

Emissions Trading Scheme forestry requirements for transport infrastructure delivery and maintenance

Planning Policy Manual

NZ Transport Agency Waka Kotahi operational transport and land use planning guidance

24 April 2024

Version 1

Document information

Purpose

This guidance forms part of the Planning Policy Manual (PPM) which provides a hub for operational transport and land use planning guidance to assist NZ Transport Agency staff and external stakeholders to navigate through relevant planning processes. PPM guidance is grouped into three parts:

- 1 Part I Third party land use developments (LUDs)
- 2 Part II Operational responses to NZ Transport Agency strategic planning policy direction
- 3 Part III Planning the transport network**

This guide is part of the PPM Part III.

Availability

This document is held in electronic form by the NZ Transport Agency Poutiaki Taiao Environmental Planning Group and on the NZ Transport Agency internet (nzta.govt.nz)

Guidance owner

Poutiaki Taiao, Environmental Planning, NZ Transport Agency
environmentalplanning@nzta.govt.nz

Document History

Version	Date	Authors	Description of changes
V0.1	April 2024	Aaron Hudson	Ratified May 2024 Published online May 2024

ISBN 978-1-99-004427-4 (online)

Copyright information

Copyright ©. This copyright work is licensed under the Creative Commons Attribution 4.0 International licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to NZ Transport Agency and abide by the other licence terms. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

Disclaimer

The NZ Transport Agency has endeavoured to ensure material in this document is technically accurate and reflects legal requirements. However, the document does not override governing legislation. The NZ Transport Agency does not accept liability for any consequences arising from the use of this document. If the user of this document is unsure whether the material is correct, they should refer directly to the relevant legislation and contact the NZ Transport Agency

CONTENTS

1	What this guide covers	4
2	Introduction	4
3	How to check for ETS compliance risk	6
	ETS forestry compliance risk assessment process	7
4	When does the ETS apply?	8
4.1	What is <i>forest land</i> ?.....	8
4.2	Pre-1990 <i>forest land</i>	9
4.3	Post-1989 <i>forest land</i>	9
4.4	Temporarily Unstocked Forest Land	10
4.5	What is deforestation.....	11
5	Reducing a project’s ETS financial liability	11
5.1	Offsetting deforestation with an offsite forest	12
6	Records and reporting	12
7	Definitions	13
8	Who to talk to for more information	14
9	References	14

1 What this guide covers

This guidance outlines the statutory requirements and responsibilities that the NZ Transport Agency Waka Kotahi (NZTA) has under the Emissions Trading Scheme (ETS) forestry rules. This guidance applies when NZTA (including its consultants and contractors) intends to [deforest](#) or purchase [forest land](#) as part of the delivery and/or maintenance of transport infrastructure. NZTA triggers the ETS compliance requirements when it:

- Exceeds the statutory threshold for *deforesting* ETS qualifying *forest land*. Where *deforestation* is the physical conversion of forest to a non forest land use such as a road, cycleway, farm or housing, or
- Acquires ETS qualifying *forest land* that has been voluntarily registered into the ETS.

This guidance includes:

- a brief overview of the ETS
- how to check for ETS compliance risk
- what triggers ETS compliance requirements for NZTA
- how to reduce compliance requirements
- a glossary of key ETS [definitions](#). (Words italicised in the text are defined in Section 7 -[Definitions](#))

2 Introduction

The Climate Change Response Act 2002 (CCRA) provides the legal framework for New Zealand's ETS. The ETS imposes a cost on greenhouse gas (GHG) emissions for certain activities to encourage businesses and landowners to reduce their emissions. This includes imposing regulatory requirements and financial costs on the removal of certain classes of forests. The regulations are intended to discourage the *deforestation of forest land* which acts as a 'sink' that absorbs GHG and stores carbon. ETS compliance records are published, and non-compliance presents a legal, financial and reputational risk for NZTA.

