Coversheet: Managing and protecting highly productive land under the Resource Management Act (1991)

Advising agencies	*Ministry for Primary Industries (MPI) and Ministry for the Environment (MFE)*
Decision sought	*Approval to release NPS-HPL for gazettal*
Proposing Ministers	*Minister for Primary Industries, Hon. Damian O'Connor* *Minister for the Environment, Hon. David Parker*

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

There is a lack of clarity on how highly productive land should be managed under the RMA. This often results in less weight being attributed to the value of highly productive land for current and potential land-based primary production, and greater weight being given to other matters and priorities by decision-makers. This is causing ongoing, incremental loss of highly productive land due to urban rezoning and fragmentation of rural land for rural lifestyle purposes.

Summary of Preferred Option or Conclusion (if no preferred option)

How will the agency's preferred approach work to bring about the desired change? Why is this the preferred option? Why is it feasible? Is the preferred approach likely to be reflected in the Cabinet paper?

Government intervention is the preferred approach to address the ongoing, incremental loss of highly productive land. Feedback from stakeholders has highlighted the urgency of this issue, and the need for a national direction to have immediate legal effect to prevent further significant losses of highly productive land. Although this issue can (and will be) addressed through upcoming resource management reform, the evidence shows that the loss of highly productive land is accelerating, and the introduction of new resource management legislation will not occur rapidly enough to halt the irreversible decline of New Zealand's most productive land.

Government intervention would:

- Improve consistent decision making on applications to use highly productive land for a purpose that is not land-based primary production
- Clearly define 'highly productive land' (HPL) through a spatial identification process at the regional policy statement level (which is then adopted at the district level)
- Achieve a balance between a nationally consistent approach to manage and protect HPL from inappropriate subdivision, use and development while enabling the local context to be considered and incorporated into planning and decision-making

- Avoid urban rezoning on HPL except where it is needed to allow councils to meet the requirements under the NPS-UD to provide sufficient development capacity
- Avoid rural lifestyle zoning on HPL and avoiding subdivision of HPL except in tightly defined circumstances
- Protect HPL from inappropriate use and development by setting out what types of development and uses may be appropriate on highly productive land
- Enable councils to manage reverse sensitivity effects that can constrain and conflict with land-based primary production activities using HPL.

This RIS assesses three options for addressing the problem definition. The preferred option is the proposed National Policy Statement for Highly Productive Land (NPS-HPL) in combination with guidance and implementation support for councils.

The 'Our Land 2018' and 'Our Land 2021' reports provide a robust evidence base for the ongoing loss of HPL over the last few decades. In response to this evidence, the NPS-HPL has been developed through an extensive process, including ongoing input from stakeholders, a formal consultation phase and the release of an exposure draft in October 2021. This has resulted in refinement of the NPS-HPL to ensure alignment with other national direction, including the National Policy Statement for Urban Development 2020 (NPS-UD), and to simplify the HPL identification and mapping process for local authorities. This option meets the identified policy gap and we consider it is both feasible and acceptable to stakeholders. The preferred option will be recommended for gazettal as part of the Cabinet paper.

Ahead of the official gazettal and implementation of the proposed NPS-HPL, it is intended that officials will publish fact sheets on the Ministry for the Environment (MFE) and Ministry for Primary Industries (MPI) websites as part of the implementation support. Following commencement of the NPS-HPL, officials intend to develop technical guidance and transition guidance to assist local authorities on key implementation tasks (including mapping HPL) and will run targeted workshops.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?
Monetised and non-monetised benefits
The expected benefits of the proposed NPS-HPL The expected benefits of the proposed NPS-HPL are considered in detail in the indicative and final CBA (the CBA) developed by Market Economics[1] which has informed this RIS. The CBA was based on an earlier version of the NPS-HPL in 2020 and there have subsequently been some changes to key provisions (including more pathways for certain subdivision, use and developments on HPL). As such, some of the benefits identified in the CBA are not considered to be a completely accurate reflection of the scale and significance of the benefits anticipated from final proposed NPS-HPL provisions (although the general nature of the benefits remains the same and the changes are unlikely to alter the conclusions of the CBA).

[1] Market Economics, "*National Policy Statement – Highly Productive Land Cost Benefit Analysis*", Final Version, 16 June 2020.

The expected benefits of the NPS-HPL are primarily environmental and economic and result from protecting HPL, so that the productive capacity of the land is available for future generations. With HPL afforded greater protection, the primary sector can continue to operate efficiently and sustainably, food supply is not threatened, sector resilience is enhanced, and primary sector domestic and export earnings are sustained (both downstream supply chain outcomes[2]).

The CBA has modelled and monetised the key benefit of the NPS-HPL in terms of the avoided loss of primary production output calculated over a 30-year period across six case study districts. This estimated that the avoided loss of primary production output on parcels that may have been expected to subdivide to create lifestyle lots from the proposed NPS-HPL to be $265m (8% discount rate)[3]. The CBA considered this to be a conservative underestimate of the benefits expected from the NPS-HPL and noted that this is an ongoing benefit with high significance.

As noted in the CBA, HPL is an environmental resource that has value beyond its current or potential tangible uses, and has many values that cannot be attributed a monetary value. Some of the non-market values associated with protecting HPL include:

- Protecting rural employment opportunities, supporting rural households and wider rural and urban communities both economically and socially
- Protecting ecological regulating functions, such as water storage for plants, supporting diversity/habitat, flood regulation and carbon sequestration
- Maintaining a sense of identity for both individuals and communities that define themselves by living/farming in a rural area
- Intergenerational benefits from retaining HPL for primary production, enabling future generations to sustainably produce food and fibre for themselves and others.

The main beneficiaries of the NPS-HPL

The main beneficiaries of implementing the NPS-HPL as a planning instrument are the community at large, particularly rural communities that depend on land-based primary production, and food and fibre processing industries.

Councils will benefit from clear policy direction, which will allow them to manage the HPL resource in their region/district more efficiently and effectively. This is likely to translate to cost savings over time and reduced litigation. This is particularly important in the context of increased national direction that prioritises the protection of freshwater resources and increasing urban development to provide for housing. Having clear policy direction on how the protection of HPL should be considered alongside these other (often competing) issues will assist councils with both policy development and decision making.

Central government will benefit from addressing a key policy gap in their national direction programme through a targeted planning instrument focused on reversing the trend of ongoing HPL loss over time. Developing a specific NPS to manage HPL is aligned with central government's resource management reform workstream.

Landowners of both HPL and non-HPL land will benefit from greater certainty on the location and value of HPL through the HPL identification process. HPL landowners will

[2] Ibid, pg. 4.

[3] Present value at an 8% discount rate across the six case studies between 2018 and 2048, also considers the costs of inputs to produce that level of output (estimated at $200m in present value terms – Ibid, pg.4).

have greater certainty that they will be able to continue to use their land for land-based primary production or will be able to investigate future uses of their land in the land-based primary production space if it is not currently in production. They will also benefit from improved protection from reverse sensitivity effects.

Non-HPL landowners may have an increased likelihood of their land being identified as suitable for urban rezoning or rural lifestyle zoning if they are located close to urban centres and may benefit from the associated increase in land value. Tangata whenua will have assurance that, regardless of the HPL identification process, they will be able to exercise their rangatiratanga on 'specified Māori land' including customary and freehold Māori land and Māori reserves and reservations (as defined in the NPS-HPL) without being constrained by the NPS-HPL. They will also be involved in giving effect to the NPS through the identification of HPL and preparing district plan objectives, policies and rules.

Where do the costs fall?

Monetised and non-monetised costs; for example to local government or regulated parties

The expected costs of the NPS-HPL

The expected costs of the NPS-HPL are considered in detail in the indicative and final CBA developed by Market Economics.

Landowners, industry, councils and central government will face increased costs as a result of the NPS-HPL, both in terms of implementation costs and constraints on HPL development opportunities. Opportunity costs for landowners and industry/businesses primarily occur on land that is identified as HPL where landowners would otherwise pursue plans to subdivide or develop the land for activities other than land-based primary production. Costs may also fall on existing activities in the rural environment that are not land-based primary production – being located on land identified as HPL may result in future rezoning or development plans being moved, scaled-down or modified, and in some cases prevented altogether.

Implementation costs will largely fall on central government, regional councils and district councils, which will be passed onto taxpayers and rate-payers. Some costs will be one-off, short-term costs, such as the HPL identification and associated plan change process, while others such as data maintenance and monitoring costs may be ongoing. The CBA has estimated the following monetised costs for central and local government[4]. Note that these costs are based on implementation timeframes for the NPS-HPL under the RMA in 2020 and may not reflect true implementation costs given RM reform and the transition to the new RM system[5].

- Central government guidance and support during the transitional period is estimated to be no more than $350,000 in present value terms (8% discount rate). This is considered to be minor compared to other existing or proposed NPS.
- Regional council costs for introducing plan changes to implement the NPS-HPL (excluding the mapping process which is unquantified in the CBA) are averaged at

[4] M.E. Consulting, "*National Policy Statement – Highly Productive Land Cost Benefit Analysis*", Final Version, 16 June 2020, pg. 6

[5] In particular, some councils may be reluctant to initiate changes to RPS and district plans through the RMA Schedule 1 process in advance of RM reform, which will require RSS and regional NBA plans to be prepared.

$1.86m ($1.39m average in present value terms) per regional council. Although these costs exclude the mapping process, they do factor in the plan change to incorporate the HPL maps and regional objectives and policies into the regional policy statement.

- District council costs for introducing plan changes to implement the NPS-HPL are averaged at $1.69m (or $1.22m in present value terms) per council. This is likely to be near the upper bound of costs as there is potential for cost efficiencies as part of other plan change processes and not all councils will require significant changes to operative provisions.

The actual costs for councils to implement the NPS-HPL are expected to vary substantially based on the degree of change from existing provisions and how councils choose to give effect to the NPS-HPL. The assumption is that councils will give effect to the NPS-HPL as a single plan change or incorporate this into a full plan review, with the latter option generally being more efficient in terms of timing, effort and costs.

One of the key costs anticipated from the NPS-HPL relates to the opportunity costs for rural landowners of sites containing HPL who will be constrained in their ability to subdivide their land. However, it is noted that this land may already be subject to other constraints relating to existing district plan rules, natural hazards, servicing issues etc. that influence the ability to subdivide. Subdivision of land typically results in capital gain for the landowner through the creation and sale of a new lot, which then enables the construction of (at least) one dwelling on the new lot. The desire for rural landowners to obtain capital through subdividing their property into smaller lots is evident from both the proliferation of rural lifestyle development throughout New Zealand and feedback through the NPS-HPL engagement process that rural lifestyle development subdivisions are one of the most sought-after types of rural subdivision.

The NPS-HPL will introduce a strong ‘avoidance’ regime for subdivision unless it can be demonstrated that:

- the overall productive capacity of HPL will be maintained or enhanced, or
- where the landholding is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the highly productive land.

This will create potential opportunity costs for landowners located on HPL in the form of a potential loss in capital gain that would otherwise result from the subdivision and sale of some of their land. This is somewhat mitigated by the ability to subdivide HPL when the overall productive capacity of HPL can be retained in the long term (subject to specific tests set out in the NPS-HPL). This will provide for situations such as boundary adjustments or parcel amalgamations/reorganisations that result in larger, more productive balance lots being created. There are also pathways for subdivision of Māori land or for specified infrastructure where there is a functional or operational need for the subdivision.

This flexibility in the NPS-HPL rural lifestyle provisions was not factored into the CBA modelling of opportunity costs as this was based on ‘high regulatory response’ scenario[6]. As such, actual opportunity costs under the NPS-HPL are likely to be substantially lower than estimated in the CBA. The CBA for the NPS-HPL quantifies the potential opportunity costs (loss development returns) associated with the NPS-HPL rural lifestyle provisions.

[6] The CBA was based on an earlier version of the NPS-HPL rural lifestyle subdivision that took a stronger avoidance approach.

This estimates the total net opportunity costs for the six case study districts at $140m over a 30-year period (8% discount rate)[7].

A large portion of this net opportunity cost is attributable to an undersupply of rural lifestyle lots in the modelling approach. This assumes no changes to operative subdivision provisions (a highly unlikely scenario) and that all HPL landowners have intentions to subdivide their land. As such, the CBA modelling approach overstates the net opportunity costs and this should be considered as the maximum potential opportunity costs and not reflective of the final NPS-HPL provisions restricting subdivision which provide a greater degree of flexibility. Further, when considering the net opportunity costs at the aggregate level and assumptions in modelling, the CBA concludes that opportunities costs from the NPS-HPL will be minor[8].

What are the likely risks and unintended impacts? how significant are they and how will they be minimised or mitigated?

