Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	**Portfolio**	RMA Reform
Minister	Hon Todd McClay	**Portfolio**	Agriculture
Name of package	Amendments to National Policy Statement for Highly Productive Land 2022	**Date to be published**	7 November 2024

List of documents that have been proactively released		
Date	***Title***	***Author***
21 May 2024	Regulatory Impact Statement: Amendments to the National Policy Statement for Highly Productive Land	Ministry for the Environment and Ministry for Primary Industries

Information redacted **NO**

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Summary of reasons for redaction

n/a

Regulatory Impact Statement: Amendments to the National Policy Statement for Highly Productive Land

Coversheet

Purpose of Document	
Decision sought:	Cabinet approval to amend the National Policy Statement for Highly Productive Land (NPS-HPL)
Advising agencies:	Ministry for the Environment (MfE), Ministry for Primary Industries (MPI)
Proposing Ministers:	Chris Bishop Minister Responsible for RM Reform Todd McClay Minister of Agriculture Penny Simmonds Minister for the Environment
Date finalised:	21/05/2024

Problem Definition

Two issues identified with the National Policy Statement for Highly Productive Land (NPS-HPL) since it came into force in October 2022:

1. It is unclear whether a consent pathway[1] is provided for the construction of <u>new</u> specified infrastructure on HPL (other than via a designation), despite the original intent in the policy development that a consent pathway for such infrastructure would be provided. This ambiguity may lead to inconsistent application of provisions in the NPS-HPL relevant to new specified infrastructure, which risks delaying construction of infrastructure and lead to inconsistencies with other national direction. Furthermore, it could lead to inconsistent application of the NPS-HPL in consent decisions, and local Government plans.
2. No clear consent pathway is provided for <u>new</u> intensive indoor primary production and greenhouses to develop and relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

Executive Summary

The objective of the NPS-HPL is to protect highly productive land (HPL) for use in land-based primary production (activities that is reliant on the soil resource of the land). This is achieved by restricting inappropriate use, development or subdivision of HPL, unless certain requirements are met.

Stakeholders from the renewable electricity and primary production industries raised

[1] 'Consent Pathway' refers to there being clear direction in the NPS-HPL about when a particular type of use or development may be appropriate on HPL, providing councils with the opportunity to include provision for those activities in their plans and policy statements.

concerns about the NPS-HPL (pre-engagement workshops were held with industry and selected councils). MfE and MPI consider that the issues raised warranted further consideration and consultation. Public consultation to gather more information and evidence on the two issues ran for eight weeks, from 5 September to 31 October 2023. A total of 83 submissions were received [2]. Four of the 83 submissions were entirely 'out of scope' (i.e. not related to the issues presented in the Discussion Document)[3].

Industry stakeholders confirmed the issues and supported amendments being made to the NPS-HPL. However, feedback from councils was mixed. Some, more urban councils, did not consider amendments necessary while those with higher proportions of HPL tended to be more supportive of revisiting clause 3.9 exceptions in the NPS-HPL.

Submissions received assisted in addressing some of the gaps in the analysis and options in the interim RIA, and the narrow scope of stakeholders the issues and options were initially tested with in May 2023. This RIA addresses some of the key gaps that were identified in the analysis and options in the interim RIA and provides evidence for the need to amend the NPS-HPL to clarify a consent pathway for new specified infrastructure and associated activities, and provide a clear consent pathway for intensive indoor primary production and greenhouses to develop, expand and relocate on HPL.

The options to address each of the issues are assessed against the following criteria:

Criteria	Approach for analysis
1. Consistency with the NPS-HPL	• Supports the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations. • Aligns with policy intent of the NPS-HPL[4].
2. Consistency with the wider resource management system	• The option aligns with relevant sections of the RMA and other national direction.
3. Effectiveness	• Provides a clear consent pathway for the development of non- land-based primary production on HPL, in line with the policy intent of the NPS-HPL.
4. Implementation	• Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.
5. Cultural, Environmental, Economic and Social Wellbeing	• Balances cultural, economic, environmental, and social wellbeing, in line with the policy intent of the NPS-HPL.

[2] For the specified infrastructure issue, 56 of 66 respondents (that commented on this issue and weren't out of scope) preferred Option 2 (add 'construction' to clause 3.9(2)(j)(i)) compared to 10 respondents preferring Option 1 (status quo).For the intensive indoor primary production and greenhouses issue, 27 of 50 respondents (that commented on this issue and weren't out of scope) preferred Option 2 (to provide a consent pathway) compared to 14 respondents preferring Option 1 (status quo). Nine others proposed alternative options.

[3] Potential-amendments-to-the-NPS-HPL-discussion-document.pdf (environment.govt.nz)

[4] The distinction between the two bullet points for criterion 1 recognises that the objective of the NPS-HPL is to protect HPL for use in land-based primary production. This is distinguished from the 'intent' of the policy, which provides pathways for non-land-based activities to develop on HPL, some which are subject to specific gateway tests (e.g., functional or operational tests).

Issue 1: ambiguity about whether a consent pathway is provided for new specified infrastructure

The first issue is that the NPS-HPL is unclear whether a consent pathway is provided for the construction of new specified infrastructure on HPL (e.g., solar farms). The policy intent expressed in the exposure draft of the NPS-HPL was that development of new specified infrastructure would have a consent pathway to locate on HPL, but this has not been clearly translated into the final NPS-HPL. During redrafting the word 'development' was removed from the clause, restricting it to the *'maintenance, operation, upgrade, or expansion of specified infrastructure'.* This ambiguity could lead to inconsistencies in district plans, resource consent decisions and with other national direction.

Preferred option used during public consultation to provide for the construction of new specified infrastructure on HPL *(no longer recommended)*

The preferred option to address the ambiguity in relation to the construction of new specified infrastructure on HPL as published in the discussion document used for public consultation, was to amend the clause that provides a consent pathway for specified infrastructure on HPL (clause 3.9(2)(j)(i)). This option sought to clarify that this includes the 'construction' of new specified infrastructure as well as the *'maintenance, operation, upgrade, or expansion of specified infrastructure'.*

Submissions from some infrastructure and electricity industry groups indicated that the addition of the word 'construction' may not go far enough to capture all activities associated with specified infrastructure.

(New) Preferred option as a result of public consultation for specified infrastructure

Officials agree that in some cases, some activities (such as decommissioning) may not be clearly captured by the addition of 'construction' to clause 3.9(2)(j). It was intended that the addition of the word 'construction' could extend to capture wider activities associated with specified infrastructure (e.g. the construction of roads to access the site and stormwater ponds necessary for the operation of infrastructure). However, submitters have noted that this is not always the case and thus an alternative option was proposed (submitted by Electricity Sector Environment Group, Te Waihanga, and Transpower New Zealand Limited).[5] In assessing the previous preferred option against submissions received, officials have analysed the workability of that option for industry and recommend a different option than that proposed during public consultation.

The new preferred option recommended by officials is that that clause 3.9(2)(j)(i) be amended to read:

> *(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 development, operation, or decommissioning of specified infrastructure, including

[5] Noting that a number of alterative options were raised during public consultation, however, officials recommend the following as it addresses the ambiguity around providing for the construction of new specified infrastructure whilst ensuring that relevant tests are in place to ensure HPL is protected.

(but not limited to) its construction, maintenance, upgrade, expansion, replacement, or removal:

This option will result in further losses of HPL to infrastructure, particularly solar farms. Furthermore, this option captures wider activities associated with specified infrastructure developments, which is likely to result in loss of HPL required to accommodate these activities, however tests in the policy will manage and mitigate this loss. These losses however are anticipated to be small, since this option targets an ambiguity rather than fundamentally changing the objective or intent of the policy.

The (new) preferred option addresses the ambiguity around whether new specified infrastructure can locate on HPL. Additionally, it reduces the potential that other activities typically associated with, and important to, specified infrastructure developments may not be captured by merely adding 'construction' to clause 3.9(2)(j)(i). This option ensures that the NPS-HPL provides clear direction for councils working through applications for such activities. It improves alignment of the NPS-HPL with other national direction and with the original intent of the NPS-HPL. It aligns mostly with the criteria used to assess options in this RIA.

Other options such as retaining the status quo and non-regulatory interventions are not considered to adequately address the issue. Retaining the status quo will not address the issues raised nor provide a solution to the policy problem identified. MfE and MPI policy officials do not consider that non-regulatory options (such as Implementation Guidance and support for councils) would sufficiently address the issue. Guidance has already been developed[6] which was unable to fully address the issue or provide sufficient clarification.

Issue 2: no clear consent pathway for new intensive indoor primary production and greenhouses

The second issue covered in public consultation was that no clear consent pathway is provided for intensive indoor primary production and greenhouses to develop or relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

The policy intent in the development of the NPS-HPL was that these industries could locate on non-HPL (as they are not 'land-based primary production' as defined in the policy). However, these industries play an important role in the resilience and functions of the primary sector, through public consultation, it is clear that in some districts non-HPL is not feasible and the NPS-HPL is creating issues for the development of these industries.

Options to provide for the development and relocation of intensive indoor primary production and greenhouses on HPL

The preferred option, informed in part by submissions received during public consultation, officials' analysis, and wider Government work programmes and manifesto commitments, is to provide a consent pathway for intensive indoor primary production and greenhouses via clause 3.9(2) of the NPS-HPL.

[6] Ministry for the Environment. 2023. *National Policy Statement for Highly Productive Land: Guide to implementation*. Wellington: Ministry for the Environment.

The issues raised by primary industry stakeholders warranted further consideration and consultation, but the desired outcomes of climate change resilience and supporting food production industries needed to be balanced against the protection of a finite resource for use in land-based primary production, both now and for future generations (objective of NPS-HPL). As such, there was no 'preferred option' used in public consultation.

Submissions received outlined that the NPS-HPL impacts these industries ability to establish new developments, especially in regions/districts where the rural environment has high proportions of HPL (this results in limited alternatives for these industries to develop, e.g., in places like Manawatū District and Matamata-Piako District). Other submissions also raised that existing operations have faced consenting barriers to 'expand' due to the NPS-HPL. In working through public submissions and workability of different options, to fully address the issues raised by industry and some councils, the preferred option is to provide for the development, expansion, and relocation of these activities on HPL. This option addresses the policy problem and potential ambiguity that existing operations may not be able to 'expand' despite policy intent that legally established operations would be able to.

Other non-regulatory options such as Implementation Guidance and support for councils is not considered sufficient, because guidance material is discretionary and cannot override provisions in the NPS-HPL.

Limitations and Constraints on Analysis

The scope of this RIA is limited to interventions that either align with the intent of the NPS-HPL or is an extension of pathways already provided under the national policy statement. Some of the of key limitations associated with the policy approaches and analysis in this document are because the NPS-HPL has been in effect less than two years, meaning:

• most councils have not yet undertaken the necessary plan changes to align with requirements of the NPS-HPL.
• there has been limited testing of the policies provisions and limited evidence available to understand the full extent that the issues, addressed in this RIA, are impacting councils, applicants and stakeholders across New Zealand.
• there is limited evidence (such as lack of available resource consents and case law) to support the issues raised by renewable energy and primary production stakeholders.

Public consultation helped address some of the gaps in the analysis and evidence for both policy issues. Some aspects of the policy issues however, remain untested and difficult to quantify based on current data. For specified infrastructure, the demand for renewable energy developments such as solar is likely to be significant. Officials have attempted to quantify the amount of HPL that could be used or loss to these developments, however, these estimates are likely to differ across New Zealand and may result in some loss of HPL.

The policy issue relating to intensive indoor primary production and greenhouses have had limited consent decisions the Ministries are aware of. This can be attributed to a few things, such as:

- the relatively short time the policy has been in force;
- appetite for developing new operations is relatively low due to high costs associated with the industries; and
- no clear consent pathway in the NPS-HPL, meaning that industries have not looked to test provisions of the policy.

Although most of the councils that submitted on this issue were in favour, others such as Auckland Council where the industries are most likely to locate in and around did not support an amendment. This is because the markets and transport routes appealing to these industries are likely to disproportionately impact the region. This is also a relevant consideration for new specified infrastructure, as proximity to end users means that areas with higher populations are appealing for developments such as solar.

Another limitation of this RIA is that the costs associated with administering the regulations, consent applications and compliance have yet to be quantified. It is likely the costs will vary by district depending on the quantity of HPL within a district and the development pressures the district is facing.

Public consultation assisted in addressing some of the gaps in officials' analysis of marginal costs and benefits of amending the NPS-HPL (as well as trade-offs if the status quo were to be maintained). Such as the continuation of ambiguity about whether new specified infrastructure is able to develop on HPL, and continuation of no clear consent pathway for intensive indoor primary production and greenhouses. Although more information and contextual insight was provided by some submitters (such as potential future resource consent issues/challenges), testing of provisions of the NPS-HPL in consent decisions or case law to date on the policy issues consulted on have been limited.

