



Ministry for Primary Industries
Manatū Ahu Matua



To: Hon Damien O'Connor, Minister of Agriculture
Hon David Parker, Minister for the Environment
From: Charlotte Denny, Director Natural Resources Policy (MPI)
Fiona Newlove, Acting Director Land and Water Systems (MfE)

Public consultation on potential amendments to the National Policy Statement for Highly Productive Land

Date	25 July 2023	Reference	Sub23-0055 BRF-3292 (MfE) B23-0265 (MPI)
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Decision required	Date decision required by
YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	28 July 2023

Purpose
<p>This briefing:</p> <ul style="list-style-type: none"> provides an update on the development of the potential amendments to the National Policy Statement for Highly Productive Land (NPS-HPL) seeks your agreement to circulate the advice package, which includes a draft Cabinet paper, discussion document and Regulatory Impact Statement to Cabinet Economic Development Committee (DEV) on 23rd August. The purpose is to undertake public consultation on the potential amendments. seeks your decision on whether a four, six, or eight-week period commencing before the election is appropriate for public consultation.

Contacts for telephone discussion (if required) – MPI			
Name	Position	Contact number	First contact
Charlotte Denny	Director, Natural Resources Policy	022 017 4798	<input type="checkbox"/>
Tom Corser	Manager, Land Policy	022 014 0679	<input checked="" type="checkbox"/>
Kok Hong Wan (Author)	Senior Policy Analyst, Land Policy	04 894 3421	<input type="checkbox"/>

Contacts for telephone discussion (if required) - MfE			
Fiona Newlove	Acting Director, Land and Water Systems	0220619682	<input type="checkbox"/>
Jo Burton	Manager, Land and Water Systems	022 066 1645	<input checked="" type="checkbox"/>
Cathy McNab (Author)	Senior Policy Analyst, Land and Water Systems	0272085801	<input type="checkbox"/>

Key messages
Various stakeholders from the renewable energy and primary production sectors have commented how the NPS-HPL has restricted the development of activities that do not rely on the soil properties of HPL, but may be necessary for social, economic, cultural, or environmental wellbeing.
In March 2023, you both agreed to consult on a potential amendment to the NPS-HPL that provides a specific pathway for the construction of specified infrastructure ¹ , and a potential bespoke consent pathway that would provide for intensive indoor primary production and greenhouses to develop on highly productive land (HPL).
In May we met with a targeted group of councils and stakeholders from the renewable energy and primary production sectors to discuss whether current policy is fit for purpose. The feedback received from these workshops informed the content of the discussion document.
We now seek your agreement to circulate the advice package for Cabinet consideration on 23 rd of August. This package includes the draft discussion document and interim Regulatory Impact Statement (RIS). Subject to Cabinet's agreement, the discussion document and RIS will be released for public consultation.
We are seeking your decision as to whether public consultation should be completed during this term of government over shortened timeframe (four weeks) or extend into the election period (six week period) or into the next term of government (eight weeks). Any changes to the NPS-HPL would be considered by Cabinet next term.

Context

1. The NPS-HPL took effect in October 2022. Since then, officials from the Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) ('we') received feedback from various stakeholders that the NPS-HPL has restricted the development of activities that do not rely on the soil properties of HPL, but may be necessary for social, economic, cultural, or environmental wellbeing.
2. We provided this feedback to you in March 2023, where you both agreed to consult on [B23-0143 / BRF-2841 refers]:
 - a. a potential amendment to the NPS-HPL that provides a specific pathway for the construction of specified infrastructure (in particular, for renewable energy generation including solar farms) on HPL, and
 - b. a potential bespoke pathway that would provide for intensive indoor primary production¹ and greenhouses² to develop on HPL.
3. In May 2023, officials met with a targeted group of councils and stakeholders from the renewable energy and primary production sectors to discuss whether the current policy is fit for purpose or if the issues outlined above warrant amendments to the NPS-HPL. The feedback received from these meetings informed the content of the discussion document.

