

A guide to the

Pre-1990 Forestry Allocation and Exemptions

December 2010

Ministry of Agriculture and Forestry



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Foreword – Ministers' Letter to All Pre-1990 Forest Landowners

To All Pre-1990 Forest Landowners

The Government is committed to doing our fair share to address global climate change. The New Zealand Emissions Trading Scheme is part of New Zealand's response to international efforts to reduce the greenhouse gases that contribute to global warming.

New Zealand has very large areas of exotic forest first established before 1990 (called pre-1990 forests). These forests are a significant store of carbon, but they are also a potential source of carbon emissions if these forests are cleared permanently (deforested). For this reason, the New Zealand Emissions Trading Scheme places rules on the deforestation of pre-1990 forest land.

The Government is providing landowners of eligible pre-1990 forest land with a one-off allocation of free New Zealand units. This allocation is in recognition of the impact of the deforestation rules on landowners.

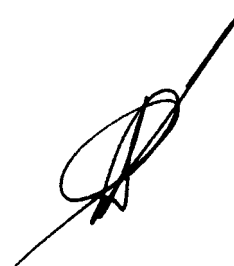
Pre-1990 forest landowners have an important choice to make. They can apply for an allocation of New Zealand units. Alternatively, if they are eligible, they can apply to exempt their land from the obligations of the ETS. Both of these options have significant but differing value to landowners.

We urge pre-1990 forest owners to carefully consider the options outlined in this guide that are relevant to them.

Feel free to seek further advice and information on your particular situation from independent advisors. Once you have decided on your preferred option, ensure you apply within the required timeframes to make sure you do not miss out on this one-off opportunity.



Hon Dr Nick Smith
Minister for Climate Change Issues



Hon David Carter
Minister of Forestry

Pre-1990 forests key concepts

Pre-1990 forest land

Under the New Zealand Emissions Trading Scheme (ETS), pre-1990 *forest land*¹ is defined as land covered by *forest species* (either exotic or indigenous, including manuka and kanuka) on 31 December 1989 that remained in forest species, and was predominately exotic forest species on 31 December 2007.

Land that was in indigenous forest on 31 December 1989, and remained so on 31 December 2007 is not pre-1990 forest land, and is not captured by the Emissions Trading Scheme. It is therefore not eligible land for the purposes of this guide.

How the ETS affects owners of pre-1990 forest land

When *landowners deforest* more than two hectares of pre-1990 forest land in each five-year period from 1 January 2008, they are mandatory participants in the ETS and incur liabilities for the carbon emissions from those forests. These liabilities reflect the liabilities the country incurs under the Kyoto Protocol.

Landowners are permitted to deforest two hectares or less in each five-year period from 1 January 2008 without incurring liabilities.

Harvesting pre-1990 forest, followed by replanting or natural regeneration is not considered deforestation and does not incur liabilities.

An important choice to be made

Pre-1990 forest landowners now have an important choice to make between an *allocation of New Zealand units* (NZUs), and if eligible, an exemption from deforestation obligations under the ETS. This guide explains these options further.

To receive either an allocation or an exemption you need to complete and submit an application on the official MAF form. There are no application fees, but applications must include an electronic map of the forest land in question.

Not applying for an allocation or exemption

You can also choose not to apply for either an allocation or an exemption, but you may be worse off as both have value.

If you deforest more than two hectares in each five-year period, ETS deforestation liabilities will apply regardless of whether the landowner received an allocation or not.

When to apply

The deadlines for allocation and exemption applications are:

Tree weed exemption for the period 2008 to 2012	31 October 2010
Less than 50 hectares exemption	30 September 2011
Allocation of NZUs	30 November 2011

¹ Terms in italics have specific meaning – see *Key terms*, page 21.

Key points

Pre-1990 forest landowners are entitled to apply for an allocation of NZUs, or if eligible to apply for an exemption from the deforestation obligations under the ETS.

You cannot have an exemption and an allocation on the same piece of land.

You can choose neither, but you may be worse off.

There are deadlines for applying for the allocation and exemptions.

More information on climate change and the ETS

More information on climate change, the Kyoto Protocol, the ETS and the role of forests is available at www.climatechange.govt.nz.

MAF has a suite of guides containing more detail on the rules and requirements of forestry in the ETS. See page 19 for a list of these guides, and where to find them.

The allocation of NZUs by the Government

The Government is providing landowners of eligible pre-1990 forest land with a **one-off** allocation of NZUs. The allocation is in recognition of the impact the ETS deforestation rules may have had on land values.

You are eligible for an allocation regardless of what you do in the future (whether that be deforesting, or continuing to harvest and replant). If you deforest in future, the allocation can assist you to meet your ETS deforestation liabilities.

In general, if land was bought or transferred to the new owner prior to 1 November 2002, it is eligible for the highest allocation of NZUs. That date was when the Government announced its intention to introduce restrictions on deforestation, and those owners would have been impacted the most by the ETS deforestation rules.

Those who purchased their land after the announcement could be expected to factor the deforestation rules into land purchase negotiations, and therefore receive a lower allocation of NZUs.

How many NZUs will forest landowners be allocated?

NZUs are allocated on the basis of each mapped hectare of eligible pre-1990 forest land.

How many NZUs are allocated per hectare to the *eligible person* depends primarily on when the land was acquired. Other factors include how it was acquired, and how the land is owned for example, company, trust, joint tenancy, Māori incorporation etc.

The allocations are:

- 60 NZUs per hectare for eligible pre-1990 forest land that has not changed ownership arrangements since 31 October 2002;
- 39 NZUs per hectare for eligible pre 1990 forest land transferred to the landowner on or after 1 November 2002; or

- 18 NZUs per hectare for eligible pre-1990 forest land that was Crown forest licence land on 1 January 2008 that was or will be transferred to an iwi under a Treaty of Waitangi settlement² after that date.