NZTA becomes an ETS participant when it deforests > 2 hectares of *pre-1990 forest land* within a prescribed [mandatory emissions return period](#). (NZTA must then report every subsequent 1 hectare of *forest land* it deforests nationally within that same period). It is important to note that deforesting areas of trees that are < 1 hectare do not count toward NZTA becoming an ETS participant. This includes deforesting < 1 hectare of a larger area of *forest land*. **How the ETS rules apply in practice is complex. If you have any uncertainty about compliance, please seek professional advice from a registered ETS forestry expert.**

A project may have liability even if the threshold is triggered after it is completed. Once NZTA cumulatively exceeds the two-hectare threshold, it must retrospectively report every 1 hectare of *deforestation of forest land* it has completed within the same prescribed [mandatory emissions return period](#). Where projects or maintenance programmes expect to affect any *forest land*, the project manager should ensure that the Environmental Planning team confirms that NZTA is a current ETS participant and what contingencies need to be made for future financial ETS liability.

NZTA as an ETS participant must:

- Report the initial *deforestation of forest land* to Te Uru Rākau New Zealand Forest Service (Te Uru Rākau)
- Subsequently record and report details of that *deforestation* through the statutory Deforestation Emissions Return process, and
- Surrender the required number of pre-purchased NZ Units (*NZUs*) to the Government that are calculated (via regulations) to be equivalent to the emissions value of the forest sink removed.

These compliance requirements are managed by the NZTA Environmental Planning Team.

The volume of *NZUs* NZTA must purchase can be reduced by replanting the *cleared forest land* with qualifying tree species. Strict tree stock and growth thresholds must be met to achieve compliance.

Any permissions or approvals granted under the Resource Management Act 1991 (or similar legislation) are separate to any statutory compliance requirements under the ETS. Consequently, even though NZTA may have approval to clear land under other statutes, that does not avoid the need to comply with obligations under the ETS, including reporting *deforestation* and surrendering *NZUs*.

While outside the scope of this guidance, please note that there is a need to check what ETS obligations exist when NZTA acquires land operated as a waste disposal facility. Project and/or maintenance teams should also check the rules under Part 3A of the Forests Act 1949 when felling native trees including those that are likely to be milled at a sawmill and discuss this with the Environmental Planning team.

NZTA also has a wider role to play in reducing emissions from land transport in New Zealand. This will be managed through the NZTA response to Aotearoa New Zealand's emissions reduction plan, with the main focus being on reducing emissions associated with the land transport system. For more information on the NZTA climate change and sustainability strategies refer to [Section 9](#).

