



PROACTIVE RELEASE COVERSHEET

Minister	Hon James Shaw	Portfolio	Associate Minister for the Environment (Biodiversity)
Name of package	Biodiversity Credit System Discussion Document for Public Consultation	Date to be published	8/11/2023

List of documents that have been proactively released

Date	Title	Author
21 June 2023	Cabinet paper: Biodiversity Credit System Discussion Document for Public Consultation	Ministry for the Environment and Department of Conservation
21 June 2023	Appendix 3 – National Iwi Chairs Forum: Ensuring a Te Tiriti o Waitangi Compliant Biodiversity Credit System	Iwi Technicians
27 June 2023	ENV-23-MIN-0032 - Cabinet Environment, Energy and Climate Committee Minute of Decision	Cabinet Office

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Redactions made in the Cabinet paper have been made under section s 9(2)(f)(iv) to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers and officials, section s 9(2)(h) of the Act to maintain legal professional privilege and section s 9(2)(g)(i) of the Act to maintain the effective conduct of public affairs through – the free and frank expression of opinions to Ministers of the Crown in the course of their duty.

Appendix 2 and Appendix 4 of the Cabinet paper are withheld in full under section s 9(2)(f)(iv) of the Act to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers and officials.

In Confidence

Office of the Minister of Conservation

Office of the Associate Minister for the Environment (Biodiversity)

Chair, Cabinet Economic Development Committee

Biodiversity Credit System Discussion Document for Public Consultation

Proposal

- 1 This paper seeks agreement to release a discussion document for public consultation on a potential biodiversity credit system for Aotearoa New Zealand.

Relation to government priorities

- 2 This proposal:
 - Supports an area of cooperation outlined in the Cooperation Agreement between the Labour Party and the Green Party, “Protecting our environment and biodiversity through working to achieve the outcomes of Te Mana o te Taiao - Aotearoa New Zealand Biodiversity Strategy 2020”;
 - complements the implementation of the National Policy Statement for Indigenous Biodiversity (NPSIB) and its desired outcomes to protect, maintain and restore indigenous biodiversity in Aotearoa New Zealand;
 - supports key system outcomes of the resource management reforms, and implementation of related climate policies such as the National Adaptation Plan and Emissions Reduction Plan;
 - has relevance to the recently released “Outrage to Optimism” report of the Ministerial Inquiry into land use in Tairāwhiti and Wairoa following Cyclone Gabrielle which recommended the Government establish a world-leading biodiversity credit system to incentivise permanent indigenous forests.

Executive Summary

- 3 On 6 June 2023 Cabinet approved the NPSIB (via Ministers with Power to Act) [CAB-23-MIN-0225 refers]. In parallel, there has been ongoing development of a discussion document to announce the Government’s interest in establishing a biodiversity credit system for Aotearoa New Zealand to complement the implementation of the NPSIB, and to provide an additional response to ongoing biodiversity decline.
- 4 This Cabinet paper seeks agreement to release a discussion document for public consultation as a first step in the exploration of the potential of, and demand for, a biodiversity credit system in Aotearoa New Zealand.

- 5 We are proposing that public consultation will occur for a total of seventeen weeks from 7 July 2023 to 3 November 2023. Targeted engagement with Māori and tangata whenua, including in person hui, will occur during this time, following advice from iwi technicians (from Pou Take Āhuarangi, Pou Taiao and Pou Tahua of the National Iwi Chairs Forum).
- 6 Officials will analyse submissions following the consultation and develop advice on next steps. This advice will be provided to Cabinet by the end of 2023.

Background

- 7 A biodiversity credit system has the potential to provide an additional and complementary response to implementation of the NPSIB, and further address declining indigenous biodiversity in Aotearoa New Zealand.
- 8 Thousands of species in Aotearoa New Zealand are threatened with, or at risk of, extinction. Government policy settings and initiatives that are aimed at addressing biodiversity decline include:
 - 8.1 Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy (**ANZBS**) – which forms part of our commitment to help halt global biodiversity loss under the Convention on Biological Diversity;
 - 8.2 The National Policy Statement for Indigenous Biodiversity (**NPSIB**) – which provides greater direction to councils about the protection, maintenance and restoration of indigenous biodiversity, and provides a regulatory tool to support the ANZBS; and
 - 8.3 The National Adaptation Plan and Emissions Reduction Plan - which both recognise that the climate and biodiversity crises are inextricably linked and include actions which will help improve the alignment between climate and biodiversity policy and action.
- 9 Many of our threatened and at-risk species and habitats are found outside of the 30% of Aotearoa New Zealand which is protected as conservation land. Despite efforts of landowners and the community, current public and private investment is falling short of what is required to maintain and protect nature.
- 10 There has been ongoing development of a discussion document to announce the Government's interest in establishing a biodiversity credit system for Aotearoa New Zealand, to complement the implementation of the NPSIB, and to provide an additional response to ongoing biodiversity decline.
- 11 We propose to publish this discussion document on 7 July 2023 – setting out the potential case for a biodiversity credit system, what a biodiversity credit system could comprise and how such a system could be implemented, including the role of government – for public comment and feedback. This will occur alongside a public announcement on the gazettal of the NPSIB.

