

Appendix 1

Draft Forestry Allocation Plan

Public Notice under section 78(3) of the Climate Change Response Act 2002

Draft Forestry Allocation Plan

Background

Under section 78(3) of the Climate Change Response Act 2002 the Minister must give public notice of the Draft Forestry Allocation Plan and ensure the Draft Forestry Allocation Plan is made available in hardcopy at the offices of and via the website of the Ministry for the Environment and at such other places as the Minister thinks fit.

Public Notice

Under section 78(3) of the Climate Change Response Act 2002, I give public notice of the Draft Forestry Allocation Plan.

A hard copy of the Draft Forestry Allocation Plan may be obtained by request in writing from the head office of either:

Ministry for the Environment,
23 Kate Sheppard Place,
PO Box 10362
Wellington 6143

Ministry of Agriculture and Forestry,
25 The Terrace,
PO Box 1127
Wellington

The Draft Forestry Allocation Plan is also available via the website of Ministry for the Environment, www.mfe.govt.nz or Ministry of Agriculture and Forestry, www.maf.govt.nz/sustainable-forestry and as part of an explanatory Information Document available from the same locations.

Any person may make a submission on the Draft Forestry Allocation Plan. Submissions must be made in writing on the form attached to the Draft Forestry Allocation Plan and sent to the Director-General of the Ministry of Agriculture and Forestry at the address above, or emailed to FAPsubmissions@maf.govt.nz, by 28 February 2009.

Minister Responsible for Climate Change Issues
Dated

NZ Emissions Trading Scheme

Draft Forestry Allocation Plan prepared under section 78(3) of the Climate Change Response Act 2002

11 October 2008

EXPLANATORY NOTE

Under section 71 of the Climate Change Response Act 2002 (the Act), the Minister responsible for Part 4 of the Act – the Minister Responsible for Climate Change Issues - must ensure that an allocation plan applies from 1 January 2008 to 31 December 2021 in relation to pre-1990 forest land. An allocation plan is issued by the Governor-General by Order in Council on the recommendation of the Minister. Prior to the Minister recommending the making of the allocation plan for forestry, the Minister must prepare and seek public submissions on a Draft Forestry Allocation Plan.

Because of the legal requirements on the content and style of this Draft Forestry Allocation Plan, we have prepared an accompanying information document. That document, written in a more accessible style, explains the rules set out in this Draft Forestry Allocation Plan and should be read in conjunction with it.

The Draft Forestry Allocation Plan is issued under section 78 of the Act and must specify the matters contained in that section and the matters specific to allocation of New Zealand units in relation to pre-1990 forest land specified in section 71 of the Act.

These matters include:

- an allocation of New Zealand units free of charge to:
 - landowners or former landowners of pre-1990 forest land; or
 - an entity appointed by the Minister to hold New Zealand units in relation to certain Crown forest licence land.
- an allocation of 55 million units reduced by 1 unit for each tonne of emissions the Minister estimates will result from deforestation of pre-1990 forest land that is exempt land as defined under the Act
- 18, 39 or a higher amount, currently estimated at 60 units, to be allocated in respect of each hectare of eligible land depending on whether:
 - the land was Crown forest licence land on 1 January 2008;
 - the land was transferred to the eligible owner on or after 1 November 2002; or
 - in the case of land owned by a body corporate on 31 October 2002, the shareholding of the body corporate has changed by more than the prescribed amount.

The Draft Forestry Allocation Plan also provides further detail of the allocation in relation to pre-1990 forest land namely:

- the landowners eligible for an allocation are those landowners at the date the finalised Forestry Allocation Plan is issued (or where land was deforested between 1 January 2008 and that date, the landowner at the date of deforestation).
- all the New Zealand units will be transferred at one time, although 34 million units cannot be surrendered or converted until after 1 January 2013. These 34 million units will be post-dated and allocated on the basis of the age of the trees on the land that is the subject of an allocation. This will mean that 21 million units will be able to be surrendered or converted from 1 January 2013 and 13 million units will be able to be surrendered or converted from 1 January 2018⁶.
- the transfer of 5% of the units for those persons eligible to receive the higher allocation under clause 5(1)(c) will be deferred for two years. The principal reason for this is that there may be unforeseen matters or errors in the determination (for example, resulting from inaccurate information being provided in relation to an allocation), which might result in landowners receiving an incorrect number of units. The 5% of the units being

⁶ (It should also be noted that the Act provides that the 34 million New Zealand units that cannot be surrendered until after 1 January 2013 can be cancelled if the Act does not require a person to surrender units for deforestation of pre-1990 forest land)

transferred at a later date should avoid the need to reclaim units from landowners who receive them incorrectly.