The CBA report[9] noted that the actual impacts of the NPS-HPL will not be spread evenly across the country and will depend on the location of HPL, the prevalence of primary production in each district, the rate of projected growth in urban and rural locations and the degree of change required to operative planning frameworks to give effect to the NPS-HPL policy direction. As such, it is difficult to anticipate exact impacts on each council at this stage. However, this variability between districts and regions was recognised in the CBA and was somewhat addressed through the use of a case study methodology to demonstrate the range of impacts that could occur in different parts of the country.

There is a risk of some resistance from private landowners towards the NPS-HPL in the context of perceived impacts on property rights. This is likely prevalent in addition with the potential introduction of NPS-IB later in 2022, as this involves the mapping of 'significant natural areas' on private and public land. Although there are fundamental differences in the way both instruments work and the limits they place on the subdivision, use and development of private properties, there is a risk that both instruments will be considered by the public in the same way in terms of excessive restrictions on private property rights.

However, this risk is mitigated through the provisions in each instrument for appropriate use and development on private land (including Māori land) while protecting HPL and significant natural areas. It should also be noted that there is generally no 'right' to subdivide land in New Zealand, as all subdivision applications require a resource consent and only controlled activity applications have to be granted by a territorial authority.

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[7] This is based on modelling of the six case studies to direct lifestyle development to non-HPL, which resulted in a gross reduction in capital gain (cost) to landowners on HPL of -$687m (undiscounted) and a gross opportunity gain of $277m (undiscounted) to landowners on non-HPL. This is a net opportunity cost in the combined case study areas of -$411 (undiscounted) or -$140m in present value terms (8% discount rate).

[8] Specifcially the CBA concludes at pg. 132 that "*This is a net opportunity cost in the combined case study areas of -$411 (undiscounted) or -$140m in present value terms (8% discount rate). Importantly, this is associated with supply of nearly 11,900 new lifestyle lots over the long-term and this is 7.6% less than demand under the status quo (due to capacity constraints assumed to be fixed in M.E's model). A portion of the net opportunity cost is therefore attributable to potential for fewer lifestyle properties. This overstates the opportunity cost and so should be considered an upper limit. While opportunity costs to individual landowners on HPL may be significant, at an aggregate level, the net opportunity cost is (at most) a 5.5% loss of potential realisable capital compared to a future without the NPS – HPL. In wider economic terms, this foregone opportunity for capital gain is considered only minor*".

[9] M.E. Consulting, "*National Policy Statement – Highly Productive Land Cost Benefit Analysis*", Final Version, 16 June 2020, pg. 9

There have also been concerns raised from Horticulture New Zealand and vegetable growers about the combined effect of the NPS-HPL (which will restrict the ability to subdivide land mapped as HPL) and the NPS-FM (which may impose limitations on nutrient use that means the same land cannot be used viably for vegetable production). This is mitigated through the pathway for the use of mapped HPL where it can be proven that the landholding is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the highly productive land. Landowners seeking to use their HPL for a use other than land-based primary production would be required to demonstrate that they have considered a range of options and opportunities for addressing identified constraints. While this may not be the most straightforward option for addressing the concerns of vegetable growers, it does mean that highly productive land that is not economically viable for land-based primary production is not 'locked up' by the NPS-HPL and there is a pathway for a landowner to make their case for an alternative land use. The test for this is intentionally high, otherwise it could undermine the intent of the NPS-HPL. Too low a threshold for landowners to meet would likely result in a continuation of the status quo and continued loss of HPL.

Council resourcing and timing of plan reviews are also an implementation risk for the NPS-HPL. Local authorities have recently been tasked with implementing a range of national direction, including the NPS-UD, the NPS-FM and NES-F. This places additional pressure on local authorities to implement this direction within legislated timeframes, and on the private sector and tangata whenua to engage with the implementation process, in some cases across multiple jurisdictions. The timing of plan reviews and when councils will give effect to the NPS-HPL will also be influenced by the timing of the resource management reforms, as some local authorities may choose to delay plan review processes until there is more certainty about the new legislation. However, stakeholder engagement with local authorities during the NPS-HPL development has highlighted the urgency of this issue in some districts/regions and numerous councils are waiting on the gazettal of the NPS-HPL so they can factor it into their current plan review processes. It is expected that the councils that are most under pressure from private plan change requests to rezone HPL will likely prioritise the mapping of their HPL to ensure it is protected as soon as possible. Further, the interim definition of highly productive land and provisions with immediate legal effect will ensure the NPS-HPL helps to protect highly productive land from the date of commencement.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?
How confident are you of the evidence base?
The evidence base supporting the problem definition is robust. The need for government regulation has become more apparent since the publication of the 'Our Land' reports in 2018 and 2021 and the 'Environment Aotearoa' report in 2022, which show how HPL loss and fragmentation has accelerated over the last 20 years despite efforts from some local authorities to protect HPL. These reports noted that HPL is disproportionately affected by the increasing demand for urban development and residential housing, which justifies a focus on protecting HPL in the face of consistent urbanisation and fragmentation pressure. These findings have also been identified consistently in local and central government reports, independent publications and texts produced by non-government organisations. There is also an element of urgency related to this issue. The evidence base supports national regulation as the solution – the absence of clear national direction on the

management and protection of HPL has been identified as a key contributor to ongoing loss and fragmentation of HPL at a national level. Feedback from local authorities during engagement on the proposed NPS-HPL has highlighted the need for clear and immediate direction from central government on the importance of protecting HPL, particularly in districts/regions that are experiencing the greatest pressure for both urban rezoning and rural lifestyle development. Local authorities are finding it increasingly difficult to decline applications on HPL that would further reduce the productive capacity of the resource. There is no clear direction in either the RMA or in higher order documents to prioritise the retention of HPL for land-based primary production over non-productive uses.

Although there will be a delay in the NPS-HPL being fully given effect to through RMA plans (or future iterations of plans under the new resource management system), the NPS-HPL would be able to be considered in decisions made on resource consent applications and plan changes from the date of gazettal. This would provide support for decision makers to decline inappropriate proposals on HPL in the interim period while RMA plans are transitioning into the new resource management framework. Failure to introduce national regulation at this stage could see a continuation of the status quo and further irreversible losses of HPL over the next 5-10 years as the new resource management legislative changes bed-in.

The evidence base has been built on further through the NPS-HPL development process. Further evidence has been obtained from scoping workshops held with local authorities, key industry groups and iwi, a formal consultation process and government roadshow and three iterations of cost/benefit analysis (CBA). Collectively, this information supports government intervention through a national direction instrument and option analysis has confirmed that a NPS is the most suitable mechanism to address HPL loss.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Ministry for Primary Industries (MPI)
Quality Assurance Assessment:
The RIA provides a good assessment of the risks and limitations. For this reason, the QA Panel has assessed the RIA as meeting the Quality Assurance criteria.
Reviewer Comments and Recommendations:
The MPI RIA QA Panel has reviewed the paper proposing a National Policy Statement for Highly Productive Land and considers that the RIA is clear and concise, consulted and complete. The Panel consider that officials have done a good job in preparing the RIA which enables the reader to make a meaningful assessment of the proposed changes and the reasons as to why these are required now. Officials have attempted to consult on the proposals within the timeframes provided, including with Māori and other stakeholders. The RIA clearly identifies the criteria that has been used to underpin decision making, notes constraints on the analysis and the potential impact the proposed changes may have. The RIA also clearly explains how the legislative changes will be implemented and monitored. The RIA also is as convincing as possible in explaining why action is required now, rather than waiting for changes to the Resource Management Act 1999 to be completed.

Impact Statement: Managing and protecting highly productive land under the Resource Management Act (1991)

Section 1: General information

1.1 Purpose

The Ministry for Primary Industries (MPI) and the Ministry for the Environment (MFE) are solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. The analysis and advice have been produced for the purpose of informing Ministerial and Cabinet decisions on the proposal.

1.2 Key Limitations or Constraints on Analysis

Describe any limitations or constraints, for example:

- *What issues are in or out of scope? eg, Ministers may already have ruled out certain issues*
- *What is the evidence of the problem?*
- *What are the range of options considered?*
- *What are the criteria used to assess options?*
- *What are the assumptions underpinning the impact analysis?*
- *What is the quality of data used for impact analysis?*
- *What limitations may there have been on consultation and testing?*

The purpose of the NPS-HPL is to address the key regulatory factor driving the continued loss of HPL nationally, which is a lack of clarity on how HPL should be managed under the RMA, leading to greater weight being given to other factors when making decisions. This focus on addressing a regulatory issue has inevitably narrowed the scope of the proposal to matters that fall squarely within the RMA sphere.

During the submission and wider stakeholder engagement process, other issues were raised that were deemed to be out of scope, including protection and/or enhancement of soil health, application of fertilisers and nutrients to soil and managing the presence of phosphorus and nitrogen levels in soils. These matters will be looked at as part of another future workstream and are being addressed through the Essential Freshwater Package[10]. Soil health will also be considered as part of broader RM reform as the proposed NBA includes an environmental outcome relating to the protection or restoration of the health of soils along with the protection of highly productive land for food and fibre production.

The focus on addressing the three key regulatory issues associated with HPL loss (being urban rezoning, fragmentation and reverse sensitivity) was developed based on the findings of the Our Land 2018, Our Land 2021 and Environment Aotearoa 2022 reports, which pinpointed these issues as being primarily responsible. As discussed

[10] Includes the NPS-FM, the NES-F and the Resource Management (Stock Exclusion) Regulations 2020

above, these findings have also been identified consistently in local and central government reports, independent publications and texts produced by non-government organisations, confirming the validity of focusing on these three issues.

The range of options considered to address these issues include:

- A National Policy Statement (the preferred option)
- A National Environmental Standard focused on introducing nationally consistent subdivision provisions to address urban rezoning, land fragmentation and reduce instances of reverse sensitivity effects
- An amendment to the NPS-UD to address the loss of HPL from urban rezoning.

A full assessment of the options against these criteria is included in Section 3.2 of this report. The criteria used to assess these options are as follows:

1. **Effectiveness** – does the option address the issue of inadequate consideration of HPL;

2. **Level of direction** – the ability of the option to allow councils to direct actions and outcomes, increasing certainty and consistency in implementation;

3. **Flexibility** – does the option allow local authorities to respond to local priorities, pressures and community expectations and balance other national priorities;

4. **Complexity and costs** – the complexity, cost and effort to develop (central government) and implement (councils) the option; and

5. **Timeliness** – can the option be developed and implemented in an appropriate timeframe (i.e. allow for implementation of the desired outcome in the shortest timeframe).

Through the consultation process and the preparation of issues and options papers, it was determined that a NPS was the most appropriate option to address HPL loss. An NPS would achieve a nationally consistent outcome while still allowing for an appropriate level of regional and district variation to account for local conditions. It provides the right level of direction to address the issues without being too detailed and prescriptive, which might lead to perverse outcomes in some districts (as could occur if NES were introduced). It was also determined that combining the NPS-HPL with the NPS-UD would likely result in HPL loss becoming a sub-set issue of urban development and could result in consideration of HPL simply becoming another criteria to be considered, along with a range of other factors, when deciding where urban rezoning would take place. This option would also not be able to address other issues for HPL outside of urban rezoning (i.e. fragmentation and reverse sensitivity).

The extent of engagement and testing on the NPS-HPL has not been limited or constrained in any way. The development of the proposed NPS-HPL has been an extensive four-year process involving initial engagement and testing with stakeholders, a formal public consultation, further workshops and testing, exposure draft process and further testing with stakeholders on specific issues. This ongoing engagement and testing has involved iwi/Māori as Treaty partners, local authorities, primary sector representatives, developers, non-government organisations, soil scientists and infrastructure providers.

1.3 Responsible Manager (signature and date):
Tom Corser Land Policy, Land, Water & Climate Directorate Ministry for Primary Industries 29 June 2022
Hayden Johnston Director, Water and Land Use Policy Ministry for the Environment 29 June 2022

Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

The value and benefits of highly productive land

National and international literature demonstrates that HPL is a resource that has value beyond its current or potential uses, and that it provides significant services and benefits that are not necessarily marketable but are vital for the common good[11]. While generally recognised for its economic value when being used for land-based primary production, HPL also has wider societal, cultural and environmental benefits. The value of HPL is therefore not limited to those that directly use and benefit from the resource (i.e. landowners), but also those that get indirect benefits from the HPL resource (e.g. local and international food supply) and those that could use it in the future.