Analysis

The case for a biodiversity credit system in New Zealand

- 12 Much of the funding for the protection and enhancement of biodiversity comes from local and central government. Despite the expertise, enthusiasm and existing investments from landholders and the wider community, cumulative current public and private investment is falling short of what is required to maintain and protect nature.
- 13 There remains strong interest from tangata whenua, private landowners, the farming community and environmental groups to undertake additional action that provides positive biodiversity outcomes. This will become more pronounced with the introduction of the NPSIB, which will require councils to consistently identify. and landowners to manage, significant natural areas.
- 14 Biodiversity credits would potentially assist landowners to maintain the significant natural areas on their land, and help to offset any loss in development opportunity, or to help fund mitigation measures when landowners want to develop their land.
- 15 Internationally, and domestically, businesses and philanthropists are increasingly looking for ways in which they can support biodiversity initiatives. This interest is expected to increase with developments such as the Taskforce for Nature Based Disclosures, which asks businesses to identify, disclose, mitigate and offset impacts of their business on nature.
- 16 Biodiversity credits would provide an avenue for investors to provide funding to biodiversity initiatives, with confidence that initiatives have integrity and impact.
- 17 We have the potential to harness this growing interest by developing new tools that will help landholders to protect, maintain, restore and enhance the biodiversity on their land, and help share the cost of this action. As other countries are beginning to do, we have the opportunity to explore whether a biodiversity credit system in Aotearoa New Zealand could provide an innovative approach to grow funding and mobilise investment to support biodiversity.
- 18 Many threatened and at-risk species and habitats outside of public conservation lands are found on whenua Māori, and tangata whenua have the potential to gain from a biodiversity credit system for protecting te taiao. This will enable them to exercise their rangatiratanga and kaitiakitanga, and sustain connections whānau, hapū and iwi have with their whenua, awa and moana, as well as mātauranga Māori and other cultural taonga.
- 19 If done well, a biodiversity credit system could:
 - 19.1 attract corporate, philanthropic and community investment to incentivise positive actions for indigenous biodiversity. This could increase funding for biodiversity and help meet demand from philanthropists/businesses who want to invest in verifiable, positive biodiversity action;

- 19.2 help Aotearoa New Zealand meet its international obligations to protect biodiversity and deliver on outcomes sought through the ANZBS - such as 'prosperity is intrinsically linked with thriving biodiversity';
 - 19.3 supplement regulatory changes to improve biodiversity protection and restoration;
 - 19.4 support the implementation of related climate policies such as the National Adaptation Plan and Emissions Reduction Plan;
 - 19.5 supplement DOC's work on public conservation land; and
 - 19.6 expand and reward positive biodiversity action on private land and whenua Māori.
- 20 There are already privately-run biodiversity credit products operating in Aotearoa New Zealand, and these are anticipated to continue to develop, with or without Government intervention. The Government may have a role to play, however, in enabling a high-integrity biodiversity credit system.
- 21 The recently released "Outrage to Optimism" report of the Ministerial Inquiry into land use in Tairāwhiti and Wairoa following Cyclone Gabrielle also recommends the Government establish a world-leading biodiversity credit system to incentivise permanent indigenous forests.

Biodiversity credits and a biodiversity credit system as a concept

- 22 Biodiversity credits are a type of economic instrument that recognise, in standardised ways, either projects and/or activities that provide positive outcomes for biodiversity, against which 'nature positive' claims can be made (e.g. in marketing). Initiatives could relate to significant natural areas under the NPSIB, taonga species, and restoration in the wider landscape.
- 23 By purchasing credits, people and organisations can finance and claim credit for their contribution to 'nature-positive' actions for biodiversity on public and private land, including whenua Māori. In return, landowners and land managers can receive supplementary income to support their on-the-ground actions for nature such as the protection of significant natural areas.
- 24 Biodiversity credits and systems are emerging both internationally and domestically across a range of initiative types via:
- 24.1 Government-led schemes and initiatives - such as the Australian Federal Government's Nature Repair Bill, which seeks to reward landholders for restoring and protecting nature, and provide options for businesses to invest in nature repair.
 - 24.2 private sector-led initiatives - such as Ekos' Sustainable Development Unit credits (New Zealand), VERRA's -Verified impacts standards for Nature (United States), Wallacea Trust's Biodiversity Credits (United Kingdom), GreenCollar's – Nature Plus Credits (Australia), Climate Trade/Terrasos–

Voluntary Biodiversity Credits (Colombia) - which all provide a new way to attract investment into biodiversity-friendly activity.

25 Existing examples of biodiversity credits can be broadly placed into three categories:

25.1 Credits which represent *activities* to the benefit of biodiversity e.g.: a landowner undertakes pest and predator control over a piece of land;

25.2 Credits which represent *outcomes* in which clear benefits to biodiversity are seen/achieved, e.g.: there has been a 10% increase in species found in a particular area; and

25.3 Credits that relate to standardised projects and are a hybrid approach incorporating aspects of both activity and outcome-based measures.

26 Unlike carbon markets, there is no obvious single 'unit' of measurement that could be used to outline changes in biodiversity.

