



Ministry for Primary Industries
Manatū Ahu Matua



To: Hon Damien O'Connor, Minister of Agriculture
Hon David Parker, Minister for the Environment
From: Charlotte Denny, Director Natural Resources Policy
Hayden Johnston, Director Water and Land Use Policy

National Policy Statement for Highly Productive Land 2022: Approval of final advice package for Ministerial consultation and Cabinet

Date	30 June 2022	Reference	B22-0342 (MPI) BRF-1762 (MfE)
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Decision required	Date decision required by
YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	Circulate the Cabinet paper to your Ministerial colleagues at your earliest convenience for lodgement on the 21 July 2022

Purpose
This briefing updates you on the development of the National Policy Statement for Highly Productive Land and seeks your agreement to circulate the final advice package for Ministerial consultation ahead of Cabinet consideration in late July.

Other agencies/industries consulted on during the production of this briefing
<p>Officials provided the attached Cabinet paper and draft National Policy Statement for Highly Productive Land (NPS-HPL) to the following agencies for comment:</p> <p>Crown Law Office; Department of Conservation; Department of Internal Affairs; Kāinga Ora – Homes and Communities; Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry of Defence; Ministry of Education; Ministry of Housing and Urban Development; Ministry of Social Development; Ministry of Transport; Te Arawhiti; Te Puni Kōkiri; The Treasury; and Waka Kotahi New Zealand Transport Agency.</p> <p>The Department of the Prime Minister and Cabinet has been informed.</p>

Contacts for telephone discussion (if required) – MPI			
Name	Position	Contact number	First contact
Charlotte Denny	Director Natural Resources Policy	9(2)(a) [REDACTED]	<input type="checkbox"/>
Thomas Corser	Manager Land Policy	9(2)(a) [REDACTED]	<input checked="" type="checkbox"/>
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Hayden Johnston	Director Water and Land Use Policy	9(2)(a) [REDACTED]	<input type="checkbox"/>
Jo Burton	Manager Land and Water Systems	9(2)(a) [REDACTED]	<input checked="" type="checkbox"/>
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Key messages
<p>This briefing provides a Cabinet paper seeking agreement to promulgate the NPS-HPL and updates you on policy amendments made since March. The Cabinet paper is accompanied with: a final recommendations report; section 32 report; Treaty of Waitangi Analysis report; and Regulatory Impact Statement (RIS).</p>
<p>In April, officials tested the necessity and workability of three amendments to the NPS-HPL with a small group of councils, Treaty partners, Manaaki Whenua Landcare Research, Horticulture New Zealand, and vegetable growers.</p>
<p>Managing the protection of highly productive land has not been possible without some implementation and Resource Management systems risk. Providing a consenting pathway for development to occur on highly productive land that is subject to considerable long-term constraints on its use in primary production is the most practicable approach relative to alternatives.</p>
<p>At a meeting with Horticulture New Zealand on 21 June, the Minister of Agriculture directed officials to amend the NPS-HPL to allow councils to consider retaining Land Use Capability (LUC) class 1 to 2 land over LUC class 3 land when urban expansion on to highly productive land is necessary. We have worked with the Ministry of Housing and Urban Development and this is now provided for in the NPS-HPL.</p>
<p>No significant concerns on the Cabinet paper and the NPS-HPL were raised during agency consultation from 8 to 16 June.</p>

Key messages

A final recommendations report and section 32 report is included. These have been through legal review. A Regulatory Impact Statement (RIS) is also attached that is approved by a joint Ministry for Primary Industries (MPI) and the Ministry for the Environment (MfE) RIS panel.

This briefing is prepared as part of the NPS-HPL final advice package for Ministerial consultation. Officials recommend lodging the Cabinet paper and final advice package for NPS-HPL on 21 July for Cabinet Economic Development Committee consideration on 27 July 2022.