3 How to check for ETS compliance risk

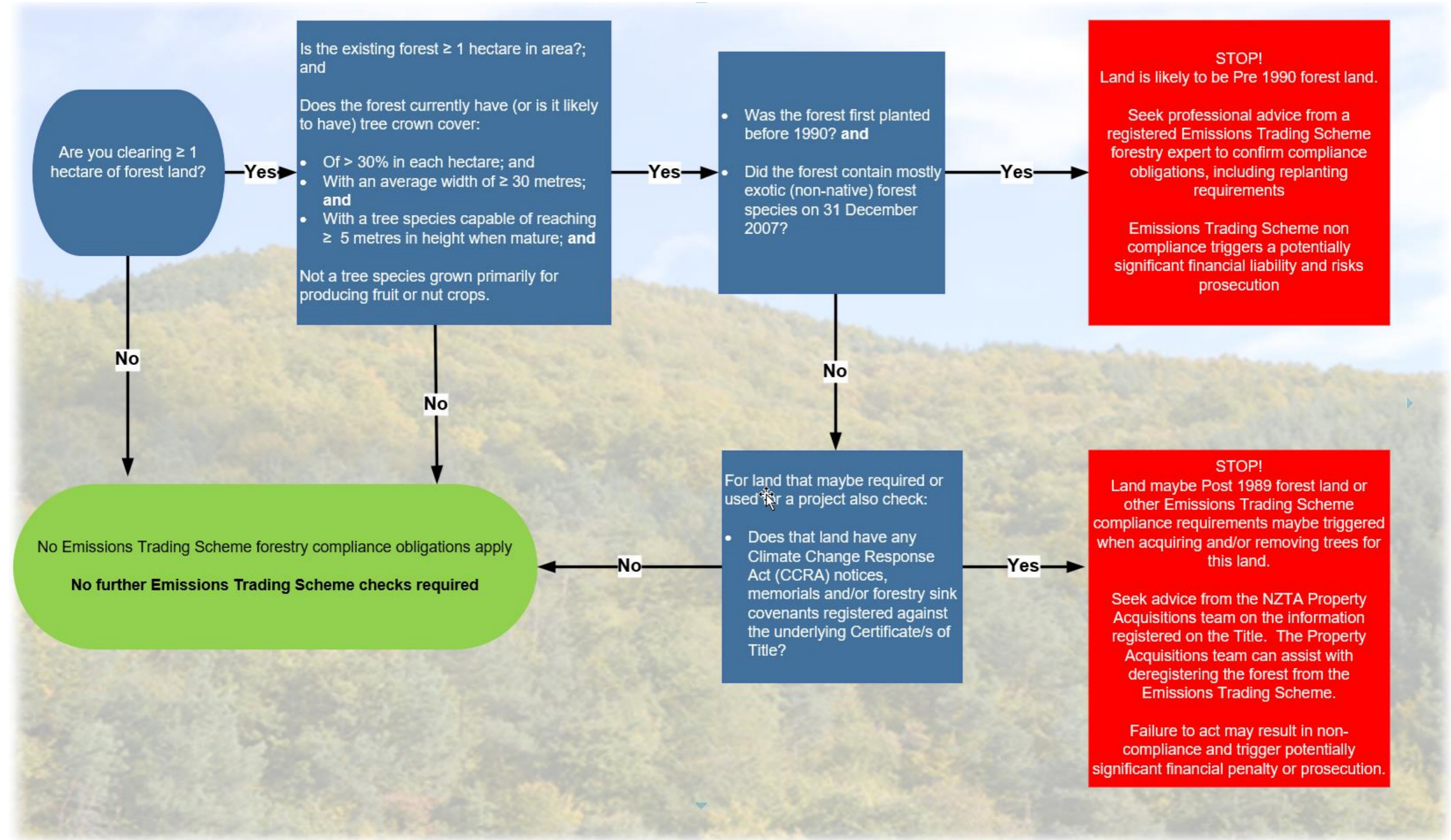
The Project Manager supported by the relevant NZTA environmental planner needs to ensure the steps outlined in the table below are completed. For infrastructure projects and emergency recovery works these steps should be completed during the Z/19 Taumata Taiao environmental screening checks for the proposal. For maintenance programmes these checks need to be completed as part of the development of the required Environmental Management Plan/s which must also meet the NZTA Z/19 Taumata Taiao Environmental and Sustainability Standard. It is the relevant environmental planner's role to alert the project or maintenance team to environmental statutory compliance requirements including the ETS and support the project manager to achieve compliance.

Project and/or maintenance teams are accountable for meeting all statutory compliance requirements and costs.

Step	Action
1	<ul style="list-style-type: none"> Using the flow chart in section 3.1, confirm if any of the tree areas within the project meet the definition of forest land. If any of the criteria are not met, the ETS does not apply.
2	<ul style="list-style-type: none"> Using the flow chart in section 3.1, confirm if the <i>forest land</i> is either pre-1990 or post-1989 forest land registered with the Emissions Trading Scheme. Identify if any of the forest has been harvested or cleared within the previous four years
3	<ul style="list-style-type: none"> All identified ETS compliance risks should be confirmed once a preferred project or maintenance option is chosen. Contingency planning and costs should be factored into project funding and design to ensure compliance is achieved during the construction and post construction phases. Treasury's 'low real' and 'central real' carbon shadow prices can be used for forecasting pricing of NZUs. Section 4 When does the ETS Apply? provides more information on when the ETS applies. <p>Note: If you have any uncertainty about how the ETS forestry rules apply to your project or maintenance works, please seek professional advice from a registered ETS forestry expert to avoid the risk of non-compliance</p>

3.1 ETS forestry compliance risk assessment process

During the Z/19 Taumata Taiao environmental screening processes, the project manager (supported by the environmental planning and property experts within the project team) should ensure completion of the following checks. These checks will help confirm what ETS forestry compliance risks exist as part of delivering a project and assist with managing the consequential NZTA statutory obligations. **How the ETS rules apply in practice is complex. It is recommended that the following checks are supported by professional advice from a registered ETS forestry expert to avoid the risk of non-compliance.**



