



PROACTIVE RELEASE COVERSHEET

Minister	Hon David Parker	Portfolio	Environment
Name of package	National Policy Statement for Highly Productive Land: Release of Discussion Document on Potential Amendments	Date to be published	26/10/2023

List of documents that have been proactively released

Date	Title	Author
23 August 2023	Cabinet paper: National Policy Statement for Highly Productive Land: Release of Discussion Document on Potential Amendments	Ministry for the Environment
23 August 2023	DEV-23-MIN-0192 - Cabinet Economic Development Committee Minute of Decision	Cabinet Office

Information redacted

No

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Office of the Minister of Agriculture
Office of the Minister for the Environment

Chair, Cabinet Economic Development Committee

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

Proposal

1. This paper seeks agreement to release a discussion document (Appendix One) for the purpose of undertaking public consultation on potential amendments to the National Policy Statement for Highly Productive Land 2022 (NPS-HPL).

Relation to government priorities

2. The NPS-HPL complements the Labour Party's 2020 manifesto commitment to promote the Fit for a Better World roadmap. The roadmap intends to accelerate the productivity, sustainability, and inclusiveness of the primary sector to deliver value for all New Zealanders.
3. Providing for a clear consent pathway¹ for the development of renewable energy generation complements the Government's goal of New Zealand transitioning to a low emissions economy.

Executive Summary

4. The NPS-HPL took effect in October 2022. The objective of the NPS-HPL is to protect highly productive land (HPL) for use in land-based primary production for current and future generations². HPL is typically flat or gently undulating, has fertile soils and good climate, and is important for growing food and fibre.
5. The Ministry for the Environment (MfE) and Ministry for Primary Industries (MPI) published the Guide to Implementation ('guide') in March 2023 to support the implementation of the NPS-HPL.
6. Since the NPS-HPL took effect, various stakeholders have raised concerns that it has restricted the development of activities that do not rely on the soil properties of HPL, but that may be necessary for social, economic, cultural, or environmental wellbeing. The key areas of concern have been around:

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

² The policy intent of the NPS-HPL, as agreed by Cabinet in 2022 is to protect the soil resource – a resource that is continually lost, largely due to urban rezoning and land fragmentation arising from rural lifestyle development [CAB-22-MIN-0374].

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- 6.1. new specified infrastructure³ (in particular, for certain renewable electricity generation including solar farms and for infrastructure needed at pace, for example to support the recovery after cyclone Gabrielle); and
- 6.2. intensive indoor primary production, and greenhouses⁴.
7. We propose to consult on:
 - 7.1. a potential amendment to the NPS-HPL that provides for a consent pathway for the construction of new specified infrastructure on HPL (without a designation); and
 - 7.2. a potential bespoke consent pathway for the development of intensive indoor primary production and greenhouses on HPL.
8. Officials have developed a discussion document to help facilitate a discussion on whether these amendments to the NPS-HPL are warranted.
9. The issues raised by stakeholders may be valid, and the suggested amendments may have merit, but they warrant further consideration from a wider set of stakeholders. Input and views from interested organisations, iwi, and the public will help to ensure that providing a consent pathway for non-soil reliant activities is balanced and consistent with the goal of protecting HPL for land-based primary production.
10. We recommend that the discussion document be released on 5 September 2023 for an 8-week period of public consultation. Officials intend to report back to us on the submissions in November/December 2023. Any changes to the NPS-HPL would be considered by Cabinet in early 2024.

Background

Purpose of the NPS-HPL

11. The NPS-HPL was developed under the Resource Management Act 1991 (RMA) to provide national direction aimed at preventing further irreversible loss of HPL from urban development, and to address issues associated with the fragmentation of HPL from rural lifestyle development.
12. The NPS-HPL directs local authorities to identify and map HPL in their regions, and to protect HPL from inappropriate subdivision, use and development, while directing urban development away from HPL where possible.

³ 'Specified infrastructure' is defined in the NPS-HPL and includes:

- (a) infrastructure that delivers a service operated by a lifeline utility;
- (b) infrastructure that is recognised as regionally or nationally significant in a National Policy Statement, New Zealand Coastal Policy Statement, regional policy statement or regional plan; and
- (c) certain public flood control, flood protection, or drainage work.

⁴ 'Intensive indoor primary production' means primary production activities that principally occur within buildings and involve growing fungi or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry (see National Planning Standards).

'Greenhouse' encompasses an array of different structures erected to house cropping systems. They do not typically rely on the life supporting capacity of the soil resource but are rural activities that support commercial food production. Greenhouses can include glasshouses, plastic houses, shade houses and tunnel houses.

13. The NPS-HPL recognises that some non-land-based activities may need to occur on HPL for cultural, economic, environmental, or social wellbeing – for example activities that support existing land-based primary production, and some infrastructure and extraction activities. The NPS-HPL provides consent pathways for certain non-land-based activities (termed ‘not inappropriate’) to occur on HPL subject to specific tests.