Context

1. The development of the NPS-HPL has been through an extensive process with significant input from stakeholders dating back to 2018, including formal public consultation in 2019 and targeted exposure draft testing in late-2021.
2. In March, officials sought your agreement to test the workability and necessity of three possible amendments to the NPS-HPL to enable it to be finalised [MPI B22-0116 / MfE BRF-1276 refers]. These amendments relate to:
 - a) the mapping process of highly productive land;
 - b) the scope of activities that can be undertaken on specified Māori land; and
 - c) the direction on tangata whenua involvement in giving effect to the NPS-HPL.
3. This briefing provides an update on the outcomes from this testing and our recommended policy approach which informed the final NPS-HPL.
4. Officials have finalised the NPS-HPL. A draft Cabinet paper and draft NPS-HPL was circulated for agency consultation from 8 to 16 June. Crown Law Office raised some technical matters which officials have addressed. No significant concerns were raised by other agencies.
5. This briefing includes the Cabinet paper and accompanying appendices for Ministerial consultation and your approval for lodgement on 21 July for Cabinet Economic Development Committee (DEV) on 27 July.

Outcome of further engagement on possible amendments

6. On 14 April, officials tested the necessity and workability of three amendments to the NPS-HPL with a small group of councils, Treaty partners, Manaaki Whenua Landcare Research, Horticulture New Zealand, and vegetable growers.

Pathways for land that has long term or permanent constraints

7. Officials have given extensive consideration as to whether land that has long term or permanent constraints on its ability to be used for land-based primary production should be excluded from the mapping of highly productive land. Types of long-term

constraints considered included water quality/quantity constraints imposed under the National Policy Statement for Freshwater Management 2020 (NPSFM).

8. There is potential for long term or permanent constraints to be considered during the mapping of highly productive land (HPL). However, officials have found that including that assessment during HPL mapping would be complex to undertake and would substantially increase the risks of litigation and therefore the length of time that would be needed to complete HPL mapping. This has been reinforced through ongoing stakeholder feedback on the NPS-HPL during our targeted engagement.
9. Officials therefore recommend a pathway (clause 3.10 of the NPS-HPL) for areas of HPL (where the land has long-term or permanent restrictions that mean it is not economically viable for primary production) to convert to non-primary production uses.
10. This will be assessed on a case-by-case basis and the onus will be on the applicant to demonstrate there are permanent or long-term constraints on the use of their land that cannot be addressed through a range of feasible options (for example, improved management practices, water efficiency and storage measures). The intent is that this only occurs in exceptional circumstances supported by strong evidence (for example, a small parcel of land that has permanent water or nutrient restrictions).
11. While the consenting pathway for dealing with long-term constraints on land is considered the most practicable, we do note that this pathway shifts the risks of litigation and exploitation from the mapping stage to the consenting stage. The onus and costs to provide evidence of the constraints will be on the applicants, who may have less access to the relevant information than the council would have.
12. There are implementation risks associated with this approach, given viability can be a subjective consideration. However, the test has been carefully drafted to ensure that there is a greater level of protection for HPL than the status quo. Implementation support to councils will help to assist with the complexity of determining viability through the consenting process.

Integrated management of HPL with freshwater management and urban development

13. In response to concerns raised by Horticulture NZ about both the mapping and consenting pathways for considering permanent or long-term constraints, an integrated management policy has been introduced (Policy two) which requires that *“the identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development”*.
14. This policy and the associated implementation clause (3.2) highlights the key interactions between HPL, urban development and freshwater management (as the most relevant interactions for the NPS-HPL, and to provide guidance for any trade-offs plans will need to consider). We have not included a list or reference to all possible interactions with other national direction, this results in provisions that are complex and unhelpful.

15. Officials note that referring to just urban development and freshwater creates some implementation and Resource Management system risks, as councils may seek to prioritise those pieces of national direction. We will manage this risk through guidance and implementation support and we note that councils have an obligation to implement all national direction equally. These matters are addressed in the accompanying section 32 report.