Note that forest land owned by a company is eligible for 39 NZUs per hectare if 51% or more company ownership changed from 1 November 2002. For more information on the rules for company and body corporate ownership see the section opposite.

The allocation will be transferred in two parts:

Total allocation (per hectare)	Transferred before 31 December 2012	Transferred during 2013
60 NZUs	23 NZUs	37 NZUs
39 NZUs	15 NZUs	24 NZUs
18 NZUs	7 NZUs	11 NZUs

If the law changes, some or all of the second part of the allocation may be cancelled.

If you have changed your land ownership arrangements since 1 November 2002, you should read the following sections describing the transfer rules and exclusions, and the examples in Appendix 1 on page 22.

Key points

There is a one-off opportunity for owners of eligible pre-1990 forest land to apply for an allocation of NZUs from the Government.

The number of NZUs a landowner is entitled to depends on when and how they acquired their eligible pre-1990 forest land; and the area of eligible pre-1990 forest on the land – not the property title area.

The allocation will be transferred to landowners in two parts, but some or all of the second part may be cancelled if the law changes.

The date that land is transferred³ is:

- The settlement date, where the terms of transfer (for example, a sale and purchase agreement) include a settlement date;
- the date of registration of the transfer on the land title, where there are no terms of transfer; or
- the date the land was vested, where the land was transmitted by law.

Determining whether forest land is eligible for 60 or 39 NZUs per hectare

There are a number of transfers that are exceptions to the rule for the 39 NZUs per hectare allocation (called excluded transfers). Generally, this is land that was transferred on or after 1 November 2002 where there has not been the opportunity for a commercial consideration of land value, or where there

² Crown forest licensed land transferred to Ngati Awa and Te Uri o Hau under Treaty of Waitangi settlements receives 60 NZUs per hectare of eligible pre-1990 forest land.

³ Transfer means a legal transfer of the ownership of the land.

has been no change in beneficial ownership. Typically, excluded transfers do not involve a sale or purchase of the forest land.

Examples of excluded transfers of land that receive 60 NZUs include:

- transmissions and vesting under an Act, such as on bankruptcy (except for transfers in accordance with a Treaty of Waitangi settlement which receive 18 NZUs per hectare);
- distribution of property under a Will;
- establishing trusts and trustee changes;
- gifting;
- giving effect to Property (Relationships) Act 1976 matters;
- transfers between joint owners, partners and certain other ownership structures where the beneficial interests in the eligible land have not exceeded certain thresholds;
- partitioning land between joint owners.

Only one excluded transfer needs to have occurred for the land to be eligible for 60 NZUs per hectare.

Detailed examples of excluded transfers are provided in Appendix 1 on page 22. If you think you may qualify for an excluded transfer you should seek independent professional advice (for example, a lawyer or accountant).

Companies

For companies (excluding some co-operative companies), a change of shareholding of more than 51 percent constitutes a change of ownership (excludes some co-operative share changes where they are required by the company constitution) and is eligible for an allocation of 39 NZUs per hectare. The date a shareholding change is considered to have occurred is the date recorded in the company's share register.

Intra-company restructures such as transfers to a wholly owned subsidiary, to a holding entity or between subsidiaries do not trigger the 39 NZUs per hectare allocation.

Land owned prior to 1 November 2002 by a company as a trustee is eligible for the 60 NZUs per hectare allocation unless there has been a substantial change in the class or classes of beneficiaries on whose behalf the land is held.

There are other cases of transfers of ownership between companies, trusts and partnerships where the beneficiaries are largely the same that are also exclusions to the 39 NZUs category and receive 60 NZUs (see Appendix 1 on page 22).

If both an excluded transfer and a change in a company ownership (or holding company ownership) of more than 51 percent has occurred, then the land is eligible for the 39 NZUs per hectare allocation.

How to apply for an allocation

Initially applications are paper-based, with on-line applications expected to be available from late 2010. Application forms are available at www.maf.govt.nz/forestry-allocation.

To ensure allocations are issued to the right person, applicants will need to supply the following:

- the name of the eligible person applying for an allocation;
- land title reference and the legal description of the land – which can be found on the certificate of title (computer freehold register) or other ownership record such as Māori Land Court records;
- for applications for allocations of 60 NZUs per hectare, proof of the date the land was acquired;
- geospatial mapping information (electronic files of mapping information called shapefiles) for the eligible pre-1990 forest land – this must comply with the requirements of the Geospatial Mapping Information Standard;
- for excluded transfers, a certificate verifying that the transfer of forest land after 30 October was an excluded transfer;
- whether an exemption for the forest land has been applied for;
- a New Zealand Emission Unit Register (NZEUR) holding account number into which the allocation of NZUs will be transferred;
- in some cases, additional certificates or statements may be required.

In situations where it is not clear the land is pre-1990 forest (such as when the date an area first qualifies as forest land is close to 31 December 1989) you may be asked for additional evidence.

Deadline for applying

Applications for an allocation of NZUs close on 30 November 2011.

Who can apply

To be eligible to apply for an allocation, you must be one of the following:

- the legal landowner of the pre-1990 forest land on 20 July 2010 (the date the allocation plan was issued);
- if the pre-1990 forest land was deforested between 1 January 2008 and 19 July 2010 inclusive, the legal landowner on the date the land was deforested;
- if the land is vested by order of the Māori Land Court after 20 July 2010 to hold land on trust for the landowners, the trustees who held the land on the date of application⁴.

The person or entity entitled to apply is referred to as the eligible person, regardless of whether they own the land solely, or jointly with other parties.

For Crown forest licence land that is transferred to iwi as part of a Treaty of Waitangi settlement after 20 July 2010, a trust entity will apply for the allocation and hold the NZUs on behalf of future beneficial owners. The trust will transfer the NZUs to the owners on settlement of the land.

Where the land is transferred after 20 July 2010, it is still the landowner on 20 July 2010 who is eligible to apply for an allocation and receive the NZUs.

