning the land into pasture); or
  - hectare is not replanted in forest species, or does not naturally regenerate to sufficient levels, within four years of harvest.
- A one off allocation of New Zealand Units (NZUs) was made available to all owners of pre-1990 forest land under the Forestry Allocation Plan (FAP). The FAP was considered to be partial compensation from the Crown in recognition of the restrictions on land use that were imposed by the CCRA.
- The CCRA makes provision for pre-1990 forest landowners to have the economic flexibility of being able to change land use, by managing their deforestation obligations through the planting of offsetting forest land, as approved by Te Uru Rākau.
- Ngāi Tahu was allocated NZUs under the FAP and later, as a condition of approval for an offsetting application, surrendered the 57,461 NZUs allocated to the area of the offsetting application. Te Uru Rākau must return these NZUs to Ngāi Tahu when the offsetting application is revoked. The 57,461 NZUs are valued at \$1,528,462.60 (as at 13/02/2020) being an ETS market value of \$26.60 per NZU.

#### **Problem definition**

- Ngāi Tahu did not meet the timeframes to establish offsetting forest land, in compliance with the CCRA. Te Uru Rākau has no option other than to revoke the approval for the offsetting forest land. Ngāi Tahu will incur a surrender liability for 180k NZU valued at around \$4.8m, and is likely to reduce future afforestation. This scenario does not support the achievement of New Zealand's greenhouse gas targets.
- Ngāi Tahu case is the first time the offsetting provisions have been applied to an initiative of this scale and complexity. The offsetting provisions were designed to deal with the transition of smaller areas of land in farm forestry operations. Large scale forestry companies are far less likely to engage with offsetting at scale as, given that forestry is their core business, any lands under their control are most likely to be

replanted upon harvest. Ngāi Tahu, however, has responsibilities to the Ngāi Tahu people, and undertakes large scale forestry as part of a complex and multi-faceted business that operates with concurrent land uses across a wide area of land, in a post treaty settlement environment. The drafting of the CCRA did not foresee the offsetting provisions applying to a land conversion initiative of the size and complexity of Ngāi Tahu.

- The CCRA has inflexible timeframes and application area requirements that have impeded compliance by Ngāi Tahu. Under the CCRA, an offsetting forest land application is approved subject to the requirement that all the offsetting forest land must be established within the ETS legislated timeframe. Forest land that is cleared and remains unstocked for at least four years, must establish offsetting forest land within four years of approval. If the land is converted, then the timeframe is up to two years<sup>1</sup>.
- However, officials now consider these timeframes to be unrealistic to establish large and complex land areas due unforeseen issues in gaining resource consents and the logistics of planting of three application areas. Further, the lack of flexibility in the current provisions means any error in afforestation can result in the whole application to offset forest land failing. For example, the timing of the application could limit the timeframe for afforestation to one planting season. This impedes any ability to undertake infill planting to recover from planting failure that can be, typically, 5-10% of trees planted.
- Cabinet (ENV-18-MIN-0047) agreed to address the inflexibility of the CCRA in the ETS Bill. The ETS Bill is seeking to address the lack of a mechanism to vary the timeframes and area of applications for offsetting forest land (currently in select committee stage). However, the timing of these changes and their commencement in 2022, make any retrospective implementation extremely challenging and uncertain.
- In this case, the inflexibility of the timeframes made it unrealistic for Ngāi Tahu to coordinate and deliver the forestry activity required to establish the offsetting forest land. Ngāi Tahu, as an ETS participant with the unique specific factors of significant scale and complexity of forestry activity, across a large and dispersed forest estate, is faced with issues of:
  - Lead times to organise planting crews, transport, accommodation and equipment across dispersed forest estates, appropriate land, and trees for planting large areas, within the winter planting season; and
  - Uncertainty and delays to gaining resource consent for land use; alongside.
  - Responsibilities to the forestry supply chain to meet contractual obligations.
- At the time of drafting the CCRA, the timeframes to establish offsetting forest land and lack of provision for the amendment of the offsetting area once an application has been approved, did not foresee the afforestation of areas of forest land of the scale and complexity of Ngāi Tahu land conversion initiative. The issues faced by Ngāi Tahu have informed the proposed policies in the ETS Bill. The ETS Bill is seeking to address this by providing forest owners with more flexible timeframes for future cases, but those changes are not expected to apply before 2022 and a decision is now required to ensure of the objectives of the ETS are satisfied.
- Ngāi Tahu established the 1,052.6 hectares of the 1,666 hectares of approved offsetting forest land within the timeframe legislated in the CCRA. However, because