Stakeholder concerns about consent pathways under the NPS-HPL

14. Since the NPS-HPL took effect in October 2022, officials have received feedback from both renewable electricity generation and primary production sector stakeholders.
15. These stakeholders are concerned that the NPS-HPL has placed undue restrictions on the development of activities that do not rely on the soil properties of HPL but may have a functional or operational need to locate on HPL.
16. In May 2023, officials held three online workshops with a small, targeted group of stakeholders to discuss whether the current policy is fit for purpose or if the two following issues (also outlined at paragraph 6 above) warrant amendments to the NPS-HPL⁵.

Issue One: Lack of provision to enable the construction of new specified infrastructure on HPL

17. Currently under the NPS-HPL, the maintenance, operation, upgrade, or expansion of specified infrastructure is provided a consent pathway. However, stakeholders have found that the wording of clause 3.9(2)(j)(i)⁶ of the NPS-HPL is unclear as to whether this includes the construction of *new* specified infrastructure.
18. The issue is particularly relevant to new specified infrastructure that is developed or operated by an entity that is not a requiring authority⁷ (for example, solar farms which are not developed or operated by a network utility operator or council). Other specified infrastructure can typically use a requiring authority’s designation process to develop on HPL⁸.
19. This restriction can also be problematic when infrastructure needs to be developed at pace. One recent example was installing new infrastructure that was needed to support the clean-up and repairs in the aftermath of Cyclone Gabrielle.

⁵ Attendees included representatives from: councils where there is a relatively larger proportion of HPL in their district/region; the renewable electricity sector; and primary sector groups.

⁶ The text of clause 3.9(2)(j)(i) of the NPS-HPL reads as follows:

(2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied: ...
(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land
(i) the maintenance, operation, upgrade, or expansion of specified infrastructure,

⁷ The RMA allows for ‘requiring authorities’ (such as a council, Minister, or network utility operator) to notify the council that an area of land is to be designated for a public work (such as a road or telecommunications facility, school or prison). Designations do not require a land-use consent from the council, or to comply with any rules in the district plan.

⁸ Activities undertaken by requiring authorities for designations, which captures most infrastructure operators, is provided for under clause 3.9(2)(h).

20. We are confident that throughout the development of the NPS-HPL, providing a consent pathway for the development of new specified infrastructure on HPL was the intent of the policy.
21. The exposure draft of the NPS-HPL provided a pathway for new specified infrastructure to be established on HPL. This clause was redrafted to provide clearer criteria for the types of development deemed 'not inappropriate' on HPL and to give councils more scope to determine and address local circumstances. The redraft resulted in the words 'maintenance, operation, upgrade, or expansion' being added but not the word 'construction'.
22. An amendment to provide for a clear consent pathway for all specified infrastructure would also improve alignment of the NPS-HPL's approach to managing new specified infrastructure with other national direction such as the National Policy Statement for Renewable Energy Generation 2011 and the National Policy Statement for Freshwater Management 2020.

Issue Two: Absence of a clear consent pathway for intensive indoor primary production and greenhouses to be developed on HPL

23. Under the NPS-HPL, there is no clear pathway for intensive indoor primary production and greenhouses to be developed on HPL.
24. The definition of 'land-based primary production' in the NPS-HPL is production from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.
25. This definition was drafted to be deliberately narrow, so that HPL is prioritised for use by production activities that rely on the soil resource and ensure HPL can continue to be used this way by future generations.
26. As such, primary production activities that do not rely on soil properties such as intensive indoor primary production activities (for example, indoor pig and poultry farms) and greenhouses fall outside the definition of land-based primary production and are not specifically provided for as appropriate use and development of HPL.
27. The absence of a pathway to test whether these activities have a functional or operational need to locate on HPL may impact the diversity and resilience of our primary industries⁹.
28. Some primary industry stakeholders have noted the NPS-HPL does provide a consent pathway for other non-soil reliant activities, whereas a pathway for intensive indoor primary production and greenhouses is not provided. This is despite these activities being included in the definition of 'primary production' in the National Planning Standards and being identified as activities that ought to occur in the rural environment.
29. Councils have yet to fully give effect to the NPS-HPL (by notifying regional policy statement and district plan changes) and therefore it is unclear as to how, and to

⁹ Furthermore, it has been suggested that a pathway would provide options for the industries to adapt to climate change, for instance through establishment of enclosed systems to protect animals and crops from the elements. A pathway could also provide decarbonisation options, where industries could locate close to renewable energy sources.

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what extent, the NPS-HPL has impacted intensive indoor primary production and greenhouses.

30. The primary sector is identified in the National Adaptation Plan 2022 (NAP) as one of the most vulnerable sectors to the impacts of climate change¹⁰. It is likely that intensive indoor primary production and greenhouses will help ensure resilience to increasing extreme weather events.
31. We consider that the issue warrants public consultation and input from partners and interested stakeholders. This is to ensure the full spectrum of trade-offs are appropriately assessed and balanced. Addressing the issue through implementation guidance to clarify the policy intent is not appropriate as the guidance cannot provide direction inconsistent to provisions of the NPS-HPL.