⁴ This may be an option where there are many owners of Māori land and no governance arrangements are in place.

There are several important requirements you should be aware of when applying:

1. All land titles included in an application must have the exact applicant name shown on the land title record. This may mean landowners have to resolve legal ownership issues such as succession, prior to submitting an application. If there are legal ownership issues, applicants should allow extra time to resolve these issues.
2. All the legal landowners listed on the land title must sign both the allocation application form and the NZEUR holding account form. Where there are many owners, applicants should allow extra time to obtain the signatures of all the landowners.

Key points

Before applying for an allocation, you should check your land ownership arrangements are up to date and correctly recorded on certificates of title or Māori Land Court records.

How to open a NZEUR holding account

You can apply for a NZEUR holding account online at www.eur.govt.nz. **The account holder names for the holding account must exactly match the applicant (eligible person) name.**

You need to provide your email address, and a username and password. You will be issued with a holding account number. However, to fully open the account, all the account holders must sign and return the Account Holder Declaration Form to the NZEUR.

The initial transfer of NZUs is made to the holding account. Any re-distribution of NZUs (for example, to the individual parties in a joint ownership situation, or to beneficial owners) needs to be arranged subsequently by the parties themselves.

Key points

The applicant (eligible person) name must exactly match both the account holder names on the NZEUR holding account, and the names on the land titles.

A holding account must be fully open for NZUs to be transferred.

NZUs can only be transferred into the holding account of the eligible person who is legally entitled to them.

Evidence of land ownership

Applicants must prove ownership of all eligible land included in their application on the date relevant to their eligibility. For example, applicants who owned pre-1990 forest land on 20 July 2010 must demonstrate they owned the land on that date.

Copies of titles or other relevant records such as Māori Land Court records for every title must be supplied with the application. Historic search copies of titles available from Land Information New Zealand (LINZ) have the required information. Applicants claiming 60 NZUs per hectare must also prove they owned the land on 31 October 2002. Appendix 2 on page 27 provides an example of an

historic search copy of a title and how to locate the required information.

Where no title has been issued for the land, applicants may need to supply other information such as *New Zealand Gazette* notices and original survey data that clearly describes the properties that the eligible forest land is located on. Original survey documents can be obtained from LINZ.

The land parcel boundaries used to assess applications come from Landonline – the property record system maintained by LINZ. Where there is a difference between LINZ's data and professionally surveyed title boundaries, applicants may request that survey data be accepted.

Requests should be in writing, including relevant supporting information, addressed to:

Forestry Allocation Plan
The Chief Executive
Ministry of Agriculture and Forestry
PO Box 1127
Wellington 6140

The applicant should also make a request to LINZ to amend their Landonline property records.

Evidence that land is pre-1990 forest land

In situations where it is not clear the land is pre-1990 forest, you may be asked for evidence. This might include:

- aerial or oblique photographs, acquired at known dates;
- planting records, historical forest management records, maps, farm records, and other similar information;
- tree ages determined from counts of tree growth-rings.

If forest establishment occurred very close to 1990, the only definitive way of determining the year the land qualified as forest land may be to sample the forest species to get median tree age from tree ring data.

Note that land that has been rejected for registration as post-1989 forest land in the ETS is not automatically considered pre-1990 forest land, evidence will still be required.

Application processing

Once an application has been received, it will be checked for:

- completeness – that all the required information has been provided including geospatial mapping information on a CD/DVD, all declarations and acknowledgements are ticked and the form is properly signed;
- legal ownership – that the applicant is the *eligible person* (legal owner of the land), and that the NZEUR account holder names match those of the eligible person;
- that the land included in the application is eligible pre-1990 forest land; and
- that the eligible person is entitled to the number of NZUs per hectare that they have claimed.

The time to process an application depends on when the application is received, and whether or not all the required information has been provided to demonstrate legal entitlement to the land and the NZUs being claimed. The earlier you file your application, the sooner you will get your allocation.

To ensure compliance with requirements, the application process includes close scrutiny of all supporting material. Some applications will be selected for an audit. This may involve the provision of additional information, interviews, and record and site inspections.

Key points

To apply for an allocation you must provide information that demonstrates your legal entitlement to the land and the number of NZUs per hectare being claimed.

Providing false or misleading information in an application is an offence that carries penalties under the law.

Preliminary and final determinations

Based on an assessment of the information provided, you will be advised in writing of the number of NZUs to be allocated and the years they will be transferred. This is called the preliminary determination.

The notice will also specify a date by which you can provide additional information and seek a correction if you believe there has been an error or miscalculation. This will be a minimum of 20 working days after the issue of the preliminary determination. Any additional information provided will be taken into account before a final determination is made.

You will be notified of the final determination. This will also be published in the *New Zealand Gazette* and on the Ministry for the Environment's website (www.mfe.govt.nz). A direction will be given to the Registrar of the NZEUR to transfer the first part of the allocation into the eligible person's holding account.

If the eligible person's holding account is not open, the Registrar of the NZEUR will have to wait for the NZEUR holding account process to be completed before transferring the NZUs.

Other issues

What can I do with my NZUs?

You are free to hold your NZUs, in which case they could be used to help meet future emissions liabilities for either pre-1990 forest land or post-1989 forest land⁵. Alternatively NZUs can be sold for cash, or held and sold at some time in the future.

Carbon trading and brokering firms can connect people selling NZUs with buyers – just like a share broker does. The range of services offered and fees vary from company to company. Alternatively, you can sell them yourself.

What is the price of NZUs?

Like all tradeable commodities, the price of NZUs is determined by what buyers are prepared to pay, and what sellers are prepared to sell for. Information on carbon prices can be obtained from carbon brokers and carbon market websites.

Record keeping

Copies of all the information submitted with the application and the information required to create the geospatial mapping information must be retained for a minimum of seven years from the date the last NZUs are transferred. This may include source files such as extracts from stand record systems with year of establishment, and files or records used to collate and summarise information for the application.