Consultation with a targeted group of stakeholders

4. On 5th May, we held three online workshops with a small, targeted group of stakeholders. Attendees included representatives from:
 - a) councils where there is a relatively larger proportion of HPL in their district/region;
 - b) the renewable energy generation sector (REG); and
 - c) primary sector groups.
5. A list of attendees is provided in Appendix One.
6. Based on these discussions, we consider that the issues raised by stakeholders and the potential amendments warrant further consideration. Consultation with further input and views of iwi partners, interested organisations, and the public will help to ensure any consent pathway for non-soil reliant activities to develop on HPL is consistent with the objective and intent of the NPS-HPL – protecting the soil resource for use in land-based primary production.

Initial feedback from the workshops regarding specified infrastructure

7. The REG stakeholders were supportive of an amendment to the NPS-HPL to provide for 'new' specified infrastructure on HPL. They have indicated that the NPS-HPL is now a significant risk factor identified during the due diligence stage of planning for REG developments (especially solar farms) that has the potential to prevent projects progressing.

¹ Intensive indoor primary production means primary production activities that principally occur within buildings and involve growing fungi or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry (see National Planning Standards).

² We have previously sought your agreement for officials to consult on a bespoke pathway for the NPS-HPL to provide for 'hydroponic glasshouses' on HPL [B23-0143 / BRF-2841 refers]. Following feedback from Horticulture NZ, we regard 'greenhouse' as a more appropriate terminology as they better capture any permanent structure erected for the purpose of indoor growing but do not rely on the soil properties of the land. They may include glasshouses, plastic houses, and tunnel houses. The term 'hydroponic glasshouses' however potentially limits the activity to only hydroponic growing systems and glass structures.

8. REG stakeholders have stated that solar electricity generation activities require specific site attributes for solar development, which alongside solar irradiance include aspect, topography (flat contour) and access to transmission and/or distribution infrastructure. Sector representatives highlighted that there is significant overlap between the areas that are suitable for solar development and HPL.
9. Some councils have stated that having clarity to provide for specified infrastructure would be helpful. Auckland Council attendees raised concerns that any amendment could inadvertently provide for a wide range of infrastructure activities to occur on HPL. They recommended a consent pathway to explicitly direct the reversion of land use from infrastructure to primary production use (for example, via a 'sunset clause').

Initial feedback from the workshops regarding intensive indoor primary production and greenhouses

10. Hort NZ is of the view that the NPS-HPL in its current state will prevent transformation occurring in the greenhouse sector. They suggested insertion of a new clause in the NPS-HPL that would provide a pathway for certain food production activities to be provided for on HPL.
11. NZ Pork also supported an amendment to provide a consent pathway for pig farming on HPL and suggested insertion of a new clause in the NPS-HPL to remove any uncertainty for the industry.
12. Poultry Industry Association and Egg Producers Federation collectively support an amendment to provide for poultry activities on HPL, citing that the location for these activities is limited to rural zones. They suggested an amendment to the definition of 'land-based primary production' and 'productive capacity', and an insertion of a clause to provide a pathway for poultry activities to occur on HPL.
13. Matamata-Piako District Council stated that the district is predominantly HPL. The status quo is making it difficult for the council to accommodate any future growth of intensive indoor primary production, notably for the poultry industry (Inghams) which has a network of operations within areas of HPL in the district.
14. Selwyn District Council and Auckland Council indicated they are not in favour of any proposed amendment and are concerned this will undermine the original policy intent to protect soil resource for current and future generations.

Preparing the discussion document and the interim RIS

15. We have developed a discussion document to help determine if amendments are warranted to the NPS-HPL to provide for the construction of new specified infrastructure (without needing a designation process³), intensive indoor primary production, and greenhouses on HPL.
16. The discussion document is supported by an interim RIS (included within Appendix Two). The interim RIS provides a high-level summary of the problem being addressed, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.

³ Designations allow the all Ministers of the Crown and local authorities' (requiring authority) works or project to go ahead on the site or route, without needing a land-use consent from the council, or complying with any rules in the district plan. It is a process that involves notifying the council that an area of land is to be designated for a public work (such as a road or telecommunications facility, school or prison).