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<sup>1</sup> Sections 179A(1)(b)(i) and (ii), and 186C(1)(a) of the CCRA

the remaining 613.4 hectares was not established as forest land within the legislated timeframe, the whole application fails to comply with the CCRA.

- Te Uru Rākau has used the experience of Crown Forestry to calculate that four years from the time the exemption is granted, is a realistic timeframe for Ngāi Tahu to complete the planting of 613.4 hectares, plus the additional 50 hectares of indigenous forest land. A four year timeframe also aligns with the proposals in the ETS Bill.
- Te Uru Rākau has no option other than to revoke the approval for the application to establish offsetting forest land. This is a problem because the CCRA precludes Te Uru Rākau taking account of the 1,052.6 hectares that was planted within the legislative timeframes. The NZU surrender obligation for the total 1,574.77 hectares of area to be deforested in the approved application to establish offsetting forest land, and the potential penalty for non-compliance could be a disincentive to Ngāi Tahu investment in future afforestation.
- Ngāi Tahu successfully established the majority of the offsetting forest land, and is facing increasing liability costs due to the rise in value of NZUs. Ngāi Tahu is likely to seek resolution in court if an exemption is not granted. The outcome of court action would be costly and time consuming for both parties and, whilst the Crown could receive income from surrendered NZUs, this would be at the detriment of further afforestation.
- This needs to be addressed now because it is delaying significant afforestation of the remaining 613.4 hectares plus the 50 hectares of indigenous forest land that supports the government's One Billion Trees initiative (note – Ngāi Tahu afforestation would not be government funded), and could reduce Ngāi Tahu economic activity due to the costs of complying with the CCRA.

## 2.2 Who is affected and how?

- Even with Ngāi Tahu intentions and efforts, the timeframes were not sufficient to plant the total area of approved offsetting forest land. This is due to the specific factors of significant scale and complexity of forestry activity, across a large and dispersed forest estate. Conversely, other pre-1990 forest land owners are of a scale that enables them to comply with the legislative timeframes, even when it might not be easy to do so. The specific issues faced by Ngāi Tahu have informed the proposed policy in the ETS Bill to make it easier for all pre-1990 forest land owners to comply.
- Under the CCRA, Te Uru Rākau has no option other than to revoke the approval for the application to establish offsetting forest land. This means Ngāi Tahu could not use that forest land to offset deforestation and would incur either:
  - A liability for 179,885 tonnes<sup>2</sup> of carbon emissions from deforested pre-1990 forest land. (This incurs an obligation to surrender 179,885 New Zealand Units (NZUs), at an ETS market value of \$26.60 (as at 13/02/2020) per NZU, totalling \$4,784,941); and
  - A penalty for failing to comply with the CCRA, of \$5,396,550 (prior to any potential reduction of up to 100%); or

<sup>2</sup> This value is an estimate based on *Pinus radiata* in the Canterbury/West Coast region with an average harvest age of 28 years

- Significant costs and delays to establish additional forest land for approved offsetting, before deforesting the remaining pre-1990 forest land.
- The four main sawmills operating on the West Coast of New Zealand rely almost entirely on logs from Ngāi Tahu for their existence and Ngāi Tahu plans to purchase additional land for new afforestation. However, the revocation of the offsetting application, resulting in NZU surrender and possible penalty, combined with investment losses from windthrow and very large decreases in log prices may create a ripple effect that stops further investment in land and afforestation of scale by Ngāi Tahu.

