



Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 5th day of July 2010

Present:

The Hon Bill English presiding in Council

Pursuant to sections 70(1) and 72 of the Climate Change Response Act 2002, Her Excellency the Administrator of the Government, acting on the recommendation of the Minister for Climate Change Issues and on the advice and with the consent of the Executive Council, makes the following order.

Contents

		Page
1	Title	2
2	Commencement	2
3	Allocation plan issued	2
	Schedule	2
	Pre-1990 forest land allocation plan	

Order

- 1 Title**

This order is the Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010.
- 2 Commencement**

This order comes into force on 20 July 2010.
- 3 Allocation plan issued**

The pre-1990 forest land allocation plan set out in the Schedule is issued.

Schedule

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Pre-1990 forest land allocation plan

- 1 Title**

This allocation plan is the pre-1990 forest land allocation plan.
- 2 Commencement**

As provided in section 70(3) of the Act, this allocation plan comes into force on the day after the date on which it is presented to the House of Representatives.
- 3 Interpretation**
 - (1) In this allocation plan, unless the context otherwise requires,—

Act means the Climate Change Response Act 2002

body corporate—

 - (a) means a company whether incorporated in New Zealand or elsewhere (as specified in section 72(6)(b)(ii) of the Act); and
 - (b) includes any entity—
 - (i) that is formed outside New Zealand; and
 - (ii) in which shares are issued

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—

- (a) is, on the issue date, the landowner of eligible land that has not been deforested on or before the issue date; or
- (b) was the landowner of eligible land—
 - (i) on the date the land was deforested; and
 - (ii) on which that deforestation occurred during the period beginning on 1 January 2008 and ending on the day immediately before the issue date; or
- (c) is the landowner of eligible land—
 - (i) at the date of application for an allocation; and
 - (ii) that, since the issue date, has been vested in that person by order of the Maori Land Court to hold on trust for the persons who were landowners of the land on the issue date; or
- (d) is a person appointed by the Minister under section 73 of the Act

family trust means a trust that is established primarily to benefit a natural person for whom the settlor has natural love and affection

issue date means 20 July 2010

relevant date, in relation to a person referred to in—

- (a) paragraph (a) of the definition of eligible person, means the issue date;
- (b) paragraph (b) of the definition of eligible person, means the date of deforestation of the land;
- (c) paragraph (c) of the definition of eligible person, means the date of application for an allocation under this allocation plan.

(2) For the purposes of this allocation plan, a body corporate (**entity A**) is a **subsidiary** of another body corporate (**entity B**), if—

- (a) entity B—
 - (i) controls the composition of the board of entity A; or
 - (ii) is in a position to exercise, or control the exercise of, more than one-half of the maximum number

- of votes that can be exercised at a meeting of entity A; or
- (iii) holds more than one-half of the issued shares of entity A, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (iv) is entitled to receive more than one-half of every dividend paid on shares issued by entity A, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) entity A is a subsidiary of a body corporate that is a subsidiary of entity B.
- (3) For the purposes of this allocation plan, a body corporate is another body corporate's **holding entity** if that other body corporate is its subsidiary.
- (4) For the purposes of this allocation plan, a change in the ownership of shares in a body corporate (**entity C**)—
- (a) means a change in the shareholding recorded in the share register of entity C; but
 - (b) does not include a change in the shareholding of entity C—
 - (i) owing to the transfer of a share in entity C from a holding entity (**entity D**) of which entity C is a wholly owned subsidiary to any of the following persons:
 - (A) another wholly owned subsidiary of entity D;
 - (B) a holding entity of which entity D is the wholly owned subsidiary;
 - (C) another wholly owned subsidiary of a holding entity of which entity D is a wholly owned subsidiary; or
 - (ii) if—
 - (A) entity C is a co-operative company registered under the Co-operative Companies Act 1996; and
 - (B) the change is a change in the shareholding of a transacting shareholder owing to a re-

quirement that the transacting shareholder hold shares in proportion to the quantity or value of goods or services supplied to or purchased from entity C.