- the information that an eligible person must submit with their application, what information must be retained and the period it must be retained for.

The Draft Forestry Allocation Plan is required to specify the principal reasons for including the criteria and methodologies in the finalised Forestry Allocation Plan. The principal reasons for the inclusion of the criteria and methodologies relating to the determination of the total number of New Zealand units available for allocation and the total number of units allocated to each person are that they are contained in the Act.

Similarly, the principal reasons for the criteria and methodologies relating to the persons eligible for an allocation of New Zealand units included in this Plan are that they are required by the Act. However, the proposal that the landowner on the date this Plan is issued, or the date the land was deforested (if applicable), was chosen to reflect the fact that a landowner who deforests pre-1990 forest land after 1 January 2008 has obligations under the Act to surrender units. Therefore, whether or not they are still landowners they should be entitled to an allocation to assist with meeting those obligations.

The principal reason for allocating all units at one time is to give all landowners certainty over the number of NZUs they will receive as soon as possible.

The principal reason for not providing the higher level of allocation for body corporates whose ownership changes by more than 51% between 1 November 2002 and the date this Plan is issued is that any shareholder that purchased shares from 1 November 2002 could reasonably have been expected to have been aware of the likelihood of deforestation controls when buying the shares and taken some consideration of this when determining the price they were willing to pay for those shares.

The information required with the application is to ensure that only those people that are eligible, receive an allocation of New Zealand units.

1. TITLE

This allocation plan is the Draft Forestry Allocation Plan.

2. INTERPRETATION

(1) In this allocation plan, unless the context requires otherwise—

Act means the Climate Change Response Act 2002

Clause means a clause in this Draft Forestry Allocation Plan

Crown forest licence land means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989

eligible land means pre-1990 forest land other than land that has been declared to be exempt land under section 183 or 184 of the Act

eligible person means a person who meets the eligibility criteria in clause 4

forest land—

- (a) means an area of land of at least 1 hectare that has, or is likely when the forest species reach maturity to have, tree crown cover from forest species of more than 30% in each hectare; and
- (b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but
- (c) does not include—
 - (i) a shelter belt of forest species, where the tree crown cover at maturity has, or is likely to have, an average width of less than 30 metres; or
 - (ii) an area of land where the forest species have, or are likely to have, a tree crown cover at maturity of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b)

forest species means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located

issue date means the date the final allocation plan that provides for the matters in section 71 is issued by the Governor-General under section 79 of the Act

landowner—

- (a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2(2) of the Crown Minerals Act 1991); and
- (b) in relation to land other than Crown land, means—
 - (i) the legal owner of a freehold estate in the land; or
 - (ii) if the land is Māori customary land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Māori Act 1993; or
 - (iii) if the land is Māori freehold land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the legal owner of the land

Minister means the Minister for Climate Change Issues

pre-1990 forest land—

- (a) means forest land—
 - (i) that was forest land on 31 December 1989; and
 - (ii) that remained as forest land on 31 December 2007 (taking into account section 4 (4) of the Act); and
 - (iii) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but
- (b) does not include any forest land that met the definition in paragraph (a), but—
 - (i) has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or
 - (ii) was declared to be exempt land, has been deforested, and the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3 had the land not been exempt land have been surrendered under section 187(2)(b) of the Act.
- (2) Any other word or expression defined in the Act and used in this allocation plan has the same meaning as it has in the Act; and
- (3) The explanatory note forms part of the allocation plan but,
 - (a) is included to assist in understanding only, and
 - (b) does not limit the other provisions of the allocation plan and in the event there is an inconsistency between the explanatory note and another provision of the plan, the provision prevails.

3. PERIOD OF THE ALLOCATION PLAN

This allocation plan applies from 1 January 2008 to 31 December 2021.