Responsible Manager(s) (completed by relevant manager)
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Quality Assurance (completed by QA panel)	
Reviewing Agency:	The Ministry for Primary Industries

Panel Assessment & Comment:	The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed Regulatory Impact Statement: Amendments to the National Policy Statement for Highly Productive Land (the Statement). The RIA Panel considers that the Statement **meets all** the RIA Quality Assurance criteria. The document provides clear and thorough descriptions of the policy problems, analytical limitations, options, and information gathered through public consultation. The RIA Panel considers that the Statement provides robust advice to support informed decision-making.

Section 1: Diagnosing the policy problem

The following section – diagnosing the policy problem – is structured as follows:

Section 1.1 covers the context behind the NPS-HPL and the policy issues raised by renewable electricity generation and primary industry stakeholders in relation to the NPS-HPL.

Section 1.2 covers the context behind the policy issue for new specified infrastructure and how the status quo is expected to develop.

Section 1.3 covers the context behind the policy issue for intensive indoor primary production and greenhouses and how the status quo is expected to develop.

1.1 What is the context behind the policy problem and how is the status quo expected to develop?

1.1.2 Wider context of what the NPS-HPL is, and the issues raised about the policy

The National Policy Statement for Highly Productive Land (NPS-HPL) came into force in October 2022.

The NPS-HPL provides Local Planning Authorities with national direction on how highly productive land (HPL) should be managed through plan making processes and resource management decisions under the Resource Management Act 1991 (RMA). Most provisions have immediate effect, placing restrictions on rezoning, subdivision and land-use proposals on land that meets the transitional definition of HPL (Land Use Capability Classification System (LUC) classes 1–3, with some exceptions)[7]. The extent to which the NPS-HPL can influence the outcome of resource consent processes will depend on the operative land-use and subdivision rules in each district plan.

The primary objective of the NPS-HPL is to protect the soil resource for use in land-based primary production[8] and provide direction on how to implement section 7 of the RMA[9]. The inappropriate use or development of HPL is avoided by restricting activities that are not land based primary production from locating on HPL. The policy intent is that activities that do not rely on the soil resource of the land could locate on non-HPL.

The NPS-HPL recognises that there are a range of non-land- based activities that may need to locate on HPL to deliver wider cultural, social, environmental, and economic benefits. These include specified infrastructure, activities that support land-based primary production, freshwater and biodiversity management, addressing public health and safety, extraction activities, and public access. To accommodate this, there are pathways in the NPS-HPL for non-land-based activities to develop on HPL, subject to specific requirements, such as

[7] In the NPS-HPL, land is ranked against one of eight categories or classes based on its long-term potential for sustained agricultural production. This is known as the Land Use Capability Classification System (LUC). LUC Class 1 land is the most versatile and suitable for growing the largest range of crops. At the other end of the scale, class 8 land is the least versatile for primary production and is typically used for conservation purposes. Classes 1, 2 and 3 land are generally regarded as the most highly productive land in New Zealand.

[8] The NPS-HPL defines land-based primary production as *production from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land* (clause 1.3(1) of NPS-HPL).

[9] In achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to matters in s7 of the RMA including (b) the efficient use and development of natural and physical resources; (g) any finite characteristics of natural and physical resources:

functional or operational tests[10] being met (noting that not all the activities with exceptions in the policy are subject the functional or operational need test). See Appendix 1 for full list of exemptions.

Clause 3.9 of the NPS-HPL ensures that councils have some flexibility to respond to local need by providing consent pathways for certain activities that are deemed 'not inappropriate' on HPL.[11]

Two issues were identified with the NPS-HPL that warranted further consideration and wider public consultation:

1. It is unclear whether a consent pathway is provided for the construction of new specified infrastructure on HPL (other than via a designation despite the original intent that a pathway for such infrastructure would be provided).

2. No clear consent pathway is provided for intensive indoor primary production and greenhouses to develop and relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

These are considered separate policy issues and are discussed separately throughout this RIA.

1.2 Policy problem and its context (new specified infrastructure)

1.2.1 Policy Problem - providing for new specified infrastructure on HPL

The main policy issues are:

- ambiguity in the consent pathway for the construction of <u>new</u> specified infrastructure on HPL in clause 3.9(2)(j)(i), (where specified infrastructure is a defined term), this could lead to inconsistencies in district plans, resource consent decisions and with other national direction.
- the consent pathway provided in the NPS-HPL for the construction of new specified infrastructure is limited to designations and excludes developers/providers that are not requiring authorities under the RMA.
- the length of time needed to undertake a designation, limits specified infrastructure that is needed at pace (e.g., to support clean-up and repairs in the aftermath of Cyclone Gabrielle).

Requiring authorities can establish new infrastructure on HPL via designation under subclause 3.9(2)(h), however, there is no clear consent pathway for new specified infrastructure that is not undertaken by a requiring authority[12].

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[10] Functional need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.
Operational need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

[11] Clause 3.9 (1) directs Territorial Authorities to 'avoid the inappropriate' use of HPL. Clause 3.9(2) provides a list of 'exceptions' which are therefore deemed 'not inappropriate'. It is worth noting that in the development of local plans, some of the activities in clause 3.9(2) could be directed to a consent process, or may be considered permitted activities, how councils give effect to this clause is likely to differ across New Zealand.

[12] RMA designation powers are limited to electricity distributors under section 166 of the RMA and section 4 of the Electricity Act 1992 and does not include electricity operators that do not also distribute, such as such as renewable electricity generators.

This prevents new/replacement infrastructure being provided at pace as the only clear route for establishing new specified infrastructure is via designation, which is a long process.

While this is an issue for all new specified infrastructure, it is of particular concern to renewable electricity generation operators, specifically solar farms[13], telecommunications/ broadband providers and those responding to the effects of disasters, as evident with Cyclone Gabrielle. This potentially presents a limiting factor in building resilience to climate change.

1.2.2 Context to the Policy Problem for specified infrastructure

Drafting changes between the exposure draft and the gazetted version of the NPS-HPL

Throughout the development of the NPS-HPL, providing a pathway for the development of new specified infrastructure on HPL was the intent of the policy as expressed in the exposure draft of the NPS-HPL [14]. Drafting changes between the exposure draft and gazetted version resulted in ambiguity for stakeholders as to whether new specified infrastructure is provided with a consent pathway on HPL or not. This is detailed further in Appendix 2.

Ensuring consistency with the NPS-HPL objective and with other national direction/regulatory framework for specified infrastructure

Any amendment to address these issues will need to align with the objective of the NPS- HPL to protect HPL from inappropriate use. This will need to be balanced with the intent to give councils scope to provide for non-land-based uses on HPL that provide wider benefits and that are necessary for social, economic, environmental, or cultural wellbeing.

The NPS-HPL should also be consistent with other national direction and emerging national policy. Transpower[15] and the National Infrastructure Strategy[16] note unresolved conflicts between national policy direction as one of the barriers to improvement of distribution capacity and establishment of local generation schemes.

Ensuring consistency with the *National Policy Statement for Indigenous Biodiversity (NPSIB)*

The NPSIB[17] allows the "maintenance, operations, upgrade of established use activities" (clause 3.15) and provides a consent pathway for new and major upgrades to specified infrastructure in or affecting SNAs using the effects management hierarchy[18] (Clause 3.11).[19]

The NPS-HPL provides a consent pathway for maintenance, operation, upgrade, or expansion of specified infrastructure (clause 3.9(2)(j)(i)). Construction/development of new specified infrastructure is not specifically provided for as in the NPSIB. Not having a clear consent pathway for the construction of new specified infrastructure (other than via designation)

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[13] Proposed National Policy Statement for Highly Productive Land Exposure Draft Testing, p.11 https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/proposed-national-policy-statement-for-highly-productive-land-exposure-draft-testing/

[14] National Policy Statement for Highly Productive Land Evaluation under section 32 of the Resource Management Act, 2022

[15] Transpower 2020, Whakamana i Te Mauri Hiko - Empowering our Energy Future - TP Whakamana i Te Mauri Hiko.pdf (amazonaws.com)

[16] New Zealand Infrastructure Commission - Rautaki Hanganga o Aotearoa, New Zealand Infrastructure Strategy, 2022- 2052. (pg61-62)

[17] National Policy Statement for Indigenous Biodiversity https://environment.govt.nz/acts-and-regulations/national-policy-statements/proposed-nps-indigenous-biodiversity/

[18] Effects Management hierarchy is an approach to managing and mitigating the adverse effects of an activity on indigenous biodiversity or other natural values (see full definition in NPSIB).

[19]Note that NPSIB provisions do not apply to renewable electricity generation or electricity transmission network infrastructure.

may result in inconsistencies between the NPS-HPL and other national direction.

Ensuring consistency with the *National Policy Statement for Renewable Energy Generation (NPSREG), the National Policy Statement on Electricity Transmission (NPSET) and the National Environment Standards for Electricity Transmission Activities (NESETA)*

Some of the issues raised with respect to the construction of new specified infrastructure are a part of wider work undertaken to strengthen current RMA national direction on renewable electricity generation and electricity transmission. This relates specifically to the NPSREG, NPSET and the NESETA. Changes to consent pathways for renewable energy and the proposed NPSREG and NPSET were the subject of public consultation (20 April 2023 to 1 June 2023)[20] and the feedback is now under review.

The proposals in that discussion document focus on strengthening the current national direction on renewable electricity generation and electricity transmission, to provide a consenting process that is more efficient, certain, and environmentally sustainable for renewable energy generation (REG) and Electricity Transmission Network (ETN) projects[21]. The aim is to provide clear and nationally consistent consent pathways for renewable electricity generation and electricity transmission. That discussion document did not specifically mention the NPS-HPL, nor did it address REG or ETN development on HPL. However, all these pieces of national direction play a part in consent pathways for REG and ETN.

There is a clear need to accelerate the development of renewable electricity generation to meet future demands and government climate and Net Zero goals by 2050. Providing for new specified infrastructure on HPL, such as solar panels, will work towards coalition agreement of the new Government to double the country's renewable electricity.

The interim Climate Change Committee 2019 report[22] found that New Zealand needed to build a substantial amount of new renewable electricity capacity over the next 15 years to support a 100% renewable electricity option.

Solar electricity generation activities have preferred site attributes for solar development, that closely align with that of HPL, including aspect, solar irradiance, and topography alongside access to transmission and/or distribution infrastructure. Many solar farms across Aotearoa New Zealand are already located on HPL. Appendix 3 includes a sample of maps that show established solar farm locations in relation to HPL.

There has been a noticeable increase in the number of resource consent applications to district councils and under the Covid-19 Recovery (Fast-track Consenting Act 2020) for the development of renewable electricity generation infrastructure on HPL, such as the Waiterimu Solar Farm and the Tauhei Solar Farm in the Waikato. One has been declined and the rest are awaiting decisions (see table in Appendix 4). The processing of these consents is coming up against the need to protect HPL while trying to provide for additional renewable electricity generation to reduce greenhouse gas emissions, meet market demand and achieve government targets.

Delay for necessary specified infrastructure while waiting for the designation process

In responding to Cyclone Gabrielle, emergency legislation had to be developed at pace to address the impacts of the cyclone. This included the need for infrastructure on HPL to

20 MfE and MBIE 2023 Strengthening National Direction on Renewable Energy Generation and Electricity Transmission - Consultation Document (mbie.govt.nz)

21 Doubling New Zealand's renewable electricity

22 Interim Climate Change Committee – Accelerated electrification evidence, analysis, and recommendations, 2019

facilitate recovery operations in Hawkes Bay. The ambiguity in the NPS-HPL for the construction of new specified infrastructure (other than via a designation) limits the ability of councils and other infrastructure providers to respond at pace to emergency situations such as Cyclone Gabrielle. For example, a situation where infrastructure was needed to be developed at pace was to support the clean-up and repairs in the aftermath of Cyclone Gabrielle, some infrastructure could not proceed with the urgency the situation required, due in part to provisions of the NPS-HPL.

In instances where natural disasters occur, some councils may give infrastructure providers emergency powers to undertake emergency works[23]. As such, there could be cases where some infrastructure providers who do not have designation status are able to undertake urgent work in response to disasters (e.g., repair works). However, these provisions, after a certain period, require a resource consent. The changes to the NPS-HPL will extend to infrastructure providers who cannot designate land, which will streamline emergency work processes.

Pre-engagement workshops with councils and renewable energy stakeholders

In early May 2023, officials held online targeted workshops with different stakeholders, from the renewable electricity sector and councils, who had previously been involved in the development of the NPS-HPL. The workshops were aimed at gathering initial thinking from councils and different stakeholders on the primary issues, potential options, and gain further understanding of the implications.

Stakeholders from the renewable energy sector showed strong support for a change to the NPS-HPL to provide clarity for the development of new specified infrastructure particularly that associated with renewable electricity generation (such as solar farms).

Some councils voiced concerns that the pathway for the development of new specified infrastructure on HPL is not clear in the current NPS-HPL and requires guidance. Support for amendments to clause 3.9(2)(j)(i) was dependant on the district, the extent of HPL and the amount of renewable energy generation consent applications currently being processed.

Public consultation – case for an amendment and key themes

Out of all territorial authorities (21 in total) that provided a submission on this issue, Auckland Council was the only one in favour of retaining the status quo, all other Councils supported providing an amendment. All energy sector and infrastructure providers supported an amendment to clause 3.9(2)(j)(i). See Summary of Submissions and Recommendations report for full list of consultation themes and recommendations.

