



Office of Hon Tim Groser

Minister of Trade
Minister for Climate Change Issues

15-O-01223

Simon Johnson
fyi-request-2901-014a2267@requests.fyi.org.nz

Dear Mr Johnson

Thank you for your email of 2 July 2015 requesting the following information under the Official Information Act 1982 (OIA):

[In relation to *the Ministerial Direction of 10 March 2015, to the Registrar of the New Zealand Emission Unit Register (NZEUR) to issue New Zealand Units (NZUs) in the document headed Appendix Two Ministerial Direction*]

- *I request a copy of pages 1 to 8 of this document; and*
- *If there is some other report or document that you also considered on 10 March 2015 in making your decision to issue New Zealand Units, then may I please have a copy of that too.*

Only one document titled, *Briefing note: Issuance of New Zealand Units (NZUs) in the NZ ETS for 2015* dated 9 March 2015 falls within the scope of your request and is attached. The Ministerial Direction (pages 9 and 10) was signed 10 March 2015 and is publically available on the Environmental Protection Authority's website. Please note parts of the Briefing note have been withheld under the following sections of the OIA:

- *s9(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons;*
- *s9(2)(h) - the withholding of the information is necessary to maintain legal professional privilege; and*
- *s9(2)(j) - the withholding of the information is necessary to enable a Minister of the Crown or any department holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).*

The issuance of NZUs is an administrative and mechanical process required for the operation of the New Zealand Emissions Trading Scheme. The matters that I have to consider when issuing NZUs are specified in Section 68(2) of the Climate Change Response Act 2002 – this is outlined in Appendix One (page 7) of the released document.

Under section 28(3) of the OIA, you have the right to ask the Ombudsman to review my response to your request.

Yours sincerely

Hon Tim Groser
Minister for Climate Change Issues



To: Hon Tim Groser, Minister for Climate Change Issues
Issuance of New Zealand Units (NZUs) in the NZ ETS for 2015

Other Dept Tracking Number:		MfE Tracking Number:	15-B-00143
Date Submitted:	9 MAR 2015	MfE Priority:	Urgent
Security Level:	IN CONFIDENCE	Number of Attachments:	Three (Analysis of legal obligations, direction to the Registrar, and Ministerial statement)
Action Sought:	Consult with the Minister of Finance; sign and present the attached direction and statement to the House	Response Needed by:	16 March 2015

Ministry for the Environment Contacts

Position	Name	Telephone (cell) (work)	1st Contact
Principal author	[with held under section 9(2)(a)]		✓
Responsible Manager	Craig Salmon	439 7642	
Director	Kay Harrison	439 7579	

Purpose

- This briefing seeks your agreement to issue 30.7 million New Zealand Units (NZUs) into the Crown holding account. These units will be transferred to those New Zealand Emissions Trading Scheme (NZ ETS) participants who are eligible to receive an allocation.
- Issuance refers to the creation of new NZUs and is carried out through a Ministerial direction to the Registrar of the New Zealand Emission Unit Register (NZEUR). This is a routine task required for the effective operation of the NZ ETS.
- There is currently an insufficient number of NZUs in the Crown holding account to meet upcoming allocation requirements. This briefing recommends you issue enough units to provide for the expected transfers of NZUs for this financial year and the next (2014/15 and 2015/16). If you do not issue NZUs, the Crown will not meet its statutory obligations under the CCRA to transfer units to participants.
- Section 68 of the Climate Change Response Act 2002 (the CCRA) allows you, as Minister for Climate Change Issues, to direct the Registrar to issue NZUs. To issue NZUs you are required to consult with the Minister of Finance and have regard to specific matters, as stated in the CCRA. These matters include: the number of units that New Zealand has received, or expects to receive under any international agreement, New Zealand's international obligations and the proper functioning of the NZ ETS. We do not consider there are any significant issues arising from these requirements
- Following your approval and consultation with the Minister of Finance, you are required to present copies of the Ministerial direction to the Registrar and the accompanying Ministerial statement to the House of Representatives. We will then publish the direction and Ministerial statement in the New Zealand Gazette and on the Environmental Protection Authority (EPA) website.