4 When does the ETS apply?

4.1 What is forest land?

Forest land must be at least 1 hectare in size and have (or will have when mature) a tree crown cover¹:

- *Of > 30% in each hectare; and*
- *With an average width of ≥ 30 metres; and*
- *Is a forest species, meaning:*²
 - *A tree species capable of reaching ≥ 5 metres in height when mature; and*
 - *Not a tree species grown primarily for producing fruit or nut crops.*

All of the above criteria must be met for the area of trees to be considered *forest land*. If one or more of the above criteria is not met, the area of trees is not *forest land* and the ETS does not apply.

By way of example, shelter belts are not *forest land* because they will not meet the 30 metre crown cover width requirement. Similarly small, isolated groups of trees that do not meet 1 hectare total area are not considered *forest land*.

The ETS classifies *forest land* into two categories:

- [Pre-1990 forest land](#); and
- [Post 1989 forest land](#)

Different rules apply depending on whether the forest is *pre-1990* or *post-1989 forest land*.

These categories are mainly determined by the date that the forest was first established (before or after 1 January 1990) however, additional criteria and exemptions also apply.³ Full definitions of each category are set out below and within in Section 7 -[Definitions](#).

Professional advice from a registered ETS forestry expert should be sought where there is uncertainty over the age of the forest and the compliance obligations that apply. Contact the Environmental Planning Team via environmentalplanning@nzta.govt.nz for details of our current provider/s.

¹ *Forest land* is defined under Climate Change Response Act 2002, s4(1)

² *Forest species* is defined under Climate Change Response Act 2002, s4(1)

³ See definitions of both categories under Climate Change Response Act 2002, s4(1)

4.2 Pre-1990 forest land

All pre-1990 forest land is automatically included within the ETS.

NZTA becomes an ETS participant when it cumulatively deforests > 2 hectares nationally of *pre-1990 forest land*⁴ within a prescribed *mandatory emissions return period* (note cumulative across projects and years). Areas of deforested trees that are < 1 hectare do not count toward NZTA becoming an ETS participant.

Pre-1990 forest land is defined as:

- a forest area that meets the definition of *forest land*; and
- was *forest land* on 31 December 1989; and
- remained *forest land* on 31 December 2007 and consisted predominantly of exotic (non-native)⁵ tree species at that time.

Where mixed tree species are present, an assessment is required to identify the predominant *forest species*. This is determined by calculating which particular *forest species* has the largest basal area (as defined by Regulation 4(1) of the Climate Change (Forestry Sector) Regulations 2008). This assessment should be completed before tree clearance starts.

Pre-1990 forest land is often not recorded on the underlying property title. When NZTA acquires interests in land, it should seek warranties from the landowner (or registered forest right holder or registered leaseholder) as to the presence (or lack of) of any *pre-1990 forest land* and where relevant its location and extent. **Identifying pre-1990 forest land is complex; it is therefore recommended that expert advice is sought to avoid the risk of non-compliance where any uncertainty exists.** The results of all ETS forestry assessments should be sent to the Environmental Planning team via environmentalplanning@nzta.govt.nz. This will ensure NZTA manages the cumulative *deforestation* of *pre-1990 forest land* during each mandatory emissions period to ensure it meets its compliance reporting obligations.

4.3 Post-1989 forest land

The ETS only applies to post-1989 forest land that has been formally registered within the ETS. Where post 1989 forest land has been registered within the ETS it will be recorded on the property's title.

NZTA triggers compliance requirements when it acquires land that includes *post-1989 forest land* registered within the ETS. To avoid any compliance obligations, the NZTA property acquisitions team must undertake the following actions prior to acquiring any land:

- Confirm and understand any CCRA or ETS notices registered against the property title of land that is to be acquired; and
- Confirm whether the ETS participant is the landowner, or a registered forestry right holder or a registered leaseholder; and
- Deregister the *post-1989 forest land* from the ETS prior to NZTA acquiring title to the land.

⁴ Note there are limited statutory exceptions, which generally apply to approved *deforestation* offsets and best practice forestry management requirements – see in s179A CCRA. Consideration of these exceptions should be made by professional ETS forestry expert/s.

