

Submission On
**“A Redesigned NZ ETS
Permanent Forest Category”**

On Behalf Of
**The Environmental Defence Society,
Pure Advantage
and WWF-New Zealand**



PureAdvantage™





SUBMISSION ON “A REDESIGNED NZ ETS PERMANENT FOREST CATEGORY”

on behalf of

THE ENVIRONMENTAL DEFENCE SOCIETY, PURE ADVANTAGE and WWF-NEW ZEALAND

Submitter Details

Full Name Environmental Defence Society Incorporated
Address PO Box 91736, Victoria Street West, Auckland 1142
Phone 09 302 2972
Contact Gary Taylor
Email gary@eds.org.nz
Date 11 August 2023

Full Name Pure Advantage
Address PO Box 99421, Newmarket, Auckland 1149
Phone 09 600 6408
Contact Simon Millar
Email simon@pureadvantage.org
Date 11 August 2023

Full Name WWF-New Zealand
Address PO Box 11514, Manners Street, Wellington 6142
Phone 022 329 9667
Contact Dr Kayla Kingdon-Bebb
Email kkingdonbebb@wwf.org.nz
Date 11 August 2023

1 **Introductory comments**

- 1.1 This is a joint submission on behalf of the Environmental Defence Society (**EDS**), Pure Advantage, and WWF-New Zealand (together, ‘we’) in relation to the Ministry for Primary Industries’ (**MPI**) discussion document on “*A redesigned NZ ETS Permanent Forest Category*” (**Discussion Document**).

- 1.2 EDS is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to promote better environmental outcomes in resource management.
- 1.3 Pure Advantage is a registered charity led by business leaders and supported by a collective of researchers and writers who investigate, communicate and promote opportunities for Aotearoa New Zealand to fulfil its potential for green growth.
- 1.4 WWF-New Zealand is a not-for-profit, environmental non-government organisation, and part of the international environmental organisation WWF (World Wide Fund for Nature). Our mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. We bring together individuals, communities, businesses, and government to develop and implement innovate, evidence-based solutions.

2 Summary of submission

- 2.1 The New Zealand Emissions Trading Scheme's (**NZ ETS**) permanent forest category - as its name implies - should be restricted to forests known to be able to optimise and sustain sequestration and storage of carbon in perpetuity. It should therefore be restricted to indigenous biodiverse forests.
- 2.2 This approach best aligns with:
 - (a) Upholding the precautionary principle and intergenerational equity because of the extent of uncertainties and risks associated with permanent exotic and transition forests;
 - (b) The commitment to take an integrated approach to addressing climate change and biodiversity loss together; and
 - (c) Minimising administrative and operational complexity.
- 2.3 We consider the Treaty-based concerns raised by some Māori entities regarding the redesign of the permanent forest category can be mitigated through a suite of interventions aimed at ensuring the ongoing and future development of Māori-owned lands, including those returned through Treaty settlements.
- 2.4 A moratorium on any further registration of exotic forests in the permanent forest category should be implemented urgently.

3 Sequencing and scope of interrelated consultations confused

- 3.1 The transparency of decision-making, suggestion of undue influence, availability of relevant information to inform feedback and support regulatory coherence, and confused sequencing and scope of consultations regarding the NZ ETS permanent forest category and related proposal to amend the National Environmental Standards for Plantation Forestry (**NES-PF**) to

extend its application to the management of exotic 'carbon forests' have been highly questionable and unsatisfactory.

Reversal of original proposal to restrict permanent forest category to indigenous forests

- 3.2 In its March 2022 consultation,¹ MPI proposed restricting the NZ ETS permanent forest category to indigenous forests (**MPI 2022 PFC Consultation**). On 29 July 2022, the Ministers for Climate Change and Forestry buckled to pressure² from forestry bodies and some Māori landowners and announced it was “unlikely that we will propose closing the permanent category to exotics on 1 January 2023”³ and would instead “take more time to fully consider options”.⁴ In September 2022, Cabinet agreed with this approach. That decision was not evidence-based.

Consultation on national direction for “exotic carbon afforestation”

- 3.3 Subsequently, in October 2022, MPI consulted on whether to extend the NES-PF to include managing the biophysical effects of **exotic carbon forests** (and requiring forest management plans for these), thereby implicitly and pre-emptively endorsing the eligibility of permanent exotic forests in the NZ ETS permanent forest category.
- 3.4 The Discussion Document references the NES-PF exotic carbon forest’s consultation, stating that “[a]mendments to the NES-PF are scheduled to be finalised later this year [2023]”⁵ and that officials “will consider options to redesign the permanent forest category with NES-PF changes in mind, to ensure a cohesive regulatory system for management permanent forests in the future.”⁶
- 3.5 The Interim Regulatory Impact Statement informing the Discussion Document observed that “[i]t is currently hard to compare [the proposal to introduce new minimum forest management requirements for all registered permanent forests] with the Status quo as final decisions on changes to the NES-PF have not yet been made.”⁷
- 3.6 MPI’s website notes that Government announced on 14 June 2023 that:
- (a) ***“[D]ecisions have been made to amend the NES-PF”⁸ and that one key area of change is “expand[ing] the types of forests controlled by the NES-PF to include exotic continuous-cover forests (‘carbon forests’), to manage their environmental (biophysical) effects as if they are plantation forests”⁹; and that***

¹ <https://www.mpi.govt.nz/consultations/managing-exotic-afforestation-incentives/>

² <https://www.stuff.co.nz/environment/climate-news/129414379/government-douses-its-proposal-to-limit-exotic-forests>

³ Ibid.