4 Allocation of New Zealand units per hectare

- (1) An eligible person is entitled to an allocation under this allocation plan of the following number of New Zealand units in respect of each hectare of eligible land in respect of which the person was the landowner at the relevant date or is required by section 73 of the Act to apply for an allocation of New Zealand units:
- (a) 18 New Zealand units for each hectare of eligible land that was Crown forest licence land on 1 January 2008 and that—
 - (i) has not been transferred to iwi as part of a Treaty of Waitangi settlement by the issue date; or
 - (ii) was transferred to iwi as part of a Treaty of Waitangi settlement on or after 1 January 2008 but before the issue date:
 - (b) 39 New Zealand units for each hectare of eligible land, other than land specified in paragraph (a), that was transferred to the eligible person—
 - (i) after 31 October 2002 under a transfer specified in clause 5; or
 - (ii) before 1 November 2002 under a transfer specified in clause 6 if the eligible person is a body corporate specified in clause 7:
 - (c) 60 New Zealand units for each hectare of any other eligible land not specified in paragraph (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 were eligible land referred to in subclause (1)(c).

5 Meaning of transfer for purposes of clause 4(1)(b)(i)

- (1) For the purposes of clause 4(1)(b)(i), **transfer**—
- (a) means—

- (i) a transfer of land under the Land Transfer Act 1952; or
 - (ii) a transmission of land by operation of law; but
- (b) does not include an excluded transfer.
- (2) For the purposes of clause 4(1)(b)(i), the date eligible land is to be treated as transferred is—
 - (a) the settlement date if the terms of the transfer included a settlement date; or
 - (b) the date of registration of the transfer under the Land Transfer Act 1952 if the terms of the transfer did not include a settlement date; or
 - (c) the date the land was vested if the land was transmitted by operation of law; or
 - (d) despite paragraphs (a) to (c), the date at which the redress value was ascribed to the eligible land, being 1 April 2001, if the eligible land is redress licensed land transferred pursuant to the Ngāti Awa Claims Settlement Act 2005.
- (3) For the purposes of subclause (1), **excluded transfer**—
 - (a) means the transfer of eligible land—
 - (i) by transmission, except where the land is vested under an Act in accordance with a Treaty of Waitangi settlement:
 - (ii) on a distribution by an executor, administrator, or trustee of a deceased person's estate to a beneficiary who is beneficially entitled to receive the property under a will or the rules governing intestacy:
 - (iii) on a distribution by a trustee of a trust to a beneficiary of the trust:
 - (iv) on a distribution in kind by a body corporate:
 - (v) on the making of a gift:
 - (vi) on a settlement by the trustee of a trust on the trustee of another trust, if authorised under—
 - (A) a trust instrument as a power of advancement or resettlement:
 - (B) section 41 of the Trustee Act 1956 as the payment of money or the application of property:

- (vii) from a trustee of a trust to a trustee of the same trust after a new trustee has been appointed or any transferor has ceased to be a trustee of the trust:
- (viii) between spouses, civil union partners, or de facto partners, whether under an agreement for the purpose of Part 6 of the Property (Relationships) Act 1976, an order under section 25 of the Property (Relationships) Act 1976, or for any other purpose (where **spouse**, **civil union partner**, and **de facto partner** have the same meanings as in the Property (Relationships) Act 1976):
- (ix) by a settlor to the trustee of a family trust established by the settlor:
- (x) by a landowner—
 - (A) to a body corporate in which the landowner, or a trustee of a family trust of which the landowner is the settlor, holds all the shares; or
 - (B) if the land is held by joint tenants or tenants in common, to a limited partnership in which the joint tenants or tenants in common are the partners of the limited partnership:
- (xi) between partners of a partnership if, between 31 October 2002 and the relevant date, the interests of the partners in the partnership have not changed by more than 51%:
- (xii) from a body corporate (**entity E**) to any of the following persons:
 - (A) a wholly owned subsidiary of entity E:
 - (B) a holding entity of which entity E is the wholly owned subsidiary:
 - (C) another wholly owned subsidiary of a holding entity of which entity E is the wholly owned subsidiary:
- (xiii) from a body corporate (**entity F**) to any of the following persons:
 - (A) a trustee of a trust whose beneficiaries are the persons who held all of the shares in