Some of the key benefits provided by HPL include:

- **Environmental** – direct and indirect ecological services such as water purification/filtration, water storage for plants to use and flood regulation, habitat for many different creatures (supporting biodiversity), nutrient cycling and climate regulation through carbon sequestration[12]. Also, using HPL for land-based primary production is positive from an environmental perspective as HPL needs less intervention to be used efficiently and effectively to generate food and other natural resources[13]. Conversely, less productive land requires more inputs such as fertilisers and irrigation that can lead to negative environmental outcomes.
- **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 for the year to 30 June 2022 is expected to reach $52.2 billion and the sector accounts for 11.1% of New Zealand's gross domestic product (as at 31 March 2020).[14] Primary sector activities also support employment and businesses across the primary sector value chain and in the wider rural community. A total of 367,000 people were employed in New Zealand's food and fibre sector as of 2019, representing 13.8% of the total workforce[15]. As an example of how beneficial the food and fibre sector can be to a specific geographic area, the Pukekohe food production hub employed 1,458 Full-time equivalent ('FTE') employees in the growing of vegetables in 2017, equivalent to 22% of the total 6,700 FTE employees in vegetable growing employment in New Zealand. Incomes from these primary production related jobs have flow-on effects to the wider economy through personal and household spending, which helps to sustain both urban and rural businesses[16].
- **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, particularly for people who gain meaning and

[11] Market Economics (2020), *'National Policy Statement – Highly Productive Land - CBA Supporting Spatial Analysis & Literature Review'* prepared for Ministry for Primary Industries.

[12] M.E Consulting (2020). *Proposed National Policy Statement – Highly Productive Land Cost-Benefit Analysis*. Prepared for MPI. Section 5.1, pg 64

[13] Ibid

[14] Ministry for Primary Industries (2022). *Situation and Outlook for Primary Industries June 2022*.

[15] Ibid

[16] M.E Consulting (2020). *Proposed National Policy Statement – Highly Productive Land Cost-Benefit Analysis*. Prepared for MPI. Section 5.1, pg 66

identity from living in a rural area used for land-based primary production. Locally sourced food also meets societal expectations that people will have access to produce from a local source that is in the freshest condition with a small carbon footprint. There are also societal benefits to be gained from taking steps to preserve our food producing ability and gifting a legacy of sustainable food production to the next generation.

- **Cultural** – Māori have had a long history and a close interdependent relationship with the natural environment, particularly soil resources[17]. Feedback provided by various iwi through consultation on the proposed NPS-HPL confirmed that land and soil resources are a precious taonga for Māori as tangata whenua (people of the land)[18]. 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. Another key aspiration is the ability to develop Māori land for a range of activities, including residential and commercial activities. Feedback from iwi submitters on the proposed NPS-HPL supported the protection of highly productive whenua, particularly the focus on restricting lifestyle development, which was recognised as a factor that compromises the productive potential of the land. Iwi submitters on the proposed NPS-HPL also noted the importance of protecting highly productive soils and land from the irreversible effects of uncontrolled urban rezoning. However, iwi submitters were also clear that Māori land should not be unduly constrained with respect to potential development options, as Māori land often has other limitations that make it difficult to develop. Feedback from iwi submitters is discussed further in Section 2.4 of this report.

In addition to the benefits outlined above, an important non-market value benefit of HPL is its option value. This is a non-use value that relates to the willingness of current generations to pay for retaining the option to use HPL sometime in the future. Option value in this context is the opportunity to use HPL for land-based primary production as well as derive benefit from its air, water and climate regulating functions. If HPL is not protected, then this option value is lost (an opportunity cost).

Key resource management issues under the status quo

The absence of clear national direction on the management and protection of HPL is resulting in inconsistent and poor outcomes. While there is evidence of good practice in some areas, there are also examples of failed attempts to provide stronger protection of this resource and poor decision-making that fails to adequately consider cumulative effects and the value of HPL for future generations. These issues are contributing to the ongoing, incremental and permanent loss of this resource nationally, a fact which is now well documented in New Zealand. In particular, the *Environment Aotearoa 2022* and *Our Land 2021* reports highlight the ongoing reduction in the availability of HPL for primary production due to urban rezoning and fragmentation by ad hoc development and rural lifestyle development.

In addition, there have been widespread concerns about the impact of new sensitive and incompatible activities conflicting with established land-based primary production

[17] Churchman G, and Landa E (editors) (2014). *The soil underfoot: infinite possibilities for a finite resource.* Taylor and Francis Group.

[18] For example, Ngāi Tahu clarified this relationship in their submission by stating that "*as tangata whenua, Ngāi Tahu identify as from the land and of the land"*.

activities utilising HPL, constraining their operations and resulting in "reverse sensitivity effects".

Urban rezoning onto highly productive land

Urban rezoning into rural areas has had a significant effect on the availability of HPL for land-based primary production. From 2002 to 2019, the amount of HPL converted to new urban areas (from dense urban developments through to lots up to 4,000m² in size) increased by 30 percent (from 49,185 ha to 64,192 ha). Over the same period, the total New Zealand urban area increased by 13% to approximately 206,565 hectares[19]. Research has found that urban growth disproportionally occurs on HPL with 27.7% of new urban areas between 2002 and 2019 located on LUC 1-3 land. In 2019, half of New Zealand's urban area rezoning was located in Auckland, Waikato and Canterbury[20].

Urban rezoning onto HPL is a permanent loss of that land for land-based primary production. Ongoing urban rezoning onto HPL therefore has wide-ranging and intergenerational impacts on rural communities and economies that are based around land-based primary production.

One reason why urban rezoning disproportionately impacts HPL is that it is often more suitable to develop than non-HPL. Some of the attributes that make HPL desirable for land-based primary production (being flat or rolling, cleared, close to key transport links) also make it attractive for urban rezoning. These attributes also make HPL less costly to develop and service, and therefore more likely be desirable for urban rezoning. Numerous submitters on the proposed NPS-HPL provided examples of recent urban rezoning onto HPL; from ribbon development to the east and west of Palmerston North, to future urban areas identified on the Heretaunga Plains in the Hawke's Bay. Others highlighted urban rezoning on the Taieri Plains outside Dunedin, the Cromwell Basin in Central Otago, Richmond in the Tasman Region and Cambridge in the Waikato[21]. It is concerning that some of this urban rezoning has occurred despite strong policy direction at the regional and district levels to protect HPL, which indicates that the policy tools currently available to protect HPL are not effective enough.

Fragmentation of highly productive land

Fragmentation of HPL is the result of subdividing rural land, often for residential use or for the purpose of raising capital. Areas of HPL that are at greatest risk of fragmentation are in peri-urban areas and/or within rural areas seen as desirable places to live for their rural amenity and character. Fragmentation can occur for a number of reasons[22], but the prime driver is subdivision for rural lifestyle developments, which typically results in land parcels that are too small to be used for economically viable land-based primary production.

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19 Curran-Cournane, F. et al (2021). Cumulative effects of fragmentation and development on highly productive land in New Zealand. *New Zealand Journal of Agricultural Research.* Pg. 6. https://doi.org/10.1080/00288233.2021.1918185

20 Ibid, Table 3, pg. 7

21 Submissions from Richard Hugh Wilde, Horticulture New Zealand, Our Food Network Dunedin, Brown Acres, Central Otago Winegrowers Association, Peter Singleton and Manaaki Whenua Landcare Research

22 Other key reasons noted by submitters included the need to subdivide to raise capital for buying out family members or paying for farm improvements (Far North District Council); and development creep through incremental land use change e.g. a change to a non-productive land use activity often results in a future subdivision to accommodate that activity (The Resource Management Law Association of New Zealand).

There has been a sharp increase in rural lifestyle development in recent decades. 21% of HPL (LUC 1-3) is now occupied by land parcels smaller than 40ha that contain a dwelling. On the most highly versatile land (LUC 1-2), 15% of LUC 1 and 10% of LUC 2 land is fragmented into land parcels smaller than 8ha containing a dwelling[23]. In Auckland, 35 percent of the region's most versatile land is occupied by rural lifestyle properties[24].

Rural lifestyle development is having a far greater impact on the availability of HPL than urban rezoning. While the outward growth of urban centres between 1990 and 2008 occurred on 0.5 percent of New Zealand's LUC 1 and 2 land, analysis in the same study shows that rural lifestyle zones occupied 10 percent of all LUC 1 and 2 land[25]. If fragmentation of all HPL is considered (LUC 1-3), 5 percent of HPL had been subdivided into lifestyle blocks (parcels between 2 and 8 ha in size) in 2019. This is equivalent to 173,800 ha (59 percent increase since 2002)[26].

Submitters on the proposed NPS-HPL (particularly councils) also provided consistent feedback that rural lifestyle development is the biggest threat to HPL in their region/district[27].

While the fragmentation of land ownership is legally reversible, in practice this is not common as a property's value generally increases when it is converted to a rural lifestyle property[28]. As a consequence, fragmentation of HPL generally results in the permanent loss of that land for land-based primary production.

The extent to which rural lifestyle developments are used for land-based primary production (if at all) varies markedly, from intensively farmed small blocks, producing a range of commercial agricultural and horticultural products, through to low intensity operations, producing for the needs of the household. Past research and surveys have generally found that smaller blocks will experience a moderate to significant fall in overall production when broken up. In contrast larger blocks, and those converted from more extensive grazing, may see an increase in agricultural production and value when subdivided[29].

Reverse sensitivity

Reverse sensitivity is a well-known planning concept under the RMA. It refers to the vulnerability of an existing activity to complaints from newly located activities in close proximity that are sensitive or incompatible with that existing activity. In practice, complaints and potentially legal challenges from these newly established activities can compromise the established activity by restricting when and how it can operate. Reverse sensitivity is not unique to HPL or land-based primary production. However, reverse

[23] *New Zealand's Environmental Reporting Series: Our Land 2021.*

[24] Deloitte (2018). *New Zealand's Food Story: The Pukekohe Hub.* Prepared for Horticulture New Zealand, August 2018.

[25] Andrew R, & Dymond JR. (2013). Expansion of lifestyle blocks and urban areas onto high-class land: An update for planning and policy. *Journal of the Royal Society of New Zealand,* 43(3), 128–140.

[26] *New Zealand's Environmental Reporting Series: Our Land 2021.*

[27] Submissions from Manaaki Whenua Landcare Research; Auckland Council; Dunedin City Council; Western Bay of Plenty District Council; Masterton District Council

[28] Andrew R, & Dymond JR. (2013). Expansion of lifestyle blocks and urban areas onto high-class land: An update for planning and policy. *Journal of the Royal Society of New Zealand,* 43(3), 128–140.

[29] Lillis et al. (2005). *Smallholdings in New Zealand.* New Zealand Agricultural and Resource Economics Society (Inc.). Paper presented at the 2005, NZARES Conference.

sensitivity effects can be a particular issue for certain land-based primary production operations.

In productive rural environments, common reverse sensitive effects relate to complaints about the operation and noise of machinery, pesticide and fertiliser spraying and application, and dust and smells associated with land-based primary production. These complaints can lead to subsequent constraints on these established operations. For example, reverse sensitivity associated with development pressures was identified by a local growers' community as one of the key challenges resulting from urban rezoning and rural fragmentation in Pukekohe[30]. Feedback from submitters on the proposed NPS-HPL also noted that reverse sensitivity can have a significant impact on land-based primary production, particularly for producers on the edge of existing urban areas where the potential for conflicts is highest[31].

Submitters on the proposed NPS-HPL provided numerous examples of reverse sensitivity impacting on their operations; from complaints about normal orcharding activities in the Far North District to the spray drift from vineyards in Central Otago[32]. An interesting finding was that even if there was no actual adverse effect caused and all consents and other approvals had been obtained correctly, the perceived adverse effect and subsequent complaints from neighbours are often enough to restrict the operation and or/force the closure of rural production activities[33].

The pressure on land-based primary production activities to internalise their effects to the extent practicable can be difficult to manage according to submitters. Feedback from growers raised concerns that the requirement to internalise effects essentially sterilises certain parts of production properties in order to provide internal buffers – this increases the cost of operating and ultimately makes operations less economically viable[34]. Feedback also suggests that councils have been struggling to regulate the interface between urban and rural activities without putting further considerable pressure on primary producers in terms of operational requirements and costs[35].

2.2 What regulatory system(s) are already in place?

- *What are the key features of the regulatory system(s), including any existing regulation or government interventions/programmes? What are its objectives?*
- *Why is Government regulation preferable to private arrangements in this area?*
- *What other agencies, including local government and non-governmental organisations have a role or other substantive interest in that system?*

[30] Curran-Cournane F, Cain T, Greenhalgh S, Samarasinghe O (2016), '*Attitudes of a farming community towards urban growth and rural fragmentation – an Auckland case study*. *Land Use Policy*. 58:241–250.

[31] For example, submissions on proposed NPS-HPL from Horticulture New Zealand and Bay Vegetable Growers.

[32] For example, submissions on proposed NPS-HPL from Submissions from Horticulture New Zealand and Central Otago Winegrowers Association.

[33] For example, submissions on proposed NPS-HPL from Submissions from Central Otago Winegrowers Association and Far North District Council.

[34] For example, submissions on proposed NPS-HPL from submissions from Horticulture New Zealand.

[35] For example, submissions on proposed NPS-HPL from the Resource Management Law Association.