⁴ Ibid.

⁵ Discussion Document, at 6.

⁶ Discussion Document, at 6.

⁷ Interim Regulatory Impact Statement - A redesigned New Zealand Emissions Trading Scheme (NZ ETS) permanent forest category (June 2023) (**Interim Regulatory Impact Statement**), p 50, para 227.

⁸ <https://www.mpi.govt.nz/forestry/national-environmental-standards-plantation-forestry/>

⁹ <https://www.mpi.govt.nz/forestry/national-environmental-standards-plantation-forestry/>

- (b) “[T]he Cabinet papers detailing what Cabinet has agreed to, including the recommendations report, will be proactively released prior to the amended regulations coming into force”¹⁰ and that “[t]he regulatory changes, subject to Cabinet agreement are planned to be enacted by October 2023.”¹¹

3.7 We requested those Cabinet papers. They have not been provided. Given the:

- (a) Interrelationship between an extended NES-PF and the options presented in the Discussion Document for forest management plans under the NZ ETS; and
- (b) (Acknowledged) need for regulatory coherence,

failure to release these materials during the course of this consultation limits submitters’ ability to assess the proposed options and provide properly informed and meaningful feedback, including in support of regulatory coherence. This raises questions of consultative fairness.

“Redesign” of the permanent forest category

3.8 In June 2023, MPI released its Discussion Document on redesigning the NZ ETS permanent forest category. It variously states that:

- (a) “Some of the options have been narrowed by last year’s consultation”;¹²
- (b) “[U]nder design choice 1 (which forests should be allowed into the permanent forest category), this consultation does not ask for your feedback on: ... restricting the permanent forest category to indigenous forests only”;¹³ and
- (c) “Note, the Government has previously consulted on the status quo (no additional restrictions on the types or locations of forests entering the permanent forest category) during last year’s consultation. Therefore, this document focuses on the options to redesign the permanent forest category. Similarly, **the Government has previously indicated its preference for the redesigned permanent forest category to allow transition forests to register – therefore we do not propose to consult on the option of only allowing indigenous forests to register in the permanent forest category.**”¹⁴

3.9 These statements, together with the scope of options for the types of forest that should be allowed to register in the permanent forest category presented in the Discussion Document,

¹⁰ <https://www.mpi.govt.nz/forestry/national-environmental-standards-plantation-forestry/>

¹¹ <https://www.mpi.govt.nz/forestry/national-environmental-standards-plantation-forestry/>

¹² Discussion Document, at 16.

¹³ Discussion Document, at 16.

¹⁴ Discussion Document, at 17.

appeared to expressly foreclose (re)consideration of restricting the permanent forest category to indigenous forests.

- 3.10 However, in workshops and discussions with officials regarding the scope of options for forest types in the Discussion Document, we were advised that “all options are still on the table”.
- 3.11 We have taken this assertion at face value in presenting our submission below, but observe that this *ad hoc* approach to both the substance and procedure of public consultation might not stand up to judicial scrutiny.

4 What type(s) of forest should be allowed to register in the Permanent Forest Category?

- 4.1 On the basis that “all options are still on the table”, we strongly submit that the Government’s original proposal to ***restrict the NZ ETS permanent forest category to indigenous forests*** should be revisited.¹⁵
- 4.2 Under the heading “A cautious approach to redesigning the permanent forest category” the Discussion Document acknowledges:¹⁶

“There is some uncertainty around the long-term environmental and ecological risks that permanent exotic forests pose - due to the lack of long-term data on permanent exotic forests in New Zealand.”

We consider that the only option consistent with “a cautious approach” to redesigning the permanent forest category is to exclude exotic forests.

- 4.3 We further recommend that work is urgently undertaken to investigate how pre-1990 indigenous forest could be registered in the permanent forest category, or otherwise formally recognised and incentivised for their superior and self-sustaining carbon sequestration and storage capability and capacity. This would both acknowledge, and help to realise, the significant opportunity to materially increase permanent carbon stocks, and restore and enhance indigenous biodiversity and climate-resilience in degraded old-growth indigenous forests which have been sequestering and storing carbon for millennia.

Permanence (should be) the key to category’s purpose

- 4.4 Restricting the permanent forest category to indigenous forests is not intended to undermine the important role for carefully managed exotic plantations in Aotearoa New Zealand. We need a well-planned and carefully calibrated combination of exotic plantation

¹⁵ The rationale for the Government’s original proposal in this regard was to mitigate concerns that the introduction of an unrestricted permanent forest category, together with a rising carbon price, would incentivise extensive ‘permanent’ *Pinus radiata* afforestation at the expense of both gross emissions reductions and other productive land uses. We note that addressing these concerns, particularly the relationship between - and relative - incentives for forestry removals vis-à-vis gross emissions reductions, are also the subject of separate (albeit related) and concurrent consultation.

¹⁶ Discussion Document, at 2.

and permanent indigenous forests to meet our emissions reductions targets and commitments in the shorter term, and to realise the biodiversity, climate-resilience, low-carbon and bioeconomy aspirations of the Forestry and Wood Processing Industry Transformation Plan published in November 2022.

- 4.5 However, the primary objective of the **permanent** forest category - as its name suggests - should be to support the establishment of self-sustaining (and therefore durable), long-term biodiverse and climate-resilient forest sinks for maximum carbon sequestration and storage in perpetuity, whilst enhancing indigenous biodiversity; soil health, stability and conservation; air and water quality; and regulating local climate conditions. Our indigenous forests are capable of, and often superior to exotics, at this.