27 Biodiversity credits also tend to operate in a voluntary market, rather than a compliance market, and are intended to achieve positive outcomes for biodiversity. As such, they are different from biodiversity offsets, which are usually regulatory or planning requirements used to offset negative impacts on indigenous biodiversity arising from development.

28 s 9(2)(f)(iv)

29 Should Cabinet agree to release the discussion document attached in Appendix 1, it will seek feedback from the public on:

29.1 what a biodiversity credit system in Aotearoa New Zealand should achieve;

29.2 the design of a biodiversity credit system and how it should be implemented;

29.3 what role government might have in such a system; and

29.4 how a biodiversity credit system may complement wider biodiversity and climate policies.

Key considerations and choices for how a biodiversity credit system could be designed and implemented

Rights and interests of Māori

30 Whānau, hapū and iwi have unbreakable whakapapa connections with te taiao. Māori have general and specific interests in safeguarding te taiao and specific kaitiaki relationships with taonga species, as guaranteed under article 2 of Te Tiriti.

31 s 9(2)(f)(iv), s 9(2)(h)

s 9(2)(f)(iv), s 9(2)(h)

- 32 Much of the remaining biodiversity in Aotearoa New Zealand, outside of the conservation estate, is found on whenua Māori. 48 per cent of Māori Land Court land and 34 per cent of Treaty Settlement land has indigenous vegetation cover, compared with only 16 per cent of other private land.

33 s 9(2)(f)(iv)

- 34 Māori organisations are at the forefront of biodiversity work in Aotearoa New Zealand, for example:

34.1 Manaaki Ruahine Trust leads Mauri Oho, which is protecting taonga species (e.g. whio and kiwi) and improving biodiversity on Māori Trust land, public conservation land and neighbouring farmland.

34.2 Te Ngahere Ltd leads Te Ngāhere, which undertakes pest control, trapping, fencing and planting in parks, reserves and waterways.

34.3 Ngāti Pāhauwera Development Trust leads Kaitiaki Taiao which works with Māori, government and research agencies to undertake riparian management, species protection and freshwater and wetland protection.

34.4 Maungatautari Ecological Island Trust (MEIT) is governed by community members, including local iwi representatives. MEIT leads the Sanctuary Mountain Maungatautari conservation project, which was the first seller in Ekos' biodiversity credit system (paragraph 20.2 refers).

- 35 Māori need to be closely involved in any work to develop a credit system to make the most of their expertise. s 9(2)(f)(iv)

- 36 There will need to be careful consideration of the specific relationship and interests Māori have with te taiao, and how this is incorporated in a potential biodiversity credit system.

- 37 An initial analysis of Te Tiriti considerations is attached as Appendix 2.

The role of government

- 38 The role for government could sit along a spectrum of possible intervention. The two broad roles that government could play to support the development of a biodiversity credit system, which are not necessarily mutually exclusive, are:

38.1 A market enabler role – where government supports the development and uptake of voluntary schemes in New Zealand through enabling policies (e.g.

development of common standards or guidance), and potentially funding support is provided as the market is established; and/or

- 38.2 A market administrator role – where government establishes and manages a voluntary biodiversity scheme for Aotearoa New Zealand and plays an active role in its ongoing management and administration (for example, in Australia with their Nature Repair Market).

39

s 9(2)(h)



The wider biodiversity and climate system

- 40 The biodiversity and climate crises are inextricably linked, and there is potential for a biodiversity credit system to supplement and support climate outcomes.
- 41 A biodiversity credit system could support initiatives seeking to achieve dual biodiversity and climate change outcomes by reducing some of the financial gap between exotic forests and native forests when financed based on their carbon sequestered alone.
- 42 Biodiversity credits could also interact more directly with carbon markets by being ‘stacked’ or ‘stapled’ to carbon credits. A ‘stacked’ credit is where a carbon and biodiversity credit is issued for the same project, a ‘stapled’ credit is where a carbon and biodiversity credit come from different projects but are traded together as a whole product.

Proposed release of a discussion document for public consultation

- 43 The release of the discussion document will allow the Government to hear directly from those who are likely to interact with a biodiversity credit system and gauge public support, and understand:
- 43.1 the potential for such a system in Aotearoa New Zealand (including demand for credits); and
- 43.2 what is needed to develop a high integrity, well-functioning biodiversity credit system.
- 44 The discussion document is attached to this paper as Appendix 1.
- 45 Should Cabinet agree, we intend to release the discussion document for public consultation for a total of seventeen weeks from 7 July 2023 to 3 November 2023.
- 46 Submissions will be collated from interested parties and then analysed to produce a report with recommended next steps for a potential biodiversity credit system.

47 The next steps report will be provided to Cabinet at the end of 2023.

Financial Implications

48 There are no financial implications from this proposal. However, there could be implications in the future depending on the next steps that are agreed, and what role government decides to take in any future system. Financial implications will be provided within further advice.

Legislative Implications

49 There are no legislative implications from this proposal.

Impact Analysis

Regulatory Impact Statement

50 The scope and framing in the discussion document is exploratory and does not have regulatory implications, and therefore Cabinet's impact analysis requirements do not apply at this stage. If any specific proposals are developed, they would be subject to further consultation and the provision of impact analysis.