Taxation

In general, as NZUs transferred under the allocation are considered capital, they are not subject to income tax when they are received or sold by that landowner. Also, no tax is payable on any increase in market value of NZUs during the time they are held.

⁵ Refer to *A Guide to Forestry in the Emissions Trading Scheme* for information on earning NZUs by registering post-1989 forest land in the ETS. Participation is voluntary.

Less than 50 hectares exemptions

The less than 50 hectares exemption is a one-off opportunity available to landowners to exempt pre-1990 forest land from the ETS. The area of forest land must be less than 50 hectares, and must have been owned on 1 September 2007 by a person who owned less than 50 hectares of pre-1990 forest land in total.

If the landowner on 1 September 2007 included a body corporate (for example, a company, limited partnership, incorporated society or Māori incorporation) then the interest of any “associated person” must also be counted and be less than 50 hectares. Landowners are associated persons where they are bodies corporate with substantially the same shareholders/members or under the same control.

How the less than 50 hectare exemption works

A notice of the exemption is placed on the land title. The exemption means that the exempt land can be deforested (the land use can be changed) at any time without incurring deforestation liabilities under the ETS. The exemption is permanent and runs with the land if it is sold. It cannot be traded or transferred to another area.

An NZEUR holding account is not required for exemption applications.

Key points

The less than 50 hectares exemption is a one-off opportunity to obtain a permanent exemption for pre-1990 forest land from the deforestation rules of the ETS.

What is the value of an exemption?

Because exempt land can be deforested without incurring a liability to surrender NZUs, the value of the exemption is the value of the liability not incurred, or the NZUs “saved”. This can be determined from carbon stock look-up tables.

Exempt land can be valued at its highest and best use as it is exempt from the ETS rules.

Deadline for applications

Applications for a less than 50 hectare exemption close on 30 September 2011.

Late applications may be accepted at the discretion of the Chief Executive, Ministry of Agriculture and Forestry. Requests should be in writing, addressed to: Forestry Allocation Plan, the Chief Executive, Ministry of Agriculture and Forestry, PO Box 1127, Wellington 6140, and should include relevant supporting information.

Who can apply

The landowner on 20 July 2010 is eligible to apply for the less than 50 hectares exemption. For pre-1990 forest land deforested between 1 January 2008 and 20 July 2010, the landowner at the date of deforestation is eligible to apply.

Where land has been transferred to new owners since 1 September 2007, the applicant must obtain the required statutory declaration from each person who owned the land on 1 September 2007 that they owned in total, on that date, less than 50 hectares of pre-1990 forest land.

Eligibility of the land

For land to be eligible for the less than 50 hectares exemption, the land must:

- be an area of pre-1990 forest land of less than 50 hectares; and
- have been owned on 1 September 2007 by a person or persons who, together with any associated persons, owned in total less than 50 hectares of pre-1990 forest land across all land titles.

That is, the total individual interests in pre-1990 forest land of **each landowner on 1 September 2007** must have been less than 50 hectares. If any one landowner owned 50 hectares or more of pre-1990 forest land in total on 1 September 2007, then their interests make all the pre-1990 forest land they have interests in ineligible for the exemption.

You cannot have an exemption and an allocation of NZUs on the same piece of land.

Determining landowners' interests

Where land is held jointly by more than one person or entity, the total individual interest of each joint owner is determined as:

- for joint tenants (where the shares of joint owners listed on the land title are not specified) – the equal share of the total area of eligible pre-1990 forest land (total area divided by the number of joint owners) excluding the interest of any professional trustee as a joint tenant; or
- for tenants in common (where the shares of joint owners are specified on the land title) – the total area of eligible pre-1990 forest land multiplied by their proportionate share as specified on the land title.

Key points

The main restrictions on the eligibility for the less than 50 hectares exemption are:

- the area of pre-1990 forest land must be less than 50 hectares in size;
- the total individual interests in pre-1990 forest land of each owner on 1 September 2007 must be less than 50 hectares; and
- you cannot have an allocation and an exemption for the same area of land.

Trusts and trustees

Where land is held in trust, the trustees are the legal owners and are considered to have the interests, not the beneficial owners. Trustees' interests are counted as equal shares.

A professional trustee is a person or entity whose business or profession includes acting as a trustee. The interest of a professional trustee is only excluded from counting ownership interests as a joint tenant. Otherwise, all of the interests of professional trustees are counted.

A person or entity may act as trustee on multiple trusts without being a professional trustee. In this case also, all their interests in any role as a trustee (or in any other capacity) are counted.

In some cases, a professional trustee acts as an agent or in an advisory capacity rather than as a landowner. This involvement is not counted.

Examples of the less than 50 hectares exemption rules


Examples of how to apply the less than 50 hectares exemption eligibility rules to different cases of pre-1990 forest land are provided below.

Example 1. Eligible land

PROPERTY 1

- Joint owners Matt and Mary McDonald
- 10 ha pre-1990 forest land

Matt McDonald	5 ha
Mary McDonald	5 ha



Property 1 is eligible.


Explanation: The area of pre-1990 forest land on Property 1 is less than 50 hectares. Also, Matt and Mary McDonald's total individual interests in pre-1990 forest land are each less than 50 hectares.

Example 2. Ineligible land

PROPERTY 2

- Joint owners McDonald Farms Ltd and McDonald Forests Ltd
- 88 ha pre-1990 forest land

McDonald Farms Ltd	44 ha
McDonald Forests Ltd	44 ha



Property 2 is ineligible.


Explanation: The area of pre-1990 forest land on Property 2 is greater than 50 hectares. The fact that McDonald Farms Ltd and McDonald Forests Ltd each own less than 50 hectares is irrelevant if the area of pre-1990 forest land is greater than 50 hectares.