Relative proven permanence

- 4.6 Forests are a natural carbon removal ‘technology’ that is proven and immediately available to be deployed at a large scale.
- 4.7 However, because they are a nature-based means of carbon storage, they are vulnerable. Increasing climate-related risks and land-use strategies threaten their health and longevity. Accordingly, we strongly endorse the proposal to redesign the NZ ETS to drive deep and urgent emissions reductions at source whilst maintaining support for forestry removals.
- 4.8 No individual tree is permanent. The natural lifespans of, and complex dynamics between, different forest species materially inform the self-sustaining potential of a forest, and therefore its relative ‘permanence’. In this regard, our indigenous forests have been self-sustaining for millennia and do not need to “be managed to mitigate end-of-life risks”.¹⁷ By comparison, MPI acknowledged in its 2022 consultation that:¹⁸

“Unlike many indigenous trees, few exotic species are long-lived in New Zealand (for example, *Pinus radiata* has an average lifespan of 80-90 years) and without ongoing management there is no certainty that a self-sustaining forest will develop or provide biodiversity or other benefits”.

Long-term lens essential

- 4.9 The need to draw down and store carbon is not a temporary one. It is enduring. That is because fossil fuel emissions have such a long lifetime in the atmosphere that, for practical purposes, the warming they produce is ‘forever’.¹⁹ To fully compensate for the warming impact of long-lived greenhouse gas emissions, removals effectively require storage over millennial timeframes.²⁰

¹⁷ Discussion Document, at 14.

¹⁸ Ministry for Primary Industries (2022) *Managing exotic afforestation incentives: A discussion document on proposals to change forestry settings in the New Zealand Emissions Trading Scheme*, Wellington, at 6.

¹⁹ Climate Analytics (2023). Why offsets are not a viable alternative to cutting emissions, at 14, 4.

²⁰ Climate Analytics (2023). Why offsets are not a viable alternative to cutting emissions, at 14.

- 4.10 It is incongruous, therefore, that the permanent forest category adopts a temporal prohibition on clear-felling a ‘permanent’ forest of just 50 years, in addition to allowing harvest down to a minimum of 30% tree crown cover per hectare of forest. Leaving aside the express endorsement of clear-fell harvesting (which is ecologically destructive and either not permitted or significantly restricted in comparable jurisdictions for this very reason), we recommend that, for environmental integrity, the permanent forest category should be both redefined and redesigned with intergenerational - not temporary - durability in mind.

Intergenerational equity: Legacy of permanent indigenous forests is consistent with Climate Change Commission’s recommendations and 2050 net-negative commitment

- 4.11 Viewed from an intergenerational perspective, our duty of care to future generations requires us to ask: what permanent forest legacy should we establish now for the benefit of future generations, who will face more severe climate change impacts than we are already confronting today and for which we bear responsibility?

- 4.12 The Climate Change Commission has been unequivocal in recommending that:²¹

“[i]n general, permanent forests established as carbon sinks should be indigenous species and support biodiversity gains. To provide a long-term carbon sink beyond 2050, ... such forests would have long-lived tree species that grow and sequester carbon for hundreds of years.”

- 4.13 The first Emissions Reduction Plan similarly articulates a long-term vision for forestry’s role and contribution to Aotearoa New Zealand’s climate change response, materially that:²²

“By 2050, Aotearoa New Zealand has a sustainable and diverse forest estate ... [and] will contribute to global efforts to address climate change and emissions reductions beyond 2050, while building ... resilient landscapes, and a legacy for future generations to thrive.”

- 4.14 Establishing a permanent indigenous forest sink now will better position Aotearoa New Zealand to play its part to realise net-negative global emissions from 2050 as required under the Paris Agreement.

Consistency with integrated approach to addressing climate change and biodiversity loss together

- 4.15 In furtherance of *Te Mana o te Taiao* and as agreed in ENV-22-MIN-0012, Chapter 4 of the first Emissions Reduction Plan reflects the Government’s commitment to addressing the interrelated climate and biodiversity crises simultaneously and synergistically. It undertook to achieve this by adopting an integrated approach to climate policy, planning and regulation that protects, enhances and restores nature, including by prioritising nature-based solutions.

²¹ As referenced in MPI 2022 PCF Consultation, at 26.

²² Discussion Document, at 8, refers.

4.16 These same commitments are reflected in the National Adaptation Plan, and the Government has made international commitments to similar effect, having adopted the Kunming-Montreal Global Biodiversity Framework late last year.

4.17 The Interim Regulatory Impact Statement also acknowledges that:²³

“Ministers have also indicated their preference to consider biodiversity and climate crises together, and to use the permanent forest category to support the establishment of long-term indigenous carbon sinks. This aligns with the Climate Change Commission’s recommendations to invest in new indigenous forests to deliver a long-term carbon sink to offset emissions that are hard to reduce.”

4.18 Restricting the permanent forest category to indigenous, biodiverse forests is consistent with that commitment because:²⁴

“In general, well managed indigenous forests are likely to have better environmental and biodiversity outcomes over time than comparable exotic forests. While permanent exotic forests have environmental benefits over and above some competing land uses (for example, lower sediment loss to waterways, shade and habitat for wildlife), if not well managed, these forests carry longer-term environmental risks. For example, wilding conifers could have an adverse impact on conservation forests and pastoral land uses, while fire and disease present significant risk to plantation forests.”

and:²⁵

“Over time, fast-growing, heavy forests planted on steep, erosion prone land are at risk of instability through heavy rain and windthrow, which can result in risks to communities and landowners. Because of the short lifespan of most exotics (especially *Pinus radiata*), we also do not know how these forests will develop over time and the extent to which benefits they offer will be maintained.”