4. ELIGIBILITY CRITERIA

A person is an eligible person for the purposes of this allocation plan if the person -

- (a) is the landowner of eligible land that has not been deforested on the issue date; or
- (b) was the landowner of eligible land that was deforested between 1 January 2008 and the issue date, on the date the land was deforested; or
- (c) is a person appointed by the Minister under section 72.

5. ALLOCATION OF UNITS PER HECTARE

- (1) An eligible person is eligible for an allocation under this allocation plan of the following number of New Zealand units in respect of eligible land of which the person was the landowner at the relevant date in clause 4(a) or (b), (or in the case of the person appointed under section 72 the eligible land in respect of which the person is required by that section to apply for an allocation of New Zealand units):
- (a) 18 New Zealand units per hectare in respect of eligible land that was Crown forest licence land on 1 January 2008; and -
 - (i) has been transferred to iwi as part of a Treaty of Waitangi settlement on or after 1 January 2008 but before the issue date; or
 - (ii) has not been transferred to iwi as part of a Treaty of Waitangi settlement by the issue date:
 - (b) 39 New Zealand units per hectare in respect of eligible land that was transferred to that person -
 - (i) on or after 1 November 2002; or
 - (ii) prior to 1 November 2002, if the eligible person is a body corporate whose ownership has changed by more than 51% between 31 October 2002 and the issue date:
 - (c) The number of New Zealand units per hectare calculated in accordance with the following formula in respect of eligible land other than land referred to in paragraph (a) or (b):

$$A = (B - C) / D$$

where:

- A is the number of New Zealand units per hectare to be allocated in respect of eligible land other than land referred to in paragraphs (a) and (b).
- B is the total number of New Zealand units available for allocation under the plan (as referred to in clause(6)).

- C is the total number of New Zealand units to be allocated under the plan in respect of eligible land referred to in paragraph (a) and (b).
- D is the number of hectares of eligible land other than land referred to in paragraphs (a) or (b).
- (2) Despite subclause (1)(b), Crown forest licence land that was transferred pursuant to the Te Uri o Hau Claims Settlement Act 2002 is to be treated as if it is eligible land referred to in subclause (1)(c).
- (3) For the avoidance of doubt, for the purposes of subclauses (1)(b) -
- (a) the date eligible land is to be treated as transferred is the settlement date; and
 - (b) transfer does not include transmission⁷ other than by vesting under a statute where the vesting occurs on a settlement date

6. TOTAL NUMBER OF NEW ZEALAND UNITS AVAILABLE FOR ALLOCATION UNDER THE PLAN

- (1) Subject to subclause (2), the total number of New Zealand units available for allocation under this allocation plan is –
- (a) 21 million New Zealand units in the period 1 January 2008 to 31 December 2012
 - (b) 34 million New Zealand units in the period 1 January 2013 to 31 December 2021
- (2) The total number of New Zealand units available for allocation under this allocation plan in each of the periods in subclause (1) is to be reduced by one New Zealand unit for each tonne of emissions that the Minister estimates will result in that period from –
- (a) deforestation on pre-1990 forest land that has been declared exempt under sections 183 or 184 of the Act; or
 - (b) deforestation of pre-1990 forest land of 2 hectares or less for which no obligation to surrender units is imposed under the Act.

7. YEARS OF TRANSFER OF NEW ZEALAND UNITS ALLOCATED UNDER PLAN

- (1) Subject to subclause (2) and sections 84 and 85 of the Act, an eligible person specified in a determination made by the Minister under section 82(7) of the Act in relation to this allocation plan will receive all the New Zealand units allocated to that person in the year the determination is made.

⁷ Note – transmission includes devolution of a deceased person's estate or interest in land to that person's executor or administrator, acquisition of land by survivorship, vesting of land in the Official Assignee on bankruptcy and vesting of land by virtue of an order of a Court.

- (2) A person who is specified in a determination as entitled to receive a number of New Zealand units in respect of eligible land referred to in clause 5(1)(c):
- (a) will receive 95% of those units in the year the Minister makes the determination;
 - (b) subject to any new determination under section 84, will receive the remaining 5% in the year 2 years after the date 95% of the units were received by that person.