⁵ *Indigenous forest species* is defined by s 4(1) Climate Change Response Act – “a *forest species* that occurs naturally in New Zealand or has arrived in New Zealand without human assistance”.

Deregistration requires the existing ETS participant (landowner, forestry right holder, or registered leaseholder) to complete a *Mandatory Emissions Return* and then surrender sufficient *NZUs* to return the carbon balance of the land to zero.

The ETS participant is likely to seek compensation for the costs associated with deregistration (including the cost of *NZUs*) which may affect acquisition costs.

NZTA can deregister part of an area of *post-1989 forest land*. There must be a balance of ≥ 1 hectare of *forest land* remaining to allow a partial deregistration. We may choose this option if only part of a forest is required for a project.

Failure to deregister all *post-1989 forest land* prior to NZTA acquiring it will trigger compliance obligations and risks non-compliance, including potentially significant financial penalty. The Property team has updated its Memorandum of Agreement template to acquire land under the Public Works Act 1981 to enable the deregistration (or part deregistration) of *post-1989 forest land* prior to acquisition.

NZTA is unable to register *post-1989 forest land* within the ETS to earn *NZ Units*. This is because of the funding controls under the Land Transport Management Act 2003 and the compliance requirements of the Public Works Act 1981.

4.4 Temporarily Unstocked Forest Land

Temporarily unstocked forest land is *forest land* that has been '*cleared*'⁶ but not '*deforested*', including where:

- *forest species* are replanted or naturally regenerating; or
- the land has been left in a cleared state, with the potential intention to replant or allow natural regeneration of *forest species*.

Temporarily unstocked forest land must meet statutory tree stock and growth thresholds at intervals 4, 10 and 20 years⁷ after the forest was first cleared or it will be deemed *deforested*. Failure to meet any of these statutory stock and growth thresholds will mean that the landowner (or forestry right holder) at the relevant time will be responsible for the *deforestation* and must comply with the ETS's reporting requirements, including the need to surrender *NZUs*.

It is important to note that NZTA may inherit ETS compliance obligations where it acquires *temporarily unstocked forest land* and the failure to meet a stock or growth threshold occurs while the *forest land* is under its ownership or management. Additionally, where NZTA disposes of *temporarily unstocked forest land*, ETS obligations may also transfer with the land to the new landowner.

Identifying *temporarily unstocked forest land* and confirming the ETS compliance checks can be complex. To manage the risk of ETS non-compliance and avoid any uncertainty the NZTA property acquisitions team must undertake the following checks:

- Confirm with the ETS participant (existing landowner or a registered forestry right holder, or a registered leaseholder) whether any land to be acquired contains any *forest land* that has been cleared; and
- confirm the date at which the *temporarily unstocked forest land* was first cleared, and the forest status at years 4, 10 and 20 after this date; and

⁶ *Clear* is defined under Climate Change Response Act 2002, s4(1), and includes felling, harvesting, burning, spraying or otherwise killing of the trees, including through human mechanical removal.

⁷ Note the tree stock and growth thresholds for *temporarily unstocked forest land* are defined in s179 of the Climate Change Response Act 2002. These thresholds are intended to incentivise the re-establishment of forestry sinks for absorbing GHG.

- where any *forest land* has been cleared, have all ETS compliance obligations been discharged, including:
 - evidence that all *deforestation* reporting obligations have been satisfied and all required NZUs surrendered; or
 - evidence from a registered ETS forestry expert that confirms the statutory tree stock and growth thresholds have been achieved at intervals 4, 10 and 20 years after the trees were first cleared. This may require field evaluation.
- Confirm all property acquisition agreements include the necessary legal warranties to mitigate compliance risk.
- Seek expert ETS advice where required.

Where NZTA acquires *temporarily unstocked forest land*, it can ensure compliance with any ETS obligations by either:

- Surrendering the appropriate number of NZU where NZTA plans to *clear* and *deforest* the land in the future for a project or maintenance works; or
- Achieving the statutory tree stock and growth thresholds within the regulatory timeframes.