Climate Implications of Policy Assessment

51 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal in its current stage, as it is not expected to result in any significant, direct emissions impacts. This proposal is at the discussion stage and is seeking public consultation. There are initiatives in this proposal that could have future indirect emissions impacts through a biodiversity credit system. The development of this proposal will be disclosed to the CIPA team as the work progresses.

Population Implications

52 There are no population implications at this stage.


Human Rights

53 There are no identified inconsistencies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Engagement with Māori

54 Officials from the Ministry for the Environment and Department of Conservation have been holding regular hui with iwi technicians (from the Pou Take Āhuarangi, Pou Taiao and Pou Tahua of the National Iwi Chairs Forum). The intent of these meetings was to surface emerging interests from Māori in a biodiversity credit system, and discuss how Māori are involved going forward. The meetings are not a substitute for more fulsome engagement with Treaty Partners in time.

- 55 Targeted engagement with tangata whenua, including in person regional hui, will occur during the public consultation period following advice from iwi technicians. This will outline the best approach to doing this, and key groups to include in engagement (such as Federation of Māori Authorities, and the Māori Trustee). Iwi technicians have agreed to facilitate this engagement. Iwi technicians have noted that discussion documents tend to draw in responses from non-Māori audiences, and supplementary engagement is needed to garner wider Māori views.
- 56 Iwi technicians have developed a paper “National Iwi Chairs Forum: Ensuring a Te Tiriti o Waitangi Compliant Biodiversity Credit System, June 2023” to “inform Cabinet Ministers of outstanding matters to be considered in order to develop a Te Tiriti compliant Biodiversity Credit System”. The paper is included as Appendix 3.
- 57 s 9(2)(g)(i) 
- 58 Iwi technicians have also been engaged in the development of the discussion document. Officials will continue to engage with iwi technicians in progressing the policy work, including any subsequent consultation.

Engagement with key stakeholders

- 59 Officials have also held several initial meetings with interested parties to begin socialising that the Government is intent on exploring the potential role of a biodiversity credit system in Aotearoa New Zealand. They have also helped to surface key initial considerations for biodiversity credits.
- 60 The meetings have included: Forest and Bird, philanthropists, the Sustainable Business Network, farm advisors, officials from the Australian Federal Government, and also two workshops attended by practitioners, ecologists, and technical experts.
- 61 Other background information on a biodiversity credit system has been sought through:
- 61.1 Commissioning a report from the ‘Pollination Group’ to outline potential uses of biodiversity markets to scale financing of nature-based solutions in Aotearoa New Zealand.
 - 61.2 Surveying Sustainable Business Network members to understand: the potential demand, motivations and barriers for business investment in nature, and what kind of nature investments businesses are interested in.
 - 61.3 Commissioning a report and survey from PriceWaterhouseCoopers to better understand business motivations for participating in voluntary carbon markets, and whether biodiversity considerations are a key part of this.
- 62 An engagement plan has been developed to support the public consultation process. The goal is to use targeted, proactive engagement to gain perspectives, buy-in and feedback from partners and key stakeholders about the development and concept of a

biodiversity credit system. There will be web pages, publications, and communications messaging to support this engagement.

- 63 The engagement plan is attached to this paper in Appendix 4.

Agency consultation

- 64 The following agencies were consulted in the development of this Cabinet paper: Department of Internal Affairs, Ministry for Primary Industries, Te Arawhiti, Land Information New Zealand, Ministry of Foreign Affairs and Trade, Department of the Prime Minister and Cabinet, Ministry of Housing and Urban Development, New Zealand Transport Agency, Te Puni Kōkiri, Treasury, New Zealand Defence Force, Ministry of Transport, Ministry of Business, Innovation and Employment.

Communications

- 65 The release of the discussion document and beginning of public consultation will be announced in a joint statement by both the Minister of Conservation and the Associate Minister for the Environment (Biodiversity), on 7 July 2023, alongside the announcement and gazettal of the NPSIB.

Proactive Release

- 66 We intend to proactively release this Cabinet paper following Cabinet decisions proactively within 30 business days, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Conservation and the Associate Minister for the Environment (Biodiversity) recommend that Cabinet Committee:

- 1 **Note** that Cabinet approved the National Policy Statement for Indigenous Biodiversity (**NPSIB**) (via Ministers with Power to Act) [CAB-23-MIN-0225 refers], and in parallel, there has been ongoing development of a discussion document to announce the Government's interest in establishing a biodiversity credit system for Aotearoa New Zealand, to complement the implementation of the NPSIB
- 2 **Note** that a biodiversity credit system could:
 - 2.1 attract corporate, philanthropic and community investment to incentivise positive actions for indigenous biodiversity;
 - 2.2 help Aotearoa New Zealand meet its international obligations to protect biodiversity and deliver on outcomes sought through Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy (**ANZBS**);
 - 2.3 supplement regulatory changes to improve biodiversity protection and restoration;
 - 2.4 support the implementation of related climate policies such as the National Adaptation Plan and Emissions Reduction Plan;