17. The Treasury's Regulatory Impact Analysis team has determined that the proposal to release the discussion document is exempt from the requirement to provide a full RIS. The exemption is based on advice that the consultation package is accompanied by an interim RIS.
18. An MPI quality assurance panel has reviewed the interim RIS and confirmed that it meets these requirements.

Discussion and options on enabling the construction of new specified infrastructure on HPL

19. Under the status quo, the maintenance, operation, upgrade, or expansion of specified infrastructure is provided a consent pathway. However, the wording of clause 3.9(2)(j)(i)⁴ of the NPS-HPL is unclear as to whether this includes the construction of new specified infrastructure. Electricity sector stakeholders have raised concerns about this.
20. The issue is particularly relevant to new specified infrastructure that is developed or operated by an entity that is not a requiring authority (for example, solar farms which are not developed or operated by a network utility operator or council). Other specified infrastructure can typically use a requiring authority's designation process to develop on HPL.
21. This is also an issue for specified infrastructure that is needed a pace, as the designation process is long. A recent example is the infrastructure needed to support the recovery after cyclone Gabrielle.
22. The discussion document proposes two options to facilitate the discussion on enabling the construction of new specified infrastructure on HPL.
23. Option One is the status quo, where the NPS-HPL provides for the maintenance, operation and upgrade of specified infrastructure remains unchanged. Officials consider this option would not resolve the issue perceived by stakeholders, and the inconsistency with how other national direction address specified infrastructure would remain⁵.
24. The preferred Option Two is to amend the relevant clause to include the word 'construction' to make clear that there is pathway for new specified infrastructure on HPL subject to certain tests. The tests require development to have a functional or operational need to locate on HPL and that the impacts on HPL are minimised.
25. Option Two would ensure:
 - a. a clear pathway for specified infrastructure to develop on HPL is provided (without needing a designation);
 - b. the overall intent of the NPS-HPL is maintained;
 - c. consistency between the NPS-HPL with other national direction;
 - d. the current demand for solar farms in rural areas is addressed, and
 - e. the NPS contributes to the Government goal to transition to a low emissions economy.

⁴ Clause 3.9 Protecting highly productive land from inappropriate use and development

(2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:

(i) the maintenance, operation, upgrade, or expansion of specified infrastructure:

⁵ Alignment with the National Policy Statement for Renewable Energy Generation, National Policy Statement for Indigenous Biodiversity and the National Policy Statement for Freshwater Management.

Discussion on providing a consent pathway for the development of intensive indoor primary production and greenhouses on HPL

26. Under the status quo of the NPS-HPL, there is no clear pathway for intensive indoor primary production and greenhouses to develop on HPL.
27. The definition of 'land-based primary production'⁶ has been drafted to be deliberately narrow, so that HPL is prioritised for use by production activities that rely on the soil resource. The narrower definition of land-based primary production in the NPS-HPL recognises that activities that do not rely on the soil resource of the land could locate in alternative parts of the rural environment that are not HPL.
28. As such, primary production activities that do not rely on soil properties such as intensive indoor primary production activities (for example, indoor pig and poultry farms) and greenhouses fall outside the definition of land-based primary production and are not specifically provided for as appropriate use and development of HPL.
29. Primary sector stakeholders noted that:
 - a. the absence of a consent pathway to test whether these activities could locate on HPL may impact the diversity and resilience of our primary industries; and
 - b. pathways under the NPS-HPL are provided for other non-soil reliant activities, whereas a pathway for intensive indoor primary production and greenhouses is not. This is despite these activities being identified in the National Planning Standards as activities that ought to occur in the rural environment.
30. The discussion document considers how the NPS-HPL could be a barrier for the growth of some primary industries that are vital to New Zealand's food production system. It also outlines key considerations as to how the NPS-HPL could be a restricting factor in improving the resilience and diversity of our primary industries.
31. The discussion document proposes two options. Option one is the status quo, while Option Two is to provide a pathway for these activities to develop on HPL.
32. At this stage, officials have not put forward a preferred option as we note that the NPS-HPL has only been in effect for less than a year. This is a short timeframe to understand the extent of the problem (if any), and whether it requires regulatory intervention.
33. Councils have yet to fully give effect to the NPS-HPL (by notifying regional policy statements and district plan changes) and therefore it is unclear as to how, and to what extent the NPS-HPL has impacted intensive indoor primary production and greenhouses.
34. However, it is worth noting that the primary sector is identified in the National Adaptation Plan 2022 (NAP) as one of the most vulnerable sectors to the impacts of climate change⁷. It is likely that intensive indoor primary production and greenhouses will help ensure resilience to changing and adverse weather in some situations. Therefore officials consider that public consultation is necessary to ensure that the full spectrum of trade-offs are appropriately assessed and balanced.