Situation Analysis

Issuance background

6. NZUs are created by the New Zealand Government through the process of issuance. This is a routine task in the NZ ETS to ensure that there are a sufficient amount of NZUs available for allocation. After being 'issued', NZUs are stored in the Crown Holding Account until participants submit their emissions returns or applications for an allocation. Once these are processed, participants are transferred units.
7. In order to meet the estimated demand for unit allocation, additional NZUs must be issued into the Crown account. These NZUs will be allocated to participants for this financial year and the next (2014/15 and 2015/16).
8. To date, four issuances have occurred totalling 153.5 million NZUs. These covered transfers up until the 2013/14 financial year (13-B-01140 refers).

[withheld under s 9(2)(j)]

Issuance process

9. As the Minister for Climate Change Issues, you have the power to direct the Registrar to issue NZUs. Section 68 of the Climate Change Response Act 2002 (the CCRA) gives you this authority and sets out the requirements you must consider.
10. When deciding whether or not to issue NZUs, section 68(2)(a) of the CCRA requires that you consult with the Minister of Finance.
11. Section 68(2)(b) of the CCRA requires that you have regard to the following matters:
 - i. The number of units that New Zealand has received, or that you expect New Zealand to receive, under any international agreement; and
 - ii. New Zealand's international obligations, including any obligation to retire units equal to the number of tonnes of emissions that are emitted in New Zealand; and
 - iii. The proper functioning of the greenhouse gas emission trading scheme established under the Act; and
 - iv. Any other matter that you consider relevant.
12. In accordance with section 68(4) of the CCRA, the direction to the Registrar to issue NZUs, and an accompanying Ministerial statement must be published in the New Zealand Gazette and on the EPA website. Copies of the direction and Ministerial statement must be presented to the House of Representatives as a non-Parliamentary Paper.

Unit types

13. There are two types of NZUs which the Crown allocates to participants: 'exportable NZUs' and 'non-exportable NZUs'.
 - a. Exportable units: transferred to post 1989 forestry removal activities participants, pre-1990 allocation recipients, and Permanent Forest Sink Initiative participants. These units are able to be converted into Assigned Amount Units (AAUs) which can be traded internationally. To ensure exportable NZUs are identifiable, and remain exportable once traded in the New Zealand carbon market, the NZUs are 'tagged' as exportable.
 - b. Non-exportable units: transferred to non-forestry recipients of NZUs, such as those receiving industrial or fishing allocations as well as those earning NZUs for non-forestry removal activities. These NZUs are tagged as non-exportable.

14. Although exportable units may be converted to NZ-AAUs for international trading, there will be no export of units after the conclusion of the CP1 true-up¹ period. This is because international trading of CP1 units will no longer be possible. We do not expect any more conversions of NZUs to occur.

Advice

Estimated units for issuance

15. We recommend issuing 13.3 million exportable NZUs and 17.4 million non-exportable NZUs into the Crown account. In total, 30.7 million NZUs will be required for issuance.
16. We estimate that 13.9 million non-exportable NZUs and 18.9 million exportable NZUs will be allocated to participants for the 2014/15 and 2015/16 financial years. These estimates are based on the most recent data available. Forecasts for non-exportable units are based on the 2014 October baseline and forecasts for exportable units are based on the 2015 March update.
17. The breakdown of units required for unit allocation in the 2014/15 and 2015/16 years is shown in Table 1.

Table 1: Units for issuance for 2015 and 2016

[withheld under 59(2)(b)]

18. A 10% 'buffer' in excess of the forecasted amount has been added to the total number of units required for issuance to mitigate any transfers that were not forecast for this period.
19. Furthermore, we recommend issuing additional non-exportable units for the purpose of replacing all NZ-originated Assigned Amount Units (AAUs) that are currently in private ownership, in the event that the Government is unable to carry these units over into the Kyoto Protocol second commitment period. Cabinet decided [CAB Min (13) 41/11 refers] to replace these units with NZUs if they cannot be carried over on their owners' behalf.
20. There are currently 2.9 million NZ-originated AAUs held in private accounts. In order to replace these AAUs, an equivalent number of non-exportable NZUs would be required. This number may decrease if some of these account holders choose to use their AAUs to meet NZ ETS obligations or if they are transferred offshore or cancelled.