### **2.3 What are the objectives sought in relation to the identified problem?**

*Objectives must be clear and not pre-justify a particular solution. Where there are multiple policy objectives, it should be clear how trade-offs between competing objectives are going to be made and the weightings given to objectives – not just those in direct conflict.*

*For further guidance, the Guidance Note on Best Practice Analysis*

<https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf>

The objectives are to:

- Achieve the objectives of the ETS to minimise the long-term costs to the New Zealand economy of meeting international obligations and to maintain:
  - Economic flexibility – by enabling Ngāi Tahu to change land use and run a viable business with land returned through the Ngāi Tahu Claim Settlement Act 1998.
  - Equity - by enabling Ngāi Tahu as a forest owner of significant scale and complexity to manage the logistics of resourcing and planting of forest land.
  - Environmental integrity through afforestation (that also supports the One Billion Trees initiative of afforestation) and the achievement of New Zealand's greenhouse gas targets.
- Align with the intentions of the Climate Change Response (Emissions Trading Reform) Amendment Bill to improve flexibility in the legislative timeframes so they are realistic for the planting of offsetting forest land.



## Section 3: Options identification

### 3.1 What options have been considered?

**Non-regulatory options** – these were considered but none were suitable due to the requirements of the CCRA being mandatory on both Te Uru Rākau and Ngāi Tahu. The inflexibility of these requirements are being addressed through the ETS Bill.

#### **Option 1 – maintain the status quo by revoking the approval for offsetting forest land, and responding if Ngāi Tahu seeks resolution in the courts**

If Te Uru Rākau revokes the application approval and gives Ngāi Tahu notice of an obligation to surrender NZUs (to meet a carbon emissions liability for deforestation), then it is likely Ngāi Tahu will appeal to the District Court, or seek judicial review through the High Court, of Te Uru Rākau's decision.

#### **Option 2 – enact section 60 of the CCRA and give Ngāi Tahu a realistic timeframe to complete afforestation**

Option 1 would put Ngāi Tahu, effectively, in the same position as if the afforestation had been completed within the ETS legislated timeframe, while the conditions on the exemption ensure future offsetting applicants are deterred from deliberate non-compliance.

Under section 60 of the CCRA, the Governor-General may by Order in Council made on the recommendation of the Minister, exempt Ngāi Tahu from being a participant in the ETS in respect of the land in the offsetting application P90OFF00011.

The effect of the exemption would be to give Ngāi Tahu a realistic timeframe of four years from the time of the exemption being approved, in which to complete the afforestation, without incurring liabilities for carbon emissions from deforestation.

#### **Decision criteria**

**Criteria 1** – the order would meet the requirements of section 60 of the CCRA (note - this legislative requirement applies only to Option 2)

- The criteria to assess the options are set out in section 60 of the CCRA. This includes the Minister for Climate Change being satisfied the order will not materially undermine the environmental integrity of the ETS, and the costs do not exceed the benefits of making the order.

**Criteria 2** – improve the workability of the ETS for significantly large-scale forestry activity

##### Option 1

- Pros – mitigates issues caused by the lack of a flexible mechanism to vary the area and timeframe to establish forest land
- Cons – potential legal challenge regarding the specific factors taken into account in Te Uru Rākau decision. However, this decision aligns with the intention of the CCR(ETS) Bill

##### Option 2

- Pros – potential legal clarity on when deforestation occurs

- Cons – potential limited legal clarity, Crown legal costs, Te Uru Rākau officials' time, Ngāi Tahu obligation to surrender NZU not suspended by legal proceedings and reallocation of funding from afforestation