- 2.5 supplement DOC's work on Public Conservation Land; and
- 2.6 expand and reward positive biodiversity action on private land and whenua Māori
- 3 **Note** that biodiversity credits and systems are emerging internationally and domestically by both the private sector and by government-led initiatives
- 4 **Note** that a discussion document (attached as Appendix 1) has been developed which will seek feedback from the public on:
 - 4.1 what a biodiversity credit system in Aotearoa New Zealand should achieve;
 - 4.2 how to design and implement a biodiversity credit system;
 - 4.3 what role government might have in such a system; and
 - 4.4 how a biodiversity credit system may complement wider biodiversity and climate policies
- 5 **Note** that there are key Te Tiriti considerations in the potential development of a biodiversity credit system, including the rights and interests of Māori in taonga, the kaitiaki relationship that Māori have with indigenous biodiversity, and specific considerations from the Waitangi Tribunal (e.g.: Wai 262 and Wai 1200)
- 6 **Note** that as a significant proportion of indigenous vegetation outside the conservation estate is on whenua Māori, officials will need to engage widely with tangata whenua on policy development to avoid inequitable outcomes
- 7 **Note** that initial Te Tiriti analysis is attached to this paper in Appendix 2
- 8 **Note** that a paper from iwi technicians titled 'Ensuring a Te Tiriti o Waitangi Compliant Biodiversity Credit System' is included in Appendix 3
- 9 **Note** iwi technicians have been engaged in the development of the discussion document, and officials will continue to engage with iwi technicians in progressing the policy work
- 10 **Note** that the role for government is currently undefined and could sit along a spectrum of possible intervention, spanning a market enabling role, to a market administration role
- 11 **Note** that the biodiversity and climate crises are inextricably linked, and there is potential for a biodiversity credit system to supplement and support climate outcomes
- 12 **Approve** the release of the discussion document at Appendix 1 for public consultation for a total of seventeen weeks from 7 July 2023 to 3 November 2023
- 13 **Authorise** the Minister of Conservation and Associate Minister for the Environment (Biodiversity) to make minor amendments to the discussion document and supporting documents as required prior to release to ensure they give effect to their intent

IN C O N F I D E N C E

- 14 **Note** that officials will provide advice summarising feedback from public consultation and engagement with tangata whenua, and recommended next steps by the end of 2023
- 15 **Note** that officials have held some initial engagement with iwi technicians as well as several initial meetings with interested parties
- 16 **Note** that an engagement plan has been drafted to support the consultation process and is attached in Appendix 4
- 17 **Note** that the release of the discussion document and beginning of public consultation will be announced in a joint statement by both the Minister of Conservation and the Associate Minister for the Environment (Biodiversity) on 7 July 2023.

Authorised for lodgement

Hon Willow-Jean Prime

Minister of Conservation

Hon James Shaw

Associate Minister for the Environment (Biodiversity)

Appendix 1 – Biodiversity Credits System Discussion Document

Appendix 2 – Initial Te Tiriti Analysis

**Appendix 3 – Iwi Technicians' Paper - Ensuring a Te Tiriti o Waitangi
Compliant Biodiversity Credit System**

Appendix 4 – Engagement Plan

National Iwi Chairs Forum: Ensuring a Te Tiriti o Waitangi Compliant Biodiversity Credit System; June 2023

NGA TAINA ME NGA TUAKANA

Na Kuini Moehau Reedy

Kua whakapumautia te aroha

Kua papa kohaitia te ngahere

Tau ana ko te rangimarie

Tau ana te mahana te nohotahitanga e

A nga taina me nga tuakana

Tini nga hua maha nga huarahi

Na noa e whakaata mai nei

Pua ana nga mau o te ngahere

Tau ana te mahana, te nohotahitanga e

A nga taina me nga tuakana

Ano te rite ki te ngahere Mahanahana ana

Ano kua papakohaitia ra Mahanahana ana

Tipu matoro

Tipu matoro ki te ao

Purpose and Context

This short, high-level paper has been developed by the National Iwi Chairs Forum (NCIF) technicians from Pou Take Āhuarangi, Pou Tahua and Pou Taiao in an integrated cross pou approach to inform Cabinet Ministers of outstanding matters to be considered in order to develop a Te Tiriti Compliant Biodiversity Credit System (BCS). This paper seeks to highlight to the Crown the complexities of designing a BCS or a regulation framework for a BCS in Aotearoa without the leadership of Iwi Maori in the creation of such systems.

This paper has been developed following a review of the Discussion Document: “Helping Nature and People Thrive – Exploring a Biodiversity Credit System for Aotearoa New Zealand” (Draft Version 3.15) and we note that we have also provided specific comments on the draft discussion document for consideration of officials as part of our working relationship with the Crown. **We do not believe that the discussion document in its current form represents the importance of Te Ao Maori and Iwi Maori rights and interests in this space.**

Any biodiversity credit system (BCS) for Aotearoa will need to be adapted to our unique circumstances, as the Tiriti context includes the need to recognise that iwi and hapu have recognised rights guaranteed under Te Tiriti o Waitangi, and interests specified in Treaty Settlements that safeguard te taiao and protect specific kaitiaki relationships with taonga species.

A BCS may provide the potential to incentivise positive actions that support and/or align with whanau, hapu and/or iwi aspirations regarding their taiao, there is risk of breaching Te Tiriti o Waitangi if the system is not designed in a manner that recognises and provides for Iwi Māori rights and interests and our inherent obligations through whakapapa to our taonga species.