¹ The 'true up' is the 100 day period held after greenhouse gas inventory reviews have been completed on all parties to the Kyoto Protocol.

21. We recommend that the issuance is complete by mid-March 2015. This will ensure that there are a sufficient number of NZUs in the Crown Holding Account to transfer to participants for this financial year.

Legal requirements

22. 1. [withheld under s 9(2)(b)]^{is}. Analysis of the statutory criteria is provided in Appendix One. The direction to the Registrar to issue NZUs is attached in Appendix Two and accompanying Ministerial statement which sets out how you had regard for the statutory matters specified in section 68(2) of the CCRA is provided in Appendix Three.

Risks and Mitigations

23. If you decide not to issue any NZUs, the Crown will not be able to meet its statutory obligations to allocate and transfer NZUs. Specifically, the Crown will not be able to allocate non-exportable units to industrial allocation recipients as there are currently an insufficient number of these units. This risk cannot be mitigated.
24. There is a small risk that this issuance may be insufficient to meet the demand of allocation recipients. This risk is mitigated by issuing additional NZUs in excess of expected transfers. If unexpected demand exceeds this, you can choose to issue more units.
25. Officials intend to review the process for issuing NZUs to ensure it is as accurate and effective as possible. This will mitigate the risk of the Crown holding account having insufficient NZUs to meet transfers in the future.

Financial, Regulatory and Legislative implications

26. There is no fiscal cost associated with this issuance. There are no regulatory or legislative implications.

Consultation

27. Treasury, Ministry for Primary Industries and Environmental Protection Authority officials have been consulted on this briefing and support with its recommendations.

Next steps

28. Subject to your approval, we recommend the following steps:

Action	Recommended timeframes
Have regard for the section 68(2) matters discussed in Appendix One.	9 March
Consult with the Minister of Finance regarding your intention to issue NZUs into the Crown Holding Account.	9-16 March
Approve and sign the direction to the Registrar (Appendix Two).	16 March
Present a copy of the direction and Ministerial statement (Appendix Two and Three) to the House of Representatives as a non-Parliamentary paper.	16 March
We publish the direction and Ministerial statement in the New Zealand Gazette, and on the EPA website.	17-19 March
The Registrar issues 30.7 million NZUs into the Crown's holding account.	20 March

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Recommended Action

We recommend that you:

- a) **Note** that there is currently an insufficient number of New Zealand Units (NZUs) in the Crown Holding Account to meet the requirements for unit allocation to participants;
- b) **Note** the matters you are required to have regard to under section 68(2)((b) & (c)) of the Climate Change Response Act 2002, as set out in Appendix One;
- c) **Agree** that 13.3 million exportable NZUs and 17.4 million non-exportable New Zealand Units should be issued into the Crown Holding Account; **Yes / No**
- d) **Consult** with the Minister of Finance regarding your intention to direct the Registrar to issue NZUs into a Crown holding account in accordance with section 68(2)(a) of the CCRA; **Yes / No**
- e) **Sign** the attached direction to the Registrar (Appendix Two); **Yes / No**
- f) **Approve** the attached Ministerial statement setting out how you have had regard to the matters specified under section 68(2)(b) of the CCRA (Appendix Three); **Yes / No**
- g) **Present** a copy of the direction, and accompanying Ministerial statement to the House of Representatives; **Yes / No**
- h) **Note** a copy of the direction, and accompanying Ministerial statement will be published in the New Zealand Gazette and on the EPA website.



Craig Salmon
Manager, ETS Operations Policy Team

Date 09/03/15.