Example 3. Calculating total individual interests with multiple landowners and titles

PROPERTY 3

- Joint owners (as joint tenants)
- Shares are not specified on the title
- 60 ha pre-1990 forest land


Grandpa McDonald	20 ha
Grandma McDonald	20 ha
Harold Smith Trustees Ltd (as a professional trustee)	20 ha



PROPERTY 4

- Joint owners (as tenants in common)
- Shares are specified on the title
- 40 ha pre-1990 forest land

Grandpa McDonald (3/4 share)	30 ha
Luke McDonald (1/8 share)	5 ha
Lucy McDonald (1/8 share)	5 ha



Properties 3 and 4 are ineligible.

Explanation: Property 3 is not eligible as it is more than 50 hectares of pre-1990 forest land.

Property 4 is also not eligible as Grandpa McDonald's total individual interest in pre-1990 forest land is 50 hectares (20 hectares from Property 3 + 30 hectares from Property 4). Grandpa McDonald's interest prevents Property 4 from being declared exempt land.

The interest in pre-1990 forest land of Harold Smith Trustees Ltd as a professional trustee and joint tenants in Property 3 (20 hectares) is not counted.

The only option for both Property 3 and 4 is an allocation of NZUs.

Tree weed exemptions

Tree weed exemptions are for the deforestation of pre-1990 forest land that is legitimate tree weed forest, such as wilding conifers.

Tree weed exemptions will be available at intervals and are valid for clearance of tree weeds during specified five-year periods.

You need to provide the following information with your tree weed exemption application:

- evidence that the land is pre-1990 forest land;
- evidence that the forest species are legitimate tree weeds;
- evidence of legal ownership; and
- other supporting information to help determine the priority of the application such as the species, the risk of spread, any requirements for control imposed by territorial authorities, management plans, and the location of reserves and other values threatened by the spread of the tree weeds.

There is a cap on the total amount of emissions that the Government will cover with the tree weed exemption for the first 5 year period, 2008 to 2012. Applications will be scored on six key criteria and prioritised. If there is significant demand in an exemption round, some applicants may miss out.

An NZEUR holding account is not required.

How the tree weed exemption works

Successful applicants will be notified of their exemption. You should keep the exemption notice for future reference, such as when selling the land. Unlike the less than 50 hectares exemption, notices are not placed on the land titles.

Tree weed exemptions lapse if tree weed clearance is not completed in the five-year period 2008 to 2012, or if clearance is not started within 24 months of the landowner being notified of the exemption.

Deadline for applications

Applications for the second round of tree weed exemptions (for clearance from 1 January 2008 to 31 December 2012) close on 31 March 2011. The first round closed on 31 October 2010.

Further rounds are planned, and these will be advertised by public notice.

Who applies

The landowner of the pre-1990 forest land on which there is (or was) tree weeds is eligible to apply for the tree weed exemption. Where the right to decide to deforest the land has been vested in a third party and the landowner has no control over the decision, the third party may apply.

Choice of exemptions

For landowners with pre-1990 tree weeds who are also eligible for a less than 50 hectares exemption, it may be easier to deforest the tree weeds under a less than 50 hectares exemption. The advantages of this are a longer application period, the exemption is permanent, landowners can deforest when they choose, and they do not have to provide the additional information required for tree weed exemptions.

Further information

Further information on tree weed exemptions and how to apply are provided in *A Guide to Tree Weed Exemptions*.

Mapping pre-1990 forest land

All applications for either an allocation or an exemption must include geospatial (electronic) mapping information of the pre-1990 forest land. Paper-based maps will not be accepted. There are specific rules for mapping forest land, and for the electronic file formats of the information, that every application must follow.

The options for mapping pre-1990 forest land include:

- doing it yourself using the online application process and mapping tool;
- engaging a mapping service provider or a forestry consulting/management firm;
- for larger companies, using your own geographic information system.

The online mapping tool is available now for less than 50 hectare exemption applications, and is expected to be available in late 2010 for allocation applications.

If you are doing your own mapping or getting it done by a service provider you should refer to the mapping guide and standard for further information, including detailed specifications and file formats (see *A Guide to Mapping Forest Land in the Emissions Trading Scheme*).

Key points

All applications for either an allocation or either type of exemption must include geospatial mapping information of the pre-1990 forest land.

The mapping must conform to MAF's mapping standard.

Key mapping rules

Forest area can change over time, for example planted areas may fail or be damaged, or boundaries may change after harvesting. The dates at which pre-1990 forest land must be mapped relate to the definition of pre-1990 forest land: that is, the land must have been in forest species on 31 December 1989, and in predominantly exotic forest species on 31 December 2007. Therefore, the pre-1990 forest land is mapped by applying mapping rules below at these dates, and the common area is the eligible forest land.