- entity F at the date the eligible land was transferred, if the class or classes of beneficiaries of the trust have not substantially changed between the date of transfer and the relevant date:
- (B) another body corporate (**entity G**) in which all the shares are held by the shareholders of entity F or a trustee of a family trust established by any shareholder of entity F:
 - (C) a trustee of a trust that held the shares in entity F, either solely or together with any beneficiary of that trust, at the date the eligible land was transferred, if the class or classes of beneficiaries have not substantially changed between the date of the transfer and the relevant date:
- (xiv) held jointly by tenants in common to any joint owner on a partition of the land:
 - (xv) from joint owners of the eligible land to joint owners of the land (other than partners in a partnership or any other circumstance described in subparagraphs (i) to (xiv)) if—
 - (A) the eligible land is held as joint tenants and between 31 October 2002 and the relevant date the joint tenants holding the land did not change by more than 51%; or
 - (B) the eligible land is held as tenants in common and between 31 October 2002 and the relevant date the interests of the tenants in common in the land did not change by more than 51%; but
- (b) does not include the transfer of eligible land under a transfer specified in paragraph (a)—
 - (i) if, between 31 October 2002 and the date the eligible land was transferred to the eligible person, the eligible land was transferred to any person other than under a transfer specified in paragraph (a); or

- (ii) if, between 31 October 2002 and the date the eligible land was transferred to the eligible person,—
 - (A) the eligible land was owned by a body corporate; and
 - (B) during the period when the eligible land was owned by the body corporate, ownership of the shares in that body corporate or, if that body corporate was a wholly owned subsidiary of another body corporate, any holding entity of the body corporate, changed by more than 51%; or
- (iii) if—
 - (A) the eligible person is a body corporate; and
 - (B) between the date of transfer of the eligible land to the eligible person and the relevant date, ownership of the shares in the eligible person or, if the eligible person is a wholly owned subsidiary of another body corporate, any holding entity of the eligible person, has changed by more than 51%.

6 Meaning of transfer for purposes of clause 4(1)(b)(ii)

- (1) For the purpose of clause 4(1)(b)(ii), **transfer** means—
 - (a) a transfer of land under the Land Transfer Act 1952; or
 - (b) a transmission of land by operation of law.
- (2) For the purposes of clause 4(1)(b)(ii), the date eligible land is to be treated as transferred is—
 - (a) the settlement date if the terms of the transfer included a settlement date; or
 - (b) the date of registration of the transfer under the Land Transfer Act 1952 if the terms of the transfer did not include a settlement date; or
 - (c) the date that the land was vested if the land was transmitted by operation of law.

7 Application of clause 4(1)(b)(ii) to certain bodies corporate

Clause 4(1)(b)(ii) applies to a body corporate that is an eligible person—

- (a) if—
 - (i) the body corporate wholly owned the eligible land at 1 November 2002 other than as a trustee; and
 - (ii) the ownership of shares in the body corporate (or, if the eligible person is a wholly owned subsidiary of another body corporate, any holding entity of the eligible person) changed by more than 51% in the period from 1 November 2002 to the relevant date; or
- (b) if—
 - (i) the body corporate wholly owned the eligible land at 1 November 2002 as a trustee; and
 - (ii) the class or classes of beneficiaries of the trust on whose behalf the land was held at 1 November 2002 substantially changed in the period from 1 November 2002 to the relevant date.

8 Transfer requirements for allocated New Zealand units

In accordance with section 72(3) of the Act, the New Zealand units allocated under this allocation plan must be transferred so that an eligible person allocated—

- (a) 18 units for each hectare of eligible land receives—
 - (i) 7 units for each hectare of eligible land on or before 31 December 2012; and
 - (ii) 11 units for each hectare of eligible land after 31 December 2012:
- (b) 39 units for each hectare of eligible land receives—
 - (i) 15 units for each hectare of eligible land on or before 31 December 2012; and
 - (ii) 24 units for each hectare of eligible land after 31 December 2012:
- (c) 60 units for each hectare of eligible land receives—
 - (i) 23 units for each hectare of eligible land on or before 31 December 2012; and

- (ii) 37 units for each hectare of eligible land after 31 December 2012.