- *Has the overall fitness-for-purpose of the system as a whole been assessed? When and with what result?*
- *What interdependencies or connections are there to other existing issues or on-going work?*

The regulatory system for highly productive land under the RMA and relevant national direction

The RMA is the key piece of legislation managing New Zealand's environment, including the management of HPL. The RMA governs the use of all New Zealand's natural and physical resources and is administered by the Ministry for the Environment (MFE), although it is largely implemented through local government policy statements and plans. HPL is recognised in the RMA at a very high, non-specific level as follows:

- Section 5, which sets out the purpose of the Act, "*to promote the sustainable management of natural and physical resources",* is relevant because HPL falls within the definition of natural resources. If HPL is effectively managed, it enables people and communities to provide for their social, economic and cultural well-being (under section 5(2)), while sustaining the potential of the HPL resource to meet the reasonably foreseeable needs of future generations (under section 5(2)(a) e.g. local food supply and employment). HPL is also indirectly referenced under section 5(2)(b) through the references to safeguarding the life-supporting capacity of water and soil.

- Section 7 outlines other matters that particular regard has to be given to. HPL is indirectly managed by two section 7 matters; the efficient use and development of natural and physical resources (under section 7(b)) and any finite characteristics of natural and physical resources (under section 7(g)). Providing for the efficient use of the HPL resource and recognising the finite characteristics of this natural resource are directly relevant to these section 7 matters.

- Section 30(1)(a) provides that it is a function of regional councils to establish, implement and review objectives, policies and methods to achieve integrated management of the natural and physical resources of the region, which includes HPL.

- Section 30(1)(b) provides that it is a function of regional councils to use, develop or protect land that is regionally significant, which would include HPL deemed by regional councils to be significant to their region.

- Section 31(1)(a) provides that it is a function of district councils to establish and implement objectives, policies, and methods to achieve integrated management of the use, development, or protection of land and associated natural and physical resources, which would include HPL.

- Section 31(1)(b) provides that it is a function of district councils to control any actual or potential effects of the use, development, or protection of land, which would include controlling activities on and around HPL.

Note that HPL is not referred to specifically or defined in any part of the RMA. Notably, the protection or management of HPL is not a matter of national importance under section 6 of the RMA, so considerations of HPL under Part 2 rely on sections 5 and 7 as discussed above. The relevance of HPL under Part 2 of the RMA has been confirmed by

the Courts[36], which have found that versatile land/soil is a natural resource that must be considered and protected under sections 5 and 7 of the RMA in relation to both present and future generations. However, these references are much less explicit and directive than previous iterations of resource management legislation (i.e. the former Town and Country Planning Act 1977).

The RMA provides several mechanisms that can be used by the Crown, and primarily councils, to assist with the management of HPL. These mechanisms include national policy statements, national environmental standards, national planning standards, regional policy statements, regional plans and district plans. At a national level there are no national direction instruments that explicitly manage HPL, although there are several NPS and NES that could impact on the ability of local authorities to protect HPL and ensure it is retained for land-based primary production activities. In particular:

- The National Policy Statement for Urban Development 2020 (NPS-UD) requires councils to provide 'sufficient development capacity" to meet expected demand for housing and business land and provides clear direction on what sufficient development capacity means in the short, medium and long-term. The NPS-UD also requires Tier 1 and 2 local authorities to prepare a Future Development Strategy (FDS) every three years to demonstrate how, where and when they will provide for urban development to meet demand over the medium to long term. FDS will also be required to identify areas where development capacity will be provided and also where there are constraints on development. The preparation of FDS is to be informed by other national policy statements and it is expected that HPL will be identified as a key constraint on urban development in FDS.

- The National Policy Statement for Freshwater Management 2020 (NPS-FM) and National Environmental Standards for Freshwater 2020 (NES-F) introduce certain constraints on HPL that may impact whether HPL can be used for intensive primary production. For example, this may involve constraints on water availability (whether water is available to be utilised to enable efficient primary production) and land use controls associated with the discharge of contaminants (which apply to activities such as dairy farming and horticulture).

There is significant variation between how territorial authorities and regional councils manage HPL within their district/region. These range from councils that already identify HPL to some degree and have a policy and rule framework in place to manage further fragmentation and loss of HPL, to others that do not identify HPL at all (spatially or through plan definitions of 'versatile soils' or similar) through their plans and have relatively permissive subdivision rules in their rural areas. Some of this variation may stem from a reluctance from some councils to propose strong provisions relating to HPL in the absence of any supporting national direction on this matter[37].

Is the current regulatory system fit for purpose?

There have been consistent concerns that the lack of clarity under the RMA with respect to HPL is resulting in two key issues:

[36] See, for example, *Canterbury Regional Council v Selwyn District Council*, (1996) 2 ELRNZ 395

[37] *Valuing Highly Productive Land – a discussion document on a proposed national policy statement for highly productive land',* MPI and MFE, August 2019, pg. 21

- Inconsistent approach to managing HPL nationally; and
- Limited weight being given to HPL when making decisions on competing land uses.

Both of these issues are contributing to the incremental, ongoing loss of HPL and compromising the effective and efficient use of HPL for land-based primary production. These issues are most prevalent around larger urban centres that are experiencing both pressure to expand onto HPL and a steady demand for rural lifestyle development.

These issues are contributing to the ongoing, incremental and permanent loss of this resource nationally, a fact which is now well documented in New Zealand. In particular, the *Our Land 2018, Our Land 2021* and *Environment Aotearoa 2022* reports highlighted the ongoing reduction in the availability of HPL for primary production due to:

- Urban rezoning; and
- Fragmentation by ad hoc development and rural lifestyle development.

Our Land 2021 noted that the biggest driver of land lost to urban rezoning and/or fragmentation was the desire for land parcels less than 8 ha in size that contain a dwelling. This desire for more land and/or smaller land parcels on the periphery of urban areas disproportionately affects HPL (LUC 1-3) compared to other classes of New Zealand land. HPL accounts for 14.5 percent of New Zealand's land area but accounted for over 50 percent of the increase in parcels smaller than 8 ha between 2002 and 2019[38]. The current regulatory system has been unable to address or reverse this trend.

In addition, there have been widespread concerns about the impact of new sensitive and incompatible activities conflicting with established land-based primary production activities utilising HPL, constraining their operations and resulting in "reverse sensitivity effects" (the problems with the current regulatory system are addressed more fully in Section 2.3 below).

Why government regulation is warranted

The ongoing loss of HPL is a wide-spread national issue that affects the majority of regions and districts in New Zealand to some degree. There are several factors that justify government regulation as a solution to ongoing loss and fragmentation of HPL:

- A reluctance from local authorities to make changes to their planning documents to protect HPL without sufficient national direction or support under the RMA to underpin their policy and rule frameworks
- A need for a national solution for a national problem – the loss of productive land for food and fibre production to support current and future generations is an issue that affects all New Zealanders, not just residents in districts with a high proportion of HPL
- A need for national consistency to ensure that all local authorities take the same approach to reducing rural lifestyle subdivision of HPL, appropriately managing the need for urban rezoning and addressing reverse sensitivity effects

[38] *New Zealand's Environmental Reporting Series: Our Land 2021.*

- A need for a higher order document to provide immediate direction to local authorities on how to manage HPL in the interim before the resource management reform is completed. Waiting for upcoming legislative change to resolve the issue will result in a continuation of the status quo and further loss of HPL over the next 5-10 years

- To provide greater clarity and direction to local authorities on how to protect HPL alongside giving effect to other national direction, including the NPS-UD and NPS-FM.

Interdependencies or connections to other existing issues or on-going work

Resource management reform

The proposed Natural and Built Environments Act (NBA) will require that the proposed National Planning Framework (NPF) and all plans promote specified environmental outcomes. The NPF will play the role of current national direction under the RMA but as single more integrated, coherent and effective framework with specific functions for conflict resolution and setting strategic direction. The proposed NBA has specified 'environmental outcomes', including (subject to final drafting) outcomes such as "*well-functioning urban and rural areas"* – including "*the prioritisation of highly productive land for land based primary production*" alongside protection outcomes.

It is also anticipated that the 'policy intent' of emerging and existing RMA national direction will carried through the NPF with some redrafting and repurposing. The NPS will provide direction and requirements for the development of Regional Spatial Strategies (RSS) and NBA Plans. Development of the NPS-HPL, including clauses with specific mention of how the NPS-HPL interacts with other key pieces of existing and emerging national direction (particularly national direction on urban development) will set the groundwork for how to balance the need to provide for urban growth but also protect the most highly productive land in the country under the RMA. This national policy direction can then be translated into the NPF to ensure continuity of direction through the resource management reform process. Similarly, the HPL mapping work that local authorities undertake under the NPS-HPL will carry through to spatial planning under RSS, albeit at a high-level (noting that RSS will generally not show or identify boundary specific areas).

Regional Spatial Strategies are long term 'placed based' strategies intended to set long term objectives for urban growth and other land use changes, responding to climate change, and identify areas inappropriate to develop for reasons such as their natural (or use) values or their importance to Māori. RSS are expected to identify strategically "no-go" places and areas for restoration, rural, urban and rural development, and infrastructure. This will include a requirement that RSS identify (at a high level) and prioritise HPL for land-based primary production and integrate strategies for this with other environmental outcomes and national direction.

RSS are intended to identify (at a regional scale) areas of HPL that are prioritised for land-based primary production, alongside areas for infrastructure, urban development, enhanced indigenous biodiversity and cultural protection. The identification of all of these different areas within the same document is intended to achieve integrated aligned, internally consistent, and synergistic outcomes and spatial strategies for regional development and protection.

Managing afforestation

Government has also committed to giving local authorities more control of managing afforestation, including afforestation on highly productive land.

The challenge is to ensure that the right type of forestry is enabled in the right places, while managing the transition to a low carbon economy and helping to mitigate climate change. The identification of HPL provides an opportunity to identify land that can be used for a wide range of land-based primary production and where it may be inappropriate to use this highly productive land for carbon forestry as a long-term and relatively low productive land-use.

Ministers have not made any final policy decisions on this work, and therefore these programmes will be able to be prepared to align with the NPS-HPL.

2.3 What is the policy problem or opportunity?

- *How is the situation expected to develop if no further action is taken, and why is this a problem? (This is the basis for comparing options against each other).*
- *What is the nature, scope and scale of the loss or harm being experienced, or the opportunity for improvement? How important is this to the achievement (or not) of the overall system objectives?*
- *What is the underlying cause of the problem? Why cannot individuals or firms be expected to sort it out themselves under existing arrangements?*
- *How robust is the evidence supporting this assessment?*

The policy problem

The key policy problem is that there is a lack of clarity on how HPL should be managed under the RMA, which often results in less weight being attributed to the value of HPL for land-based primary production and greater weight being given to other matters and priorities by decision-makers. This is causing ongoing, incremental loss of HPL due to urban rezoning and fragmentation of rural land, including for rural lifestyle purposes.

The lack of clarity under the RMA on how to protect and use HPL is largely driven by the lack of specific reference to HPL (or versatile soils) within Part 2 (purpose and principles). HPL is a relevant consideration under section 5 and section 7 of the RMA and the Courts have confirmed this through a number of judgements. However, these references to HPL in Part 2 of the RMA are much less explicit and directive than previous iterations of resource management legislation (i.e. the former Town and Country Planning Act 1977). There have been consistent concerns that the lack of clarity under the RMA is resulting in two key issues:

- Inconsistent approach to managing HPL nationally; and
- Limited weight being given to HPL when making decisions on competing land uses.

Both of these issues are contributing to the incremental, ongoing loss of HPL and compromising the effective and efficient use of HPL for land-based primary production. These issues are most prevalent around larger urban centres that are experiencing both

pressure to expand onto HPL and a steady demand for rural lifestyle development. The sections below provide more details on the key resource management issues the NPS-HPL seeks to address.

Inconsistent approach to managing HPL nationally

Without clear direction from the RMA as to how HPL should be managed, councils have adopted a variety of approaches to manage the use and protection of HPL across New Zealand. Some regional policy statements and plans have defined 'highly productive land' (or similar) and include clear direction in the objectives and policies on how this resource should be managed. Conversely, some plans are completely silent on HPL and provide limited direction on how this resource should be considered alongside other matters and uses. The more recent NPS-UD and NPS-FM create additional challenges as it is not clear how HPL should be managed in an integrated way with these matters.

Feedback from submitters on the proposed NPS-HPL identified the lack of direction in the RMA on HPL as the primary reason for inconsistent protection of this resource throughout the country. While the loss of HPL is increasingly recognised as a national-scale problem, it continues to be managed through locally focused planning approaches that do not give sufficient weight to HPL as a nationally strategic asset[39]. Submitters on the proposed NPS-HPL also provided examples of inconsistent approaches to managing HPL, both between regions and within regions, even when the relevant regional policy statement provides policy direction to protect HPL (e.g. within Waikato region).