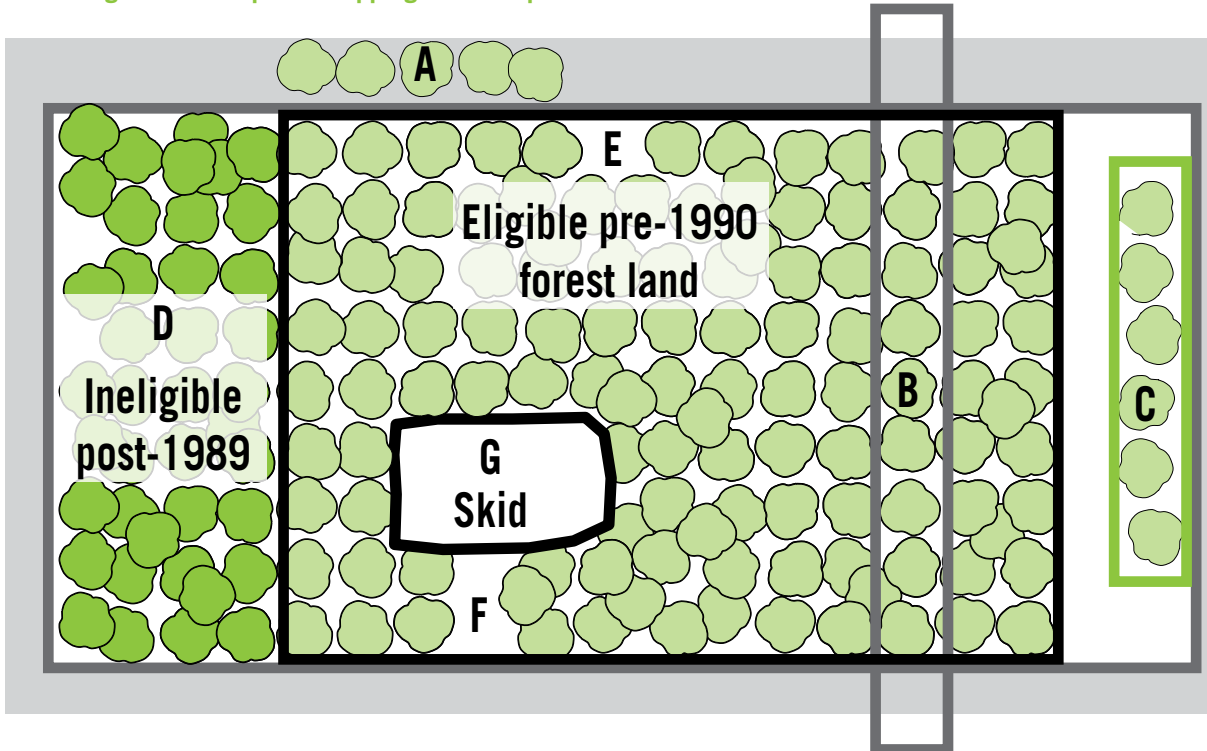
The key rules for mapping forest land, which should be followed in order, are:

1. Draw the edge of the eligible pre-1990 forest land. In doing so, the boundary line may not cross a gap of more than 15 metres from the estimated position of tree crown edges at maturity.
2. Be sure to exclude any forest not on your land (i.e. not within your legal land title boundary).
3. Exclude separate forest areas of less than 1.0 hectare in size, or less than 30 metres wide on average (such as shelterbelts) as these are not considered forest land.
4. Draw out any internal gaps that are not forest of greater than 1.0 hectare as these are ineligible.

All forest first established after 1989 or for which a date of establishment cannot be proven cannot be included.

The Figure 1 below demonstrates how the mapping rules are applied.

Figure 1: Example of mapping rules for pre-1990 forest land



The area bounded by black is eligible pre-1990 forest land.

- A. The pre-1990 forest boundary extends beyond the land title - the area not legally owned by the applicant cannot be part of the application area.
- B. A paper road with pre-1990 forest on it – the area cannot be part of the application area as it is not legally owned by the applicant.
- C. An area of forest that is less than 1.0 hectare in size, and is less than 30 metres width – this area cannot be part of the application as it is not forest land.
- D. An area of forest first established in 2001 – the area cannot be part of the application area as it is not pre-1990 forest land.
- E. A break in the forest edge that is 10 metres wide – the gap may be crossed as it is less than 15 metres between crown edges. This area can be part of the application area.
- F. A narrow internal forest road that is less than 15 metres wide – the gap may be crossed as it is less than 15 metres between crown edges. This area can be part of the application area.
- G. A skid site of 1.5 hectares – the area cannot be part of the application area as is an internal gap of non-forest land of more than 1.0 hectares.

Further information and next steps

For further information on the forestry allocation and exemptions and applications forms:

Website: www.maf.govt.nz/forestry-allocation
Email: climatechange@maf.govt.nz
Telephone: 0800 CLIMATE (254 628)

Online applications and mapping are expected to be available at the site above from late 2010.

The following guides, available at the website above, provide more detailed information.

- *A Guide to Tree Weed Exemptions* – a detailed guide to tree weed exemptions, including mapping, information requirements, and how to apply.
- *A Guide to Mapping Forest Land in the Emissions Trading Scheme* – a detailed guide to mapping forest land, including file formats and mapping conventions, for forest land in the ETS. This includes the Geospatial Mapping Information Standard.
- *A Guide to Classifying Land for Forestry in the Emissions Trading Scheme* – a detailed guide on classifying land for forestry in the ETS.

Apply for an NZEUR holding account

A New Zealand Emissions Unit Register holding account is required as part of an application for an allocation of NZUs. These can be obtained from the NZEUR (www.eur.govt.nz). Holding accounts are not required for exemption applications.

Land titles

If you do not have a copy, these can be obtained from LINZ at www.linz.govt.nz/survey-titles/land-titles-plans/index.aspx, or for Māori land records, at www.maorilandonline.govt.nz/mlol/searchmlis.jsp.

You can contact your local council to find out a title's identifier.

Legislation

The legal requirements relating to the forestry allocation and exemptions are set out in:

- Climate Change Response Act 2002 (the Act)
- Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010
- Climate Change (Forestry Sector) Regulations 2008.

These are available at www.legislation.govt.nz.

Taxation information

Further information and examples on the income tax and GST consequences of transactions in NZUs are available on the Inland Revenue website; www.ird.govt.nz.

Subscribe to receive updates

You can sign up to receive email updates on forestry in the Emissions Trading Scheme by emailing sustainableforestrybulletin@maf.govt.nz with **Sustainable Forestry Bulletin Subscription** in the subject line.

Post-1989 and pre-1990 participation in the ETS

Information and forms for voluntary post-1989 participation and pre-1990 deforestation participation in the ETS are available online at www.maf.govt.nz/sustainable-forestry. The website provides downloadable forms for paper-based applications, notifications and emissions returns, and some on-line transactions.