Avoiding administrative and operational complexity

4.19 The Discussion Document cautions that:²⁶

“It is also important to ensure the redesigned permanent forest category is operationally achievable, can be implemented quickly, is resilient to future changes and avoids unintended consequences. Any options should minimise administration and compliance costs, support the purpose of the NZ ETS and maintain regulatory certainty.”

4.20 We consider that restricting the category to indigenous forests best meets this criterion. That is because, as the Discussion Document also observes, options that allow for the

²³ Interim Regulatory Impact Statement, p 7.

²⁴ MPI 2022 PCF Consultation, at 14-15.

²⁵ MPI 2022 PCF Consultation, at 15.

²⁶ Discussion Document, at 15.

concept of ‘transition’ forests, and/or limitations around the inclusion of exotic species “introduce greater complexity to the rest of the permanent forest category”.

- 4.21 Previous consultation “highlighted how challenging it will be to appropriately define any allowances for exotic forests to enter under limited circumstances.”²⁷ For example:²⁸

“[t]he Government will need to clearly define the exact conditions [on] which exotic forests can enter [for example, defining long-lived exotic species]. The Government would also need to carefully monitor applications to enter the redesigned permanent forest category to ensure these conditions are being applied”;

and:²⁹

“[d]ifferent species grow at different rates, over different timeframes, and some species can be sensitive to site conditions. ... While some long-lived exotic species will be obvious ..., **some are likely to be difficult to define** and we may have limited information to support their inclusion.”

5 Transition forests: still an unknown quantity

Lack of empirical evidence to support long-term ‘transition’ viability

- 5.1 We disagree with characterising “enabling permanent forests to transition to indigenous forests over time” as an “opportunity”³⁰ that “best supports the establishment of long-term indigenous carbon sinks.”³¹

- 5.2 That assertion is subject to two fundamental qualifications: “**whether** transition forests prove ecologically viable, [and **whether**] and the redesigned permanent forest category adeptly incentivises and manages forests to successfully transition”.³² On the basis of these qualifications, and the fact that indigenous forests need to be established now, we consider the concept of transition forests to present both a delay and, more fundamentally, a gamble.

Designing regulation ahead of empirical evidence is misaligned with the precautionary principle

- 5.3 MPI noted in its 2022 consultation that “[t]here are differing views in contemporary discussions of this forest model over whether [transition] can be achieved cost-effectively at scale, in all environments and climatic conditions, to achieve an acceptable ecological outcome.”³³

²⁷ Discussion Document, at 18.

²⁸ Discussion Document, at 19.

²⁹ Discussion Document, at 18.

³⁰ Discussion Document, at 2.

³¹ Discussion Document, at 18.

³² Discussion Document, at 18.

³³ MPI 2022 PCF Consultation, at 18.

5.4 The Interim Regulatory Impact Statement similarly concedes that:³⁴

“There are significant evidence limitations, particularly for transition forests which are a relatively new and largely untested, forest model. **Therefore, high level assumptions have had to be made about the risks posed by transition forests, the likelihood of these forests to successfully transition, and the forest management measures that are likely to be needed to ensure this transition.**”

5.5 The Discussion Document describes “the current state of knowledge on transition forests” thus:³⁵

“**Transition forests are a novel and emerging forest model. There is a lot we still need to learn about how best to manage them and what conditions are needed for them to succeed. There is also a lack of empirical evidence about their long-term environmental, financial and forest management consequences. Consequently, establishing widespread transition forests presents an unknown degree of risk.**”

5.6 The Discussion Document therefore recommends that, “[g]iven those uncertainties, current best practice is to only plant transitioning forests in favourable environments, at smaller scales, and to actively manage the transitioning process.” We do not think that is a plausible proposal or proportionate response to address the extent of intergenerational risk and uncertainty in play, nor one that is consistent with taking “a cautious approach”.³⁶

5.7 Noting that “[t]ransition forests are **a new forestry model** and come with unique challenges”,³⁷ the Discussion Paper explains that the Government is “interested in their **potential** to help establish a long-term indigenous forest sink” and to this end has funded several research programmes.³⁸ However, these research programmes are temporally short,³⁹ have not long been in train and are not due for completion until 2026 and 2027.

5.8 We do not consider the premature inclusion of transition forests is consistent with the precautionary principle given observations that:

- (a) “Ultimately these [research] programmes may impact the final design and/or implementation of the permanent forest category”;⁴⁰ and
- (b) “While the Maximising Forest Carbon Programme will help understand how transition forests could work in the ETS, **a significant body of work will be required** to provide practical guidance for how these forests could be managed”.⁴¹

³⁴ Interim Regulatory Impact Statement, at 7.

³⁵ Discussion Document, at 11 and 18.

³⁶ Discussion Document, at 2.

³⁷ Discussion Document, at 21.

³⁸ Maximising Forest Carbon Programme, which is researching different forest types and the impacts of active forest management activities (such as animal pest control) on carbon storage, including exotic to indigenous transition forests, and the Sustainable Food and Fibre Futures funded research, which will identify management and site requirements needed to support successful transitioning from exotic to indigenous forests.

³⁹ And, therefore, unlikely to be able to adequately measure multidecadal risks and prospects of success.