8. REQUIREMENTS FOR PROVISION OF DATA AND INFORMATION

- (1) In order to receive an allocation of New Zealand units under this allocation plan an eligible person must provide, in relation to all eligible land in respect of which the person applies for an allocation of units, the following information:
- (a) The eligible person's name.
 - (b) Except in the case of a person appointed under section 72, evidence of the eligible person's ownership of the eligible land at the relevant date in clause 4(a) or (b) in the form of a copy of the relevant computer freehold registers (titles), or other relevant records such as Māori Land Court records that pertain to the eligible land.
 - (c) Where the eligible land is land referred to in clause 5(1)(c):
 - (i) evidence of the eligible person's ownership of the eligible land at 31 October 2002; and
 - (ii) if the eligible person is a body corporate, evidence that at least 49% of the ownership of the body corporate has remained unchanged between 1 November 2002 and the issue date.
 - (d) The total area in hectares of eligible land for which an allocation is sought under each of subclauses (1)(a), (1)(b) and (1)(c) of clause 5, (with each area rounded to the nearest hectare).
 - (e) The eligible person's holding account number in the New Zealand Emissions Unit Registry⁸.
 - (f) A shapefile:
 - (i) of the eligible land which may also include other land containing exotic and indigenous forest species, or non-forest land, but must not include post-1989 forest land⁹; and
 - (ii) that is accompanied by a schedule listing in relation to the eligible land, the area in hectares of forest species of each age (measured in years since planting or regeneration) as at 1 January 2008; and
 - (iii) that complies with any additional format requirements for shapefiles prescribed under section 90 of the Act.

⁸ Also known as the New Zealand Emissions Unit Register administered by the Ministry of Economic Development.

⁹ Post-1989 forest land is defined in section 4 of the Act.

- (g) A statement that the land is not exempt land.
- (h) A signed declaration stating that all of the information that has been provided is true and correct.

9. RECORD KEEPING REQUIREMENTS

Any person receiving an allocation of New Zealand units under this allocation plan must retain for a minimum of 7 years from the date of the receipt of the units:

- (a) copies of all information provided as part of their application for an allocation under this plan; and
- (b) the information required to create the shapefile and the schedule that was submitted with the application.

10. RULES FOR ALLOCATION OF DIFFERENTLY DATED UNITS

- (1) The Minister must allocate New Zealand units to eligible persons under this allocation plan as follows:
 - (a) the units referred to in clause 6(1)(b) must be allocated in respect of eligible land on which are growing at 1 January 2008 the -
 - (i) youngest 24% of the exotic forest species growing on the eligible land; and
 - (ii) next oldest 38% of the exotic forest species growing on the eligible land; and
 - (b) the units referred to in clause 6(1)(a) must be allocated in respect of eligible land on which are growing at 1 January 2008 the oldest 38% of the exotic forest species growing on the eligible land.
- (2) The units allocated in respect of the eligible land referred to in –
 - (a) subclause (1)(a) may not be surrendered or converted until on or after 1 January 2018; and
 - (b) subclause (1)(b) may not be surrendered or converted until on or after 1 January 2013.
- (3) The percentages referred to in subclause (1) must be determined by reference to the information about the age of trees growing on eligible land provided by applicants in the schedules provided under clause 8(f)(ii).

SUBMISSION FORM

DRAFT FORESTRY ALLOCATION PLAN

Please use this form to comment on the Draft Forestry Allocation Plan.

For background information refer to the MAF information document *Draft Forestry Allocation Plan and Deforestation Exemption Policies for Pre-1990 Forest Land* (11 October 2008). Further information can be found in MAF's *Forestry in the Emissions Trading Scheme Guide* (October 2008) and other information available on the MAF website www.maf.govt.nz/sustainable-forestry

Please post your feedback to:

FAP Submissions
Ministry of Agriculture and Forestry
PO Box 2526
Wellington 6140

Or fax to: 04 894 0743

By: 28 February 2009

WHO ARE YOU?

Name _____

Company/Organisation (if relevant): _____

Address: _____

Email: _____

Phone: _____

Please indicate your sector(s)/interest(s)/type(s) of organisation:

Agriculture – description/type: _____

Forestry – description/type: _____

Māori – description/type: _____

Local government – description/type: _____

Other – description/type: _____

NB: Make sure you save a copy of your submission for your own records.