Urban rezoning of highly productive land

16. On 21 June, the Minister of Agriculture and MPI officials met with representatives from Horticulture NZ. At the meeting, Horticulture NZ raised concerns that the NPS-HPL does not direct Councils to consider retaining LUC classes 1 and 2 over LUC class 3 when rezoning HPL to urban. The Minister of Agriculture requested officials to amend the NPS-HPL to provide for this.
17. We have worked with the Ministry for Housing and Urban and Crown Law to amend the urban rezoning provision under the NPS-HPL to provide for this consideration, while continuing to ensure that the NPS-HPL would not restrict councils in achieving sufficient urban development capacity.
18. When planning for growth, this amendment to clause 3.6 directs councils to consider rezoning land that has a relatively lower productive capacity as well as options that achieve greater intensification in existing urban areas and rezoning land that is not HPL.
19. Horticulture NZ provided some additional wording which would have widened the definition of productive capacity to require the consideration of social, cultural and economic benefits generated from the land. Officials consider that consideration of social, cultural and economic costs and benefits are already important considerations in Clause 3.6 and 3.10 and the addition in the definition is unnecessary.
20. Horticulture NZ also proposed that the NPS-HPL direct councils to consider the importance of domestic food supply as a further alternative approach. Officials consider that this option would not have addressed the underlying concern, and risks removing the NPS-HPL's focus on protecting the soil resource for all types of land-based primary production to prioritising certain forms of production.

Scope of activities that can be undertaken on specified Māori land

21. Māori land has had existing and historic restrictions such as ownership structure and access to finance, which already limits development. The NPS-HPL is more permissive regarding the activities that can occur on specified Māori land that is identified as HPL.
22. Attendees at the 14 April meeting were supportive of the policy to enable greater flexibility for development to occur on Māori land. Clause 3.9(2)(d) would enable a range of activities including (but not limited to) residential and commercial activities to occur on Māori land that is identified as HPL.

Tangata whenua involvement in giving effect to the NPS-HPL

23. The RMA Schedule One process requires local authorities to consult with iwi authorities and any customary marine title group during the preparation of policy statements and plans. However, the Schedule One process is often critiqued for how it is applied which has resulted in poor levels of engagement with tangata whenua in some regions on some matters.
24. Officials assessed the risks of including further direction to engage with tangata whenua in the NPS-HPL and tested the policy with stakeholders and Treaty partners. Based on analysis and feedback on the importance of how the management of HPL is for Māori, officials recommend to specifically direct councils to engage with tangata whenua when implementing the NPS-HPL, to the extent they wish to be involved through Clause 3.3.
25. Including such a clause will improve consistency in how existing requirements for tangata whenua involvement under the RMA and Local Government Act 2002 are applied in relation to the NPS-HPL. The clause is also consistent with the NPS-FM and National Policy Statement on Urban Development.

Advice package for Cabinet Economic Development Committee (DEV)

Agency consultation

26. Officials provided the attached Cabinet paper and draft NPS-HPL to the following agencies for comment: Crown Law Office; Department of Conservation; Department of Internal Affairs; Kāinga Ora – Homes and Communities; Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry of Defence; Ministry of Education; Ministry of Housing and Urban Development; Ministry of Social Development; Ministry of Transport; Te Arawhiti; Te Puni Kōkiri; The Treasury; and Waka Kotahi New Zealand Transport Agency.
27. The Department of the Prime Minister and Cabinet has been informed.
28. Agencies were generally supportive of the Cabinet paper and draft NPS-HPL. Crown Law Office has suggested technical changes to the NPS-HPL wording to improve its workability to ensure that it achieves the policy intent.
29. This week we received suggestions from Te Arawhiti to improve the definition of “specified Māori lands”. We will send the suggested text to Crown Law for their feedback. Officials recommend that advice on any changes to the definition be completed during ministerial consultation to avoid delaying the package being submitted to Cabinet.

Ministerial consultation and Cabinet approval

30. This briefing seeks your approval of the draft Cabinet paper and accompanying advice package prepared for DEV on 27 July.
31. Subject to your approval, the draft Cabinet paper and advice package will be circulated for Ministerial consultation. The Cabinet paper is accompanied by the following appendices for your approval.