From submissions, a mix of councils and industry outlined why the NPS-HPL needs to be amended. Reasons included:

- To address inconsistency in how councils are providing for specified infrastructure;
- To support New Zealand's renewable energy transition; and
- To facilitate building infrastructure in response to natural hazards and climate change preparedness.

The section on 'what are the marginal costs and benefits of the option' covers the nuances of public submissions on the options consulted on, including key themes raised by those who were not in favour of amending the NPS-HPL.

[23] s330A, RMA 1991

1.2.3 How the status quo is expected to develop?

As the NPS-HPL has been in force for less than two years, its impact on the construction of new specified infrastructure has yet to fully be assessed through policy development, resource consents and appeal decisions. Although the majority of solar farms located on HPL have been consented prior to the NPS-HPL coming into effect, there has been an increase in resource consent applications for solar farms on HPL, with four solar farms being consented (three via fast-track legislation), one declined, and 16 are at the application or pre-application stage (as of April 2024)[24]. It is worth noting that the NPS-HPL is but one piece of national direction that decision makers ought to have regard to[25], meaning that in some cases, it is not (just) the NPS-HPL that results in an application being declined – some applications are declined on grounds that it could result in significant ecological and indigenous biodiversity or landscape impacts.

Most submissions received from public consultation were in favour of clarifying whether new specified infrastructure (undesignated) is provided for in clause 3.9(2)(j)(i) of the NPS-HPL. The respondents covered that the status quo would not:

- enable consistent application of the NPS-HPL, and as such councils are likely to give effect to the NPS in varying ways. This is likely to lead to greater costs for applicants and councils, with more decisions being taken to appeal, leaving it to the courts to determine and provide clarity on the clause through case law.
- facilitate easier transition to renewable energy and assist in meeting New Zealand's emission reduction targets via reducing the complexity in consenting solar farms.
- allow for infrastructure needed to address natural hazards to be developed quicker.

The submissions who were in favour of maintaining the status quo believed that:

- the relatively short time the NPS-HPL has been in force means that there is not a sufficient body of evidence to suggest there is a need to change the status quo.
- there are alternatives for some specified infrastructure (e.g., solar) to locate, such as on rooftops of houses/buildings and non-HPL.
- under the status quo, the NPS-HPL would continue to provide specifically for the *maintenance, operation, upgrade, or expansion of specified infrastructure* – however ambiguity about whether new specified infrastructure is anticipated as 'not inappropriate' use of HPL remains.

As consent decisions to date show, the status quo is likely to continue with councils giving effect to clause 3.9(2)(j)(i) in varying ways and some projects being consented and others declined. How local authorities give effect to provisions of any piece of national direction is often subject to variation. From public submissions received, there is evidence that the NPS-HPL is impacting how councils provide for new specified infrastructure – particularly solar farms. Councils and applicants (renewable energy providers and developers) have noted that the NPS-HPL as currently drafted may lead to inconsistent application of clause 3.9(2)(j)(i), which increases consenting time and costs, as well as potentially resulting in appeals to the Environment Court for interpretation of the clause[26].

[24] Internal MfE data (2024) for solar farms on HPL (LUC 1-3), although most have been consented before the NPS-HPL came into effect.
[25] i.e. Applicants will need to demonstrate a functional or operational need to locate on HPL and demonstrate that loss of HPL will be minimised and reverse sensitivity effects on HPL is avoided.
[26] Noting that, of the resource consents that have been approved for solar farms to develop on HPL, only one has been declined and most have been approved.

1.3 Policy problem and its context (intensive indoor primary production and greenhouses)

The following section diagnoses the policy problem in relation to intensive indoor primary production and greenhouses. Further, it notes why in the policy development of the NPS-HPL these activities were excluded as appropriate use and development of HPL. It also then covers key issues raised in public submissions. Lastly, it covers how the status quo is expected to develop.

1.3.1 The policy problem

There is no clear consent pathway for new intensive indoor primary production and greenhouses to develop, expand[27], and relocate on HPL despite their importance for ensuring a diverse and resilient primary sector.

The NPS-HPL provides consent pathways for other non-land-based activities to locate on HPL. Some primary industry stakeholders have argued that specific provision for intensive indoor primary production and greenhouses should be provided (as they are identified in National Planning Standards as operations that can be provided for in the general rural zone and in the rural production zone)[28].

Some councils with larger proportions of HPL in their rural environment submitted that they have found it difficult to provide for the activities due to limited alternatives (e.g non-HPL is limited). Furthermore, other zones, such as industrial/special purpose zones, present logistical and planning limitations, this is covered in more detail in 'how status quo is expected to develop' section below.

1.3.2 Context behind the issue

The NPS-HPL prioritises HPL for 'land-based primary production' (activities that rely on the soil resource). This definition is differentiated from the National Planning Standards definition of 'primary production'. The National Planning Standards provides a wider scope of activities anticipated as 'primary production'. The narrower definition in the NPS-HPL recognises that activities that do not rely on the soil resource of HPL (some which are provided for in the National Planning Standards, see table 1 below) may be able to locate in alternative parts of the rural environment that are not HPL, including intensive indoor primary production and greenhouses. However, submissions received via public consultation outlined that in most circumstances, there is no clear consent pathway for these to develop on HPL due to provisions of the NPS-HPL, nor do alternative locations exist in regions where the rural environment has high proportions of HPL. Further detail provided in 'how the status quo is expected to develop' section below.

[27] Clause 3.11 of the NPS-HPL gives direction to territorial authorities (TA's) on how they are required to provide for the continuation of existing activities on HPL through objectives, policies and rules in district plans. TA's must *enable the maintenance, operation, or upgrade of any existing activities on highly productive land*. Some submitters raised that 'upgrade' does not always enable 'expansion'. Officials agree that upgrade may not always entail expansion of existing activities, as such, this is included as a the preferred option seeks to address.

[28] The National Planning Standards defines intensive indoor primary production as *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.*

Industry have raised that this definition of intensive indoor primary production in the National Planning Standards excludes greenhouses, thus, the matter is included as separate amendment. Greenhouses is a broad term that encompasses an array of different structures erected to house cropping systems. Greenhouses are structures erected for the purpose of indoor growing. They do not typically rely on the soil resource but are rural activities. Greenhouses can include glasshouses, plastic houses, shade houses and tunnel houses.

Table 1: Definitions from National Planning Standards and NPS-HPL

Primary production (National Planning Standards)	Land-based primary production (NPS-HPL)
(a) any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and (b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a); (c) includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but (d) excludes further processing of those commodities into a different product.	**land-based primary production** means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land

1.3.3 Primary industry concerns on the NPS-HPL: Intensive indoor primary production and greenhouses

Some primary sector bodies have pointed to other activities that are not soil reliant such as specified infrastructure having a pathway under the NPS-HPL to develop on HPL. Furthermore, industry have argued that their activities are provided for in the General Rural and Rural Production Zones in the National Planning Standards, and it is not feasible for them to locate in other environments such as urban or industrial areas. This is primarily to address biosecurity risks, reverse sensitivity considerations, and proximity to ancillary activities (see table 2). Furthermore, for districts where rural zones are predominantly HPL, such as, Matamata-Piako, Manawatū, and Horowhenua districts, the primary sector have argued that they would find it difficult to establish new sites due to such districts having high proportions of HPL in their rural zones.

Table 2: High-level outline of the impacts of no clear consent pathway for industry

Issue	Description
Climate change considerations	• National Adaptation Plan 2022 (NAP) identifies primary sector as one of the most vulnerable sectors to the impacts of climate change. • Diversification of production builds resilience. • No clear consent pathway may make decarbonisation of both sectors more challenging. • Extends growing season in colder regions. • Provides regional diversity in food supply system. • A form of climate adaption.
Locating intensive indoor primary production and greenhouses away from rural environment	• Locating these activities in urban or industrial areas are unlikely to be feasible as they could place added pressure on urban waste infrastructure due to solution management and discharge requirements. • Urban land values are about 10 times higher than suitable location in a rural zone, making these activities commercially unviable. • Viable options are limited in districts with high proportions of HPL • Increased risk of reverse sensitivity arising from truck movement, light, spray drift, odour and noise. • Locating these activities (such as piggeries or poultry) in other zones like a special purpose zone presents biosecurity risks due to requirements of separation between farms. • Industrial zones would require significant surrounding land area to mitigate impacts of the operation on neighbouring properties[29] and potentially requires

[29] For instance, the high concentration of Nitrogen in pig effluent means that ample land is needed to spread effluent, but this will depend on the size of the pig farm, its composition (breeding versus fattening only), the effluent treatment system on farm, and the regional council rules for maximum Nitrogen loading per year.

	more industrial land to accommodate intensive indoor primary production and greenhouses (typically not provided for in industrial zones), which may mean this extension may occur on HPL anyway (issue Matamata-Piako raised in their submission).
Industry growth	• Anticipated growth of both industries in response to a growing New Zealand population and opportunities in low emissions food markets. • Aging greenhouses require replacement or change of locations as leases end. • Growth is expected in both industries, however, based on historical growth and cost of investment, there is not an expected significant growth in both industries.

Historically, the development of intensive indoor primary production and greenhouses have occurred on land that is often HPL, which means that both sectors have established necessary ancillary activities to ensure safe and optimal function of their operations. Intensive indoor primary production and greenhouses are often synergistic but not necessarily supportive of land-based primary production. Intensive indoor primary production and greenhouses prefer to be located near other farming systems and horticultural businesses where efficiencies in packhouses, transportation, distribution, and labour can be achieved.

Some primary industry stakeholders have noted that locating intensive indoor primary production and greenhouse activities on land that is not LUC 1-3 is unlikely to be economically viable. Historically, intensive indoor primary production and greenhouses have been located on land that is flat and has suitable climate, which is often LUC 1-3 land. This is primarily driven by:

- cost-effectiveness of locating on flat land (minimal earthworks required for cut and fill)
- proximity of HPL to ancillary activities such as labour markets and transport
- proximity to nutrient solution management and discharge infrastructure
- constraints such as biosecurity risks if they were to be established in an urban area
- land availability and constraints in other areas that is not rural (e.g., reverse sensitivity considerations and biosecurity risks of locating in urban areas)
- constraints in rural areas which are primarily surrounded by HPL, thus limited alternatives
- reverse sensitive considerations such as noise, odour, truck movements and light
- less prone to erosion and nutrient run-off.

1.3.4 What are the current potential options under the NPS-HPL for intensive indoor primary production and greenhouses to develop on HPL, and what are the limitations of these options?

Under the status quo, the development of new intensive indoor primary production and greenhouses are directed away from HPL. There are some potential pathways under the status quo, but these are not clear and can result in added consenting barriers/costs for the industries (see table 3 below). Most public submissions did not believe that there is a clear consent pathway under the status quo.

Table 3: potential pathways under the status quo

NPS-HPL clause	Limitation
3.9(2)(a) it provides for supporting activities on the land	Primary production stakeholders point out that these activities are rarely the supporting activity but are the primary activity. Councils during public consultation also noted that this, and other pathways (such as those below) are not clear. In the definition of 'supporting activity' in the NPS-HPL, activities deemed to be 'supporting' *are activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing).* As such, primary industries have raised the issue that clause 3.9(2)(a) does not apply to new intensive indoor primary production and greenhouses. These operations, although synergistic to other farming systems, often do not support the functions of land-based primary production and thus would not have scope under clause 3.9(2)(a). Officials do not consider that although it is intended that clause 3.9(2)(a) may capture some intensive indoor primary production and greenhouses as 'supporting activity', this clause would not extend to capture the development of new commercial scale operations, nor is this pathway clear for the industries.
3.9(2)(g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land	Primary sector stakeholders have commented that this does not address concerns for the development of new commercial scale operations. This is because commercial scale operations are neither small-scale or temporary and are likely to have some impact on the productive capacity of the land. The design life of a typical greenhouse for instance, is generally 25 years, which is not considered to be a temporary activity. In New Zealand, 37% of greenhouses are larger than 5ha, while 18% are smaller than 1ha in size. Minimum lot sizes for intensive indoor primary production and greenhouses are not prescribed, as it is normally driven by factors such as crop type, location and environment that determines its viability. Officials view that clause 3.9(2)(g) does not provide a clear consent pathway for the development of intensive indoor primary production and greenhouses on HPL. This clause would not extend to nor capture the development of new commercial scale operations.
3.11(1)(a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land	The upgrade to intensive indoor primary production and greenhouse facilities provided in the NPS-HPL may not in some cases extend to increased intensity in the activity. This is likely to restrict the ability of industry to expand existing operations beyond that provided in clause 3.11. The poultry sector for instance may not be able to use this pathway to expand their building footprint, which would mean one of the

	most popular meat proteins for New Zealanders would not be able to expand their building footprint beyond that anticipated through clause 3.11. Territorial authorities have discretion to decide how clause 3.11 will work in their district plan. Submissions during public consultation from some primary industries and Selwyn District Council noted that 'upgrade' often does not entail 'expansion', and 'upgrade' (which the NPS-HPL uses) cannot be assumed to infer that the NPS-HPL provides for the 'expansion' of existing activities. As such, clause 3.11 is not a viable option for new intensive indoor primary production and greenhouses, as this clause is relevant only for already established activities (legally established prior to the policy coming into effect, October 17 2022).