⁴⁰ Discussion Document, at 21.

⁴¹ Discussion Document, at 21. We further note that, in relation to the two examples of so-called ‘transition’ forests referred to in the Discussion Document, their positive results are described only as “initial”, and subject to the caveat

- 5.9 Pre-empting the design of effective regulation in advance of sufficient and compelling evidence on the viability of transition forests risks endangering the long-term prosperity of future generations in light of the existential implications should they fail.

Intergenerational acceptability of risks cannot be adequately managed

“A committed/guaranteed long-term financial investment with a formal plan to support ongoing forest management is ... essential.”⁴²

- 5.10 Nor do we consider the short-term financial incentives for forest owners and investors, and the uncertain prospect of successful transitions across several decades, to align with securing “the **best long-term outcomes for New Zealand**.”⁴³
- 5.11 The Discussion Document observes that “[t]ransition forests have increased popularity due to their potential to provide **high initial financial returns** from fast growing exotic species, while also helping establish a cost-effective long-term indigenous carbon sink”⁴⁴ and that “the intensity of management can vary, and this directly impacts the financial returns received and how long the forest will take to transition.”⁴⁵
- 5.12 Given that the Discussion Document suggests that a “relatively short” transition period is 60 years, and that this is likely to involve more cost in terms of the intensity of management interventions required, we think it is commercially unrealistic and naïve to think forest owners and investors will be incentivised over such a long investment horizon to adopt a more intensive (and costly) management approach. The only way to do so would be to materially reduce the high initial returns that make ‘transition’ forests conceptually and commercially attractive (and arguably feasible) in the first place (for example, through performance bond and insurance obligations, lower long-run averaged returns, and/or the withholding of NZUs).
- 5.13 Even then, the effectiveness of recalibrating the design of transition forest carbon-accounting incentives (against transition milestones) may be limited by likely changes in forest land or investment ownership given the multidecadal timeframes involved.

“ongoing management will be required to ensure these forests successfully transition through time.” Discussion Document, at 19, refers.

⁴² Forbes, A and Norton, D, “Transitioning Exotic Plantations to Native Forest: A Report on the State of Knowledge” (August 2021), at 8.

⁴³ Discussion Document, at 9.

⁴⁴ Discussion Document, at 11.

⁴⁵ Discussion Document, at 11.

Transition forests will delay the establishment of indigenous forests for which we do not have time

5.14 The Discussion Document explains that:⁴⁶

“Transition forests are ***gradually managed*** from predominantly exotic trees to predominantly indigenous trees ***through time*** by either:

- progressive coupe or strip harvesting (where areas of harvested exotic trees are replaced with indigenous trees); or
- regeneration and active management to support indigenous regeneration (e.g. the cutting of light wells to encourage understory development).”

5.15 It further explains that “[t]ransition forests *can be more or less intensively managed*, enabling transitions ***over relatively short periods (for example, 60 years) or over longer timeframes (which relies on exotic species’ senescence)***.”⁴⁷

5.16 These timeframes delay indigenous afforestation and reforestation. This is problematic because “it takes time for new forests to be established and grow large enough to sequester significant volumes of carbon”,⁴⁸ and this is particularly the case for indigenous forests, which the Discussion Document acknowledges “remove carbon at a slower rate than exotic forests but can continue to sequester carbon for hundreds of years.”⁴⁹

5.17 Because of this, the Climate Change Commission advised that:⁵⁰

“[g]reater investment in new and regenerating indigenous forest is ***needed now*** to deliver a long-term carbon sink to offset emissions that are hard to reduce, and ***to ensure that New Zealand is able to maintain net zero emissions beyond 2050***. The Commission suggested in its demonstration pathway that this could be achieved by around 300,000 hectares of new native forests ***established between 2021 and 2035***.”

5.18 In light of these timeframes, we cannot afford to wait for the (uncertain) transition of exotic forests to indigenous forests. This is particularly the case “[g]iven that transition forest models are an emerging science, [and] there is no guarantee that even when actively managed, exotic forests will transition to predominantly indigenous forests within 50 years.”⁵¹ The lost opportunity to establish indigenous forests now is a gamble we cannot afford to take.⁵²

⁴⁶ Discussion Document, at 11

⁴⁷ Discussion Document, at 11.

⁴⁸ Discussion Document, at 9.

⁴⁹ Discussion Document, at 13, referencing the Climate Change Commission’s 2021 advice in *Ināia tonu nei: a low emissions future for Aotearoa*.

⁵⁰ Interim Regulatory Impact Statement, para 38.

⁵¹ Discussion Document, at 28.

⁵² We also note that in MPI’s *Transitioning Exotic Plantations to native Forest: A Report on the State of Knowledge*, the authors observe that “even where a transition to a native forest occurs, there is no evidence that it will represent “old-growth” native forest, nor that it will necessarily be similar in composition or structure to what might have occurred in the past.” Thus, transition forests may be qualitatively different, even if ‘successful’.