Importantly, a substantive conversation amongst Iwi Māori on these matters has not yet been had, these markets are new and unproven, which requires our people to examine the implications of a potential commodification of nature and how that may or may not align with the tikanga and kawa of each whanau, hapu, and iwi. As with all emerging matters, whanau, hapu, and iwi will need to wānanga in place and with respect to the various layers of responsibilities of each community to ensure the most appropriate decisions are reached for our regions and our nation.

We are concerned that this discussion document fails to recognise these matters in a substantive and meaningful way that considers intercultural context between Māori and the Crown. An attempt to oversimplify the complexity of the issues and process of decision-making process will result in cascading disproportionate impacts on all whanau, hapu, iwi, and future generations.

We acknowledge that these markets will continue to be developed and are concerned that a co-design process that results in Tiriti compliancy is not being supported. The risk is inevitable disparity and historic inequity perpetuated instead of an increased opportunity toward tikanga Māori informing the foundations toward a successful market and thriving biodiversity.

Te Tiriti Compliant Biodiversity Credit System

The discussion document recognises that the future of Aotearoa is dependent on the wellbeing of the Taiao. This concept has been extracted from a fundamental concept in Te Ao Māori, yet the document fails to fully recognise the inherent whakapapa relationships and strong interdependency whanau, hapu and iwi have with their taiao. The intrinsic relationship between whanau, hapu, and iwi and their taiao, guaranteed in Te Tiriti o Waitangi is key for developing a successful BCS. This relationship is complex, and therefore the importance of designing a Te Tiriti compliant BCS, as well as the intricacies that may involve, needs to be communicated explicitly within the consultation document.

In order to be Te Tiriti compliant, the basis of any BCS in Aotearoa must be designed by Iwi Maori to:

- Uphold Te Oranga o te Taiao;
- Fairly and appropriately incentivise the proliferation of indigenous forests and ecosystems without disproportionately burdening Iwi Maori;
- Uphold the mana motuhake and rangatiratanga of whanau, hapu and iwi including the decision-making power over their taonga species and any BCS within their own rohe;
- Uphold the unique rights, interests and obligations whanau, hapu and iwi have to taonga species derived from whakapapa and guaranteed under Te Tiriti o Waitangi;
- Recognise the inherent whakapapa relationships and strong interdependency whanau, hapu, and iwi have with taonga species and their reliance on these connections for their livelihoods, cultural, social, and economic wellbeing;
- Enable the application of mātauranga Māori of whanau, hapu, iwi, and their existing repositories to ensure that respective tikanga based decision-making authority is held by traditional knowledge holders;

- Ensure that such a system does not prohibit or restrict Iwi Māori from their own use of, and their benefiting from, taonga and mātauranga in their own rohe;
- Ensure whanau, hapu and iwi are actively supported to grow capacity to enable the application of mātauranga Māori within the design and/or implementation of a BCS;
- Ensure fair and equitable benefit sharing for Iwi Māori because of their unique rights, interests, and obligations;
- Incentivise a self-sustaining environmental industry to support the transition to a low emissions economy, incorporating a precautionary approach to promote resilience to climate change;
- Uphold rangatiratanga and mana motuhake of Iwi Māori to create and design the BCS, exploring mechanisms such as transfers of power, joint management agreements and hapu and iwi participation arrangements to involve tangata whenua.
- Increase investment and incentives for the protection, maintenance, restoration, and enhancement of indigenous biodiversity on private land including whenua Māori.
- Dedicate resources to enable a successful co-design process where both participating partners in the Tiriti relationship agree to the outcomes of protection and regulations for the BCS.

Further to these matters, the Crown must ensure that a Wai 262: Flora and Fauna claim lens is applied to any system or its regulation, in summary;

- Wai 262 represents a commitment to te tino rangatiratanga o ngā taonga katoa.
- Whānau hapū and Iwi as kaitiaki have the full and exclusive decision-making authority to Taonga Māori, as guaranteed by Te Tiriti o Waitangi, Te Whakaputanga, and subsequent declarations including the United Nations Declaration on the Rights of Indigenous Peoples, the Mataatua Declaration, and the Te Pūea Declaration, Convention on Biological Diversity (CBD), Art 8(j) and the Inter-Governmental Committee of World Intellectual Property Organisation (WIPO) on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources.
- Taonga Māori include their mauri, their whakapapa, traditional cultural expressions, their genetic and biological properties, their environments, and habitats, their reo/mita, mātauranga, tikanga and kawa, and their relationships to their kaitiaki.

Mātauranga houses significant solutions pathways to addressing the coupled biodiversity and climate crisis. The discussion document recognises that a significant remaining presence of indigenous biodiversity is on whenua Māori. Over 1.3m ha of Māori land which holds over 70% of this country's indigenous biodiversity outside the DOC estate. The co-design of a BCS with Iwi/Māori is essential to not only producing a Tiriti Compliant BCS, but a system that meets the intended environmental outcomes. This co-design must occur irrespective of whether the market is developed by the Crown or private interests in Aotearoa. Therefore, any regulation of this space, must ensure our priorities are met as tangata whenua.