1.3.5 How is the status quo expected to develop?

Since the NPS-HPL has been in force – October 2022 – intensive indoor primary production and greenhouses have had no clear consent pathway in the policy. The policy intent was that these activities could locate in alternative locations that were not HPL. As such, the status quo intended that the exclusion of these activities as appropriate use and development of HPL would retain the policy objective of the NPS-HPL: to protect HPL for use in land-based primary production. Retaining the status quo would mean that:

- intensive indoor primary production and greenhouses continue to be excluded on HPL where their operation is neither supporting a wider farming system nor meets the provisions of 'supporting activity' in clause 3.9(2)(a) of the NPS-HPL, or other provisions in the NPS-HPL.
- these industries continue to face consenting barriers to establish new activities as noted by primary industries in their submission during public consultation. For example, NZ Pork, Inghams and Horticulture New Zealand, noted in their submissions the NPS-HPL has resulted in increased barriers for these industries to either expand existing operations and or develop new commercial scale operations. The status quo has also been noted as offering little investment certainty, with Inghams outlining in their submission that their $215 million investment programme has been put on hold until there is a clearer consenting pathway for the industry to expand and develop new operations.
- councils facing issues of providing for these industries in their districts will continue. District councils such as Manawatū and Matamata-Piako submitted that due to large areas in their rural environment being HPL (LUC 1-3), they have little scope to be able to provide for intensive indoor primary production and greenhouses to establish the rural environment and in other zones[30] due to high proportion of HPL in the districts (e.g. approximately 40% of land in the Manawatū District is LUC 1-3,

[30] Locating these activities in zones such as industrial zones may not always be feasible. For example, in some council assessments for activities that may be provided for in industrial zones, rural activities such as intensive indoor primary production and greenhouses are generally not anticipated as industrial activities, as such, if these activities are provided for in an industrial zone, councils would be required to provide more business land for activities typically located in rural zones. As Matamata-Piako notes in their submission, *"all the urban settlements within Matamata-Piako are situated on highly productive land, so any extension to the existing industrial zones required to accommodate rural industry will result in a loss of highly productive land anyway. Therefore, no positive benefit would be gained by directing these businesses to an industrial zone, particularly in the Matamata-Piako context".*

about 66% of the Matamata-Piako District is HPL). Intensive indoor primary production (particularly poultry farms) have historically developed in Matamata-Piako for a number of functional /operational needs, such as being situating near labour markets, transport routes and nutrient solution management. The poultry industry is most concentrated in the Matamata-Piako District and occupies around 142ha of the districts HPL, which is around 0.01% of total coverage. Accessibility plays a key role in why areas with less accessible routes are less attractive for these industries. This can be attributed to increased costs that can be incurred by disconnect between provider and their main markets.

- there is a possibility of revisiting the NPS-HPL in future to provide for the development of new and relocating intensive indoor primary production and greenhouses on HPL. This is due to the forecasted growth of both industries to accommodate New Zealand's growing population, maximising export opportunities[31], and the land-based primary production sector being identified as being particularly vulnerable to climate change (and therefore structures to house livestock and crops become more appealing). The growth of the industries is not expected to be significant. Both systems are efficient production methods, and as such, growth on HPL is not expected to result in large areas of HPL being lost.
    - Inghams for instance, supplies 8-10 million servings of chicken from 50ha of land
    - There are an estimated 310 ha of food-producing greenhouses in New Zealand that supply over 90% of the tomatoes, capsicum and cucumber consumed fresh in New Zealand[32]. The In Hort NZs submission during public consultation, they noted that by 2030, the projected area (if expansion of the industry were assumed to be on HPL), would be roughly 341ha (around 0.009% of total HPL across New Zealand)[33].
- that both sectors have less flexibility to adapt to climate change and continue to meet food demands by New Zealand's population. It is likely that food producing sectors like intensive indoor primary production and greenhouses may look to increase the use of structures to house animals and crops to ensure some level of security and resilience to adverse weather events[34].
- there is less flexibility for the industries to transition to low emissions energy sources. Many operations use coal or gas to heat animal sheds or greenhouses. Primary sector stakeholders have expressed that reducing options for intensive indoor primary production activities and greenhouses to locate on HPL will make it more difficult to adapt these activities to climate change or to set up new ones in

[31] For instance, New Zealand imports a very small quantity of poultry and a vast majority of poultry meat consumed in New Zealand are all locally produced and processed (due to biosecurity constraints on imports). Chicken meat is one the most affordable meat proteins which has made it a popular choice for domestic consumption. Changing animal regulations and meeting demands for poultry means that the sector anticipates growth to meet demands. For districts like Matamata-Piako where the rural environment is primarily HPL, the district also has the greatest number of poultry farms in the country, they noted in pre-engagement workshops and during public consultation with officials that their district may warrant flexibility in providing for indoor poultry farms on HPL.

[32] Greenhouses also play a role in growing of leafy greens, chilis, courgettes, eggplants, herbs, sprouted beans, witloof, nursery plants, cut flowers and medicinal marijuana. HortNZ FINAL Attachment to Submission on NPSHPL Amendments.pdf (sharepoint.com)

[33] It is important to note that presenting these as proportions of HPL potentially used for greenhouses does not paint a holistic picture of HPL nationally. In other words, the cumulative loss of HPL to not only greenhouses but to other non-land based activities, is likely to be higher depending on scale of the operations. Presenting these as proportions of HPL, although useful in outlining scale and projected growth of a single industry, needs to be cautioned with the caveat that less than 15% of New Zealand's landmass is HPL (LUC 1-3), and as such proportionality here may seem insignificant, but across New Zealand, the loss of HPL occurs cumulatively. Measures in the NPS-HPL are intended to ensure the cumulative loss of HPL is minimised and mitigated.

[34] It should be noted that locating these activities indoors does not provide guaranteed protection from climate change induced weather events as buildings are also vulnerable to damage. Furthermore, there is some discretion for councils in the NPS-HPL to enable weather protection structures to be erected over land-based primary production activities without the activities being considered intensive indoor primary production or being in a greenhouse.

appropriate locations to enable decarbonisation. For example, many greenhouses that currently rely on gas or coal for heating may need to relocate to somewhere with a geothermal electricity source[35] as one of the more affordable sources of renewable energy, and not being allowed to locate on HPL may make this transition more difficult.

There are examples of greenhouses which do use the soil, such as those utilised by LeaderBrand (see image in Figure 1). Greenhouses that utilise the soil resource are anticipated as having a clearer consent pathway to be enabled on HPL under the status quo of the NPS-HPL. For instance, greenhouses by LeaderBrand (that do not pave over the soil but have structures over the soil as pictured below) would have scope to develop on HPL[36].

Figure 1: LeaderBrand greenhouse that uses soil resource[37].

A large portion of greenhouses in New Zealand, however, use mediums that do not rely on the soil (e.g., primarily use soil-less growing media)[38]. For instance, greenhouse crops may use soil-less media such as planting into pumice or sawdust filled plastic bags/buckets, in rock wool or cocopeat slabs. There is an estimated 310ha of greenhouse area across New Zealand with a majority being non-soil reliant. The projected climate vulnerability of the primary sector as identified in the National Adaptation Plan 2022[39] may warrant some high value crops such as leafy greens to utilise greenhouses for protection from the elements. Enabling a range of primary production activities also helps enable a more diverse primary sector, which is inherently more resilient to natural disasters and economic shocks.

[35] GNS undertakes project to promote geothermal greenhouses in New Zealand (thinkgeoenergy.com)
[36] Whether a greenhouse paves over the soil resource or not is dependent on the type of crop(s) intended to be produced. The greenhouse in figure 1 by LeaderBrand will produce fresh vegetables year-round (primarily leafy greens), other greenhouses used to grow tomatoes use soil-less growing mediums.
[37] Homepage - LeaderBrand
[38] Based on available data, it is difficult to distinguish between greenhouses that use the soil resource (such as those by LeaderBrand), and greenhouses that pave over the soil with artificial flooring (e.g., concrete). Data exists on known farms and where they are situated (some operations may be subject to commercial sensitivity), however, it is not possible based on current data to distinguish whether the farms are strictly indoor, or use the soil resource, and or are mixed systems (indoor with elements of outdoor system and vice-versa). Industry data estimates over 300ha of greenhouses in New Zealand, Fresh-Facts—-December-2023.pdf (unitedfresh.co.nz), 23.10.30_HortNZ-FINAL-Submission-on-NPSHPL-Amendments.pdf
[39] Urutau, ka taurikura: Kia tū pakari a Aotearoa i ngā huringa āhuarangi | Adapt and thrive: Building a climate-resilient New Zealand (environment.govt.nz)

Intensive indoor primary production industries that use or rely on the soil resource of HPL are anticipated as having a clearer consent pathway than operations that do not use the soil. Due to the nature of some operations, some adopt mixed use[40] or vertically integrated methods[41], as such, the footprint of intensive indoor primary production across New Zealand is difficult to distinguish based on current data.

The limitation of current data was also an issue that councils and other submitters raised in their submissions and post consultation feedback[42]. Those that were in favour of maintaining the status quo outlined that the lack of evidence as to the extent of the issue warrants that the NPS-HPL as currently drafted should be maintained.
Submitters further noted that under the status quo;

- alternative locations are feasible for these industries to locate, such as urban areas or industrial areas; and
- the industries are likely to result in the permanent loss of HPL, inconsistent with the objective of the policy to protect HPL for land-based primary production.

Councils, industry and others that were in favour of an amendment pointed to the need for greater flexibility to provide for these industries, noting that under the status quo:

- there is no clear consent pathway for the industries, typically rural activities, to develop in the rural environment, particularly when a districts rural zone has high proportions of HPL, and other zones present planning and logistical challenges.
- it is unlikely in most circumstances that intensive indoor primary production and greenhouses could develop on HPL. Inghams Enterprises in their submission noted that under the status quo, expanding existing activities has faced consenting issues, where the addition of new sheds was declined due to provisions of the NPS-HPL. As such, it is likely that the status quo will continue to exclude these industries from developing, (in some cases) expanding, or relocating on HPL.

Other considerations for how the status quo is expected to develop for intensive indoor primary production and greenhouses

The National Adaptation Plan 2022 and National Climate Change Risk Assessment 2020 outline that the primary production sector needs to be proactive in adapting to climate impacts to build their resilience[43]. This adaptation could be through relocating out of high-risk areas, such as those impacted by recent weather events (e.g., flood plains), as well as flexibility in how crops/goods are produced. A key concern raised by primary production sectors is that they require flexibility to adapt to climate change. Restricting intensive indoor primary production and greenhouses on HPL reduces their flexibility to site new activities or relocate existing activities to more appropriate, future proofed locations. Like many other sectors, the intensive indoor primary production and greenhouse sectors will also need to transition to renewable energy sources to support a low-emissions economy.

[40] Industry Facts | Poultry Industry Association New Zealand (pianz.org.nz)
[41] Managing the use and development of highly productive land: Potential amendments to the NPS-HPL. Consultation submission by Inghams Enterprises Pty Ltd. 31 October 2023.
[42] Some councils noted that they either didn't hold data on intensive indoor primary production and greenhouses, or they faced difficulties of distinguishing between whether the farms were strictly indoor or mixed use.
[43] National Climate Change Risk Assessment - Main Report (environment.govt.nz)

2. What objectives are sought in relation to these two policy problems?

The consideration of objectives is guided by the purpose of the RMA and the objective and intent of the NPS-HPL. There are a range of tensions and trade-offs in the consideration of objectives. For instance, protecting a finite resource in highly productive land whilst ensuring that appropriate pathways are provided for development needed to deliver wider public benefits and work toward meeting Government goals (e.g., climate resilience, emission reduction, resilient primary sector).

At the top of the hierarchy of objectives for this analysis is the objective and policies of the NPS-HPL:

- to protect highly productive land for use in land-based primary production, both now and for future generations, whilst enabling activities that are not 'inappropriate' to occur on HPL

In undertaking this analysis, officials worked to strike a balance between providing for specified infrastructure, intensive indoor primary production and greenhouses, easing the regulatory burden on industry and providing clearer direction for councils, with ensuring that the objective and intent of the NPS-HPL is maintained.

The objectives for the amendment to provide for specified infrastructure are:

1. Resolve the ambiguity in interpretation of clause 3.9(2)(j)(i);
2. Achieve a balance between a nationally consistent approach to managing and protecting HPL from inappropriate subdivision, use and development, while considering local context and needs;
3. Ensure a consistent approach across national direction;
4. Provide a consent pathway for the construction of new specified infrastructure on HPL (which cannot occur via the designation pathway), which improves the resilience of rural infrastructure, can be developed at pace to respond to emergency situations or supports the Government's climate change commitments including 100% renewable electricity generation by 2030;
5. Address the increased demand for renewable electricity generation on HPL, by providing for a clearer regulatory framework on how to balance the need to increase renewable electricity generation against the need to protect HPL.