**Criteria 3** – support the objective of the ETS being NZ's domestic marketplace for carbon

Option 1

- Pros – achieves the objectives of the ETS to minimise the long-term costs to the New Zealand economy of meeting international obligations and to maintain economic flexibility, equity, and environmental integrity (supports the One Billion Trees initiative through the completion of afforestation and additional planting of indigenous forest land)
- Cons – potential legal challenge regarding the specific factors taken into account in Te Uru Rākau decision. However, this decision aligns with the intention of the ETS Bill

Option 2

- Pros – potentially improve certainty and clarity of the interpretation of when deforestation occurs
- Cons – lower carbon stocks if additional afforestation does not occur

### 3.2 Which of these options is the proposed approach?

The proposed approach is Option 2. This would put Ngāi Tahu, effectively, in the same position as if the afforestation had been completed within the ETS legislated timeframe. The effect of the exemption would be to give Ngāi Tahu a more realistic timeframe of four years in which to complete the afforestation, without incurring liabilities for carbon emissions. Te Uru Rākau has calculated four years to be a realistic timeframe based on the experience of Crown Forestry.

Without the exemption, under the CCRA, Te Uru Rākau has to revoke the Ngāi Tahu application approval. The revocation would cause Ngāi Tahu to:

- Lose the right to use the 1,052.6 hectares of established forest land to offset the liability for carbon emissions from deforesting pre-1990 forest land; and
- Incur a liability for carbon emissions from the deforestation of pre-1990 forest land, preliminarily calculated at 346.56 hectares.
- If this were the case, a liability for 179,885 tonnes<sup>3</sup> of carbon emissions would oblige Ngāi Tahu to surrender 179,885 NZU, at an ETS market value of \$26.60 (as at 13/02/2020) per NZU, totalling \$4,784,941; and
- Incur a penalty for failing to comply with the CCRA, of up to \$5,396,550 (prior to any potential reduction of up to 100%); or
- Incur significant costs and delays to establish additional forest land for approved offsetting, before deforesting the remaining pre-1990 forest land.

Through the conditions of the exemption, Ministers can be satisfied<sup>4</sup> that the Order in Council would not materially undermine the environmental integrity of the ETS, and the costs of making the order would not exceed its benefits. In addition, future offsetting applicants would be deterred from deliberate non-compliance through the conditions on the exemption of Ngāi Tahu being more punitive than compliance with the requirements on offsetting forest land. The conditions are Ngāi Tahu:

- Establishes 50 hectares of indigenous forest land, at an estimated cost of \$250K-\$500K, that is in addition to the total area required to be established under the offsetting application, within four years of the exemption. This land must be entered in the ETS as permanent post-1989 forest land (to remain in forest for a minimum of 50 years); and
- Confers a forestry right over the 1,666 hectares of forest land that must be established, to the Crown. The effect of this right would be to:
  - Require Ngāi Tahu to surrender NZU for any future deforestation of the 1,666 hectares of land, in the way required for pre-1990 forest land deforestation under the ETS.
  - Prevent the 1,666 hectares of land (not including the additional 50 hectares of indigenous forest land) from earning NZU (to align with the treatment of offsetting forest *land within the ETS*), *without the agreement of the Crown*.
- Transfers back to the Crown, the 57,461 NZU mandatorily returned to Ngāi Tahu by the Crown, under the CCRA, at the revocation of the approved application to establish offsetting forest land. These NZU must be reimbursed by the Crown because they were originally allocated to Ngāi Tahu under the Forestry Allocation Plan and subsequently surrendered by Ngāi Tahu as a condition of the application. The requirement for Ngāi Tahu to then transfer those NZU back to the Crown means

<sup>3</sup> This value is an estimate based on *Pinus radiata* in the Canterbury/West Coast region with an average harvest age of 28 years

<sup>4</sup> As required under section 60 of the CCRA, refer to appendix one, page 8

that the effect of the exemption will align with the intended outcome of the original Offsetting application.