A review of planning approaches across the country has also found a high level of variation in:

- **The objectives and policies to guide the management and protection of HPL.** This policy direction ranges from very strong (e.g. avoiding urban rezoning on HPL) to policy direction that gives priority to urban growth and development, with HPL being just one matter to consider when providing for such growth.

- **Subdivision rules to manage fragmentation of highly productive land.** Mechanisms to manage fragmentation of HPL (e.g. minimum lot sizes, specific rural lifestyle development zones) are not used consistently, and some district plans still have permissive subdivision regimes in their main rural zone(s) that are resulting in ongoing fragmentation of productive rural areas.

The absence of clear direction in the RMA or supporting national direction on the protection and use of HPL also means there can be a reluctance on the part of territorial authorities to propose strong provisions to protect HPL and/or the weight of any proposed provisions can be diminished through the statutory process. A number of council submitters on the proposed NPS-HPL highlighted how strong protections for HPL are often diminished through the Schedule 1 process for various reasons (e.g. due to political motives) and are typically given less weight than other Part 2 considerations.

Limited weight being given to HPL in RMA planning and decision making

The lack of explicit reference to the protection of HPL in the RMA is resulting in limited weight being given to HPL when making decisions on competing land uses. This has been identified as a key issue when developing the NPS-HPL and submitter feedback on

[39] Submission on proposed NPS-HPL: Manaaki Whenua Landcare Research.

the proposed NPS-HPL confirmed this. This lack of clarity means New Zealand's HPL resource is being permanently lost to urban rezoning or subdivided into less productive rural lifestyle sized lots, often without due consideration of the long-term value this finite resource provides to New Zealand[40]. The lack of specific reference to HPL in the RMA means that competing considerations that are explicitly referenced in section 6 of the RMA or in national direction take precedence in RMA planning and decision-making. For example, a number of council submitters on the proposed NPS-HPL reported challenges balancing the protection of HPL with competing priorities under the RMA, noting that HPL is generally just one matter of many that decision-makers must 'have regard to'.

Another driver for the limited weight given to HPL under the RMA are the difficulties quantifying the value of the resource for current and future generations. The common approach to valuing land-use change under the RMA is heavily weighted toward changing away from land-based primary production. This is because urban uses always have a higher financial return and land-value compared to land-based primary production. Feedback from stakeholders has emphasised the difficulties valuing the protection of HPL for ongoing use in land-based primary production compared to its conversion to urban uses. For example, Queenstown-Lakes District Council submitted on the proposed NPS-HPL that it has constant issues managing development proposals in highly productive areas, particularly in Gibbston Valley, as the cost of losing HPL is not well understood. Similarly, Western Bay of Plenty District Council submitted that HPL frequently loses when considered alongside competing, non-productive land uses as an assessment of the highest valued use of the site will favour other uses. However, this approach fails to consider the overall best interests of the wider community or the long-term future and prosperity of the region e.g. perceived short term benefits versus potentially high-costing longer term consequences of a lost finite resource.

Another issue is that the cumulative loss of HPL for primary production is often overlooked as decision-makers discount the significance of an area when it is considered in the context of the total area of HPL in the region/district.

Robustness of evidence

The process for developing the NPS-HPL was initiated after the release of the '*Our Land 2018'* report, which identified the extent of highly versatile soils that have been lost to urban development and rural lifestyle development. Following on from this report is the '*Our Land 2021'* report that was released on 15 April 2021. Both of these reports highlight that the rate at which HPL being fragmented and/or converted to urban use is accelerating over time and that HPL is disproportionately affected by the increasing demand for urban development and residential housing.

The development of the NPS-HPL has been through an extensive process with ongoing input from stakeholders, a formal public consultation phase, and meeting a number of statutory steps for national policy statements as set out in section 45-52 of the RMA. The information gathered through this process has built up the evidence base for why national direction on HPL is needed. Evidence produced through this process includes:

[40] Curran-Cournane F, Golubiewski N, Buckthought L. (2018) *'The odds appear stacked against versatile land: can we change them?*', New Zealand Journal of Agricultural Research, DOI: 10.1080/00288233.2018.1430590

- The preparation of the 'New Zealand's food story: the Pukekohe Hub' report by Horticulture NZ in 2018, which detailed the value of the Pukekohe area for food production and the pressures faced in this important horticultural area

- Feedback from scoping workshops held with regional councils, territorial authorities and key industry stakeholders between September-November 2018, which identified key issues and discussed potential policy options and then a second round of council, iwi and public presentations and workshops between September-October 2019 and February 2020 getting feedback on the proposed NPS-HPL and further refining provisions.

- Part of the public engagement on the proposed NPS-HPL in 2019 mentioned above was a wider government roadshow to seek feedback on proposals for national direction on HPL, freshwater and urban development. The roadshow included more than 60 meetings across New Zealand, with over 7500 people in attendance. This engagement included public and primary sector-focused meetings, workshop sessions with councils, and regional hui with iwi/Māori. Feedback from this process has fed into the NPS-HPL development.

- Three iterations of CBA that provided a preliminary analysis to support the discussion document in May 2019, a follow up limited scope CBA that focused on the potential impacts of the urban rezoning policies in October 2019 and a final CBA in June 2020 (noting this based on an earlier version of the proposed NPS-HPL).

- An 'exposure draft' process in October 2021 to test the proposed NPS-HPL provisions with stakeholders, including representatives from local government, the primary sector, developers, infrastructure providers, non-government groups and iwi/Māori as Treaty partners. This process helped to test the workability of the provisions and provide more evidence to support the policy intent and provisions of the proposed NPS-HPL.

2.4 What do stakeholders think about the problem?

- *Who are the stakeholders? What is the nature of their interest?*
- *Which stakeholders share the Agency's view of the problem and its causes?*
- *Which stakeholders do not share the Agency's view in this regard and why?*

Stakeholders and their interests

The management of HPL is a topic that generates interest from a wide variety of stakeholders. These include:

- Regional and district councils, which both have responsibilities for the management of HPL under the RMA.
- Iwi as Treaty Partners and landowners.
- Crown agencies, in particular –MPI, MFE, Department of Conservation (DOC), Ministry of Housing and Urban Development (HUD) and Te Puni Kōkiri (TPK)– which are either responsible for HPL management in some way and/or own land that is highly productive.
- Local Government New Zealand (LGNZ), on behalf of councils.

- The primary sector that generates significant primary production output from HPL.
- Landowners and developers as they will be affected by greater protection of HPL.
- Environmental non-government organisations (NGOs).
- Communities and the general public interested in looking after New Zealand's productive rural land resource.
- New Zealand's land and soil science community[41].

Stakeholder views on the problem definition

The NPS-HPL has been through an extensive process that has involved ongoing engagement with key stakeholders and a formal public consultation phase, which included nation-wide meetings and formal submissions on the proposed NPS-HPL. 250 submissions were received on the proposed NPS-HPL in 2019 and 90% of those submitters indicated full or partial support for the policy intent of the NPS-HPL objective to better protect the HPL resource and ensure this resource is available for land-based primary production for future generations.

There was also widespread recognition from submitters that:

- The values and benefits of HPL need to be better recognised under the RMA; and
- This finite resource needs to be better protected from urban rezoning and rural lifestyle development.

There have also been persistent calls from soils scientists and some councils for greater national policy direction to better manage the HPL resource[42]. As such, the NPS-HPL objective is consistent with community outcomes sought throughout New Zealand to better value and protect the HPL resource for current and future generations.

As there was general consensus from stakeholders that there is a need for national direction to better manage New Zealand's HPL, the remainder of feedback from stakeholders focused on aspects of the NPS-HPL that needed more clarification or refinement. In particular:

- There were differing opinions on the scope of the NPS-HPL and whether it should focus on the most versatile soils, i.e., only protect Land-use Capability Class 1, or Classes 1 and 2, rather than Classes 1, 2 and 3.

- There were concerns about how the NPS-HPL will interact with other pieces of national direction, particularly the NPS-UD and the NPS-FM, and requests for clear and coherent alignment between these instruments.

[41] For example 'Loss of productive land' and 'Urban sprawl and high class soils / Productive land sprawl (NPS-HPL)' both feature as specific themes in the following soil science conference scheduled for later in 2022 'Soil – Aotearoa's most precious resource'.

[42] Fiona Curran-Cournane, Nancy Golubiewski & Laura Buckthought (2018), '*The odds appear stacked against versatile land: can we change them?*, New Zealand Journal of Agricultural Research, DOI: 10.1080/00288233.2018.1430590. Also a key theme developed in Curran-Cournane, F. and E. Rush (2021). *"Feeding the New Zealand Family of Five Million, 5+ a Day of Vegetables?"* Earth 2: 797-808.

- There were some suggestions for other ways to address HPL instead of a NPS, including amendments to section 6 of the RMA and merging the NPS-HPL with the NPS-UD.

These matters have been worked through further with local authorities and other key stakeholders through additional workshops and engagement. In particular, further workshops were held with local authority representatives and primary sector experts on 9th March 2021 to discuss:

- Constraints, criteria and other factors that could be used to justify not mapping land as HPL and whether any of these were appropriate/practical.
- The potential criteria for enabling urban development on land classified as HPL and the interaction between the proposed NPS-HPL and the NPS-UD.

This was followed by further engagement through an 'exposure draft' process in October 2021 to test the proposed NPS-HPL provisions with stakeholders, including representatives from local government, the primary sector, developers, infrastructure providers, non-governmental groups and iwi/Māori as Treaty partners. This process helped to test the workability of the provisions and provide more evidence to support the problem statement and policy intent.

Māori views on the problem definition

Whenua is recognised as being an important cultural and spiritual resource for Māori. Māori are spiritually connected to the land and land and water are regarded as taonga to Māori. As New Zealand's productive land and soil are important cultural and spiritual resources for Māori, the NPS-HPL objective to retain HPL for land-based primary production often aligns with Māori aspirations for whenua.

Regional hui across New Zealand, were held as part of the Essential Freshwater roadshow from August to October 2019. Eight written submissions were received from the following:

- Waikato River Authority
- Te Arawa River Iwi Trust
- Te Whakakitenga o Waikato Incorporated (Waikato Tainui)
- Te Kaahui o Rauru
- CNI Iwi Land Management Ltd (CNIILML)
- Te Rūnanga o Ngāi Tahu
- Te Akitai Waiohua Waka Taua
- Muaūpoko Tribal Authority

In October 2021 all 70 Treaty Partners that had reached settlement with the Crown (Post Settlement Governance Entities) were contacted and invited to be involved in testing the exposure draft of the NPS-HPL. Regular updates were also provided to a wider distribution list via the quarterly MfE Pānui with an opportunity to seek further information. Targeted engagement on possible amendments to the NPS-HPL post exposure draft testing was carried out in March and April 2022 with Te Arawhiti and Te Puni Korkiri; Waikato River Authority, Te Rūnanga o Ngāi Tahu and Muaūpoko Tribal Authority.

Feedback from iwi/Māori in the development of the NPS-HPL and through submissions indicated broad support for the intent of the NPS-HPL objective to protect highly

productive whenua for future generations. This was seen as particularly important for larger iwi who have multiple council boundaries within their rohe and would appreciate a more consistent framework to protect and manage HPL. Feedback from iwi/Māori submitters on the proposed NPS-HPL also emphasised the importance of partnering with iwi/Māori to identify HPL within their rohe and develop corresponding provisions for the management and protection of their whenua. This is anticipated through the implementation of the provisions that give effect to the NPS-HPL objective.

Other feedback from iwi/Māori on the NPS-HPL generally included concerns about how the NPS-HPL would impact whenua Māori, sites of significance to Māori, and the ability to undertake cultural activities and land uses such as papakāinga.

2.5 What are the objectives sought in relation to the identified problem?

- Objectives must be clear and not pre-justify a particular solution. They should be specified broadly enough to allow consideration of all relevant alternative solutions.
- Where there are multiple policy objectives it should be clear how trade-offs between competing objectives are going to be made and the weightings given to objectives – not just those in direct conflict.
- For further guidance, see 2.3 of the Guidance Note on Best Practice Analysis https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf

The NPS-HPL has a single overarching objective:

> ***Highly productive land is protected for use in land-based primary production, both now and for future generations.***

This objective provides the NPS-HPL with a clear focus, scope and purpose – to ensure that HPL is protected for use in land-based primary production for current and future generations. This does not imply or require absolute protection of HPL from all non-productive uses. Rather, in recognition of the values and benefits of HPL, the intent of the NPS-HPL objective is to ensure that non-primary productive uses only occur on HPL in the following circumstances:

- It is for urban zoning to provide sufficient development capacity and certain tests are met (there are no reasonably practicable alternatives, it will provide a well-functioning urban environment etc.)
- It involves subdivision that would maintain the productive capacity of the HPL being subdivided.
- It is for certain uses and development that are recognised as being important for public well-being (e.g. infrastructure), that relate to a matter of a national importance, and/or are recognised as being small scale or temporary with no impact on the productive capacity of HPL.
- The landholding is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the land.