To ensure that the loss of HPL is minimised and mitigated, the NPS-HPL provides tests that specified infrastructure developments must meet. Addressing the infrastructure needs of rural communities and providing for infrastructure with wider public benefits may come at the cost of less HPL available for land-based primary production. The objectives above relating to the construction of new specified infrastructure on HPL will not always completely fulfil the HPS-HPL objective to protect HPL for land-based primary production. The tests in the NPS-HPL are needed to allow councils to balance the loss of HPL against wider public benefit from new specified infrastructure. More detail is provided in the cost benefit section below.

The objectives for the amendment to provide for intensive indoor primary production and greenhouses:

1. Resolve issue of no clear consent pathway for these industries;
2. Achieve a balance between a nationally consistent approach to managing and protecting HPL from inappropriate subdivision, use and development, while considering local context and needs;
3. Build resilience in the primary sector;
4. Provide flexibility for regions/districts with higher proportions of HPL and recognition of the importance of the industries to New Zealand's food system.

The NPS-HPL provides tests and measures to ensure that the loss of HPL is managed and mitigated (e.g. clause 3.9(3)). The objectives above of resolving the issue for the industries and providing flexibility enabling resilience, need to be balanced with the objective of the NPS-HPL. The objectives sought here for the industries will not always completely fulfil the objective of the NPS-HPL to protect HPL for land-based primary production or the purpose of the RMA. It is worth noting that the NPS-HPL does already provide scope for non land-based activities to occur on HPL. These provisions would extend to intensive indoor primary production and greenhouses.

Section 2: Deciding upon an option to address the two policy problems

What criteria will be used to compare options to the status quo?

Following the objectives above, the criteria below in table 4 were used to evaluate the options in this RIA.

Table 4: criteria used to assess options

Criteria	Approach for analysis
1. Consistency with the NPS-HPL	• Supports the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations. • Aligns with policy intent of the NPS-HPL[44]
2. Consistency with the wider resource management system	• The option aligns with relevant sections of the RMA and other national direction.
3. Effectiveness	• Provides a clear consent pathway for the development of non-land-based primary production on HPL, in line with the policy intent of the NPS-HPL.
4. Implementation	• Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.
5. Cultural, Environmental, Economic and Social Wellbeing	• Balances cultural, economic, environmental, and social wellbeing, in line with the policy intent of the NPS-HPL.

The criteria in Table 4 was used to assess the options put forward to address the two policy issues outlined in this document. Additionally, the criteria were used to assess the consistency of the options with provisions in the NPS-HPL and the objectives identified above.

What scope will options be considered within?

The scope and extent of options considered for new specified infrastructure has been informed by the approaches taken in other national direction and the options consulted on in the discussion document on Strengthening National Direction on Renewable Energy Generation and Electricity Transmission.

The scope and extent of options considered for intensive indoor primary production and greenhouses are limited to pathways already provided in the NPS-HPL for activities that do not meet the definition of land-based primary production (see Appendix 1).

[44] The distinction between the two bullet points for criterion 1 recognises that the objective of the NPS-HPL is to protect HPL for use in land-based primary production. This is distinguished from the 'intent' of the policy, which provides pathways for non-land-based activities to develop on HPL, some which are subject to specific gateway tests (e.g. functional or operational tests) and measures in clause 3.9(3) being applied.

What options are being considered?

Options to provide for Specified infrastructure

In exploring options to address the policy issue for new specified infrastructure but aligns with (or mostly aligns) with the criteria, a range of options were considered which are discussed in full below (see table 5). The two options considered most appropriate, are:

- **Option 1:** Retain the NPS-HPL as currently written (status quo).
- **Option 2 (preferred):** Amend clause 3.9(2)(j)(i) to enable new and existing specified infrastructure and associated activities.

Option 1 –Status Quo

The NPS-HPL continues to provide a consent pathway only for the 'maintenance, operation, upgrade or expansion' of specified infrastructure and for activities undertaken by requiring authorities in relation to a designation.

Option 1 would allow time for the NPS-HPL to be fully implemented and to be fully assessed through council policy development and decision making. However, the ambiguity for stakeholders and councils, regarding the application of clause 3.9(2)(j)(i) to new specified infrastructure, would remain. There would be no clear pathway for undesignated infrastructure.

The status quo has already resulted in differing application of clause 3.9(2)(j)(i) by councils – where some applications were approved, and others declined due to ambiguity in the NPS-HPL (as covered in section 1.2.3 above).

Option 2 (preferred)– Amend clause 3.9(2)(j)(i) to enable new and existing specified infrastructure and associated activities

This option would include any activity related to specified infrastructure, broadening the scope of the clause. This would make it clear that there is consent pathway for the construction of new specified infrastructure on HPL. Furthermore, it would address potential additional ambiguities that may arise from inserting just the word 'construction'[45]. For example, some submitters during public consultation suggested that adding the word 'construction' may not capture wider activities typically associated with and necessary for specified infrastructure. For instance, there is uncertainty about whether storm water ponds needed for substations, and deconstruction/decommissioning activities would be captured in asserting the word 'construction'.

This option eases likelihood that councils and applicants face consenting barriers due to the NPS-HPL, it increases the scope of activities and uses anticipated through clause 3.9(2)(j)(i). This recognises that activities associated with the construction of specified infrastructure such as roads and earthworks are also enabled on HPL and avoids ambiguity that these are not specifically provided for. Importantly, it will be a requirement that these activities through this option illustrate functional or operational need to locate on HPL, as well as measures in clause 3.9(3) being applied[46].

[45] See table 5 below that outlines the then preferred option used during public consultation – to add 'construction' to clause 3.9(2)(j)(i).

[46] Clause 3.9(3): Territorial authorities must take measures to ensure that any use or development on highly productive land:
(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of

The key benefit of this approach is that it maintains the overall intent of the NPS-HPL and reflects the policy intent of the clause in the exposure draft. While it is acknowledged that REG can be developed on land which is not HPL and that NPS-HPL is not intended to specifically deal with REG, providing more clarity for the development of new specified infrastructure on HPL will assist with reaching national targets and align with other national direction, such as the NPS-REG and the NES-ET. Broadening the application of clause 3.9(j)(i) to include all activities associated with the lifetime of specified infrastructure is also consistent with the NES-ET, which contains provisions relating to the 'alteration, relocation and replacement' of transmission line support structures (regulations 14, 15 and 16), and to the 'removal' of transmission lines (regulations 19 and 20).

Table 5: Options considered to address issue but not recommended

Option	Analysis
Add the word 'construction' to clause 3.9(2)(j)(i) (preferred Option 2 from public consultation).	While this was the preferred option that was publicly consulted on, this option may not go far enough as electricity providers (ESEG) and Te Waihanga have expressed in their public submission. These submitters raised concerns that not all activities that captures the full life cycle associated with specified infrastructure will be included (such as deconstruction). Officials agree that, in line with case law, 'construction' does not always entail 'deconstruction'. In assessing the workability of this option to meet the objectives of the consultation process and alignment with the criteria used to assess the options in this RIA, this approach is no longer considered to address the full spectrum of considerations required to clarify a consent pathway for new and existing specified infrastructure. The intention with this option, and why it was the preferred option used during consultation, was that it is a streamlined drafting exercise that addresses the ambiguity of whether new specified infrastructure developments are anticipated as 'not inappropriate' use of HPL. As a result of further information received via public consultation, this option is unlikely to capture wider activities not only associated with new specified infrastructure, but may not provide scope for other activities typically associated with and necessary for the operation of existing specified infrastructure.
Extend clause 3.9(2)(j)(i) to include 'development, construction, removal, replacement, decommissioning' (alongside the provisions already provided in the NPS-HPL 'maintenance, operation, upgrade, or expansion').	While adding specificity, this option makes the clause lengthy and it may inadvertently exclude other activities associated with specified infrastructure (e.g., the construction of paper roads, stormwater ponds for substations).
Add the word 'construction' to clause 3.9(2)(j)(i) and define 'construction' in NPS-HPL to include activities that relate to removal, replacement and decommissioning.	The term 'construction' is not defined in the RMA and National Planning Standards. Adding a definition could run into implementation and interpretation issues as the definition in the NPS-HPL may not directly align with or work alongside other definitions (e.g., NPSIB uses 'construction' when referring to specified infrastructure being provided for in the policy).

highly productive land in their district; and
(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

Providing a bespoke pathway for solar farms or renewable electricity generation activities on HPL.	This is a more complex change that is unlikely to align with the original intent to provide for all new specified infrastructure. It would also result in inconsistencies with other national direction, such as the NPS-REG for which a bespoke consent pathway for renewable electricity generation has recently been consulted on.

Non-regulatory options

We do not consider that non-regulatory options (such as Implementation Guidance and support for councils) would sufficiently address the issue for new specified infrastructure outlined in this document. As guidance cannot extend the scope or reach of national direction. Guidance has already been developed[32] which was unable address the issue or provide much clarification.

Options to provide for intensive indoor primary production and greenhouses

In working through options to address the issue, meets the objectives sought in relation to providing for intensive indoor primary production and greenhouses, and aligns with (or mostly aligns) with the criteria, a range of approaches were considered, which are discussed in full below (see table 6). The two options considered most appropriate, are:

- **Option 1:** Retain the NPS-HPL as currently written (status quo).
- **Option 2 (preferred):** Provide a consent pathway for intensive indoor primary production and greenhouses in clause 3.9(2) to develop, expand and relocate on HPL

Option 1 - Status Quo

Highly productive soils bring significant economic benefits including employment for the communities that surround them, and collectively add significant value to New Zealand's primary sector. Benefits include:

- **Environmental** – direct and indirect ecological services such as water purification/filtration, water storage for plants to use and flood regulation, habitat for different flora and fauna (supporting biodiversity), nutrient cycling and climate regulation through carbon sequestration. HPL needs less intervention to be used efficiently and effectively to generate food and other natural resources (e.g fertiliser/irrigation). [47]
- **Economic** – 81.8% of New Zealand's merchandise exports come from the food and fibre sector. A large proportion of New Zealand's position as a major food and fibre exporter is supported by the productivity of the land. Food and fibre export revenue in June 2023 increased 8% to $57.4 Billion.[48] A total of 358,000 people were employed in New Zealand's food and fibre sector as of March 2021, representing 13.1% of the total workforce.[49]
- **Social** – there are numerous societal benefits to retaining HPL for land-based primary production, including contributing significantly to the social fabric of rural communities, supporting inter-generational employment and supporting and shaping the identity of rural communities.
- **Cultural** – As New Zealand's productive land and soil are important cultural and spiritual resources for Māori, the retention of HPL for land-based primary production often aligns with Māori aspirations for whenua.

In recognising the finite nature of HPL, the status quo would result in many or most intensive indoor primary production and greenhouse developments being excluded on HPL where their operation is neither supporting a wider farming system nor meets the provisions of 'supporting activity' in clause 3.9(2)(a) of the NPS-HPL. The status quo would enable consistency with s5 of the RMA and maintain objective and policy intent of the NPS-HPL.

As section 1.3.5 above covered, the status quo is likely to lead to these industries being unable to develop on HPL in most circumstances – this is likely to most impact regions and districts where the rural environment has high proportions of HPL (as noted by councils and industry in public consultation).

[47] National Policy Statement for Highly Productive land Cost-Benefit Analysis (environment.govt.nz)
[48] Situation and Outlook for Primary Industries (SOPI) December 2023 (mpi.govt.nz)
[49] ibid.

Option 2 - Provide a consent pathway for intensive indoor primary production and greenhouses in clause 3.9(2) develop, expand and relocate on HPL

This option would provide a bespoke consent pathway for the development, expansion and relocation of intensive indoor primary production and greenhouses on HPL.

A key limitation of this option is the misalignment with the intent of the NPS-HPL in its development, where intensive indoor primary production and greenhouses (as primary production that is not land-based primary production), were deliberately excluded as appropriate use and development of HPL. Requirements and measures in the NPS-HPL, such as clause 3.9(3) that directs territorial authorities to take measures to ensure activities with exemptions to develop on HPL, minimise or mitigate the impact on HPL, are expected to provide appropriate scope to ensure these activities do not lead to uncoordinated development on HPL leading to losses where alternatives could have been used.

In pre-engagement with primary production stakeholders and councils, and as raised by some submitters during public consultation on these issues, an amendment to clause 3.9(2) is expected to provide a clear consent pathway for the development, expansion and relocation of intensive indoor primary production and greenhouses on HPL. As industry and some councils noted in their feedback, the pathway is not a guarantee that a consent for these activities will be granted. This is because activities with exemptions through clause 3.9(2) are subject to clause 3.9(3) which requires that the loss of HPL be minimised or mitigated and reverse sensitivity effects on land-based primary production activities be avoided or mitigated. How councils also give effect to clause 3.9(2) in their plans is likely to differ, meaning that some of the activities provided for in the list of exceptions may be categorised in council plans as ‘permitted’, ‘controlled’, and or ‘restricted discretionary’, etc.