Other guides

Other guides containing more detail on the rules and requirements of forestry in the ETS, available at www.maf.govt.nz/sustainable-forestry, are:

- *Introduction to Forestry in the Emissions Trading Scheme* – provides an introduction to the key aspects of forestry in the ETS.
- *A Guide to Forestry in the Emissions Trading Scheme* – provides detailed information on post-1989 and pre-1990 forests in the ETS.
- *A Guide to Look-up Tables for the Emissions Trading Scheme* – a detailed guide to carbon stock look-up tables for forest land in the ETS.

Key terms

Forest land: Land that has forest crown cover of at least 30 percent. The area of forest land must be at least 1.0 hectare in size, with an average width of greater than 30 metres – that is, not shelterbelts or riparian strips. Land that is temporarily unstocked, for example after harvesting and before replanting, is still forest land.

Forest species: Trees that will reach five metres tall at maturity in the place they are located.

Landowner: The legal owner of the freehold interest in the land. This is irrespective of whether the land or forest is leased or licensed to someone else.

Deforestation: Clearance of forest land, followed by a change to another land use such as farming.

Allocation: A share of New Zealand units given by the Government, in this instance to pre-1990 forest landowners.

New Zealand unit (NZU): The unit of trade in New Zealand's Emissions Trading Scheme which represents one tonne of carbon dioxide (CO₂) equivalent of emissions or removals.

Exempt land: Land that is exempt from the pre-1990 deforestation liabilities of the New Zealand Emissions Trading Scheme. Land can be exempt through the less than 50 hectares exemption, or the tree weed exemption.

Eligible person: The person(s) or legal entity that is entitled to apply for an allocation or an exemption. This is usually indicated by the name(s) on the land title.

Appendix 1: Allocation excluded transfer rules

Under the forestry allocation, excluded transfers are cases where there has been a transfer of eligible pre-1990 forest land on or after 1 November 2002, but that transfer remains eligible to receive the 60 NZUs per hectare allocation. However, you must make sure that a non-excluded transfer does not also apply that will negate this (such as >51 percent change in shareholding in a landowning company).

The excluded transfer rules are explained in more detail with examples below.

Examples of excluded transfers

1. Transmissions. Examples include:

- rights of survivorship (joint tenants);
- vesting by statute (except where land is vested under an Act in accordance with a Treaty of Waitangi settlement).

2. Distribution of a deceased person's estate

LANDOWNER

Executor of Matt McDonald's estate

EVENT:

Matt dies and Matt's land is transferred via an executor to a beneficiary according to his will

NEW LANDOWNER

Mary McDonald – beneficiary of a will

3. Distribution by a trustee to a beneficiary of the trust

LANDOWNER

Matt McDonald, Mary McDonald and McDonald lawyer – trustees of the McDonald Family Trust

EVENT:

Trust land is transferred to a beneficiary according to the trust deed

NEW LANDOWNER

Luke McDonald – son who is a beneficiary of the trust

4. Distribution in kind by a company

LANDOWNER

McDonald Farm Limited

EVENT:

Some/all of the company's land is transferred to a shareholder(s)

NEW LANDOWNER

Matt McDonald – shareholder of company McDonald Farm Limited

5. On the making of a gift

LANDOWNER

Matt McDonald and Mary McDonald – parents

EVENT:

Parents gift land to daughter

NEW LANDOWNER

Lucy McDonald – daughter

6. A settlement by the trustee of a trust on the trustee of another trust (authorised under a trust instrument or trustee legislation)

<p>LANDOWNER</p> <p>Matt McDonald, Mary McDonald and McDonald lawyer – trustees of the McDonald Family Trust</p>	<p>EVENT:</p> <p>Trust is wound up and land is transferred to a new family trust</p>	<p>NEW LANDOWNER</p> <p>Matt McDonald, Mary McDonald and McDonald lawyer – trustees of the Matt and Mary New Family Trust</p>
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7. Change of trustees of a trust

<p>LANDOWNER</p> <p>Matt McDonald, Mary McDonald and Grandpa McDonald – trustees of the McDonald Family Trust</p>	<p>EVENT:</p> <p>Grandpa retires as a trustee and the family lawyer is appointed</p>	<p>NEW LANDOWNER</p> <p>Matt McDonald, Mary McDonald and McDonald lawyer – trustees of the McDonald Family Trust</p>
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8. Between spouses or relationship partners

<p>LANDOWNER</p> <p>Matt McDonald and Mary McDonald – husband and wife</p>	<p>EVENT:</p> <p>Matt and Mary divorce and agree the land goes to Mary</p>	<p>NEW LANDOWNER</p> <p>Mary McDonald – wife receives as share of relationship property</p>
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9. By a settlor to a family trust established by the settlor

<p>LANDOWNER</p> <p>Matt McDonald and Mary McDonald – husband and wife</p>	<p>EVENT:</p> <p>Matt and Mary set up a family trust and transfers the land into it</p>	<p>NEW LANDOWNER</p> <p>Matt McDonald, Mary McDonald and McDonald lawyer – trustees of the McDonald Family Trust</p>
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10. By a landowner to:

- A. a company where the landowner owns 100 percent shares

<p>LANDOWNER</p> <p>Matt McDonald and Mary McDonald – husband and wife</p>	<p>EVENT:</p> <p>Transfer of land into a company to run the forest operations. They and/or their family trust own all the shares of the company.</p>	<p>NEW LANDOWNER</p> <p>McDonald Farm Limited – shareholders: Matt and Mary McDonald 50 percent and McDonald Family Trust 50 percent</p>
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B. To a limited partnership where the prior owners are the partners

LANDOWNER Matt McDonald, Mary McDonald and Grandpa McDonald – joint owners	EVENT: Matt, Mary and Grandpa set up a limited partnership to run the forest operation and transfer the land to it	NEW LANDOWNER Matt McDonald, Mary McDonald and Grandpa McDonald – partners in limited partnership
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11. Between partners of a partnership, provided the interests of the partners have not changed by more than 51 percent between 31 October 2002 and the relevant date (either the 20 July 2010 or the date the land was deforested)