⁶ The definition of 'land-based primary production' in the NPS-HPL is production from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land

⁷ A resilient food system depends on the ability of different industries to adapt to climate change. This requires balancing productivity and environmental impacts, and withstanding sudden shocks or disruptions, to continue to provide New Zealanders with diverse, affordable and accessible food.

Any amendment will coincide with the ongoing Resource Management Reform

35. The proposed Natural and Built Environments Act (NBA) will replace the current RMA. The NBA will require the development of a National Planning Framework (NPF) to perform a similar role to all current national policy statements and environmental standards, including the NPS-HPL.
36. You (Minister Parker) instructed officials to include a pathway for the construction of new specified infrastructure in the first iteration of the NPF [BRF-2634 refers]. This will be subject to the new engagement draft process in Schedule 6 of the NBA before the NPF proposal is submitted to a Board of Inquiry.
37. The issue relating to specified infrastructure could be addressed in the first iteration of the proposed NPF, as the policy intent of the NPS was to provide for the development of new specified infrastructure on HPL. This change also addresses the NBA system outcome for well-functioning urban and rural areas, and NPF infrastructure framework outcomes and policies.
38. Providing for intensive indoor primary production and greenhouses to develop on HPL is not within the scope of the existing policy intent. Any changes regarding intensive indoor primary production and greenhouses would be incorporated into an amended NPS-HPL that would remain in force during the transition to the new system. These amendments could be included in the NPF through the development of later iterations, if it is determined the amendments are warranted.

Advice package for Cabinet Economic Development Committee (DEV)

Agency consultation

39. On the 4th of July, we provided a draft Cabinet paper and discussion document to the following agencies for comment: Crown Law Office; Department of Conservation; Department of Internal Affairs; Kāinga Ora – Homes and Communities; Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry of Defence; Ministry of Education; Ministry of Housing and Urban Development; Ministry of Social Development; Ministry of Transport; Te Arawhiti; Te Puni Kōkiri; The Treasury; and Waka Kotahi New Zealand Transport Agency.
40. The Department of the Prime Minister and Cabinet has been informed.
41. The majority of the agencies consulted were supportive about consulting on potential amendments to the NPS-HPL. Some teams and agencies noted the importance of retaining the objective of the NPS-HPL of protecting the land for use by land-based primary production, and that any amendment should align with the policy intent and objective of the NPS-HPL⁸.

Ministerial consultation and Cabinet approval

42. Subject to your feedback, the attached draft Cabinet paper, discussion document and RIS will be circulated for Ministerial consultation on the week beginning 24th of July.

⁸ Such as the Ministry of Business, Innovation & Employment and the Department of Internal Affairs who noted that the amendments should align with the policy objective and intent of the NPS-HPL.

43. This briefing seeks your approval to lodge these papers on the 16th of August for consideration by DEV on 23rd of August.
44. Subject to Cabinet approval at DEV, the discussion document and RIS will be released for public consultation.

