

In Confidence

Office of the Minister of Forestry

Chair, Cabinet Legislation Committee

Climate Change (Forestry) Amendment Regulations (No 2) 2024**Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Climate Change (Forestry) Amendment Regulations (No 2) 2024.

Relation to Government priorities

- 2 The attached amendment regulations support the National/New Zealand First Coalition Agreement “to restore confidence and certainty to the carbon trading market” and implement decisions following a review of levies for the forestry components of the New Zealand Emissions Trading Scheme (forestry ETS) as committed to in the National Party manifesto.

Policy

- 3 In October 2024, Cabinet authorised the Minister of Forestry, Minister of Finance, and Minister of Climate Change (the Ministers sub-group) to approve policy decisions following a review of the forestry ETS cost recovery settings for the 2024/25 and subsequent financial years [ECO-24-MIN-0227 refers].
- 4 The Ministers sub-group made decisions to:
 - 4.1 reset the annual charge for post-1989 forestry participants registered in the ETS at a rate of \$14.90 (excluding GST) per hectare per annum;
 - 4.2 update the rules and help reduce costs for participants in the forestry ETS using the Field Measurement Approach (FMA) to measure and calculate carbon stored in their forests for returns covering the shortened 2023-2025 Mandatory Emissions Return Period (MERP); and
 - 4.3 make a related minor and technical amendment that for the 2024/25 financial year, eligible participants may claim the exemption from the annual charge or part-charge for indigenous forest less than six years in age by notifying the regulator by a date that is 20 working days after the amendment regulations commence.
- 5 I propose to amend the Climate Change (Forestry) Regulations 2022 (the Forestry Regulations) to give effect to these decisions. These amendments would be made under sections 163 and 167 of the Climate Change Response Act 2002 (the Act).

- 6 The reset annual charge of \$14.90 per hectare, the amendments to the FMA rules and the related minor and technical amendment will be implemented via the Climate Change (Forestry) Amendment Regulations (No 2) 2024 (the Amendment Regulations), which will amend the Forestry Regulations.

Financial Implications

- 7 In June 2024, Cabinet agreed to cancel the per hectare annual charge for the 2023/24 financial year¹ and committed to resetting the annual charge starting in the 2024/25 financial year [LEG-24-MIN-0123 refers].
- 8 The Ministry for Primary Industries (MPI) managed the removal of cost recovery for the 2023/24 annual charge through a combination of holding vacant positions, scaling forestry support programmes and limiting Te Uru Rākau – New Zealand Forest Service regional presence.
- 9 If the Amendment Regulations are made, they will result in cost recovery revenue for the forestry ETS continuing to be forgone of \$6.23 million per annum which MPI will manage through its baseline. This is considered appropriate in the short-term, as it recognises that some forestry ETS services are still maturing or have costs that are not yet stabilised.
- 10 The \$6.23 million per annum of foregone revenue could be reconsidered for cost recovery at the next review in 2025/26. This 2025/26 review will provide an opportunity for Cabinet to review the ratio and level of Crown funding for services.

Timing and 28-day rule

- 11 I propose that the annual charge amendments in the Amendment Regulations come into force in January 2025, 28 days after they are notified in the *New Zealand Gazette*.
- 12 I propose that the updates to FMA rules in the Amendment Regulations come into force in March 2025, three months² after they are notified in the *New Zealand Gazette*.

Compliance

- 13 The Amendment Regulations comply with:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

¹ The annual charge for the 2023/24 financial year was cancelled to provide certainty around forestry ETS cost recovery and to enable decisions to be taken on revised cost recovery settings without having to proceed with collection of costs from 2023/24 to 2024/25 (noting forestry sector concerns and Government launching an independent review of the operations costs of the forestry ETS).

² Section 166 of the Climate Change Response Act 2002 requires that regulations made under section 163 come into force three months after the date of their publication or on any later date.

- 13.3 the principles and guidelines set out in the Privacy Act 2020;
- 13.4 relevant international standards and obligations;
- 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee; and
- 13.6 Section 163(5) of the Act, which requires the Minister of Climate Change, when making regulations under section 163(1)(a) or (b), to have regard to international climate change obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals.

Regulations Review Committee

- 14 There are no known grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 15 The proposed regulations are certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 16 The MPI Regulatory Impact Analysis Panel (RIAP) has reviewed the Cost Recovery Impact Statement "*Forestry in the Emissions Trading Scheme: Review of the annual charge and Field Measurement Approach reporting for the 2023-25 period*" produced by the Ministry for Primary Industries. The review team considers that the CRIS meets the QA criteria.