Note the Property acquisitions team has updated its templates to ensure the necessary checks are undertaken when acquiring land. These updates include the requirement for the landowner to warrant that the land is free from *temporarily unstocked forest land*.

4.5 What is deforestation

Deforestation is defined under the Climate Change Response Act 2002 as either: ⁸

- The conversion of *forest land* to a non-forest land use (for example, when *forest land* is physically cleared to make way for housing, road or cycleway use). In such cases the *deforestation* is taken to occur at the date of the first action that is inconsistent with the land remaining *forest land* (for example, that may be the date the *forest land* is cleared); or
- Where *forest land* is cleared, and either replanted or left to naturally regrow (i.e. *temporarily unstocked*) but the land does not meet the required tree stock and growth thresholds at intervals 4, 10 and 20 years after being first cleared. In such cases *deforestation* is taken to occur at the date that 1 hectare or more of *forest land* fails to meet those thresholds. (i.e. it is not the date the trees are cleared, rather the date that the new trees fail to reach the required size/coverage).

The forestry compliance obligations of the ETS will be triggered once NZTA exceeds the relevant statutory *deforestation* thresholds.

5 Reducing a project's ETS financial liability

Several options may be available to reduce the compliance requirements and financial liability for a specific project. The following options should be explored once a NZTA project or maintenance programme is mature enough to clearly confirm ETS compliance obligations and costs.

- Reduce the area of *pre-1990 forest land* that the project will *deforest*. This reduces the number of NZUs that must be purchased and surrendered to pay for the removed forest. This option is only viable where there are robust alternative project corridor/s that avoid or reduce *deforestation* of any *forest land*; and/or

⁸ *Deforestation* is defined under Climate Change Response Act 2002, s4(1), see also ss 179 and 181.

Deregistering any *post-1989 forest land* from the ETS before acquiring the land will avoid ETS forestry obligations. Note NZTA can deregister part of a *post-1989 forest*. The NZTA Property acquisitions team has processes set up to achieve this; or

- Fully replanting *temporarily unstocked forest land* within 4 years of the trees being cleared to the required stocking and growth thresholds. This option assumes the trees will not be cleared in the future during project construction. The replanted forest must then be managed to ensure the trees achieve the 10 and 20 year statutory growth rates to avoid being deemed as *deforested*. It is often cheaper to replant forest with exotic or native tree species rather than buy *NZUs*. Expert advice should be sought to inform the whole of life compliance costs to inform the cost versus benefit decision making for a project. See section 4.4 [temporarily unstocked forest land](#) for the replanting compliance requirements; or
- A combination of these options may also be viable.

NZUs must be purchased at either public auction or on the secondary market at the market price. It is more practical for NZTA to purchase *NZUs* as required on the secondary market. This is because the secondary market provides flexibility on the volume and timing for purchasing *NZUs*. NZTA has a carbon trading account for this purpose. To hedge against the anticipated increase in the market price of *NZUs*, NZTA may be able to make an advance purchase of limited amounts of units. *NZUs* can only be purchased for projects that have an approved NLTP budget and a clear view of the number of units required to pay for *deforestation*. Advice and support must be obtained from the NZTA Finance team to confirm if and when *NZUs* can be purchased in advance. The NZ ETS does not allow the purchase and surrender of overseas emissions units.

Should NZTA need to purchase *NZUs*, please first speak to the Poutiaki Taiao Environmental Planning team for advice.

5.1 Offsetting deforestation with an offsite forest

It is not recommended that NZTA obtains pre-approval from Te Uru Rākau to offset the *deforestation of pre-1990 forest land* with an offsite forest. NZTA has strict obligations under the Public Works Act 1981 to only acquire and retain land genuinely required for a public work. Consequently, using this mechanism risks non-compliance with the Public Works Act 1981. Should you wish to explore the Emission Trading Scheme's offsetting mechanism, expert Legal, Property and ETS forestry advice should be first obtained.

6 Records and reporting

For all NZTA works that trigger the ETS forestry rules, Project team shall securely record all ETS forestry assessments. The Project Manager supported by the relevant NZTA environmental planner should also send a copy of all ETS forestry assessments to the Environmental Planning team via environmentalplanning@nzta.govt.nz. This enables the Environmental Planning team to centrally manage what *forest land* is nationally affected so it can meet its ETS reporting obligations.