These activities currently cover a relatively small proportion of HPL, and their historical development has not resulted in large areas of HPL being lost, officials do not expect that a proliferation of these activities will occur on HPL.

The ‘what are the marginal costs and benefits of the option’ section further below covers pros and cons of this option.

Table 6: Options considered to address issue but not recommended

Option	Analysis
Provide a consent pathway for intensive indoor primary production and greenhouses via clause 3.9(2), subject to functional or operational tests.	This option was used during public consultation. It outlined that, like specified infrastructure, intensive indoor primary production and greenhouses, would be subject to functional or operational tests. Horticulture New Zealand provided legal advice that argued that functional or operational test should be removed as the activities are typically associated with HPL. Whereas Auckland Council argued that the activities shouldn't be able to eligible to illustrate a functional or operational need as they are not land-based primary production. In assessing how functional or operational tests have been applied, officials do not think this option would prove to be workable for the two industries. In assessing the projected growth and expansion of the intensive indoor primary production and greenhouse industries, officials do not see significant growth in the industries beyond that to meet domestic demand, capitalising on export opportunities for low emissions food, and adaptation to climate change. As such, it not anticipated that the absence of the functional or operational tests would lead to uncoordinated growth or a proliferation of these industries (as evident through their historical growth prior to the NPS-HPL). In regard to concerns of Auckland Council, officials note that the NPS already provides for activities to develop on HPL that are not land-based primary production, and specified infrastructure is subject to functional or operational tests, which are not uses or development directly considered land-based primary production.
Provide an open pathway for intensive indoor primary production and greenhouses to develop on HPL.	An open pathway would allow for the development and relocation of intensive indoor primary production and greenhouses on HPL. This option will address the concerns raised by stakeholders about their inability to adapt to climate related risks and challenges around energy requirements. This option, however, could risk uncoordinated development of intensive indoor primary production and greenhouses on HPL where alternative locations could have been utilised. This option would also be inconsistent with provisions in the NPS-HPL that ensure HPL is protected, and the productive capacity of the soil is maintained (such as clause 3.9(3) which directs territorial authorities to take measures to ensure that any use or development on HPL minimises or mitigates and avoids loss of HPL). This option would also be inconsistent with the pathways the NPS-HPL provides for other non-land-based primary production (which are subject to tests and measures in the NPS).

Amend the definition of land-based primary production to include both intensive indoor primary production and greenhouses.	Amending the definition of land-based primary production to provide for non-soil reliant activities would enable the development and relocation of intensive indoor primary production and greenhouses. This option could potentially open pathways in the NPS-HPL to accommodate other food-producing activities and primary activities that could locate in alternative parts of the rural environment. Where their reverse sensitivity impacts are less prominent than intensive indoor primary production and greenhouses. This option may also result in providing for food-producing industries that have less demand in a New Zealand context. Some submitters during public consultation suggested that the definition of land-based primary production should be amended, such as including intensive indoor primary production and greenhouses in this definition (to read as **land-based primary production** *means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land "as well as indoor primary production and greenhouses"*). This addition to the definition of land-based primary production would be inconsistent with the intent and objective of the NPS-HPL, as such, officials recommend a pathway through clause 3.9(2) instead, as this clause provides for activities not directly captured in the definition of land-based primary production.

Non regulatory options

- Officials do not consider that non-regulatory options (such as implementation guidance and support for councils) would sufficiently address the issues outlined in this document about intensive indoor primary production and greenhouses. The implementation guide published in March 2023 on the NPS-HPL have gone some way to address concerns of industry, however, current provisions in the NPS-HPL relevant to the development of both industries would not extend to the development of commercial scale operations nor the development of new operations on HPL. Implementation Guidance also cannot override provisions in the NPS-HPL.

How do the options compare to the status quo/counterfactual?

Key: ++ much better than doing nothing/the status quo, + better than doing nothing/the status quo,
- worse than doing nothing/the status quo, - - much worse than doing nothing/the status quo,
0 similar to making no change retaining the status quo

New Specified Infrastructure

	Option One – Status Quo	Option Two – Amend clause 3.9(2)(j)(i) to capture activities associated with new and existing specified infrastructure
Consistency with the NPS-HPL.	**0** Meets the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations. Misaligned with policy intent of the NPS-HPL to provide for new specified infrastructure.	**+ +** It will enable a standardised approach to new specified infrastructure in council policy development and decision making in line with the original policy intent. Aligns with policy intent (in the development of the policy) by allowing councils the flexibility to balance the need for specified infrastructure, like solar farms, with the loss of or lessening of the availability of HPL for land-based primary production for current and future generations.
Consistency with the wider resource management system	**0** Is consistent with RMA s5 and s7 in that it safeguards the life-supporting capacity of soil. Will retain misalignment with the approach taken to new specified infrastructure in current and emerging national direction.	**+** Aligns with s7 of RMA by giving councils scope to have particular regard to the benefits to be derived from the use and development of renewable energy balanced against finite nature of HPL. It improves the NPS-HPL consistency with other national direction and emerging national policy, by providing a consent pathway for new specified infrastructure to develop on HPL when there is a functional or operational need.
Effectiveness	**0** Ensures that HPL is protected from inappropriate use and development. However, it will not provide a clear consent pathway for new (undesignated) specified infrastructure to establish on HPL. Will not address policy issue.	**+** This amendment addresses the issue by providing a consent pathway for new specified infrastructure. However, it is likely to result in the further loss of HPL available to non-land based primary production, in particular to solar farms. This loss will be managed by Councils on a case-by-case basis.
Implementation	**0**	**++** It will enable a standardised implementation approach to new specified infrastructure in council policy development and decision making in line with the original policy intent.

	The NPS-HPL continues to be implemented by councils. To address policy issue, Implementation Guidance material will need to be relied upon, to ensure consistent interpretation and implementation of provisions of the NPS-HPL with other national direction. Uncertainty and ambiguity of consent pathway for undesignated specified infrastructure will remain. Ambiguity and inconsistent implementation may result in litigation costs as applicants appeal council decisions.	Improves the clarity of subclause 3.9(2)(j)(i) by making clear to councils that new specified infrastructure can develop on HPL, as well as activities associated with and necessary for specified infrastructure. It not anticipated to significantly increase the costs for councils as most have yet to give effect to the NPS-HPL in their plans and policy statements. It is considered that it may in some cases reduce costs for infrastructure providers and is unlikely to place undue costs on local and central government, tangata whenua, landowners and other stakeholders.
Cultural, Economic, Environmental and Social wellbeing	**0** The NPS-HPL has been fully assessed and found to be consistent with community expectations and to fulfil Crown Te Tiriti obligations. It protects the soil resource while providing for other land uses and activities needed to support communities or that provide local benefit.	**0** It will allow the protection of HPL to be balanced against local and national infrastructure needs. Construction of new infrastructure will still be assessed against the gateways tests to establish its need to locate on HPL. It aligns in part with the aspirations of Māori to develop land how they see fit, however, it may be considered misaligned with Māori world views that soil is a taonga.
Overall assessment	**0**	**+**

Intensive indoor primary production and greenhouses

	Option One – *Status Quo*	Option two – Provide a consent pathway for intensive indoor primary production and greenhouses in clause 3.9(2) to expand, develop, and relocate on HPL
Consistency with the NPS-HPL.	**0** Ensures that HPL is protected from inappropriate use and development. Meets the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations	**-** Could lead to outcomes inconsistent with the policy objective of the NPS-HPL to protect HPL for use in land-based primary production. Some alignment with provisions under the status quo of the NPS-HPL that provide for other non-land-based use and development to locate on HPL.
Consistency with the wider resource management system	**0** Is consistent with RMA s5 that it safeguards the life-supporting capacity of soil. May be misaligned with the wider Government work amending nation direction and regulations to reduce consenting barriers for infrastructure and primary production.	**0** Could lead to outcomes inconsistent with s5 of the RMA to safeguard the life-supporting capacity of soil. Noting that s5 matters are broadly applied in policy statements and legislation. This option would align with other parts of s5 (e.g., economic well-being). Aligns with wider Government work amending nation direction and regulations to reduce consenting barriers for infrastructure and primary production.
Effectiveness	**0** Ensures that HPL is protected from inappropriate use and development. No clear consent pathway for intensive indoor primary and greenhouses to develop, expand and relocate on HPL would remain.	**++** Provides a clear consent pathway for intensive indoor primary production and greenhouses. Option would be misaligned with intent of the NPS-HPL in its development, where intensive indoor primary production was deliberately excluded from having a clear consent pathway[50]. Although feedback received through recent consultation showed a preference for these activities to be provided for in the NPS-HPL.
Implementation	**0** The implementation and monitoring of the NPS-HPL continues as anticipated in the development of the policy. Costs imposed on councils and resource consent applicants due to no specific provision for intensive indoor primary production and greenhouses.	**+ +** Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.

[50] Greenhouses as outlined in this RIA, was not specifically identified as being excluded. However, the intention in the development of the policy was that primary production that occurs within buildings or provided for in the National Planning Standards definition of intensive indoor primary production would locate on non-HPL, which includes Greenhouses.

Cultural, Economic, Environmental and Social wellbeing	**0** Balances cultural, economic, environmental, and social Wellbeing in line with the policy intent of the NPS-HPL. However, does not provide flexibility for new operations which could have economic and environmental impacts for the intensive indoor primary production and greenhouse industries.	+ Recognises local context and potential need for intensive indoor primary production and greenhouses to develop on HPL, mostly in regions/districts where HPL is a high proportion of the rural environment. Reduces consenting barriers for intensive indoor primary production and greenhouses. Could be inconsistent with environmental considerations of protecting HPL for use in land-based primary production. However, provides resiliency for primary production to respond to and mitigate against adverse weather events.
Overall assessment	**0**	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Specified infrastructure

Option 2 amends clause 3.9(2)(j)(i) to capture activities associated with new or existing specified infrastructure.

The key benefits of **option 2** is that this option would provide clarity, improve consistency and support effective implementation by:

- providing for specified infrastructure that cannot be designated or is needed at pace, while retaining the intent of clause 3.9 and the NPS-HPL
- ensuring that councils have flexibility to consider and provide for other (non-land based) uses and development on HPL in the circumstances outlined in subclause 3.9
- addresses the issues and objectives identified in this RIA
- ensures that the NPS-HPL provides clear policy direction to Councils
- would align the NPS-HPL with other national direction and emerging national direction providing for new specified infrastructure, such as solar farms.

Option 2 would also provide more certainty for councils and resource users as it would address the ambiguity about whether new specified infrastructure is provided for in the NPS-HPL. See section below for an assessment of the costs and benefits of providing for specified infrastructure on HPL.

This amendment would also facilitate faster development of new and replacement infrastructure needed in response to natural disasters, such as that needed in the wake of Cyclone Gabrielle.

There is a risk that this amendment will result in the loss of HPL, however, these losses are not anticipated to be significant, given the checks and balances and the limit on what is considered specified infrastructure in the NPS-HPL. Further detail is provided below on the anticipated footprint of solar developments on HPL.

MfE and MPI officials recommend Option 2 as it meets the NPS-HPL policy objectives and delivers net benefits in improved implementation, effectiveness, clarity and consistency.

Intensive indoor primary production and greenhouses

Option 2 provides a consent pathway for intensive indoor primary production and greenhouses in clause 3.9(2) to develop, expand and relocate on HPL.

The key benefits of **option 2** is that the option would address the policy problem, aligns mostly with the policy objectives outlined in this RIA, and provides clarity that these industries have a clear consent pathway, which in turn supports implementation concerns raised by industry and council during public consultation. The option would:

- address the policy problem and be in line with the pathways in the NPS-HPL provided for other non-land-based primary production
- provide flexibility for these primary production activities to adapt to climate change and work toward decarbonising the industries

- provides greater flexibility for regions and districts with large areas of HPL.

Option 2 addresses concerns raised by industry and some councils that the NPS-HPL is impacting ability to establish and expand intensive indoor primary production and greenhouse activities. See section below for an assessment of the costs and benefits of providing for intensive indoor primary production and greenhouses on HPL.

MPI and MfE officials recommend Option 2 as it addresses the policy issue, aligns mostly with the policy objectives, and delivers net benefits in improved implementation, effectiveness, clarity and consistency.

What are the marginal costs and benefits of the option?

Benefits and costs of providing for new specified infrastructure on HPL (including associated activities for new and existing specified infrastructure)

Specified infrastructure preferred Option 2 has a **range of benefits**:

- **Councils:** Option 2 will assist with minimising costs to councils associated with administering the HPL provisions. Clarifying the NPS-HPL provides a consent pathway for new specified infrastructure including undesignated infrastructure, removing the ambiguity and complexity for consent applications and potentially the extent of legal challenge. It would also make clear that activities typically associated with and necessary for specified infrastructure are provided through this option.
- **Resource users:** Option 2 will reduce costs to infrastructure providers, in particular renewable electricity generators, associated with consent processing costs by providing a clear consent pathway. This will provide greater certainty for business planning and risk assessment phases of infrastructure development. It also allows faster establishment of specified infrastructure. The ability to establish solar farms provides an additional income stream to landowners/lessees.
- **Central government:** Option 2 provides certainty about how the NPS-HPL applies to specified infrastructure and ensures greater consistency with other national direction. It also supports government policies and targets on climate change and reducing barriers for infrastructure, as well working towards doubling New Zealand's renewable electricity generation.