The key risk with this option is other ETS participants, who technically failed to offset deforestation, could seek to challenge Te Uru Rākau decisions that take significantly large scale forestry activity into account. However, these ETS participants failed to offset significantly smaller areas, in each case of less than 110 hectares, and in each case Te Uru Rākau sought to ensure the workability of the ETS for the affected parties. This risk is also mitigated by the ability of smaller scale pre-1990 forest land owners to comply with the CCRA, even though it might not be easy to do so, compared to the legislative timeframes being unrealistic for the scale and complexity of the forestry activity Ngāi Tahu sought to undertake.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

Summarise the expected costs and the benefits in the form below. Add more rows if necessary.

Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no actions were taken. Note that “wider government” may include local government as well as other agencies and non-departmental Crown entities.

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance

<b>Affected parties (identify)</b>	<b>Comment:</b> nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	<b>Impact</b> \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts
<b>Additional costs of proposed approach, compared to taking no action</b>		
Regulated party - Ngāi Tahu	Not incur a liability to surrender units in the ETS for carbon emissions from the existing deforestation of pre-1990 forest land, preliminarily calculated at 346.56 hectares. If this were the case, a liability for 179,885 tonnes <sup>5</sup> of carbon emissions would oblige Ngāi Tahu to surrender 179,885 NZUs	Around -\$4.8m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	Not incur a liability to surrender units in the ETS for carbon emissions from any part or total future deforestation of the remainder of the pre-1990 forest land in the application to offset forest land, preliminarily calculated at 1,228.21 hectares. If this were the case, a liability for 637,436 tonnes <sup>6</sup> of carbon emissions would oblige Ngāi Tahu to surrender 637,436 NZUs	Around -\$17m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	Not incur significant costs and delays to establish additional forest land (as an equivalent for the approved offsetting), before deforesting any of the remaining pre-1990 forest land	High impact
	Incur the cost of transferring back to the Crown, the 57,461 NZU reimbursed to	-\$1,528,462.60 (as at 13/02/2020) being an

<sup>5</sup> This value is an estimate based on *Pinus radiata* in the Canterbury/West Coast region with an average harvest age of 28 years

<sup>6</sup> This value is an estimate based on *Pinus radiata* in the Canterbury/West Coast region with an average harvest age of 28 years

	Ngāi Tahu by the Crown, under section 186H(4) of the CCRA	ETS market value of \$26.60 per NZU
Regulator – Te Uru Rākau	Not incur Crown legal fees responding to Ngāi Tahu in court Note - Ngāi Tahu is likely to appeal Te Uru Rākau decision to revoke the application to establish offsetting forest land	-\$75,000 to -\$200,000 Plus, Te Uru Rākau officials' time of three to six months. This does not include any potential appeal costs
	One-off cost - Crown would not benefit from the surrender obligation of 179,885 NZUs. However, the revenue to the Crown would have been forgone if Ngāi Tahu had complied with the application for offsetting forest land. In addition, the Crown will benefit from more afforestation than deforestation	Around \$4.8m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	One-off cost – the Crown would not benefit from the surrender of obligation of NZU from any part or total future deforestation of the remainder of the pre-1990 forest land in the application to offset forest land, preliminarily calculated at 1,228.21 hectares. If this were the case, a liability for 637,436 tonnes <sup>7</sup> of carbon emissions would oblige Ngāi Tahu to surrender 637,436 NZUs	Around \$17m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	One-off cost – Crown must, under section 186H(4) of the CCRA, reimburse 57,461 NZU surrendered by Ngāi Tahu as a condition of the application to offset forest land (due to the NZU being allocated under the Forestry Allocation Plan)  (Note – a condition of the exemption is for Ngāi Tahu to transfer the 57,461 NZU back to the Crown. This would ensure the transaction was cost-neutral to Crown accounts)	\$1,528,462.60 (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
<b>Total Monetised Cost</b>	Note - The net cost in terms of NZU considering both Ngāi Tahu and the Crown is zero. Therefore the total benefit of this intervention is the cost avoidance from not going to court	A minimum of -\$75,000 to -\$200,000
<b>Non-monetised costs</b>	Note – Costs and delays to Ngāi Tahu establishing forest land or undertaking deforestation, negatively impact on potential economic development through forestry activity and/or a change of land use	High impact