9 Requirements for provision of data and information

- (1) In order to receive an allocation of New Zealand units under this allocation plan and enable the Minister to determine an eligible person's correct allocation, the 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 full name:
 - (b) if the eligible person consists of 2 or more persons who were jointly the landowner of the eligible land at the relevant date, the name of a nominated person who is authorised by the persons who constitute the eligible person to receive notices on behalf of the eligible person:
 - (c) if the eligible person appoints an agent to make the application on behalf of the eligible person, a copy of the notice of appointment:
 - (d) the legal description of the eligible land:
 - (e) the total area in hectares of eligible land for which an allocation is sought under each of paragraphs (a), (b), and (c) of clause 4(1):
 - (f) except in the case of a person appointed under section 73 of the Act, evidence that the eligible person was the landowner of the eligible land at the relevant date in the form of a copy of the relevant computer freehold registers (titles) or other relevant records such as Maori Land Court records that pertain to the eligible land:
 - (g) if the eligible land is land specified in clause 4(1)(c), and the land was transferred to the eligible person prior to 1 November 2002, evidence of the eligible person's ownership of the eligible land at 31 October 2002:
 - (h) the eligible person's holding account number in the New Zealand Emission Unit Register (as required to be opened by the eligible person under section 61 of the Act):

- (i) geospatial mapping information relating to the eligible land that complies with any format requirements prescribed under section 90 of the Act.
- (2) An application for an allocation under this allocation plan must also be accompanied by—
 - (a) a statement signed by, or on behalf of, the eligible person—
 - (i) verifying that the land in respect of which an allocation is applied for is eligible land; and
 - (ii) advising whether the eligible land is subject to an application under section 183 or 184 of the Act; and
 - (iii) verifying that—
 - (A) all of the information provided with the application is true and correct to the best of the knowledge and belief of the person signing the statement; and
 - (B) the person is duly authorised to make the application on behalf of the eligible person; and
 - (b) if the eligible land is land referred to in clause 4(1)(c) and the land was transferred to the eligible person after 31 October 2002 under an excluded transfer (as determined in accordance with clause 5), a certificate given by the eligible person, or the eligible person's solicitor, verifying that—
 - (i) the eligible land was transferred to the eligible person in accordance with a transfer listed in clause 5(3)(a); and
 - (ii) clause 5(3)(b), to the best of the knowledge and belief of the person giving the certificate, does not apply; and
 - (c) if the eligible land is land referred to in clause 4(1)(c) and the eligible person is a body corporate that—
 - (i) wholly owned the eligible land at 1 November 2002 other than as a trustee, a certificate given by or on behalf of the eligible person, verifying that the ownership of the body corporate (or, if the eligible person is a wholly owned subsidiary

- of another body corporate, any holding entity of the eligible person) did not change by more than 51% in the period from 1 November 2002 to the relevant date; or
- (ii) wholly owned the eligible land at 1 November 2002 as a trustee, a certificate given by or on behalf of the eligible person, verifying that the class or classes of beneficiaries of the trust on whose behalf the land is or was held at the relevant date did not substantially change in the period from 1 November 2002 to the relevant date.
- (3) For the purposes of subclause (1)(e),—
- (a) the total area in hectares of eligible land must be rounded to the nearest whole number for each area of eligible land; and
- (b) if the total area in hectares for an area of eligible land is a whole number and a half, the hectares must be rounded up to the nearest whole number.

10 Record-keeping requirements

A person to whom New Zealand units are allocated under this allocation plan must retain for a minimum of 7 years from the date on which the last of the units are transferred to the person—

- (a) copies of all the information submitted with the person's application for an allocation under this plan; and
- (b) the information required to create the geospatial mapping information that was submitted with the person's application for an allocation.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 20 July 2010, issues a pre-1990 forest land allocation plan under section 70(1) of the Climate Change Response Act 2002. Under section 70(3) of that Act, the allocation plan comes into force on the day after the date on which it is presented to the House of Representatives.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 July 2010.

This order is administered by the Ministry of Agriculture and Forestry.