This means that urban rezoning and other uses (e.g. environmental protection and enhancement, infrastructure) may be appropriate on HPL in certain circumstances, provided the overall HPL resource within each region is protected for land-based primary production for current and future generations.

Section 3: Option identification

3.1 What options are available to address the problem?

- *List and describe the key features of the options. Set out how each would address the problem or opportunity, and deliver the objectives identified.*
- *How has consultation affected these options?*
- *Are the options mutually exclusive, or do they or some of them work in combination?*
- *Have non-regulatory options been considered? If not, why not?*
- *What relevant experience from other countries has been considered?*

Overview

Three options have been considered for addressing the key problem that **provisions addressing the protection and management of highly productive land under the RMA are unclear** and result in ongoing, incremental loss of highly productive land due to urban rezoning and fragmentation of rural land for rural lifestyle purposes. The three options are:

- **Option 1:** National Environmental Standards for managing HPL
- **Option 2:** A National Policy Statement for HPL with a single objective (preferred option)
- **Option 3:** Incorporating protection of HPL into the National Policy Statement for Urban Development (NPS-UD)

Addressing the key problem will contribute to the long-term policy objective of reversing the trend of ongoing loss and fragmentation of highly productive land in New Zealand.

Status quo

The status quo is described in Sections 2.1 and 2.2 of this report. It consists of primarily RMA provisions and a range of national direction instruments (e.g. NPS-UD, NPS-FM) that do not clearly or explicitly mention HPL but do mention other competing factors such as providing sufficient development capacity for housing and business land that can often be in direct conflict with retaining HPL for land-based primary production.

The status quo includes wider changes to the resource management system, including the introduction of new legislation (the proposed Natural and Built Environments Act (NBA) and Spatial Planning Act (SPA)) in 2023 although the full transition to the new resource management system will take much longer. The prioritisation of HPL for land-based primary production is intended to be listed as an environmental outcome in the NBA, which means it will need to be considered in the preparation of National and Built Environments plans under this Act. The NPF is also anticipated to provide further guidance as to how the prioritisation of HPL for land-based primary production is to be balanced against other competing environmental outcomes. However, the reform process will take time before it has any impact and is not likely to be specific enough to afford HPL clear and unambiguous protection in a timely manner. As such, it is anticipated that provisions in local authority planning documents are likely to remain inconsistent without sufficient strength and/or direction to sufficiently protect the HPL

resource in the short to medium term, which will result in the continued loss of HPL to urban development and further fragmentation.

Option 1: National Environmental Standards for managing HPL

National Environmental Standards (NES) are regulations made under section 43 of the RMA. NES prescribe standards for environmental matters and can operate as plan rules to provide more consistent and certain resource consent requirements nationally. NES generally prevail over plan rules, except where a NES expressly states plan rules can be more stringent or lenient.

A NES for HPL would provide a nationally consistent set of regulations to manage different land use activities on HPL. For example, a NES for HPL could permit land-based primary production activities on HPL (subject to appropriate conditions) and provide restrictions on inappropriate subdivision, use and development on HPL through a more stringent activity status and associated requirements.

A key benefit of this option is that a NES could have immediate effect and provide a high level of certainty and consistency in how the NES is implemented and the outcomes achieved.

The main limitation of a NES for protecting HPL is that it provides limited flexibility to respond to different local priorities and pressures as it tends to be better suited to managing issues with less local variation. Furthermore, NES do not contain objectives and policies. Therefore, some form of guidance is likely to be required in place of objectives and policies to assist applicants and councils make decisions about competing issues or considerations at the resource consent stage. Although a NES could be tailored to a certain extent to allow plan rules to be more stringent or lenient or focus on particular locations, this needs to be finely balanced if the consistency and certainty benefits of a NES are to be achieved. A NES would also need to be carefully designed to ensure it was appropriate in all locations it applied to and did not have unintended consequences for “locking-in” certain land uses HPL.

The immediate impacts on landowners would also likely be greater under this option. In contrast, a NPS must be given effect to by councils through RMA policy statements and plans before any regulatory methods could be introduced, which gives affected landowners and stakeholders a chance to input into the public planning process, either under the RMA or through RM reform.

Accordingly, given these limitations, a NES is not considered to be the most appropriate option to address the identified resource management issues.

Option 2: A National Policy Statement for HPL (preferred option)

A National Policy Statement (NPS) issued under sections 45-55 of the RMA sets out objectives, policies and implementation requirements that councils must give effect to in RMA regional policy statements and plans and have regard to when considering resource consent applications. The level of direction and specificity in the NPS provisions determines how much flexibility councils have when giving effect to the NPS based on their local context.

The NPS-HPL clarifies the position of HPL in the decision-making hierarchy by providing clear direction on the outcomes sought for HPL nationally. This includes an overarching objective that provides clear direction on the outcome sought - "*Highly productive land is protected for use in land-based primary production, both now and for future generations*". This objective is supported by 9 policies that set out the critical actions required to achieve the objective, focusing on identifying and mapping HPL, enabling it to be used for land-based primary production and also protecting it from urban rezoning, subdivision, inappropriate use and development and reverse sensitivity effects. The implementation requirements in Part 3 of the NPS-HPL set out how these policies are to be implemented through changes to RMA policy statements and plans and through resource consent decision-making.

The NPS-HPL defines several key terms critical to implementing the policies, including defining urban rezoning with reference to the described zones in the National Planning Standards, definitions such as development capacity that are aligned with the NPS-UD, and definitions of 'land-based primary production' and 'productive capacity'. The NPS-HPL also focuses on how local HPL should be identified both in the transitional period and through the regional HPL mapping process. Both the transitional definition of HPL and the mapping HPL process focus on areas of LUC 1, 2 and 3 in rural zones as the starting point for defining HPL, followed by whether the land is in a Rural production or General rural zone (or equivalent if the National Planning Standards have not yet been given effect to). The mapping process also allows for consideration of whether the land forms part of a large and geographically cohesive area of HPL. Councils can also consider other classes of LUC land for HPL mapping if it has the potential to be highly productive in the context of the district/region based on factors such as soil type, physical land and soil characteristics, and climate of the area. This provides a pathway for other classes of LUC land to still be mapped as HPL if they are considered highly productive e.g. stony soils suitable for viticulture. Councils are able to exclude LUC 1, 2 or 3 land from being mapped as HPL if it has been identified through a FDS for future urban use.

The NPS-HPL contains specific direction for how territorial authorities must allow for urban rezoning on HPL in certain circumstances. This allows for urban rezoning of HPL when:

- The urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land (under the NPS-UD); and
- There are no reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
- The environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

The general intent is to only allow urban rezoning on HPL where no other feasible options exist and to ensure that decision-making on rezoning HPL for urban development is based on clear, robust evidence.

The NPS-HPL also provides strong direction that zoning HPL for rural lifestyle purposes should be avoided, given this is an unproductive use of HPL and one of the key issues the proposed NPS-HPL seeks to address.

The NSP-HPL seeks to avoid the subdivision of HPL unless the productive capacity of the land can be maintained or improved. The only other situations where subdivision of HPL would be considered appropriate are if the subdivision is on specified Māori land (see comment on Māori land uses below), or if the subdivision was to enable specified infrastructure that has a functional or operational need to locate on HPL. The intent is to significantly reduce instances of HPL being subdivided for non-productive purposes once the NPS-HPL comes into effect.

The NPS-HPL also allows for other subdivision, use and development on HPL where the land is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the HPL. The onus to prove that the land is not economically viable for land-based primary production is on the landowner and they would need to go through either a private plan change or a resource consent process to confirm this. The process would involve the applicant demonstrating that there are long-term or permanent restrictions that limit the productive capacity of the land to the extent that land-based primary production is not economically viable. They would also have to demonstrate that they had evaluated a range of options to overcome the identified constraints e.g. considered improved land management practices, alternative production strategies, water efficiency/storage methods, reallocation/transfers of water and nutrient allocations, and boundary adjustments/leasing arrangements as relevant. This is an intentionally high test as, applied too liberally, it has the potential to undermine the objective of the NPS-HPL and could result in a continuation of the status quo.

The NPS-HPL also seeks to protect HPL from inappropriate use and development. It does this by setting out the types of activities and uses that may be appropriate on HPL which are activities that are recognised as being important for public well-being (e.g. infrastructure), that relate to a matter of a national importance, and/or are recognised as being small scale or temporary with no impact on the productive capacity of HPL.

The NPS-HPL is permissive of the activities that can occur on ‘specified Māori land’ (as defined). This recognises the existing and historic restrictions (such as ownership structure and access to finance) which already limit the development of this land.

Subdivision of ‘specified Māori land’ that is mapped as HPL is not restricted by the NPS-HPL where subdivision includes partition orders made under Te Ture Whenua Māori Act 1993.

Finally, the NPS-HPL sets out how territorial authorities should manage reverse sensitivity issues affecting HPL in their district plans. It is recognised that most territorial authorities with rural land in their district already have provisions to manage reverse sensitivity effects, but that there is a lack of national consistency in this area. The intent of the NPS-HPL reverse sensitivity provisions is to raise the bar nationally and encourage all territorial authorities to implement best practice to avoid where possible, or otherwise, mitigate reverse sensitivity effects on land-based primary production activities on HPL. Non-statutory guidance will also be provided to support territorial authorities develop effective provisions to avoid and mitigate reverse sensitivity effects through their district plans.

The NPS-HPL provides a balance between providing some degree of flexibility in how councils give effect to the provisions while also providing clear direction and national consistency in the identification and protection of HPL for land-based primary production. The NPS-HPL option will require changes to RPS and district plans through public plan change processes to give effect to the provisions which have time/cost implications and potential litigation risks. While this is less efficient than a NES (Option 1) and may result in some diversity between districts, it is seen as preferable to a blanket 'one size fits all' set of nationally consistent rules in a NES as this is unlikely to suitable for all local contexts.

Option 3: Incorporating protection of HPL into the National Policy Statement for Urban Development 2020 (NPS-UD)

This option would involve amendments to the NPS-UD to explicitly require HPL to be considered and protected when councils are providing development capacity and identifying new urban areas in their FDS. This option could be effective in restricting urban rezoning of HPL to ensure this only occurs in appropriate situations.

This option has the benefit of consolidating the number of NPS that councils must give effect to and providing a clear integration between providing for urban development capacity while protecting HPL. This may lead to reduced implementation costs and effort for councils and reduce potential inconsistencies across different national direction instruments. However, these benefits are less relevant in the context of RM reforms given councils will be giving effect to the NPF which will provide national direction on all environmental outcomes (including well-functioning rural and urban environments) as part of a single framework.

Additionally, there are a number of significant limitations of this option:

- It only addresses urban rezoning of HPL within no/limited ability to address other key issues, including rural lifestyle development (which has been identified as the key threat to HPL), and reverse sensitivity.
- There is a potential risk that HPL is seen as a sub-issue associated with urban development rather than a matter of national significance in its own right.
- It has the potential for policy confusion in terms of the overall purpose of the combined NPS, the objectives it seeks to achieve, and what objectives prevail in the event of conflict.

Further, the consistent identification of HPL is fundamental to its successful management and protection. Therefore, additional policies would be required in the NPS-UD to ensure that HPL was consistently identified and mapped which is inconsistent with the focus and scope of the NPS-UD.

Overall, while this option may be effective in addressing the issue of urban rezoning of HPL, it would not address all identified resource management issues and is therefore not the most appropriate option to protect HPL and achieve the purpose of the RMA.

3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

- *Comment on relationships between the criteria, for example where meeting one criterion can only be achieved at the expense of another (trade-offs)*

The criteria used to assess the three options are based on the criteria listed in Section 4.4 of the discussion document on valuing HPL[43]. These criteria were developed to address the key problem identified in Section 2.3 of this document; **that there is a lack of clarity on how HPL should be managed under the RMA**, which often results in less weight being attributed to the value of HPL for land-based primary production and greater weight being given to other matters and priorities by decision-makers. These criteria have been used to assess the pros and cons of each option:

1. **Effectiveness** – does the option address the issue of inadequate consideration of HPL;
2. **Level of direction** – the ability of the option to allow councils to direct actions and outcomes, increasing certainty and consistency in implementation;
3. **Flexibility** – does the option allow local authorities to respond to local priorities, pressures and community expectations and balance other national priorities;
4. **Complexity and costs** – the complexity, cost and effort to develop (central government) and implement (councils) the option; and
5. **Timeliness** – can the option be developed and implemented in an appropriate timeframe (i.e. allow for implementation of the desired outcome in the shortest timeframe).

Linkages between criteria

Criteria 2 and 3 are somewhat opposing as allowing local authorities some flexibility to respond to local conditions has the potential to undermine achieving certainty and consistency in implementation. The preferred option will need to balance the need for local flexibility with ensuring the option is implemented in a nationally consistent way in key areas.