LANDOWNER Partnership (and interests) of Matt McDonald (45 percent), Mary McDonald (45 percent) and Grandpa McDonald (10 percent)	EVENT: Matt and Mary buy out Grandpa's interest in the partnership	NEW LANDOWNER Partnership (and interests) of Matt McDonald (50 percent), Mary McDonald (50 percent)
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12. From a company:

A. To a wholly owned subsidiary

LANDOWNER McDonald Farm Limited	EVENT: Land transferred to a wholly owned subsidiary	NEW LANDOWNER Young McDonald Forests Limited – McDonald Farms Limited owns 100 percent of the shares
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B. To a holding company

LANDOWNER McDonald Farm Limited	EVENT: Land transferred to a holding company	NEW LANDOWNER McDonald Holdings Limited – company owns 100 percent of the shares in McDonald Farm Limited
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C. To another wholly owned subsidiary of the company's parent company

LANDOWNER McDonald Farm Limited	EVENT: Land transferred to a holding company	NEW LANDOWNER McDonald Holdings Limited – company owns 100 percent of the shares in McDonald Farm Limited
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13. From a company:

A. To a trustee of a trust whose beneficiaries held all of the shares of the company – provided the class or classes of beneficiaries of that trust did not change substantially between the date of the transfer and the relevant date.

LANDOWNER

McDonald Farms Limited – company with shareholders: Matt McDonald 50 percent, Mary McDonald 50 percent

EVENT:

Matt & Mary create a trust to own the land instead of their company. Matt, Mary and their children are beneficiaries of the trust. There have been no changes of beneficiaries made through the trust deed.

NEW LANDOWNER

McDonald Accountants Trustee Company Limited – trustees of the Matt and Mary Family Trust

B. To a company whose shareholders hold all the shares

LANDOWNER

McDonald Farms Limited – company shareholders: Matt McDonald 10 percent, Mary McDonald 10 percent, McDonald Family Trust trustees 80 percent

EVENT:

Land is transferred to another company with the same shareholders

NEW LANDOWNER

Matt & Mary Forestry Limited - company shareholders: Matt McDonald 20 percent, Mary McDonald 20 percent, McDonald Family Trust trustees 60 percent

OR: To a trustee of a family trust established by any shareholder of the company

LANDOWNER

McDonald Farms Limited – company shareholders: Matt McDonald 10 percent, Mary McDonald 10 percent, McDonald Family Trust trustees 80 percent

EVENT:

Land is transferred to Matt & Mary Forestry Limited. A family trust created by Mary (one the shareholders of McDonald Farms Ltd) is the sole shareholder of the new company

NEW LANDOWNER

Matt & Mary Forestry Limited – company shareholders: Mary's Family Trust trustees 100 percent – created by Mary McDonald

C. A trustee of a trust that held the shares solely or with any beneficiary of that trust

LANDOWNER

McDonald Farms Limited – company shareholders: Matt McDonald 10 percent, Mary McDonald 10 percent, McDonald Family Trust trustees 80 percent

EVENT:

Land is transferred to a trust that is a shareholder of McDonald Farms Limited

NEW LANDOWNER

McDonald Family Trust trustees – Matt & Mary McDonald are among the beneficiaries of the Trust

14. From tenants in common to any tenant (joint owner) on partition of the land

LANDOWNER

Matt McDonald (1/3 share) Mary McDonald (1/3 share) and Grandpa McDonald (1/3 share) – tenants in common of 60 ha in one title (shares are specified on the title)

EVENT:

Land is subdivided into new titles and transferred to the parents and grandfather

LANDOWNER New Title 1:

Matt McDonald and Mary McDonald (40 ha)

LANDOWNER New Title 2:

Grandpa McDonald (20 ha)

15. From joint owners (both joint tenants and tenants in common) to the joint owners provided the joint owners (or joint owners interests, if tenants in common) are at least 49% same between 31 October 2002 and the relevant date.

LANDOWNER

Grandpa McDonald, Lucy McDonald, Luke McDonald, Matt McDonald, Mary McDonald – joint owners (as joint tenants)

EVENT:

Grandpa passes away and his share is transferred to the surviving joint owners.

NEW LANDOWNER

Lucy McDonald, Luke McDonald, Matt McDonald, Mary McDonald – joint owners (20 percent change)

Appendix 2: Navigating land titles

Figure 2 shows an example of how to find required information on a historic search copy of a title (computer freehold register).


The required information is Identifier, Legal Description and either Original Proprietors (where the land has not been transferred), or under Interests a memorandum showing a transfer.

In this example, it shows the land was transferred to Joseph Bloggs on 31 July 2002.

Note that the search copy date must be after 20 July 2010.


Figure 2. Example of historic search copy of a title

EXAMPLE ONLY



COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952

Historical Search Copy



Identifier NA54D/1210
Land Registration District North Auckland
Date Issued 02 October 1984

Prior References
NZ28B/1152

Estate Fee Simple
Area 149.9866 hectares more or less
Legal Description Lot 1 Deposited Plan 72111
Original Proprietors
Michael Raymond King as to a 1/3 share
Leslie Margot King as to a 1/3 share
William Alfred King as to a 1/3 share

Interests
D009384.5 Mortgage to The National Bank of New Zealand Limited – 19.6.1996 at 1:47 pm
5300695.2 Discharge of Mortgage D009384.5 – 31.7.2002 at 2:15 pm
5300695.4 Transfer to Joseph Bloggs – 31.7.2002 at 2:15 pm
5300695.6 Mortgage to The National bank of New Zealand Limited – 31.7.2002 at 2:15 pm

Transaction Id 27877541
Client Reference aleggat008Historical Search Copy Dated 7/08/10 3:50 pm Page 1 of 1