Timeframe for public consultation

45. We seek your agreement to release the discussion document and interim RIS for public consultation, with three options on the consultation timeframe.
- a. (Option A) a four-week period for public consultation to conclude in September before the end of this term of government, or
 - b. (Option B) a six- week period for public consultation to conclude in October. This option overlaps with the election period, or
 - c. (Preferred Option C) an eight-week period for public consultation to conclude in November. This period extends into the next term of government. This is our preferred option.
46. The table below sets out an indicative timeline for amending the NPS-HPL (Option C):

Step	Tentative date
Draft Cabinet package to be circulated for Ministerial consultation	Week beginning 24 th July
Lodgement date	16 th August
Cabinet consideration (DEV)	23 rd August
Final adjournment of the House	31 st August
Public consultation	September 2023
Report back on submissions and final recommendations	Late 2023
Amendments, Gazettal and implementation	Early 2024

47. The risks associated with Option A is that a four-week period is less than the minimum six weeks we would recommend for public consultation. Officials consider 4 weeks would be insufficient time for stakeholders and partners to properly engage in the material. Consultation will also overlap with the pre-election period.
48. The risks associated with Option B are an overlap with the pre-election and election period, and a delayed gazettal of an amendment that is sought to provide certainty for the development of specified infrastructure on HPL over the coming months.
49. The risks associated with Option C is an overlap with the pre-election and election period and further delays to gazettal of an amendment that will provide certainty for the development of specified infrastructure on HPL over the coming months. A longer timeframe for consultation (Option C) will reduce any perceived concerns about rushing the consideration of any potential amendments.

Post-consultation

50. When the consultation period has ended, officials will report back on submissions received and develop final policy advice that considers these submissions and the analysis of the RMA section 32 report.
51. Any changes to the NPS-HPL would be considered by Cabinet next Parliamentary term.

Recommendations

52. It is recommended that you:

- a) **Note** that officials received feedback from various stakeholders where the NPS-HPL has restricted the development of new specified infrastructure, intensive indoor primary production and greenhouses

NOTED

- b) **Note** that officials met with key targeted stakeholders and councils to discuss whether the status quo is fit for purpose or amendments to the NPS-HPL are necessary

NOTED

- c) **Note** that officials have developed a discussion document for the purpose of public consultation

NOTED

- d) **Note** the content of the Cabinet paper, discussion document and interim RIS

NOTED

- e) **Note** that any amendment to the NPS-HPL will coincide with the ongoing Resource Management Reform

NOTED

- f) **Agree** to circulate the draft Cabinet paper, discussion document and interim RIS for Ministerial consultation

YES / NO

- g) **Agree**, subject to Ministerial consultation, to lodge the final package of advice for DEV on 23rd August

YES / NO

EITHER

- h) **Agree** for the public consultation to be carried out for four weeks from early September 2023, concluding this term of government (Option A)

YES/NO

OR

- i) **Agree** for the public consultation to be carried out for six weeks from early September 2023, overlapping with the general election (Option B)

YES/NO

OR

- j) **Agree** for the public consultation to be carried out for an eight week period concluding post 2023 general election (Option C)

YES/NO

- k) **Note** the risks associated with the public consultation timeframes

NOTED

- l) **Note** that any changes to the NPS-HPL will be considered by Cabinet after the Election.

NOTED

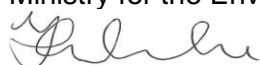
Charlotte Denny
Director Natural Resources Policy Directorate
Ministry for Primary Industries

Hon Damien O'Connor
Minister of Agriculture

/ / 2023



Fiona Newlove
Director Water and Land Use Policy
Ministry for the Environment



Hon David Parker
Minister for the Environment

/ / 2023

Minister's comments

Appendix One:

The following attended the online consultation meetings with officials on 5th May. Note that Poultry Industries Association did not attend the meeting but have provided their feedback on the proposed changes:

Councils

Auckland Council
Matamata-Piako District Council
Selwyn District Council
Tasman District Council

Renewable energy sector

Victoria University of Wellington
Meridian Energy
Sustainable Electricity Association of New Zealand (SEANZ)
Lightsource
Helios Energy
Harmony Energy
Mercury Energy
Genesis Energy
Manawa Energy

Primary production sector

Horticulture New Zealand
Dairy New Zealand
New Zealand Pork

Appendix Two: Cabinet paper, discussion document and supporting Regulatory Impact Statement