Anticipation of surrender liabilities is an anticipation of carbon loss

- 5.19 The Discussion Document anticipates that “transition forests will incur significant surrender liabilities under the NZ ETS as large exotic trees are replaced by smaller, slower growing indigenous species, therefore reducing carbon stocks.”⁵³ A bespoke carbon accounting method is therefore proposed, with the illustrative example earning NZUs during an initial period of exotic forest growth, pausing for an interim (transition) period, and then gradually resuming its accrual of NZUs - presumably when a predominance of indigenous species can be identified. Whilst the smoothing out of NZU accrual is likely to better enable those genuinely committed to realising the transition to do so, it is unclear whether such a gradual increase in returns will be enough to incentivise and support the costly interventions necessary over the long timeframes involved.
- 5.20 In the Discussion Document’s modelled transition scenario:⁵⁴
- “The modelled forest sees a peak in total carbon stock around age 40, with exotic softwoods making up over 95% of the total carbon stored in the forest at this point. **Total carbon stocks are progressively reduced as the forest is made up of greater proportions of indigenous species.** Over time (from roughly 35-40 years onwards in this model) the exotic trees are removed and replaced with new indigenous trees. **This causes the amount of carbon stored in the forest to decrease.** Moreover, **although indigenous forests are expected to sequester high levels of carbon in the long-run, the total amount of carbon stored in the forest is still far below its initial peak after 100 years.**”
- 5.21 The carbon stock delays and losses anticipated under the transition forest model described above would seem to undermine its integrity in terms of both additionality and permanence, and therefore whether we not only meet, but sustain, our emissions reduction obligations.
- 5.22 Furthermore, specific performance is likely to offer limited relief within a meaningful timeframe should a transition forest fail. The opportunity cost of being decades behind on indigenous reforestation and associated climate mitigation and resilience will only increase the burden of adaptation on future generations.
- 5.23 Meanwhile, the financial cost of managing failed or abandoned transition (exotic monocultural) forests - for pests, disease, wildings, fire, harvest or collapse - will inevitably fall on the taxpayer. Dispersed ownership, limited liability, the ability to liquidate, and the passing of time are likely to frustrate the ability to hold investors accountable.

Exceptions

- 5.24 We acknowledge that limited exceptions to restricting the permanent forest category to indigenous forests cannot be entirely avoided, and appropriate arrangements for their careful management will be critical. These include:

⁵³ Discussion Document, at 21.

⁵⁴ Discussion Document, at 22.

- (a) Exotic (including 'transition') forests permitted to register in the permanent forest category from 1 January 2023 until such time as a moratorium on their registration comes into effect. This moratorium would cease when regulatory changes to restrict the category to indigenous forests take effect; and
- (b) Plantation forests in respect of which the erosion susceptibility risk of clear fell harvesting has been deemed unacceptable (for example, forests on the East Coast identified as 'purple zoned' in the Ministerial Inquiry into Land Use report).

Bespoke management plans, verification and auditing arrangements will be required for these exceptions.

5.25 If it were decided that transitions should be attempted for these 'exceptions', Forbes and Norton note that the objectives would need to be clearly defined:⁵⁵

"For example, if a main objective of the transition is to avoid plantation clear fell in a sensitive catchment, the focus could be on simply replacing exotic cover with some form of native cover, not necessarily with high-volume native trees and if the native understorey regeneration is abundant then the exotic plantation could be removed rapidly. Whereas, if the transition is to sequester forest carbon, a more gradual transition is likely to be desirable (maximising the growth and biomass benefits of the fast-growing exotic canopy) and longer-term recruitment of high-volume native tree species will be important."

The issue of de facto permanence

5.26 We note that the Discussion Document does not address the risk of de facto permanence.

5.27 In this regard, MPI's 2022 PFC Consultation considered the risk of forests in other NZ ETS categories being managed as permanent, noting that:

- (a) "At the current and expected future NZU prices, *Pinus radiata* forests registered under averaging accounting are expected to have a positive return on investment, regardless of whether they are harvested. There is a risk that forests registered under averaging accounting could be managed as permanent if harvesting is not economically viable. These forests could contribute negative environmental impacts if poorly managed⁵⁶ such as wilding, pests, disease and fire risk;"⁵⁷
- (b) "Furthermore, ... [t]here is a risk that a proportion of the 310,000 hectares of exotic forests currently registered under stock change accounting could be managed as permanent forests and continue to earn NZUs within the NZ ETS (or sold to new

⁵⁵ Forbes, A and Norton, D, "Transitioning Exotic Plantations to Native Forests: A Report on the State of Knowledge" (August 2021), at 18.

⁵⁶ Or indeed *not* managed.

⁵⁷ MPI 2022 PCF Consultation, at 20.

owners who convert management of the forest to a permanent exotic forest)”⁵⁸; and consequently that

- (c) “The Government will need to consider the likelihood that exotic forests registered under both stock change and averaging accounting will be managed as permanent and **whether measures are needed to mitigate potential adverse impacts.**”⁵⁹

5.28 The risk of de facto permanence remains. We agree that measures may be needed, but with the focus being on deterring (or disincentivising) the risk, rather than on mitigating potential adverse impacts.

Consequences of failed transitions

5.29 The Discussion Document anticipates an escalating pathway of compliance action and tools in relation to forest management requirements. Existing compliance tools under the NZ ETS include:

- (a) Infringement notices for low-level non-compliance;
- (b) Reporting and late payment penalties;
- (c) Pecuniary penalties;
- (d) Expelling forests from the NZ ETS for persistent non-compliance; and
- (e) Criminal offences for serious misconduct.

5.30 The Discussion Document suggests that new tools better suited to the nature of permanent forestry, particularly transition forests, could include:

- (a) Abatement and/or abatement notices (to take or stop certain actions within a certain timeframe);
- (b) Withholding units until a requirement is met;
- (c) Moving persistently non-compliant forests to the standard forest category under averaging accounting (instead of deregistering them entirely); and
- (d) Bonds to ensure forest outcomes are achieved over the life of the forest.