#### Expected benefits of proposed approach, compared to taking no action

<sup>7</sup> This value is an estimate based on *Pinus radiata* in the Canterbury/West Coast region with an average harvest age of 28 years

Regulated party – Ngāi Tahu	Retain the right to use the 1,052.6 hectares of forest land (established as an equivalence to the forest land approved in the application to establish offsetting forest land). Note – the condition on the exemption for forestry right over this forest land would treat this the same as offsetting forest land and it could not earn NZU as post-1989 forest land in the ETS	High impact
	Reimbursement of 57,461 NZU (allocated under the Forestry Allocation Plan and surrendered as a condition of the application to offset forest land) when Te Uru Rākau revokes the application to establish offsetting forest land  (Note – a condition of the exemption is for Ngāi Tahu to transfer the 57,461 NZU back to the Crown. This would ensure the transaction was cost-neutral to Crown accounts)	\$1,528,462.60 (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
Regulator – Te Uru Rākau	Carbon stored in the 1,052.6 hectares of established new forest land, of around 654K tonnes (if this remains outside of the Emissions Trading Scheme and is not deforested)	Around \$17.4m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	Carbon stored in the remaining 613.4 hectares of forest land required to be established under the original offsetting application	Around \$9.5m (as at 13/02/2020) being an ETS market value of \$26.60 per NZU
	Carbon stored in the additional 50 hectares of indigenous forest land over 50 years	Around \$430k (as at 13/02/2020) being an ETS market value of \$26.60 per NZU  By the end of 2070 (at an age of 50 years) 16,170 tonnes of CO <sub>2</sub> would be stored
	Receipt of 57,461 NZU (allocated under the Forestry Allocation Plan and reimbursed with the revocation of the application to offset forest land) when Te Uru Rākau revokes the application to establish offsetting forest land	\$1,528,462.60 (as at 13/02/2020) being an ETS market value of \$26.60 per NZU

	(Note – a condition of the exemption is for Ngāi Tahu to transfer the 57,461 NZU back to the Crown. This would ensure the transaction was cost-neutral to Crown accounts)	
<b>Total Monetised Benefit</b>	Note - The net benefit in terms of NZU considering both Ngāi Tahu and the Crown is zero. Therefore the benefit of this intervention is from the carbon stored through afforestation	Around \$27m
<b>Non-monetised benefits</b>	Ngāi Tahu confidence to continue to invest in commercial afforestation and land use development supports regional employment and development  Carbon stored through afforestation has economic value to New Zealand as it helps meet domestic and international green-house gas targets	High impact



## 4.2 What other impacts is this approach likely to have?

*Who has been, or will be consulted, and at what stage(s)? Has consultation with iwi/hapū occurred, or should it?*

MfE and Te Uru Rākau are jointly informing the briefing of the Minister and, if agreed by the Minister, the drafting of the Cabinet paper.

Ngāi Tahu has been informed of the development of options and engaged in discussion on the proposed option.

Consultation will not occur with iwi/hapū because the proposed exemption does not have implications for treaty settlement land other than that of Ngāi Tahu.

Consultation will not occur with other pre-1990 forest land owners because:

- The one-off exemption and conditions do not leave Ngāi Tahu in a better commercial position than if the approved offsetting forest land had been planted.
- The problem of the CCRA having inflexible legislated timeframes has already been consulted on during the development of the ETS Bill (as above).
- Ngāi Tahu factors of significant scale and complexity of forestry activity, across a large and dispersed forest estate are specific and unique. They are not relative to other ETS participants whose smaller scale mean they can comply with the CCRA.

It is possible that some might seek to challenge Te Uru Rākau decision to seek and exemption for Ngāi Tahu on the basis of the specific factors of significant scale and complexity of forestry activity, across a large and dispersed forest estate. However, in this case, Ngāi Tahu circumstances are such that the legislated timeframes are not realistic. Whereas other pre-1990 forest land owners are of a scale that enables them comply with the legislative timeframes, even when it might not be easy to do so.