However, as a result of this amendment there may be a greater reduction in available HPL for land-based uses and development. The **opportunity costs are**:

- Many infrastructure providers can use the designation or notice of requirement route available in clause 3.9(2)(h) meaning HPL would be lost to specified infrastructure under the status quo anyhow. This amendment would open a pathway for all specified infrastructure developers without having to go through the long designation process.
- It increases the likelihood that HPL will be lost to infrastructure development, primarily in regions with larger populations due to proximity to end users (e.g., Auckland and Christchurch), although there are a range of checks and balances within the NPS-HPL to ensure that the losses are minimised and mitigated.
- The designation route is not readily available to most renewable electricity developers, so the amendment would mainly provide a consent pathway for renewable electricity generation developments on HPL. As HPL is often the preferred location for solar farms, the amendment is likely to result in the loss of HPL by:
  - significantly reducing its productive potential and use for land-based primary production, and or
  - tying it up in the long term with solar electricity generation infrastructure.
- While solar farms do not significantly impact on the soil resource, they decrease the potential productivity of the land limiting it in some contexts to sheep grazing[51]. It is worth noting that the NPS-HPL is agnostic as to what land-based primary

[51] While some productivity can be maintained with agrivoltaics – research into mixed use system (such as solar farms and land-based primary production) remains in its infancy in a New Zealand context. Ongoing work across Government is looking to better understand the trade-offs and opportunities of agrivoltaics.

production activity occurs on HPL and has no requirement for HPL to be used to its maximum productive potential.

- Given the high value of electricity generation infrastructure it is unlikely in the foreseeable future that land will be returned to solely land-based primary production.
- It will create a greater incentive to establish solar farms or other renewable electricity generation on HPL rather than on lower grade rural land, in industrial areas or urban areas. Rural land is cheaper and more readily available and HPL is easier to develop.
- The amount of HPL that might be 'lost' to solar farms may be relatively small compared to the total HPL resource in New Zealand. Transpower expects a 2-fold increase in solar capacity between 2030 and 2050 (capacity from 7360 MW in 2030[52] to 14,800 MW in 2050[53]) This effectively describes a best-case scenario for the growth of utility solar over the next 25 years. Industry[54] uses a rule of thumb for utility solar of 1.5 ha of land per 1MW of generation. On this basis, 14,800 MW of utility solar by 2530 would require 22,800 ha of land. Even if all that land was assumed to be HPL, that 22,800 ha would represent approximately 0.6% of the estimated 3,830,000 ha of highly productive land in New Zealand[55]. It is noted that there is limited publicly available data on the overlap between existing or potential solar farms and HPL.
- While it is not possible to quantify the exact extent of potential loss of HPL to new specified infrastructure, available evidence considers this to be relatively small in comparison to the whole HPL resource (less than 22,800 hectares of the 3,830,000 hectares total estimate for HPL by 2050), although it will contribute to cumulative loss of HPL. For comparison, 22,800 ha was equivalent to over 60% of the area used for outdoor vegetable production, a rural land use activity that is limited to HPL[56].
- One of the purposes of public consultation was to seek out further information on the potential extent of HPL loss to solar farms and other types of infrastructure development that may be approved on HPL as a result of this amendment, however no further data was obtained. It is acknowledged that these estimates are associated with a degree of uncertainty, although overall the possible 'worst-case scenario' impacts may be relatively small compared to the total HPL resource.

Detail on regulatory burden is provided below in section 3.

Benefits and costs of providing for Intensive Indoor Primary Production and Greenhouses

There are associated benefits and costs of providing for intensive indoor primary production and greenhouses. The intensive indoor primary production and greenhouse industries serve domestic food supply and international trade. These activities are expected to grow in response to serving New Zealand's growing population, export opportunities, and growing international market for low emissions food. Expansion is also anticipated due to climate change adaptation, freshwater limits and targets, and as noted earlier, opportunities within

[52] Transpower, Whakamana i Te Mauri Hiko monitoring report March 2023, page 4.
[53] Transpower, Whakamana i Te Mauri Hiko monitoring report October 2023, page 6.
[54] Ministry for Business, Innovation and Employment 2020 Economics of Utility-Scale Solar Forecast in Aotearoa New Zealand
[55] Total area of Land Use Classification 1-3 land from NZ Land Resource Inventory 2021 – noting that this is a proxy for HPL and does not account for land that has been zoned urban (and not developed) and therefore not available for land- based primary production in the long term.
[56] Data obtained from: FreshFacts 2023, https://unitedfresh.co.nz/assets/site/images/images/Fresh-Facts-%E2%80%93-December-2023.pdf.

export markets for low-emissions foods both domestically and internationally. Noting careful consideration of the trade-offs for providing for these activities and the potential permanent losses of HPL. Considerations will also need to be given to the impact that a pathway for intensive indoor primary production and greenhouses may have on the availability of HPL for use in land-based primary production (as well as consideration for the impacts on both industries if the status quo is maintained). Detail on regulatory burden is provided below in section 3).

The benefits of providing for intensive indoor primary production and greenhouses[57]:

Councils

- Provides flexibility for councils who noted difficulties of providing for these industries during public submissions.
- Addresses implementation concerns raised by councils that alternative locations for these industries to develop are limited when their rural environment has high proportions of HPL.
- Provides clarity to councils that these industries have a clear consent pathway, which addresses issues around unclear pathways under the status quo that were noted in public submissions as impacting the ability of the industries to expand and develop.

Central Government

- Addresses issues raised by some councils and industry that nationally, there are contexts where these industries have faced barriers in developing and expanding, particularly in districts where HPL is a high proportion of the rural environment.

Poultry Industry

- A vast majority of the poultry that New Zealanders consume is produced and processed in Aotearoa· New Zealand chicken meat production significantly outweighs export of chicken meat. In 2020, over 200,000 metric tonnes of chicken were for the domestic market. In 2021, domestic meat production was around 250,000 metric tonnes. In 2022, it was again over 200,000 metric tonnes. For these years, the export of domestically produced chicken meat was around 50 tonnes annually[58].
- The relative affordability of poultry has led to chicken being the most popular animal meat protein in New Zealand, accounting for 55% of animal meat consumption.
- New Zealand is essentially self-reliant on domestically produced and processed poultry, this could mean that the NPS-HPL could become a barrier for a vital food producing industry to meet food demands of New Zealanders if the industry is not able to establish new commercial scale sites on HPL. Around 98% of chicken produced by poultry producers such as Inghams is for domestic consumption. Around 8-10 million servings they supply comes from approximately 50ha of land.

Greenhouses

- Total area of greenhouses in New Zealand is estimated to be only 310 Ha (120 Ha tomatoes and 190 ha other vegetables), an area that has been increasing since 2017. 64% of total greenhouse area is in the upper North Island, 17% in the lower north island and 19% in the South Island. Because 90% of crops grown in greenhouses is grown for the domestic market, they tend to be situated near larger population areas

[57] Noting that the examples provided are not an exhaustive list of all the industries and type of livestock or crops that fall within scope of intensive indoor primary production or greenhouses.

[58] NZ Poultry Production Statistics - Latest Dec 2023 | Poultry Industry Association New Zealand (pianz.org.nz)

and are located in proximity to supply and infrastructure networks[59].

- Greenhouse vegetables are grown year-round in relatively stable, controlled environments with optimal growing conditions that offer the ability to produce a range of vegetables for domestic consumption as well as international markets. The 'when' that crops are grown matters for covered crop operations, as most are responsible for supplying fresh New Zealand-grown produce in the off-season or when weather events affect outdoor crops[60].

Pig farming Industry

- Pork produced in New Zealand primarily serves the domestic market, however, to meet demands, New Zealand imports 60% of pork that is consumed.
- The domestic pork industry is in competition with imported pork, which comprise around 60 percent of all pork products sold in New Zealand. The industry has declined from around 600 farms in 2001 to around 100 farms in 2024. Industry have argued that the animal welfare standards it must meet adds costs and make it more difficult to compete with imports from countries with lower standards.
- The pig industry does not anticipate proliferation of new commercial indoor farms (noting the challenges the sector faces with international imports). However, industry has noted that no clear consent pathway makes the economic viability of the industry even more challenging.

However, as a result of this amendment there may be a greater loss of HPL or availability of HPL to non-land based uses and development. The **opportunity costs are**:

- Providing for these industries are likely to lead to further permanent losses of HPL and inability of HPL to be used for land-based primary production.
- Providing for these industries may also disproportionately impact areas with established markets and transport routes, which includes Auckland Council, who did not support amending the NPS-HPL.
- Providing for these industries would be misaligned with the intent of the policy, where the industries were deliberately excluded from being able to locate on HPL. It is worth noting that, as the NPS-HPL has been in force for around two years, some councils have found it difficult to provide for these industries in the rural environment and in other potential zones (the intention during policy development was that the industries could locate in alternative non-HPL areas, as raised through public submissions, this has implementation challenges).

The development and expansion of intensive indoor primary production and greenhouses are expected. This is to meet animal welfare regulations, adapt to climate change, and allow for the consolidation of the industries[61]. Officials consider that these industries, due to the provisions of the NPS-HPL and historical rate of development, are unlikely to significantly result in large areas of HPL being lost.

[59] 23.10.30_HortNZ-FINAL-Submission-on-NPSHPL-Amendments.pdf
[60] The high costs of decarbonisation are leading to increased consolidation in the greenhouse industry. The heavy reliance of the greenhouse industry on fossil fuels means that as the industry decarbonises, they may need develop and relocate to sites close to renewable energy sources, and not being allowed to locate on HPL may make this transition more difficult (for instance, renewable energy sources such as solar, are primarily located on flat land and thus the greenhouse industry may wish to locate close to solar farms), or other renewable energy such as geothermal.
[61] Changing Animal Code of Welfare may mean some intensive indoor primary production activities may need to obtain new resource consents for their expanded building footprint. Clause 3.11 of the NPS-HPL anticipates that existing activities are able to 'upgrade' to meet requirements such as meeting Animal Code of Welfare changes. Further information can be found in 'Guide to Implementation' on MfE's website.

Section 3: Delivering an option

How will the new arrangements be implemented?

The NPS-HPL was developed under the RMA, meaning it is administered by regional and district councils as part of their functions and roles under the RMA. Any amendments will need to be given effect to by councils through their resource management plan provisions and when considering resource consents. The NPS-HPL contains transitional provisions to ease implementation and ensure highly productive land is better protected from commencement date (October 17, 2022). Regional councils then have three years to map HPL in accordance with the NPS-HPL. Territorial authorities have two years to give effect to the NPS-HPL once the maps are operative in regional policy statements.

Guidance will be updated as necessary to support the implementation of the full package of amendments to the NPS-HPL.

The Policy Implementation and Delivery directorate at MfE will ensure that information about any amendments is publicly available and communicated to local planning authorities and Treaty Partners.

Officials will determine what other guidance products may be needed to support implementation (such as fact sheets).

Final Cabinet decisions on the full package of amendments to the NPS-HPL are supported by a Summary of Submissions and Recommendations report, Section 32 evaluation report, and treaty impact analysis.

Implementation risks and mitigation

Specified infrastructure

It is anticipated that the amendment to provide for construction of specified infrastructure will fall within scope of the implementation work programme for the wider NPS- HPL and within the original RIS that supported the promulgation of the NPS-HPL[62]. Many councils have yet to give effect the NPS-HPL so this change should be able to be incorporated as part of the necessary plan changes without undue disruption. As discussed in the cost benefit analysis above, it is anticipated that the amendment would not cause implementation disruptions and may make implementation easier by improving clarity and consistency.

Public submissions yielded support for the amendments as it would improve implementation by councils giving effect to the NPS-HPL in a consistent manner.

Intensive indoor primary production and greenhouses

It is anticipated that the potential amendments to provide for intensive indoor primary production and greenhouses falls within scope of the implementation work program for the wider NPS-HPL. It is anticipated that the amendment would not cause implementation disruptions or place undue strain on decision makers. If risks or disruptions to the implementation of the NPS-HPL are caused by providing for the amendments, supporting non-regulatory material will be developed to ease the risks.

Public submissions yielded general support for the amendments, it was noted by some submitters that it would allow greater flexibility for land-use and enable clearer direction that the industries are provided a consent pathway in the NPS-HPL.

[62] Regulatory Impact Assessment - Full Impact Statement Template (environment.govt.nz)

How will the new arrangements be monitored, evaluated, and reviewed?

Monitoring, evaluation, and review of any amendments will be undertaken as part of the wider NPS-HPL monitoring and review process.