Date

Hon Tim Groser
Minister for Climate Change Issues

Appendix One: Analysis of section 68(2) of the CCRA – matters which you must 'have regard to' when carrying out issuance

1. This appendix provides analysis of the statutory matters which you must "have regard to" in accordance with section 68 of the CCRA. The discussion will form the basis of the Ministerial statement accompanying your direction (in accordance with section 68(5) of the CCRA) to explain how you had regard to these matters. The statement is attached as Appendix Three.
2. Under section 68(2) of the Act you must:
 - (a) consult the Minister of Finance; and
 - (b) have regard for the following matters before directing the Registrar to issue an allocation of NZUs into a Crown holding account:
 - i. the number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement; and
 - ii. New Zealand's international obligations, including any obligations to retire units equal to the number of tonnes of emissions that are emitted in New Zealand; and
 - iii. the proper functioning of the greenhouse gas emissions trading scheme established under this Act; and
 - iv. any other matters that the Minister considers relevant.
3. Section 68(2)(c) relates to the issuance of NZUs into a Crown holding account on or after 1 January 2013 if no second Commitment Period under the Kyoto Protocol exists. Despite New Zealand's decision not to take its commitment under the Second Commitment Period, a second Commitment Period still exists. Therefore, the requirement to have regard to the matters under section 68(2)(c) is not applicable at this time.
4. Each matter under section 68(2)(b) is specifically addressed below.

Section 68(2)(b)(i): 'the number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement'

 - As an Annex 1 Party to the United Nations Framework Convention on Climate Change New Zealand's assigned amount for Commitment Period 1 (CP1) is fixed at 309,564,733 metric tonnes of carbon dioxide equivalent emissions and translates to an equivalent number of assigned amount units. The units are held in the Crown's holding account in the Registry.
 - New Zealand can also expect to receive certain Kyoto removal units for the net increase in forest sinks during CP1. New Zealand has elected to receive these at the end of CP1 and the true-up period (2015). Currently it is projected that New Zealand will receive 71.6 million removal units from forestry removals over CP1.
 - New Zealand decided not to take its commitment under the Second Commitment Period. Therefore, New Zealand will not have an assigned amount for Commitment Period 2 (CP2).

Section 68(2)(b)(ii): 'New Zealand's international obligations, including any obligation to retire units equal to the number of tonnes of emissions that are emitted in New Zealand'

 - As an Annex B party to the Kyoto Protocol, New Zealand must retire sufficient Kyoto units to cover its total emissions during CP1. If New Zealand's emissions exceed its assigned amount, plus removal units from domestic land use and land use change activities (LULUCF), it may obtain additional Kyoto units to cover those excess emissions through the use of the flexible mechanisms provided under the Kyoto

Protocol. This includes direct purchases of Kyoto units through international emissions trading; or from their surrender to the Government by private entities under the NZ ETS. New Zealand may also lose Kyoto units through sales to other countries (only NZUs allocated to the forestry sector are permitted to be converted to AAUs and sold internationally).

- The latest projection of New Zealand's net position under the Kyoto Protocol is a surplus of 127.5 million units as at 31 January 2015. New Zealand's Kyoto Protocol Financial Position is NZ\$4.0 million using a carbon price of NZ\$0.03 (Euro\$0.02/0.64210) per unit.
- New Zealand decided not to take its commitment under the Second Commitment Period. Therefore no international obligation exists at this stage to retire units equal to the number of tonnes of emissions that are emitted in New Zealand going forward.

Section 68(2)(b)(iii): 'the proper functioning of the greenhouse gas emissions trading scheme established under the Act'

- The purpose of the Act includes, in section 3(1)(b) "to provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce greenhouse gas emissions by assisting New Zealand to meet its international obligations under the Convention and the Protocol, and by reducing New Zealand's net emissions below business-as-usual levels".
- The implementation, operation and administration of a greenhouse gas emissions trading scheme (the NZ ETS) requires, amongst other things, the issuance of sufficient NZUs to meet:

- a. entitlements of post-1989 forest participants;
- b. entitlements of participants undertaking removal activities;
- c. any entitlements under an allocation plan; and
- d. any auctions of NZUs the Crown undertakes.