5.31 The use of covenants that run with the land would better guarantee the realisation of forest outcomes at scale and in perpetuity,⁶⁰ and better align with the multidecadal nature - and risk - of transition forests.

5.32 We do not understand the rationale for the proposal to move persistently non-compliant forests into the standard forest category under averaging accounting (and how this would compare in any case with the specific carbon accounting approach suggested for transition

⁵⁸ MPI 2022 PCF Consultation, at 20.

⁵⁹ MPI 2022 PCF Consultation, at 20.

⁶⁰ As required for Permanent Forest Sink Initiative forests, and recommended in Dr Adam Forbes and Professor David Norton’s report for MPI on “Transitioning Exotic Plantations to Native Forest: A Report on the State of Knowledge”, at 6.

forests), what this would achieve, and whether this implies an expectation that non-compliant/failed transitional forests would be harvested.

- 5.33 Although transition forests should be designed to enable access for monitoring, they are unlikely to be designed or located (e.g. proximity to ports) with harvesting in mind. This is particularly the case for a lot of Māori freehold and customary land in respect of which transition forests are being considered, noting that such land is “is disproportionately ... remote”,⁶¹ “difficult to access”,⁶² and marginal to harvest.
- 5.34 Given these land and location constraints, and the absence of a clear rationale, the suggestion that failed transitions could plausibly transfer into the standard forest category does not seem a credible proposition.
- 5.35 The effectiveness of specific performance is limited due to (re-)establishment timeframes. Bond obligations, and/or the withholding of NZUs as an incentive for, and security against, specific performance can protect against financial loss, but not carbon and/or biodiversity loss and the associated opportunity cost.
- 5.36 Furthermore, and as discussed above at para 5.23, the efficacy of any enforcement tools is likely to prove increasingly limited over time due to the multidecadal nature of the transition forest model, the transfer of ownership during that time, and the corporate protections afforded by limited liability and liquidation.
- 5.37 In summary, the limited ability to effectively police and enforce successful transitions supports their exclusion from the permanent forest category.

6 Forest management requirements should be mandated for *all* forests through verified forest management plans

- 6.1 Aotearoa New Zealand’s forestry sector has enjoyed operating under a high-risk, high-trust model to date. This loose rein approach has resulted in disastrous social, economic and ecological consequences for local communities and receiving environments, resulting in a complete loss of social licence.
- 6.2 One measure by which the industry’s social licence can be restored is through the requirement for all forests⁶³ (irrespective of category) to submit verified forest management plans for approval before they can register in the NZ ETS. We therefore disagree with the Interim Regulatory Impact Statement’s suggestion that “if forest management requirements were to be implemented, the preferred option would be for these to be through a flexible approach ***where foresters determine how they will meet high level requirements.***”⁶⁴

⁶¹ Discussion Document, at 12.

⁶² Discussion Document, at 15.

⁶³ Above a certain land area threshold.

⁶⁴ Interim Regulatory Impact Statement, at para 19.

- 6.3 We agree that forest management plans should be regulated and informed by expert knowledge and:⁶⁵
- (a) Encompass site and species selection and silvicultural regime and ensure these are optimised for long-term climate-resilient carbon sequestration and storage in perpetuity (for permanent forest category forests), environmental integrity, and ecological co-benefits;
 - (b) Cover the life of the forest;
 - (c) Identify risks, mitigations and monitoring regime. With regard to risk, we agree the need to design and manage forests in anticipation of, and for resilience to, increasing climate-risks, is critical, particularly in relation to fire, disease, pests and weeds, and extreme weather;
 - (d) Stipulate best practice management for the forest model and desired outcomes according to the unique circumstances of each individual forest; and
 - (e) Outline timeframes for specific management interventions and milestones.
- 6.4 We accept that some degree of flexibility will be necessary to allow for forests to adapt to changing pressures and improvements in forest management knowledge and practices,⁶⁶ and that “[a] more flexible approach might better account for the variation in species, geographical locations, climate and soil types different forests encounter.”⁶⁷ Ultimately, a combination of prescriptive rules (in support of a degree of consistency and certainty) together with an adaptive outcomes-focused approach pursuant to bespoke (but verified and audited) forest management plans may be needed.
- 6.5 Specific forest management rules should be developed for exceptional circumstances where an exotic forest needs to be transitioned to an indigenous one (as discussed in para 5.24 above). To some extent, these will need to be adaptive simply because the evidence base for whether and how these can succeed is uncertain and evolving:⁶⁸
- “[o]ur understanding of what best management practice looks like for transition forests is still developing. We will need to ensure transition forest management is flexible enough to accommodate emerging science, while ensuring that minimum standards are met, and outcomes for the model are achieved.”
- 6.6 We agree that ensuring that certain interventions occur within a specified timeframe through clearly identified and monitored milestones will be essential.⁶⁹ These may relate to, among other things, the manipulation of light conditions in the canopy, managing stand level interventions, ensuring access to indigenous seed sources and/or enrichment planting, minimum stocking rates, effective pest and weed control, and the influence of other site related factors.

⁶⁵ Discussion Document, at 29.

⁶⁶ Interim Regulatory Impact Statement, at para 236.

⁶⁷ Discussion Document, at 29.

⁶⁸ Discussion Document, at 27.

⁶⁹ Discussion Document, at 27.