Te Oranga o te Taiao

Upholding Te Oranga o te Taiao through the development of a BCS should be prioritised when designing a Te Tiriti compliant BCS. Te Oranga o te Taiao has significant potential as a nationally applied governing concept for environmental management and restoration. Progress in this direction has been made with the incorporation of Te Oranga o te Taiao in the Natural and Built Environment and Spatial Planning Bills. Upholding Te Oranga o te Taiao in a BCS model will build the foundation of a Te Tiriti Compliant BCS model, and compliment ongoing and/or future climate change, biodiversity, and environment policy development.

The concept of Te Oranga o te Taiao is based in mātauranga Māori and therefore must be clearly articulated from a Mātauranga Māori lens if it is to be applied in the manner in which it was intended.

This means working with Crown officials to ensure its incorporation is conceptually appropriate when developing policy or legislation.

Co-Design

Through implementing the Memorandum of Understanding developed to establish the NZ ETS and Land Use Treaty Partnership Working Group, the NCIF propose that the cross pou working group work with the Crown to facilitate discussions on how to potentially co-design the foundations required to develop a Te Tiriti Compliant BCS model which enable whanau, hapu, and iwi at place to lead.

We must stress that we see this work as needing to be carried out immediately in order to avoid a situation in which a Te Tiriti lens has to be retroactively applied to extant Crown workstreams.

To be clear, this engagement with the NICF should not override the Crown's obligations to engage directly with Te Tiriti partners and Maori landowners to ensure that the role of the NICF is not overstated. NICF is not the Te Tiriti partner, and the overriding priority of engagement and input must come from whanau, hapu, and iwi themselves.

NCIF propose in parallel to direct engagement, to establish a technical working group to support NCIF technicians to co-design the necessary foundations of a Te Tiriti compliant BCS model. NCIF technicians will undertake research and development of both international and national options that could be adapted to enable a Te Tiriti compliant model. It is proposed that this work be carried out immediately to avoid the development of the BCS where Te Tiriti compliant practices are retrofitted into a pre-determined model.

NCIF will initially facilitate engagement with whanau, hapu, and iwi via various regional hui during the consultation period of the Discussion Document: "Helping Nature and People Thrive – Exploring a Biodiversity Credit System for Aotearoa New Zealand".

Through this engagement and separate technical workshops, NICF will work with the Crown to develop a detailed discussion document: "Te Herenga ki te Tiriti o Waitangi: Ensuring Biodiversity Credit Markets are Te Tiriti Compliant". It is envisaged that this discussion document would inform the basis of a BCS model and any proposed regulatory framework and that NICF continues to work with the Crown to provide a space for whanau, hapu, and iwi to be directly involved in the co-design, which would include (but not limited to):

- Building Regulations;
- Creating resourcing for Iwi/Māori to participate;
- Engaging effectively with whanau, hapu, and iwi; and
- Upholding Māori rights and interests.

Conclusion

NCIF recognises the importance and its interdependent nature of this work bringing together Pou Āhuarangi, Pou Tahua and Pou Taiao – to ensure holistic consideration of varying interests, concerns, and aspirations for our people and to uphold mana motuhake. The BCS approach in its current state would impact the protection of specific Taonga kaitiaki relationships provided for through Treaty Settlements (and other mechanisms); through to broader iwi/hapū rights and interests under Te Tiriti o Waitangi relating to indigenous biodiversity. Markets are new and rapidly emerging, requiring our people to examine the implications of potential commodification of nature and how this is consistent with their tikanga and kawa. Whānau, hapū and iwi perspectives must inform appropriate and tikanga-based decisions in each rohe.

We are concerned the discussion document fails to recognise these matters adequately as this leads to an underestimation of what is required to ensure that a BCS is Te Tiriti compliant and does not adversely impact the whakapapa-based relationships of whānau, hapū and iwi to their taiao.

In order to address the lack of focus on upholding iwi Māori rights and interests in the proposed design of a BCS, **and associated regulatory framework, NCIF¹ has developed actions to support the design phase. These have been created to regain confidence in the partnership and design processes.** The Crown holds an enduring obligation to engage directly with Te Tiriti partners and Māori landowners, prioritising engagement with, and input from whānau, hapū and iwi. To restore the design process, there is a need to:

- Address matters giving rise to the non-compliance with Te Tiriti in the current approach and provide resourcing for iwi Māori to participate, engage and uphold their rights and interests.
- Provide an effective role for NICF in managing engagement with whānau, hapū and iwi through design of a Te Tiriti compliant BCS discussion document and facilitation of engagement. We can aid the navigation to connect in and across regions.
- Co-Design and hold an overarching framework to inform and guide all workstreams that reinforces Te Tiriti partnership and compliance as outlined in this paper.
- Reinforce that to meet intended environmental outcomes, the programme must recognise that a significant proportion of all remaining indigenous biodiversity is on whenua Māori, with over 70% outside DOC estate.