7 Definitions

The following terms are used within the Climate Change Response Act 2002 and have a specific statutory meaning.

Clear	<p>In relation to a tree includes felling, harvesting, burning, spraying or otherwise killing of the trees, including through human mechanical removal.</p> <p>Does not include pruning or thinning of a tree</p>
Deforestation	<p>Both:</p> <p>(a) The conversion of '<i>forest land</i>' to a non-forest land use (e.g. clearing <i>forest land</i> for a road, housing or cycle way), and</p> <p>(b) <i>forest land</i> that is cleared and fails to meet the required stocking and growth requirements, in accordance with s 179 of the Climate Change Response Act 2002.</p>
Deforestation Emissions Return (DRE)	<p>Is the report in which a forest's carbon stock change is calculated over a given period. This includes identifying and reporting the change in carbon stock resulting from the <i>deforestation of pre-1990 forest land</i>.</p>
Forest land	<p>Is as an area of forest that is:</p> <ul style="list-style-type: none"> • at least one hectare in area; and • has, or is likely to have, a tree crown cover average width of at least 30 metres; and • has tree crown cover of greater than 30% in each hectare; and • the trees are capable of reaching at least 5 metres in height when mature; and • excludes trees grown primarily for producing fruit or nut crops⁹
Forest Species	<p>Tree species capable of reaching at least 5 metres in height at maturity in the place they are located but excludes tree species grown or managed primarily for producing fruit or nut crops.</p>
Mandatory Emissions Return Period	<p>The mandatory emissions return periods are:</p> <ul style="list-style-type: none"> • 1 January 2018 to 31 December 2022 • 1 January 2023 to 31 December 2025 • 1 January 2026 to 31 December 2030; and • each consecutive 5-year period thereafter.
NZ Units (NZUs)	<p>The main unit of trade within New Zealand's Emissions Trading Scheme. One NZU is required to be surrendered for each metric tonne of carbon dioxide-equivalent emissions liability under the ETS.¹⁰</p>
Post-1989 Forest Land	<p>Land which contains forest land that:</p> <ul style="list-style-type: none"> • Was not forest land on 31 December 1989; or

¹⁰ Climate Change Response Act, s63(1).

	<ul style="list-style-type: none"> • Was forest land of 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 31 December 2007 and any ETS liability has been paid. <p>Post-1989 Forest Land owners or forestry right holders can voluntarily register such land in the Emissions Trading Scheme to earn NZUs in relation to the carbon stored in the forest as it grows.</p>
Pre 1990 Forest Land	<p>Is <i>forest land</i> that:</p> <ul style="list-style-type: none"> • Was <i>forest land</i> on 31 December 1989; and • Remained <i>forest land</i> on 31 December 2007; and • Contained predominantly exotic tree species on 31 December 2007. <p>But does not include <i>forest land</i> which has been deforested where surrender obligations have been satisfied or was declared 'exempt' land under the CCRA.¹¹</p> <p>Pre-1990 Forest Land is automatically included in the Emissions Trading Scheme.</p>
Temporarily Unstocked Forest Land	Is <i>forest land</i> that has been cleared but does not meet the definition of deforested under the CCRA.
Te Uru Rākau	Te Uru Rākau New Zealand Forest Service forms part of the Ministry of Primary Industries. Te Uru Rākau is responsible for the administration the government's forestry management priorities including the Emissions Trading Scheme.

8 Who to talk to for more information

For further information or queries about NZTA compliance with the Emissions Trading Scheme forestry rules, please contact the Poutiaki Taiao Environmental Planning team via EnvironmentalPlanning@nzta.govt.nz

9 References

[NZTA Climate Change Policy](#)

[NZTA Toitū Te Taiao -Our Sustainability Action Plan](#)

[NZTA Z/19 Taumata Taiao -Environmental and Sustainability Standard](#)

[NZTA Environmental Screen](#)

[Te Uru Rākau New Zealand Forestry Service Forestry in the Emissions Trading Scheme Guidance](#)

¹¹ Climate Change Response Act 2002, s 60.