Criteria 4 and 5 are interlinked as the need to implement an option in a timely manner can often have resourcing implications and associated increased costs. There are also linkages between Criteria 1 and 5 as delays in implementation can impact the effectiveness of the option.

3.3 What other options have been ruled out of scope, or not considered, and why?

- *List the options and briefly explain why they were ruled out of scope or not given further consideration*

[43] *'Valuing Highly Productive Land – a discussion document on a proposed national policy statement for highly productive land',* MPI and MFE, August 2019

National planning standards – ruled out of scope at this stage as they are a new instrument (the first standards were released April 2019) and are currently just focused on plan format, structure and definitions. The intent is that they can include plan content so in future they could be considered in the option set. Further, the national planning standards will soon be superseded by resource management reform.

Non-statutory guidance – not considered as a stand-alone option as it is unlikely to have the desired impact on the status quo given the level of variety in rural subdivision provisions and approaches to subdivision, reverse sensitivity and urban rezoning of HPL nationally. However, it is anticipated that non-statutory guidance will be provided as part of the implementation package for the preferred option.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2? *Add or subtract columns and rows as necessary.*

If possible, use this table to provide information on monetary, as well as qualitative costs and benefits for each of the options under consideration. Give evidence supporting your judgements, including stakeholder feedback where relevant.

Try to keep this table to a single side. If you find that you are having to write a lot to explain your assessment of whether each option is better or worse than taking no action under each criterion, add text under the table rather than filling the table with words.

	No action	Option 1: NES	Option 2: NPS	Option 3: Amending NPS-UD
Criterion 1 Effectiveness	**0** Would not be effective to address the identified problems. Practice would continue to be variable throughout the country.	**+** Could be effective to address some aspects of the problem. NES cannot include objectives and policies so limited ability to provide direction on the actual outcomes sought.	**++** Could provide clear direction that HPL is a nationally significant, finite resource and should be considered as such within the planning framework. Could provide clear direction and support to councils to address the key land-use planning issues affecting HPL.	**+** Could be effective to address urban rezoning onto HPL. Limited ability to address fragmentation and reverse sensitivity. Would only apply in 'Major Urban Areas' so would not consistently address the identified problems.
Criterion 2 Level of direction	**0** Would continue to be a lack of clarity and national direction on how HPL should be managed. No clear guidance on how HPL should be considered alongside other matters of national importance.	**+** Could provide a high level of certainty and national consistency in how HPL is managed at the rule level. NES cannot include objectives and policies so limited ability to provide direction on the actual outcomes sought.	**++** Can provide clear direction on how HPL should be considered and balanced with other matters. The level of direction set by the clear, single objective and implementing policies should leave little room for interpretation.	**+** Could be effective to provide direction on how HPL should be considered when identifying new urban areas. Limited ability to provide clear direction on how HPL should be managed as the focus of the NPS is urban development.

Criterion 3 Flexibility	**0** High level of flexibility for councils to manage HPL within their region/ district.	**- -** Provides limited flexibility for councils to respond to different pressures and priorities. Less opportunity for councils to determine the most appropriate use of land. Impacts on landowners would be higher with less opportunity to challenge the rules that apply to their site.	**+** Allows some flexibility for councils to respond to local pressures and priorities when giving effect to the objective and policies in the NPS. Provides some discretion to councils to determine the most appropriate use of land based on a clear and transparent consideration of benefits, costs and risk.	**+** Same flexibility as Option 3, however would only be able to address urban rezoning issues, not fragmentation or reverse sensitivity.
Criterion 4 Complexity and costs	**0** N/A – no additional costs to develop or implement the option.	**- -** Complex and costly to develop to ensure it is appropriate in all locations it applied to and did not have unintended consequences. Costs for councils to align their plans with NES and implement the NES (consenting and monitoring).	**-** Relatively efficient for central government to develop NPS focused on land use planning issues affecting HPL. There will be costs for councils to identify HPL and give effect to the NPS through their policy statements and plans.	**-** Would be a relatively discrete amendment to the NPS. Utilises an existing national instrument which reduces costs to both develop (central government) and implement (councils). Still has additional costs and complexities associated with identifying HPL.
Criterion 5 Timeliness	**0** N/A – no time required to develop or implement the option.	**-** Would be time consuming for central government to develop a NES to ensure it is fit-for-purpose and does not result in perverse outcomes. Can have immediate effect once gazetted.	**++** Relatively efficient for central government to develop NPS focused on land-use planning issues affecting HPL. It will take a number of years before councils make changes to their plan and policy statements to give effect to the NPS. This timing risk would be mitigated through policies that take effect at gazettal and by including a transitional definition of HPL.	**++** Relatively efficient for central government to amend the NPS-UD. Implementation timeframes for councils are likely to be dictated by the existing timeframes in the NPS-UD.

Overall assessment	**0**	**0** Overall about the same as the status quo	**++** Overall, much better than the status quo	**+** Overall better than the status quo

Key:

++ much better than doing nothing/the status quo

+ better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- worse than doing nothing/the status quo

- - much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

- *Where a conclusion as to preferred option is reached, identify it and set out reasons for considering it to be the best approach (by reference to the assessment criteria)*
- *If no conclusion as to preferred option is reached, identify the judgement (eg, which stakeholders, or which criteria are the most important) or the additional information that is needed to enable a decision to be made*
- *How much confidence do you have in the assumptions and evidence?*
- *What consultation has taken place and with whom? If consultation has not taken place why is this?*
- *Have Māori interests and Treaty of Waitangi implications been taken into account? - https://www.justice.govt.nz/maori-land-treaty/*
- *What do stakeholders think - in particular, those opposed? Why are they concerned? If it has not been possible to accommodate their concerns, why is that*

Preferred option

The preferred option is a stand-alone National Policy Statement under the RMA – the NPS-HPL. The NPS-HPL is preferred as it has the potential to provide considerable improvements in how HPL is considered and managed by councils. A NPS can also provide a higher degree of flexibility for councils to consider and respond to local circumstances when giving effect to the NPS, while still providing clear direction on the outcomes that need to be achieved.

5.2 Summary table of costs and benefits of the preferred approach

Summarise the expected costs and benefits of the proposed approach in the form below. Add more rows if necessary.

*Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no action were taken. Note that "wider government" may include local government as well as other agencies and non-departmental Crown entities.*

See https://treasury.govt.nz/publications/guide/guide-social-cost-benefit-analysis *further guidance.*

There have been three iterations of cost-benefit analysis (CBA) throughout the development of the NPS-HPL:

1) Indicative CBA prepared in May 2019
2) Focused CBA on the potential impacts of urban rezoning policies prepared in October 2019
3) Final CBA prepared in June 2020 (Main Report & Supporting Analysis)

A range of information has been considered in determining the cost and benefits including but not limited to; the NPS–HPL Discussion Document (MPI, 2019), a summary of stakeholder consultation feedback (November 2018, 4Sight Consulting Ltd), submissions on the proposed NPS-HPL by case study councils, interviews with case study councils and a review of relevant literature. A range of datasets have also been used to inform spatial and economic modelling.

The anticipated costs and benefits outlined in the table below are based on spatial analysis of six case study council areas. The amount of rural lifestyle subdivision and urban rezoning with and without the NPS-HPL has been projected over a 30-year period. This has enabled significant long-term economic benefits (avoided loss of primary production gross output) to be estimated, alongside opportunity costs to landowners and developers.

The case study areas span both high and low growth urban and rural environments, with differing primary sector roles within the local economy, different mixes of land-based primary production activities, and differing extents of LUC Class 1-3 resource relative to total council land area. The case studies relied on for this CBA are considered representative of the parts of New Zealand where the NPS-HPL is expected to have the greatest effect.

The CBA reports note that HPL is an environmental resource that has value beyond its current or potential tangible uses and also has many values that cannot be attributed to a monetary value (see Section B for more details on the monetised and non-monetised benefits of the NPS-HPL). As such, the table below does not include monetised costs and benefits for all categories, although some costs have been included where they are most relevant.

Affected parties *(identify)*	**Comment**: *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts*	**Evidence certainty** *(High, medium or low)*
Additional costs of proposed approach compared to taking no action			
Regulated parties	Community at large – Due to the prioritisation given to land-based primary production activity on HPL, there may be opportunity costs when the HPL may have alternative uses which deliver benefits other than those from land-based primary production, and which may at a site level, or at the aggregate level, outweigh the benefits of land-based primary production.	Low	Low
	Community at large – Time, travel and resource costs for community participation in council activities that implement the proposed NPS-HPL.	Low	Low
	Tangata whenua – There will be a cost for tangata whenua to resource engagement and consultation in the development of provisions and to be involved in decision-making, particularly on applications for non-productive use of HPL. Includes the opportunity cost of time.	Medium-high	Medium-high
	Landowners – Opportunity costs for new subdivision, use and development on land identified as HPL as the HPL identification effectively precludes a range of non land-based primary production activities and associated subdivision, either in total or limits the extent of what could otherwise be achieved (over and above operative rules) as a consequent	Medium-high The CBA for the NPS-HPL quantifies the potential opportunity costs (loss development returns) associated with the NPS-HPL rural lifestyle provisions. This estimates the total net opportunity costs for the six case	Medium

	effect of the proposed NPS-HPL policies.	study districts at $140m over a 30-year period (8% discount rate)[44].	
	Landowners – Potential time and monetary costs to participate in plan changes that relate to contested HPL boundaries.	Low	High
	Landowners – Potential additional application costs for landowners associated with applications to use or subdivide HPL land for a non-productive purpose, including economic assessments of productive capacity, etc.	Low	Medium
	Industry – Potential for increased costs to either expand an existing business without using more HPL, relocate a business off HPL in order to expand or develop or set up a new business on non-HPL land if the land price is more expensive than setting up on HPL.	Low	Low
Regulators and wider government	Territorial authorities – Implementation costs for plan change to develop provisions to manage HPL (excluding mapping)	$1.69m (or $1.22m in present value terms) per council	Low
	Territorial authorities – Potential additional consent processing costs for non-productive land uses or subdivisions on HPL once provisions have been introduced to give effect to the NPS-HPL	Low	Low
	Regional councils – Implementation costs for plan change to develop provisions to manage HPL (excluding mapping)	$1.86m (or $1.39m average in present value terms) per council	Low

[44] This is based on modelling of the six case studies to direct lifestyle development to non-HPL, which resulted in a gross reduction in capital gain (cost) to landowners on HPL of -$687m (undiscounted) and a gross opportunity gain of $277m (undiscounted) to landowners on non-HPL. This is a net opportunity cost in the combined case study areas of -$411 (undiscounted) or -$140m in present value terms (8% discount rate).

	Central government – Costs to prepare guidance and provide support during the transitional period	$350,000 in present value terms (8% discount rate)	Low
Total Monetised Cost		N/A – Cost ranges per unit calculated only at this stage where possible	
Non-monetised costs		Low-high	Low-high

Expected benefits of proposed approach compared to taking no action			
Regulated parties	Community at large – The wider community benefits from the retention of HPL as the land will be available for food production for current and future generations, the primary sector can continue to operate efficiently and sustainably, local food supply is not threatened, sector resilience is enhanced, and primary sector domestic and export earnings are sustained	High The avoided loss of primary production output on parcels that may have been expected to subdivide to create lifestyle lots under the proposed NPS-HPL. The CBA estimated this to be a $265m over a 30-year period across six case study districts and an ongoing benefit with high significance.	Medium
	Community at large – Protection of HPL supports rural employment opportunities, supports rural households and supports wider rural and urban communities both economically and socially	High	Medium
	Community at large – Communities maintain a sense of identity by defining themselves as living/working in a farming area, intergenerational benefits from retaining HPL so that future	Medium-high	Medium

	generations can use it to sustainably produce food and fibre for themselves and others		
	Tangata whenua – If tangata whenua aspirations for HPL identified on specified Māori land (as defined in the NPS-HPL) involve land-based primary production, they will have the same benefits as other landowners. They will also have assurance that, regardless of the HPL identification process, they will be able to exercise their rangatiratanga on this land without being unduly restricted by the NPS-HPL. They will also be involved in giving effect to the NPS through the identification of HPL and preparing district plan objectives, policies and rules.	Medium	Medium
	Landowners – Will benefit from greater certainty on the location and value of HPL through the HPL identification process and will have greater certainty that they will be able to continue to use their land for land-based primary production or will be able to investigate future uses of their land in the land-based primary production space if it is not currently in production	High	High
	Landowners – Land-based primary production activities will have better protection from reverse sensitivity effects	Low	Medium
	Landowners – Non-HPL landowners may have an increased likelihood of their land being identified as suitable for urban rezoning or rural lifestyle zoning if they are located close to urban centres and may benefit from the associated increase in land value	Gross opportunity benefits for rural lifestyle subdivision and urban rezoning directed to non-HPL of $277m over a 30-year period.	Medium