What is good for Māori is good for all of Aotearoa – our knowledge, systems and way of life must be upheld and honoured. Te Oranga o te Taiao is based in mātauranga Māori and must be articulated and applied from a Mātauranga Māori lens. It holds significant potential as a nationally applied governing concept for environmental management and restoration. This means working with the Crown at the design stage to ensure its incorporation is conceptually appropriate for the development of policy and/or legislation. WAI262 reinforces that the Crown must ensure iwi and hapū have authority over taonga. Taonga Māori include their mauri, their whakapapa, traditional cultural expressions, their genetic and biological properties, their environments, and habitats, their reo/mita, mātauranga, tikanga and kawa, and their relationships to their kaitiaki.

The ability to partner together will lead to improved environmental, economic, social, and cultural outcomes for whānau, hapū and iwi and other New Zealanders.

¹



Cabinet Environment, Energy and Climate Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Biodiversity Credit System: Release of Discussion Document

Portfolio **Conservation / Associate Environment (Biodiversity)**

On 27 June 2023, the Cabinet Environment, Energy and Climate Committee:

- 1 **noted** that in June 2023, Cabinet (via Ministers with Power to Act) approved the National Policy Statement for Indigenous Biodiversity (NPSIB), and in parallel, there has been ongoing development of a discussion document to announce the government's interest in establishing a biodiversity credit system for Aotearoa New Zealand, to complement the implementation of the NPSIB [CAB-23-MIN-0225];
- 2 **noted** that a biodiversity credit system could:
 - 2.1 attract corporate, philanthropic and community investment to incentivise positive actions for indigenous biodiversity;
 - 2.2 help Aotearoa New Zealand meet its international obligations to protect biodiversity and deliver on outcomes sought through Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy (ANZBS);
 - 2.3 supplement regulatory changes to improve biodiversity protection and restoration;
 - 2.4 support the implementation of related climate policies such as the National Adaptation Plan and Emissions Reduction Plan;
 - 2.5 supplement DOC's work on Public Conservation Land;
 - 2.6 expand and reward positive biodiversity action on private land and whenua Māori;
- 3 **noted** that biodiversity credits and systems are emerging internationally and domestically by both the private sector and by government-led initiatives;
- 4 **noted** that a discussion document (attached as Appendix 1 to the submission under ENV-23-SUB-0032) has been developed which will seek feedback from the public on:
 - 4.1 what a biodiversity credit system in Aotearoa New Zealand should achieve;
 - 4.2 how to design and implement a biodiversity credit system;
 - 4.3 what role government might have in such a system;

4.4 how a biodiversity credit system may complement wider biodiversity and climate policies;

- 5 **noted** that there are key Te Tiriti considerations in the potential development of a biodiversity credit system, including the rights and interests of Māori in taonga, the kaitiaki relationship that Māori have with indigenous biodiversity, and specific considerations from the Waitangi Tribunal (e.g.: Wai 262 and Wai 1200);
- 6 **noted** that as a significant proportion of indigenous vegetation outside the conservation estate is on whenua Māori, officials will need to engage widely with tangata whenua on policy development to avoid inequitable outcomes;
- 7 **noted** that initial Te Tiriti analysis is attached to Appendix 2 to the submission under ENV-23-SUB-0032;
- 8 **noted** that a paper from iwi technicians titled ‘Ensuring a Te Tiriti o Waitangi Compliant Biodiversity Credit System’ is included in Appendix 3 to the submission under ENV-23-SUB-0032;
- 9 **noted** that iwi technicians have been engaged in the development of the discussion document, and officials will continue to engage with iwi technicians in progressing the policy work;
- 10 **noted** that the role for government is currently undefined and could sit along a spectrum of possible intervention, spanning a market enabling role, to a market administration role;
- 11 **noted** that the biodiversity and climate crises are inextricably linked, and there is potential for a biodiversity credit system to supplement and support climate outcomes;
- 12 **approved** the release of the discussion document *Helping nature and people thrive: Exploring a biodiversity credit system for New Zealand*, attached as Appendix 1 to the submission under ENV-23-SUB-0032, for public consultation for a total of seventeen weeks from 7 July 2023 to 3 November 2023;
- 13 **authorised** the Minister of Conservation and the Associate Minister for the Environment (Biodiversity) to make minor amendments to the discussion document and supporting documents as required prior to release to ensure they give effect to their intent;
- 14 **noted** that officials will provide advice summarising feedback from public consultation and engagement with tangata whenua, and recommended next steps by the end of 2023;
- 15 **noted** that officials have held some initial engagement with iwi technicians as well as several initial meetings with interested parties;
- 16 **noted** that officials will continue to engage with Australian jurisdictions that are doing similar work with Biodiversity Offsets Schemes and Biodiversity Credit Exchanges;
- 17 **noted** that an engagement plan has been drafted to support the consultation process and is attached in Appendix 4 to the submission under ENV-23-SUB-0032;
- 18 **noted** that the release of the discussion document and beginning of public consultation will be announced in a joint statement by both the Minister of Conservation and the Associate Minister for the Environment (Biodiversity) on 7 July 2023.

Rebecca Davies
Committee Secretary

Present:

Hon Kelvin Davis
Hon Dr Megan Woods
Hon Willow-Jean Prime
Hon Rachel Brooking
Hon James Shaw

Officials present from:

Office of the Prime Minister
Officials Committee for ENV