6.7 We further agree that forest management plans would need to be subject to regular (annual) audits and re-verification to ensure that management in practice is:⁷⁰

- (a) Consistent with the plan and the forest model;
- (b) Achieving prescribed outcomes and co-benefits;
- (c) Meeting milestones and undertaking any interventions necessary to meet these within specified timeframes;

and the plan itself is and remains robust and fit-for-purpose. The appropriate re-verification period should be informed by best forest management practice but we agree that alignment with mandatory returns periods (every 5 years) would be administratively practical.

6.8 There will be costs associated with forest management plan preparation, monitoring, auditing, compliance and enforcement. However, such costs are entirely justified in light of the risks of poor forest management, and essentially require a necessary internalisation of downstream costs that are currently externalised (and well evidenced on the East Coast).

6.9 Other sectors are subject to similar management regulatory oversight regimes. The framework for farm freshwater management plans provides a workable precedent in this regard, as well as highlighting the need for intersectoral equity.

6.10 We also agree that ongoing best practice management requirements, and the introduction of forest management verification and associated oversight, will create job opportunities.⁷¹

6.11 Expertise, competence, capacity, independence, and regulatory oversight will be critical to the efficacy and rigour of forest management plan auditing and verification.

7 Transitional implementation considerations

Immediate moratorium on the further registration of permanent exotic and transition forests is necessary

7.1 We strongly recommend that officials consider imposing an immediate moratorium on the further registration of permanent exotic and transition forests in the NZ ETS permanent forest category.

7.2 MPI considered the need for such a moratorium in its 2022 consultation to restrict the permanent forest category to indigenous forests, noting that:⁷²

“We considered, but discarded, the option of introducing the changes at a later date (for example, 1 January 2025). Although this would give us more time to consider the issue and

⁷⁰ Discussion Document, at 29.

⁷¹ Discussion Document, at 28.

⁷² MPI 2022 PCF Consultation, at 19.

solutions (including introducing exceptions at the same time as the changes come into effect), we consider letting exotic forests register in the permanent category carries risks.

Offering a window of time for forests to register in the permanent exotic category is likely to lead to a surge of forests registering the NZ ETS in this category – exacerbating the issue. This would result in the negative impacts we have identified ... as well as make administering the NZ ETS system more complicated.

It would also create a permanent forest legacy which limits future governments’ flexibility to take decisions affecting NZ ETS settings. Therefore, we want to act before 1 January 2023.”

- 7.3 MPI should urgently reconsider its position for these very reasons. We would be dismayed if the registration of exotic (including purported ‘transition’) forests is allowed to continue until changes are implemented in early 2025,⁷³ or indeed later “for foresters already in the category to prepare for and implement new requirements.”⁷⁴

Permanent exotic registrants - managing the exceptions

- 7.4 Officials should not delay implementing bespoke and rigorous management requirements “for foresters already in the category” as permanent exotic or transition forest registrants.
- 7.5 Those permitted to register from 1 January 2023 were on express notice that the category was subject to redesign and that their obligations of registration could change.

Māori rights and interests

Māori rights and interests can and should be recognised and appropriately addressed

- 7.6 The Discussion Document acknowledges that Māori perspectives regarding the redesign of the permanent forest category are not uniform,⁷⁵ and there is some disagreement in relation to prioritising the short-term commercial interests of a few at the expense of broader and intergenerational cultural, economic and ecological interests.
- 7.7 Legitimate concerns have been raised from some Māori entities regarding the possible diminution in value or productive potential of Māori land (some of which has been returned through Treaty settlements), much of which is disproportionately remote and marginal.
- 7.8 These risks can and should be fully mitigated without allowing exotic or transition forests to register as ‘permanent’ forests, including through:

⁷³ Discussion Document, at 4.

⁷⁴ Interim Regulatory Impact Statement, at para 275.

⁷⁵ Discussion Document, at 11, and see <https://www.carbonnews.co.nz/story.asp?storyID=28249> (“view not shared by many Māori” - Mike Smith). The dichotomy of views has been taken to the United Nations: <https://www.1news.co.nz/2023/07/15/maori-landowners-head-to-un-in-bid-to-stop-emissions-trading-scheme-changes/>, and <https://www.newsroom.co.nz/east-coast-group-raises-concerns-at-un-about-pine-forestry>

- (a) Interventions that close the gap between the establishment and maintenance costs of indigenous biodiverse forests vis-à-vis exotic monoculture plantations;⁷⁶
- (b) Direct compensation for any provable losses;
- (c) Increasing the relative return on indigenous forest removals (as contemplated by the ETS Review options to separate and strengthen incentives for forestry removals on a long-term qualitative basis); and
- (d) Establishing a viable biodiversity credit scheme.

8 Conclusion

- 8.1 The Government has rightly identified the need to address the many risks presented by extensive and unconstrained exotic plantation and 'carbon' forests. Restricting the NZ ETS permanent forest category to indigenous forests is not the whole answer, but it is an important component of a suite of measures to this effect.
- 8.2 Vested financial interests naturally oppose this prospect. But those interests are short-term, commercially-focused, and not representative of the best interests of Aotearoa New Zealand as a whole, particularly those of future generations and our indigenous flora and fauna - our taonga. It is critical that Government is not unduly swayed by sector lobbying.
- 8.3 If the purpose of the permanent forest category is to secure an evidence-based, self-sustaining biodiverse and climate-resilient carbon sink for a prosperous future - which it should be - the case for restricting the category to indigenous forests is clear.
- 8.4 And to this end, we strongly encourage Government to stay firm in its resolve to act in the long-term interests of all New Zealanders.

⁷⁶ MPI's Native Afforestation Programme should be scaled up so as to materially assist in this regard.