	Industry – Greater certainty for rural industries that rely on supplies of primary produce (particularly food and fibre), reduced threat to food production supply chain, more certainty on where rural industries can locate	Medium	Medium
	Industry – Greater certainty about the potential for the development of specified infrastructure that has either a functional or operational need to locate in a rural environment, which may include locating on HPL	Low	Low
Regulators	All councils – Greater certainty on the location of HPL and the values that make it highly productive, clear rationale from NPS-HPL to reject private plan change and resource consent applications that do not align with the NPS-HPL direction and result in the loss of HPL	High	High
	All councils – Clear policy direction on the management of HPL will allow councils to better manage the HPL resource in their region/district more efficiently and effectively, which is likely to translate into cost savings and reduced litigation over time	High	High
	All councils – Clear direction on how to consider HPL in the context of increased national direction that prioritises the protection of freshwater resources and increasing urban development to provide for housing; having clear policy direction on how the protection of HPL should be considered alongside these other (often competing) issues will assist	High	High

	councils with both policy development and decision making		
Wider government	Central government – Central government will benefit from addressing a key policy gap in their national direction programme through a targeted planning instrument focused on reversing the trend of ongoing HPL loss over time. Developing a specific NPS to manage HPL will also support central government's resource management reform workstream	Medium	High
Total Monetised Benefit		Monetisation not possible (nor appropriate) at this stage	N/A
Non-monetised benefits		Low – high	Low – high

5.3 What other impacts is this approach likely to have?

- *Other likely impacts which cannot be included in the table above, eg, because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits*
- *Potential risks and uncertainties*

Significance of costs and benefits

Overall, the environmental benefits of the NPS-HPL will be widespread and will be felt by current and future generations. The costs are primarily associated with implementing an explicit planning framework for managing HPL that is based around local authorities identifying and mapping the HPL in their region/district spatially and undertaking supporting plan changes to give effect to the NPS-HPL direction. While these costs are potentially significant for some councils, they are mostly faced in the short term, and it is expected that the ongoing implementation costs of the NPS-HPL will reduce substantially over time. There may be some opportunity costs for landowners of HPL if they seek to use their land for purposes other than land-based primary production as the intent of the NPS-HPL is to constrain or prevent inappropriate subdivision, use and development of HPL. Those costs must be balanced against the wider public good delivered by the aggregate effects of prioritising HPL for land-based primary production, particularly in regions such as Auckland, Canterbury and Hawke's Bay where HPL is under constant urban rezoning and rural lifestyle development pressure.

Risks and uncertainties

The CBA reports were completed using a case-study approach focusing on six councils. While this approach was a pragmatic option for identifying the potential impact of the

NPS-HPL on a variety of councils across the country, there are inherent limitations with the approach in terms of sample size and ability to accurately estimate monetised costs and benefits. There were also certain assumptions made about the policy direction of the NPS-HPL made at the time the CBA reports were completed, which do not align with the final drafting of the policy. For example, building in some flexibility in the NPS-HPL rural lifestyle provisions was not factored into the CBA modelling of opportunity costs as this was based on 'high regulatory response' scenario[45]. As such, actual opportunity costs under the NPS-HPL are likely to be lower than estimated in the CBA. Similarly, a large portion of this net opportunity cost is attributable to an undersupply of lifestyle lots in the modelling approach. This assumes no changes to operative subdivision provisions (a highly unlikely scenario) and that all HPL landowners have intentions to subdivide their land. As such, the CBA modelling approach overstates the net opportunity costs and this should be considered as the maximum potential opportunity costs and not reflective of the final NPS-HPL provisions relating to subdivision which provide a greater degree of flexibility.

There is uncertainty and risk associated with the gazettal of the NPS-HPL and how this aligns with the timeframes for other key workstreams such as resource management reform – in particular whether this will impact on Council decisions on how best to implement the NPS-HPL, i.e. should it be actioned immediately due to development pressure on HPL or should it be delayed to better align with future RM reform alignment processes. It is anticipated that there will be a mix of responses with respect to implementation timeframes across councils, but that those experiencing the most development pressure will likely initiate the review process earlier to make best use of the NPS-HPL direction. Regardless of the approach each council takes, the interim definition of highly productive land and the policies with immediate effect will ensure that highly productive land will be better protected from commencement date. Decision makers will need to *have regard to* the NPS-HPL when considering resource consent applications and will need to *give effect to* the NPS-HPL when considering plan changes that enable non-productive activities on HPL. As such, there is value in introducing this national direction now to protect HPL during this interim period prior to the introduction of the new RM system.

[45] The CBA was based on an earlier version of the NPS-HPL rural lifestyle subdivision that took a stronger avoidance approach.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

- *How could the preferred option be given effect? eg,*
  - *legislative vehicle*
  - *communications*
  - *transitional arrangements.*
- *Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Will there be a role for local government?*

  Have the responsible parties confirmed, or identified any concerns with their ability to implement it in a manner consistent with the Government's 'Expectations for regulatory stewardship by government agencies'? See

  https://treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/good-regulatory-practice
- *When will the arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*
- *How will other agencies with a substantive interest in the relevant regulatory system or stakeholders be involved in the implementation and/or operation?*

Implementation of the proposed NPS-HPL

The NPS-HPL (Option 2) will need to be given effect to by councils through their resource management plan provisions and given weight to by councils when considering resource consents. The NPS-HPL contains transitional provisions to ease implementation and ensure highly productive land is better protected from commencement date. Regional councils then have three years to map highly productive land in accordance with the NPS-HPL and territorial authorities have two years to give effect to the NPS-HPL once the maps are operative in the regional policy statement. Central government will also prepare guidance to support the implementation phase of the NPS-HPL, which will provide information for local authorities, landowners and other stakeholders.

Compatibility with the Government's 'Expectations for the design of regulatory systems'

The preferred option in this RIS is compatible with the Government's '*Expectations for the design of regulatory systems'*. While Option 2 will result in substantial costs for some councils, these costs are primarily short-term and will reduce substantially over time. There will be opportunity costs for some landowners and developers when their properties are identified as being located on HPL if they had intended to use the land for a purpose not associated with land-based primary production. However, these are balanced against the wider public and environmental benefits of maintaining HPL for land-based primary production activities. There is also some flexibility for subdivision of HPL and other 'non-productive' uses and development on HPL in certain circumstances. Supporting Option 2 with central government guidance will assist in reducing identified costs on councils and regulated parties and will support timely and effective implementation.

6.2 What are the implementation risks?

- *What issues concerning implementation have been raised through consultation and how will these be addressed?*
- *What are the underlying assumptions or uncertainties, for example about stakeholder motivations and capabilities?*
- *How will risks be mitigated?*

Working with tangata whenua

Councils will be required to work together with tangata whenua when identifying HPL and giving effect to this NPS to the extent that tangata whenua wish to be involved. This may result in requests for engagement being presented to tangata whenua (particularly on local iwi and hapū) that they do not have the capacity to meet. Requiring that councils undertake an integrated approach to managing and giving effect to this NPS should assist with reducing demands on time and resources, notwithstanding the additional provisions for Māori participation anticipated through RM Reform.

Litigation risk associated with the decision to exclude Treaty settlement land and categories of 'general land owned by Māori' from the definition of specified Māori land in order to avoid establishing a different legal framework for 'general land' based on ownership of land, and ensure fairness and reasonableness of Government policy, is acknowledged.

The impact of this decision on Māori is alleviated by the availability of s133 of Te Ture Whenua Māori Act to change the status of this land to Māori freehold land and the route to change land to a Māori purpose zone.

Treaty Partners engaged in the testing the exposure draft of the NPS-HPL will be contacted in advance of public announcement of the NPS-HPL. Factsheets will be prepared with information on these pathways should Māori wish their land identified as HPL (but not captured by the definition of 'specified Māori land') to be exempt from NPS-HPL restrictions.

Capacity and capability and implementation support

Successful implementation of the NPS-HPL will be determined by the capacity, capability and willingness of councils to complete the HPL identification process and associated amendments to their regional policy statements and district plans. Some councils will have more capacity, capability and willingness than others depending on how significant an issue HPL protection is in their region/district, what stage they are at in their plan review cycle and how well resourced their policy team is.

In terms of central government support for implementation, MPI and MFE are intending to prepare the following documents as part of the implementation plan:

- a fact sheet on what the NPS-HPL means for landowners; and
- a transition guidance document for local government organisations.

It is intended that these two documents will be provided to councils prior to the NPS-HPL taking effect so that they are prepared for how to assess applications for activities on HPL

using the transitional provisions. To follow on from this initial guidance, MPI and MFE will prepare additional technical guidance to assist local authorities on policy implementation (particularly with respect to mapping and preparation of plan changes to give effect to the NPS-HPL) and will also hold workshops with both local authorities and stakeholders to support the implementation process.

Political decision making

The political nature of local government may present a risk. Funding and resources are committed (or not) based on political decision-making with community input. If councils determine that they have other priorities, the NPS-HPL may not be implemented fully, or could be delayed in favour of completing other national direction or RMA reform work programmes. This is not a risk that is easily addressed. However, the implementation package should assist councils who do want to initiate the alignment process quickly, particularly those that wish to package up the NPS-HPL alignment workstream as part of a wider plan change process or wider plan review. This risk is also mitigated somewhat by the use of transitional provisions to ensure that the intent of the NPS-HPL has been *given regard to* in decisions on resource consents and is *given effect to* by decisions on private plan changes in the interim before changes are made to RPS and district plans.

Rush on rural lifestyle subdivisions

There is a risk that there may be a rush of rural lifestyle subdivisions or other developments in some districts that currently have more permissive rural or rural lifestyle provisions. However, this risk is generally mitigated by the use of LUC 1-3 as the default basis for identifying HPL during the transitional period. This should provide territorial authorities with sufficient grounds to decline applications for inappropriate subdivision, use or development on LUC 1-3 until such time as they update their planning provisions to align with the NPS-HPL. The only areas of risk will be permitted activities (which do not need a resource consent) or controlled activities (which need a resource consent but cannot be declined), which will continue to occur despite the NPS-HPL until local authorities have completed the HPL identification process and prepared consequential plan changes to implement the NPS-HPL.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

- *How will you know whether the impacts anticipated actually materialise?*
- *System-level monitoring and evaluation*
- *Are there already monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?*
- *Are data on system-level impacts already being collected?*
- *Are data on implementation and operational issues, including enforcement already being collected?*
- *New data collection?*
- *Will you need to collect extra data that is not already being collected? Please specify.*

Monitoring the success of the NPS-HPL

MFE and MPI propose to monitor the effectiveness of the NPS-HPL in achieving the intent and objectives of the NPS-HPL, and to report on this to the Minister for the Environment and Minister for Primary Industries regularly. Officials are currently working on a monitoring plan for the NPS-HPL, which will be published after gazettal.

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

- Obtaining data through collaboration with local government and relevant crown agencies
- Monitoring local government's progress with respect to completion of HPL mapping and also 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.

A key area of monitoring will need to be the degree to which the NPS-HPL has changed the status quo e.g. whether the NPS-HPL is making a material difference in the way local authorities consider and make decisions on both plan changes and resource consent applications for urban rezoning, subdivision and other 'non land-based primary production' use and development on HPL. Information on how the NPS-HPL is impacting local authority decision making can be obtained through collaboration with local government, as outlined above. Monitoring will be undertaken both prior to any Schedule 1 plan changes to introduce HPL mapping/provisions to give effect to the NPS-HPL (i.e. to understand the effectiveness of the transitional provisions that have effect from the date of gazettal), and also after Schedule 1 plan changes to give effect to the NPS-HPL determine the effectiveness of regional policy statement and plan content.

7.2 When and how will the new arrangements be reviewed?

- *How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.*
- *What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?*
- *What opportunities will stakeholders have to raise concerns?*

Full details on how the NPS-HPL will be reviewed will be covered in the NPS-HPL monitoring plan, which will be published after gazettal. However, it is intended that the primary mechanism for monitoring will be MPI and MFE monitoring local government policy statement and plan change processes to give effect to the NPS-HPL as they progress through the Schedule 1 process. This will focus on the initial implementation phase from gazettal through to district plan changes to give effect the NPS-HPL. There will also be ongoing monitoring of HPL maps and spatial extent of HPL within each region as these are reviewed/challenged periodically as plan changes to accommodate urban growth are notified or the land is deemed to be unsuitable for land-based primary production.

Stakeholders will have the opportunity to raise concerns with the NPS-HPL implementation initially through the Schedule 1 process as local authorities initiate plan changes to give effect to the NPS-HPL. By monitoring the outcome of these implementation policy statement and plan changes, understanding the details of key submissions, and the protection of highly productive land under the NPS-HPL, Government will be able to ascertain if there are any key issues that require the NPS-HPL to be reviewed.

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