Appendix	Item	Description
One	NPS-HPL	This is the final draft of the NPS-HPL.
Two	Recommendations report	In March 2021, you approved the draft recommendations report to enable the development of an exposure draft [MPI B21-0168 / MfE 2021-B-07753 refers]. This is the final draft of the recommendations report.
Three	Section 32 report	<p>Section 32 of the RMA requires new proposals to be examined for their appropriateness in achieving the purpose of the RMA, and the provisions to be examined for their efficiency, effectiveness, cost, benefits and risks in achieving the proposed objectives.</p> <p>The Minister for the Environment is required to have regard to this report prior to recommending the NPS-HPL.</p>
Four	Treaty of Waitangi Analysis	This is an assessment of the impacts on Māori, and consistency of the NPS-HPL with the Treaty of Waitangi. This assessment was carried out in accordance with the guidance set out in Cabinet Circular CO(19)5, and with advice from the Crown Law Office.
Five	Parliamentary Counsel Office Certificate (to be provided at Cabinet on 27 th of July 2022)	<p>Crown Law Office assisted in the preparation of the draft NPS, and a detailed vires review is required before the NPS can be submitted to the Ministry for Environment Chief Legal Advisor for certification. The review and the certification process are the final steps in the process before the NPS can be submitted to the Executive Council for approval.</p> <p>The certificate is being processed by Crown Law at the time this briefing was prepared. The final certificate will be provided to Cabinet on 27 July</p>
Six	Regulatory Impact Statement (RIS)	The RIS provides a high-level summary of the problem being addressed by the NPS-HPL, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.

		The RIS will be published on the MPI, MfE and The Treasury websites after the policy is in force in September 2022.
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Next steps

32. Subject to Cabinet approval, the NPS-HPL will be gazetted and take effect 28 days after gazettal.
33. Officials are developing a communications strategy. The communications material will include media release statement, key messages, back pocket questions and answers, web page updates and fact sheets for the public.
34. Officials will provide details of release and publication of the NPS-HPL including announcements, workshops and guidance ahead of the final advice package being lodged.

Proactively released under the Official Information Act

Recommendations

35. It is recommended that you:

- a) **Note** that officials tested the necessity and workability of three amendments to the NPS-HPL in April 2022 with a targeted group of stakeholders and Treaty partners

NOTED

- b) **Note** that testing has informed the final policy related to the pathway for considering long term or permanent constraints on highly productive land, the scope of activities that can be undertaken on specified Māori land, and the direction on tangata whenua involvement in giving effect to the NPS-HPL.

NOTED

- c) **Note** that officials have amended the urban expansion provisions to direct councils to consider rezoning relatively lower productive capacity areas when urban expansion onto highly productive land is necessary.

NOTED

- d) **Note** the definition of specified Māori lands may change following advice from Crown Law expected to be completed before the 15th of July.

NOTED

- e) **Agree** to circulate the draft NPS-HPL advice package for Ministerial consultation.

YES / NO

- f) **Agree** to officials lodging the final advice package on 20 July 2022 for Cabinet approval at Cabinet Economic Development Committee on 27 July 2022.

YES / NO

- g) **Note** that, subject to Cabinet approval, the NPS-HPL will be published in the New Zealand Gazette and will take effect 28 days after publication.

NOTED

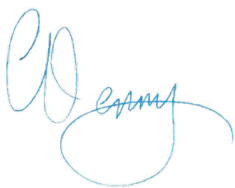
- h) **Note** officials will come back with details of release and publication of the NPS including announcements, workshops, guidance etc.

NOTED

For the Minister for the Environment

- i) **Agree** to the section 32 report

YES / NO



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Minister of Agriculture

/ / 2022



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Ministry for the Environment

Hon David Parker
Minister for the Environment

/ / 2022

Minister's comments

**Appendix One: Cabinet paper: National Policy Statement for Highly Productive Land
2022**

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