Climate Implications of Policy Assessment

- 17 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met and any emissions impact would be indirect. Reducing the annual charge for ETS participants could encourage more afforestation, potentially leading to cumulative emissions reductions of 479Kt CO_{2e} cumulative over 30 years, however this is below the CIPA threshold required for forestry-related proposals.

Publicity

- 18 Once the Amendment Regulations have been notified in the *New Zealand Gazette*, MPI will provide details of the changes on its website and notify those that made submissions during consultation. It will also send these details by email to subscribers of the Forestry ETS Alert newsletter, which includes many forestry ETS participants and consultants.
- 19 MPI will invoice forestry ETS participants for the 2024/25 financial year annual charge from February 2025. MPI will phase its invoicing of annual charges for the 2024/25 and 2025/26 financial years to ensure there is a reasonable gap between these invoices and avoid cashflow implications for forestry ETS participants.

Proactive release

- 20 I intend to release this paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Consultation

Public consultation

- 21 As the amendments to update the FMA rules will be made under section 163(1) (b) of the Act, the following consultation requirements apply:
 - 21.1 Section 3A of the Act requires representatives of iwi and Māori to be consulted on regulations made under section 163 the Act where they are expected to have an interest in the regulations; and
 - 21.2 Section 3B of the Act requires consultation with the persons that appear likely to be substantially affected by regulations made under section 163 the Act.
- 22 There are no consultation requirements in the Act to make regulations on fees and charges.
- 23 MPI consulted the public for three weeks on the proposals to reset the annual charge and update the rules for FMA participants. MPI hosted two online webinars and an online hui that were attended by 78 forest owners and consultants and Māori landowners.

The consultation requirements under the Act are met

- 24 The consultation outlined above meets the consultation requirements for the FMA amendments under sections 3A and 3B of the Act.

Agency consultation

- 25 The following agencies were consulted: the Ministry for the Environment, the Treasury, the Environmental Protection Authority, the Office of Māori Crown Relations – Te Arawhiti, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, and the Department of Conservation. The Department of the Prime Minister and Cabinet was informed.
- 26 Te Puni Kōkiri provided feedback relating to engagement with and participation of Māori landowners and treatment of Māori land, in the forestry ETS more broadly. These matters can be considered as part of work by the Forestry ETS Registry Reference Group and MPI to realise further operational efficiencies in the forestry ETS and through the wider 2025/26 cost recovery settings review.

Proactively Released

Recommendations

The Minister of Forestry recommends that the Committee:

- 1 **Note** that in October 2024 Cabinet authorised a sub-group comprising the Minister of Finance, the Minister of Climate Change and the Minister of Forestry to approve policy decisions following a review of forestry ETS cost recovery settings for the 2024/25 and subsequent financial years [ECO-24-MIN-0227 refers];
- 2 **Note** that the sub-group of Ministers agreed:
 - 2.1 to reset the annual charge and part-charge for post-1989 forestry participants registered in the ETS at a rate of \$14.90 (excluding GST) per hectare per annum;
 - 2.2 to update the rules that apply for participants using the Field Measurement Approach to measure and calculate carbon stored in their forests for returns covering the shortened 2023-2025 Mandatory Emissions Return Period, providing the option for these participants to use their existing participant-specific carbon tables, or default tables in the Climate Change (Forestry) Regulations 2022 if they do not have participant-specific carbon tables; and
 - 2.3 that for the 2024/25 financial year, eligible participants may claim the exemption from the annual charge or part-charge for indigenous forest less than six years in age by notifying the regulator by a date that is 20 working days after the amendment regulations commence;
- 3 **Note** that the Climate Change (Forestry) Amendment Regulations (No 2) 2024 will give effect to the decisions in Recommendation 2;
- 4 **Authorise** the submission to the Executive Council of the Climate Change (Forestry) Amendment Regulations (No 2) 2024;
- 5 **Note** that section 163(5) of the Climate Change Response Act 2002 (the Act) requires the Minister of Climate Change, when making regulations under section 163(1)(b) of the Act, to have regard to international climate change obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals;
- 6 **Note** the advice of the Minister of Forestry that the requirement under section 163(5) of the Act has been met;
- 7 **Note** that section 3A of the Act requires representatives of iwi and Māori to be consulted on certain regulations made under the Act, including those made under section 163 of the Act, where they are expected to have an interest in the regulations;
- 8 **Note** that section 3B of the Act requires consultation with the persons that appear likely to be substantially affected by certain regulations made under the Act, including those made under section 163 of the Act;

- 9 **Note** the advice of the Minister of Forestry that the consultation requirements in sections 3A and 3B of the Act have been met.

Authorised for lodgement

Hon Todd McClay

Minister of Forestry

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