MPI and MFE will gather data on the system effectiveness and implementation of the NPS-HPL, including:

- Obtaining data through collaboration with local government and relevant crown agencies, e.g., through the Land Monitoring Forum.
- Monitoring local government's progress with respect to completion of HPL mapping and the quality of HPL mapping to ensure that mapping is being completed within the timeframes set out in the NPS-HPL
- Using 'indicators reports' (e.g., Stats NZ, and Our Land reports and regional council zoning layers (e.g., FARMLUC, NZLRI database of land resource information etc) to obtain data.
- Gathering data of consents via National Monitoring System and appeal decisions including fast track approvals.

It is intended that the primary mechanism for monitoring will be monitoring how local government policy and plan change processes give effect to the NPS-HPL as they progress through the Schedule 1 process[63].

Overall regulatory burden

Specified infrastructure

Most councils have yet to give effect to the NPS-HPL, therefore it is considered that the burden of the amendment will be minor.

The preferred option is likely to reduce regulatory burden and costs of administering the HPL for Councils and reduce application costs to infrastructure providers by improving clarity and consistency with other national direction. However, work remains ongoing to fully understand the impact that this will have on land-based primary production (such as the loss of HPL, availability of HPL for use in land-based primary production, and intensity at which land-based primary production can occur). This needs to be balanced against the need to provide necessary infrastructure to serve and protect rural communities, provide national benefits, and to meet government targets, such as the move to a low emissions economy.

With respect to the amendment to provide for new specified infrastructure (and associated activities), it is considered that on balance no additional financial costs are anticipated and the existing NPS-HPL Cost-Benefit Analysis (CBA)[64] and s32 report are still relevant. This will be reviewed as the final policy advice is developed following consultation, noting a separate evaluation report under s32 as required by the Resource Management Act has also been developed for the amendments covered in this RIA.

[63] Under clause 10 Part 1 Schedule 1 of the RMA, councils must issue their decisions on plans or plan changes within two years of notifying the proposal.

[64] ME Consulting, 2022, National Policy Statement for Highly Productive Land Cost-Benefit Analysis National Policy Statement for Highly Productive Land Cost-Benefit Analysis | Ministry for the Environment

Intensive indoor primary production and greenhouses

There is an overall regulatory burden to consider relating to implementation of any changes to the NPS-HPL to provide for intensive indoor primary production and greenhouses.

- The addition of another sub-clause to clause 3.9 of the NPS-HPL which councils need to have regard to in their processing of consents, is likely to add more complexity. This is because the range and scope of activities that are provided an exception would now also extend to intensive indoor primary production and greenhouses. Councils currently working to align their local plans with the NPS-HPL may also face disruptions with this amendment. Non-regulatory material such as Guide to Implementation is intended to provide more clarity on how provisions in the NPS-HPL for these industries may be given effect to. Although this is intended to alleviate potential inconsistencies in how provisions of the policy are implemented, this may not address work councils are currently undertaking, as such, clear communications to councils, treaty partners, industry and the public about the change will be needed. The public consultation process was notified to councils and as such they are aware of the potential change to the NPS-HPL.

- The specificity of the preferred option will aid in providing clarity for decision makers during processing of consent applications and plan changes giving effect to the NPS-HPL.
- If the amendment to provide for the listed activities are not provided for, there is a potential that primary production industries may try to test other pathways in the NPS-HPL (listed in section 1.3.4 above) – pathways which are not clear or anticipate commercial scale operations. This could place unduly consenting costs on primary industry stakeholders and require council resourcing.

Treaty Impacts

The amendments covered in this RIA are considered to be relatively low risk for iwi and hapu. All the amendments outlined in this RIA do not impede or interfere with the aspirations of Māori to develop Māori freehold or customary land (specified Māori land as defined in the NPS-HPL) as they see fit (see Appendix 5 for definition provided in the NPS-HPL).

A treaty impact analysis accompanies these amendments to the NPS-HPL {LINK}.

Appendix 1

Clause 3.9(2) of NPS-HPL

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:

(a) it provides for supporting activities on the land:

(b) it addresses a high risk to public health and safety:

(c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:

(d) it is on specified Māori land:

(e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:

(f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality:

(g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:

(h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:

(i) it provides for public access:

(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:

(ii) the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990:

(iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:

(iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.

(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:

(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and

(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

Appendix 2

Drafting changes between the exposure draft and the gazetted versions of the NPS-HPL

Throughout the development of the NPS-HPL, providing a consent pathway for the development of new specified infrastructure on HPL was the intent of the policy. The exposure draft of the NPS-HPL provided a consent pathway for new specific infrastructure to be established on HPL, provided it did not represent inappropriate development. The exposure draft[65] clause 3.7(4) specifically referred to '*A new use or development on highly productive land is not inappropriate if: (a) the use, or development is associated with: (i) specified infrastructure that provides significant national or regional public benefit*'. This was subject to requiring territorial authorities taking measures to minimise or mitigate any actual loss of HPL.

This clause was redrafted to provide clearer criteria for the types of development deemed 'not inappropriate' on HPL and to give council more scope to determine and address local circumstances. The resulting redraft has resulted in ambiguity for stakeholders whether new specified infrastructure is provided with a consent pathway on HPL or not.

The NPS-HPL Evaluation under section 32 of the Resource Management Act (s32)[66] (s32 report) states that the criteria in clause 3.9(2) clarify the types of activities and uses that may be appropriate on HPL to provide greater certainty to councils and applicants. Clause 3.9(2) will then ensure territorial authorities provide more specific direction on appropriate and inappropriate activities in their district.

The s32 report states that provision was specifically made under this clause for maintenance, operation, upgrade, or expansion, but not construction of new infrastructure or facilities. This was because it was expected new specified infrastructure would be able to use the designation process to establish on HPL and so the clause focuses on existing infrastructure or facilities that may not have been established using a designation.

However, the s32 report in its analysis on clause 3.9 also notes that 'It was also intended the proposed NPS-HPL did not inappropriately restrict other (non-productive) uses of HPL, particularly where these uses deliver wider environmental, economic, social or cultural benefits, and there is clarity on how such uses should be considered and provided for under the NPS-HPL.' It also notes that submitter feedback highlighted the need to minimise the risk of certain activities being precluded from HPL when they deliver wider benefits.

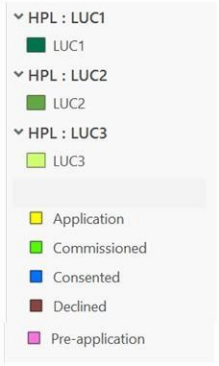
It is clear that the s32 report anticipated that all new specified infrastructure that had a need to establish on HPL would be able to do so via designation under subclause 3.9(2)(h) which states: '*it is for an activity by a requiring authority in relation to a designation or notice or requirement under the Act' (RMA)*. No consideration was made of specified infrastructure providers/developers that did not have those powers nor to significant change to or expansion of existing undesignated infrastructure.

[65] Proposed National Policy Statement for Highly Productive Land Exposure Draft Testing, p.11 https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/proposed-national-policy-statement-for-highly-productive-land-exposure-draft-testing/

[66] 2022, National Policy Statement for Highly Productive Land Evaluation under section 32 of the Resource Management Act

Appendix 3

Figures showing a selection of existing and potential solar farms and their locations relative to HPL



Region

Northland

Auckland

Waikato (fast-track)

Waikato

Key

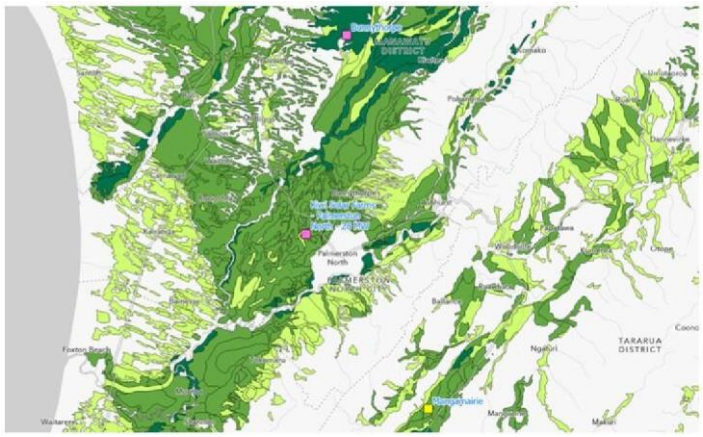
- HPL: LUC1
- LUC1
- HPL: LUC2
- LUC2
- VHPL: LUO
- LUC3
- Application
- Commissioned
- Consented
- Declined
- Pre-application

Region

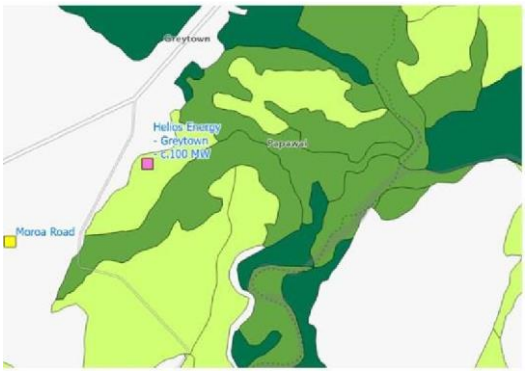
Bay of Plenty

Hawkes Bay

Manawatu-Whanganui



Wellington



Key

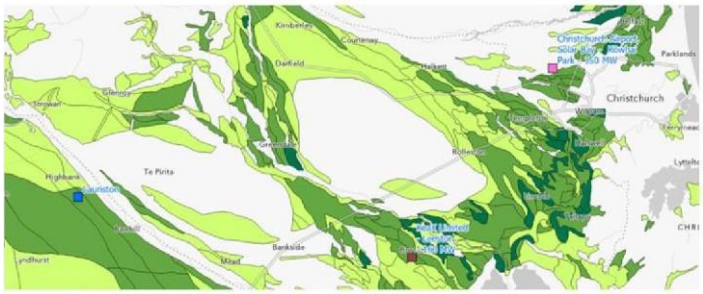
- HPL: LUC1
  - LUC1
- HPL: LUC2
  - LUC2
- HPL: LUO
  - LUC3

- Appliuition
- **Commissioned**
- Consented
- Declined
- **Pre-application**

Region

Marlborough

Canterbury



Appendix 4

Table showing applications for solar farms *(current according to MfE records as of April 2024)*

	Territorial authority	Planning Status	MW	On HPL?
North Island	Far North	Consented	16	no
38 sites	Far North	Consented	39	yes
	Whangarei	Application	130	yes
	Whangarei	Consented	26.7	yes
	Kaipara	Consented	69	yes
	Kaipara	Consented	4.4	yes
	Kaipara	Pre-application	20	unclear
	Auckland	Pre-application	76	unclear
	Auckland	Pre-application	160	yes
	Auckland	Application	50	yes
	Auckland	Consented	2.3	yes
	Thames Coromandel	Consented	31	yes
	Waikato	Consented (fast track)	130	yes
	Waikato	Consented (fast track)	180	yes
	Waikato	Declined (fast track)	140	yes
	Matamata-Piako	Consented (fast track)	147	yes
	Matamata-Piako	Application	4.5	yes
	Hauraki	Consented	4.4	yes
	Whakatane	Pre-application	115	yes
	Whakatane	Consented	32	yes
	Opotoki	Consented	58	unclear
	Taupo	Consented (under appeal)	400	no
	South Taranaki	Operational	2.1	yes
	South Taranaki	Pre-application (fast track)	94	yes
	South Taranaki	Pre-application	80	yes
	Gisborne	Consented	5	no
	Napier	Pre-application	10	yes
	Central Hawkes Bay	Consented	70	yes
	Ranitikei	Pre-application (fast track)	65	yes
	Ranitikei	Pre-application	84	yes
	Manawatu	Pre-application	20	yes
	Palmerston North	Pre-application	28	yes
	Palmerston North	Pre-application	6	yes
	Tararua	Consented	50	yes
	Carterton	Pre-application (fast track)	133	yes
	Carterton	Pre-application	4.5	unclear
	South Wairarapa	Pre-application	100	yes
	South Wairarapa	Application	175	no
South Island	Marlborough	Operational	2.2	yes
18 sites	Marlborough	Pre-application	28	no
	Marlborough	Operational	1	no
	Marlborough	Pre-application	10	yes
	Marlborough	Consented	4.5	yes
	Christchurch	Pre-application	170	no
	Selwyn	Declined	160	yes
	Ashburton	Consented	52	yes
	Ashburton	Pre-application	7	unclear
	Mackenzie	Pre-application	20	unclear
	Mackenzie	Application	88	no
	Timaru	Pre-application	24	unclear
	Waimate	Pre-application	10	unclear
	Central Otago	Consented	50	no
	unknown	Pre-application	14	unclear
	unknown	Pre-application	50	unclear
	unknown	Pre-application	50	unclear
	unknown	Pre-application	34	unclear

56 sites total		*total MW on HPL*	3536.6
		not yet consented	1249.5
		consented	844.4
		application	184.5
		pre-application	905
		declined	300
		operational	4.3

Appendix 5

Definition of Specified Māori Land in the NPS-HPL

Clause 1.3

specified Māori land means land that is any of the following:

(a) Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):

(b) land vested in the Māori Trustee that— (i) is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and (ii) remains subject to that Act:

(c) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:

(d) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):

(e) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:

(f) land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of the mana whenua over the land