## Section 5: Stakeholder views

### 5.1 What do stakeholders think about the problem and the proposed solution?

*Who has been, or will be consulted, and at what stage(s)? Has consultation with iwi/hapū occurred, or should it?*

*What is the nature of their interest?*

*Do they agree with your analysis of the problem and its causes?*

*Do they agree with your proposed approach?*

*Has your proposed approach been modified as a result of stakeholder feedback?*

Te Uru Rākau has explained the proposed option to Ngāi Tahu.

Ngāi Tahu support the option in principle. This is preferred to the alternative, which is, seeking resolution in court.

Further discussion will take place to inform the drafting of the Cabinet paper, and to ensure the operational details of the exemption conditions are feasible.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements be given effect?

*How will the proposed approach be given effect? eg,*

- *legislative vehicle*
- *communications*
- *transitional arrangements*

*Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Have they expressed any concern about their ability to do so?*

*When will the new arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*

*How will implementation risks be managed or mitigated?*

The proposed approach to give effect to the new arrangements is the Governor-General, by Order in Council made on the recommendation of the Minister, exempt Ngāi Tahu from being a participant in the Emissions Trading Scheme.

The exemption will mean:

- Ngāi Tahu will have four years from the date of the exemption to plant the remaining 613.4 hectares of forest land, plus the additional 50 hectares of indigenous forest land; and
- Ngāi Tahu will not be required to surrender NZU to meet any carbon emissions liability from deforestation.

This will be communicated to Ngāi Tahu in a letter from Te Uru Rākau.

Once the Order in Council is implemented:

- Te Uru Rākau will be responsible for the ongoing operation and enforcement of the new arrangements; and
- Ngāi Tahu will be responsible for complying with the conditions of the exemption. Ngāi Tahu is prepared to act, and the arrangements will come into effect immediately the exemption is granted.

The implementation risks include failure of afforestation e.g. due to a poor planting season or adverse event. These will be:

- Mitigated through Te Uru Rākau using the experience of Crown Forestry to calculate that four years from the time the exemption is granted, is a realistic timeframe for Ngāi Tahu to complete the planting of 613.4 hectares, plus the additional 50 hectares of indigenous forest land. A four year timeframe also aligns with the proposals in the ETS Bill.
- Administered through the existing regulatory framework for the ETS. This will be accommodated within the existing work programme of the Climate Change Operations team within the Forestry and Land Management Branch of Te Uru Rākau.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

*How will you know whether the impacts anticipated actually materialise?*

*System-level monitoring and evaluation*

- *Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?*
- *Are data on system-level impacts already being collected?*
- *Are data on implementation and operational issues, including enforcement already being collected?*

*New data collection*

- *Will you need to collect extra data that is not already being collected? If so, please specify*

Within four years of the exemption being granted, Ngāi Tahu must complete the planting of the:

- 613.4 hectares, of the 1,666 hectares approved for offsetting forest; and
- 50 hectares of indigenous forest land.

Te Uru Rākau will monitor the impact of the arrangement through evidence of afforestation provided by Ngāi Tahu and the regulatory framework for the ETS, that is, emissions returns (for pre-1990 forest land that is deforested, Ngāi Tahu must submit an emissions return between 1 January and 31 March in the year immediately after).

### 7.2 When and how will the new arrangements be reviewed?

*How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.*

*What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?*

*What opportunities will stakeholders have to raise concerns?*

The arrangements will be reviewed by the Climate Change Operations team on a bi-ennial basis, on request by Ngāi Tahu (e.g. if there is an adverse event), or on receipt of information that forest land has been deforested or has not been established outside of that agreed between Ngāi Tahu and Te Uru Rākau.

Concerns may be raised by any stakeholder at any time, with Te Uru Rākau.