• While your direction to the Registrar to issue NZUs into a Crown holding account may technically be made at any time (after having followed the statutory process), you must have regard to the proper functioning of the NZ ETS. In considering this, it is appropriate for you to have regard to current fiscal and economic projections for the next two financial years (2014/15, 2015/16) which estimate the following:

- a. Post-1989 forest land owners and PFSI participants (approximately 18.9 million exportable NZUs)
- b. Industrial allocation to emission intensive, trade exposed industry (approximately 10.1 million non-exportable NZUs)
- c. Removal activities, synthetic greenhouse gas removals and other non-forestry related activities (approximately 3.2 million non-exportable NZUs)
- d. Two Negotiated Greenhouse Gas Agreements (approximately 0.5 million non-exportable NZUs).

- The balance of NZUs will be monitored regularly to check that there is not a greater demand for NZUs than assumed. In 2016 the EPA will identify either a shortfall or excess of NZUs, and if necessary, either a cancellation of NZUs, or further issuance can occur. Decisions on the implementation of auctioning NZUs are yet to be made.

Appendix Two: Ministerial Direction

**Ministerial direction to the Registrar of the New Zealand Emission Unit Register:
Issuance of New Zealand Units into the Crown holding account in the New Zealand
Emissions Unit Register**

Having consulted the Minister of Finance and having had regard to all the relevant matters pursuant to section 68 of the Climate Change Response Act 2002, I direct the Registrar of the New Zealand Emission Unit Register to issue 30.7 million New Zealand Units (NZUs) into the Crown holding account in the New Zealand Emission Unit Register.

I direct the Registrar to identify and 'tag' 13.3 million NZUs as suitable for conversion to Assigned Amount Units (AAUs) and exportable, and 'tag' 17.4 million NZUs as not being suitable for conversion and non-exportable.

Dated at Wellington this

day of

2015

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Hon Tim Groser
Minister for Climate Change Issues

Date

Appendix Three: Ministerial Statement to accompany the Direction to the Registrar of the New Zealand Emission Unit Register

In making the above direction to the Registrar I have consulted with the Minister of Finance and I have had regard to the following matters specified in section 68 of the Climate Change Response Act 2002:

Section 68(2)(b)(i) *The number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement*

New Zealand has received 309,564,733 Assigned Amount Units (AAUs) under the Kyoto Protocol. New Zealand has elected to receive removal units for net increases in forest sinks (RMUs) at the end of commitment period one (CP1). It is estimated New Zealand will receive 71.6 million RMUs.

New Zealand decided not to take its commitment under the Second Commitment Period. Therefore, New Zealand will not have an assigned amount for Commitment Period 2 (CP2).

Section 68(2)(b)(ii) *New Zealand's international obligations, including any obligation to retire units equal to the number of tonnes of emissions that are emitted in New Zealand*

Under the United Nations Framework Convention on Climate Change, New Zealand has a commitment to adopt policies and measures to mitigate climate change.

New Zealand also has obligations under the Convention's Kyoto Protocol, whereby it must retire sufficient Kyoto units to cover its total emissions during CP1 or face non-compliance consequences. New Zealand has received 309,564,733 AAUs and expects to receive 71.6 million RMUs. The latest projection of New Zealand's net position under the Kyoto Protocol is a surplus of 127.5 million units.

New Zealand decided not to take its commitment under the Second Commitment Period. Therefore no international obligation to retire NZUs equal to the number of tonnes of emissions that are emitted in New Zealand exists at this stage.

Section 68(2)(b)(iii) *The proper functioning of the greenhouse gas emissions trading scheme established under this Act*

The proper functioning of the NZ ETS requires the issuance of sufficient NZUs to meet entitlements of post-1989 forestry participants; any entitlements under an allocation plan; and any auctions of NZUs the Crown undertakes. Officials estimate that over the next two financial years (2014/15, 2015/16), 18.9 million exportable NZUs will be transferred to post-1989 forest land owners and PFSI participants; and 13.9 million non-exportable NZUs will be transferred to industrial allocation recipients, entities with Negotiated Greenhouse Gas Agreements and participants engaged in certain removal activities.

Officials will monitor the balance of NZUs closely to ensure a further issuance, or cancellation of NZUs can occur to maintain the proper functioning of the NZ ETS.

Section 68(2)(b)(iv) *Any other matters that the Minister considers relevant*
There are no other matters.