Consultation on potential amendments to the NPS-HPL

32. We are requesting approval to consult on the potential amendments to the NPS-HPL. Public consultation will help to clarify how the NPS-HPL is impacting on non-land-based use and development that may need to locate on HPL. It will also allow testing of the potential options for amendments with iwi, a range of stakeholders, interest groups and the public.
33. An underlying concern could be whether such amendments may compromise the NPS-HPL's objective – to protect HPL for use in land-based primary production, both now and for future generations.
34. Consultation will help to inform final policy advice on whether amendments are required to provide for:
 - 34.1. the construction of new specified infrastructure on HPL (without a designation); and
 - 34.2. a bespoke consent pathway for intensive indoor primary production and greenhouses to develop on HPL.

RMA requirements and purpose of the discussion document

35. The RMA requires that the Minister for the Environment must either elect to follow a process involving a Board of Inquiry, or establish and follow an alternative process that meets the requirements of s46A(3)(b).
36. I (Minister Parker) agreed to an officials-led process being undertaken in accordance with s46A(3)(b), and directed officials to develop a discussion document for consultation on the potential amendments on this basis.
37. The discussion document facilitates the discussion on the two issues and is accompanied by an interim Regulatory Impact Statement (Appendix 2).

Discussion on enabling the construction of new specified infrastructure on HPL

38. There are two options laid out to facilitate the discussion on enabling the construction of new specified infrastructure on HPL.

¹⁰ A resilient food system depends on the ability of different industries to adapt to climate change. This requires balancing productivity and environmental impacts, and withstanding sudden shocks or disruptions, to continue to provide New Zealanders with diverse, affordable and accessible food.

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39. Option One is retaining the status quo where clause 3.9(2)(j)(i) of the NPS-HPL remains unchanged and continues to provide for the maintenance, operation and upgrade of specified infrastructure only. Officials consider this option would not resolve the issues identified.
40. Option Two is to amend clause 3.9(2)(j)(i) to include the word 'construction', providing for a clear pathway for new specified infrastructure on HPL subject to certain tests. The tests require development to have a functional or operational need to locate on HPL and that the impacts on HPL are minimised.
41. Option Two (preferred) would:
 - 41.1. enable the construction of new specified infrastructure (without the need for a designation process);
 - 41.2. improve consistency with other national direction; and
 - 41.3. contribute to the Government's goal to transition to a low emission economy.

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

42. The discussion document considers how the NPS-HPL could be a barrier for the growth of some primary industries that are vital to New Zealand's food production system. It also outlines key considerations as to how the NPS-HPL could be a restricting factor in improving the resilience and diversity of our primary industries.
43. The discussion document notes that there is limited evidence to determine the scale of the issue for intensive indoor primary production and greenhouse industries. It notes the importance of ensuring that HPL is protected.
44. The discussion document proposes two options with no specific preference (as wider input is needed). Option One is the status quo, while Option Two provides for a pathway for intensive indoor primary production and greenhouse activities to develop on HPL.
45. We note that the NPS-HPL has been in effect for less than a year. This is a short timeframe to understand the extent of the problem (if any), and whether it requires regulatory intervention.
46. Councils have yet to fully give effect to the NPS-HPL (by notifying regional policy statements and district plan changes) and therefore it is unclear as to how, and to what extent, the NPS-HPL has impacted intensive indoor primary production and greenhouses.

Public consultation process

47. We are now seeking Cabinet's approval to release the discussion document in September for an 8-week period public consultation. The final discussion document would be published on both MfE and MPI websites.

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48. When the consultation period ends, officials would report on submissions received and develop final policy advice that considers submissions and the analysis of the RMA section 32 report.
49. Any changes to the NPS-HPL would be considered by Cabinet in early 2024.

Amendments to the NPS-HPL for specified infrastructure will transition into the proposed National Planning Framework

50. The Natural and Built Environments Act 2023 (NBA) will replace the current RMA. The NBA will require the development of a National Planning Framework (NPF) to perform a similar role to all current national policy statements and environmental standards, including the NPS-HPL.
51. I (Minister Parker) instructed officials to include a pathway for the construction of new specified infrastructure in the first iteration of the NPF (known as the 'transitional NPF'). This will be subject to the new engagement draft process in Schedule 6 of the NBA before the NPF proposal is submitted to a Board of Inquiry.
52. Addressing this issue in the transitional NPF is consistent with the original policy intent to provide for the development of new specified infrastructure on HPL. It would also address the NBA system outcome for well-functioning urban and rural areas, and NPF infrastructure framework outcomes and policies.
53. Providing for intensive indoor primary production and greenhouses to develop on HPL is not within the scope of the existing policy intent. Any changes regarding intensive indoor primary production and greenhouses would be incorporated into an amended NPS-HPL that would remain in force during the transition to the new system. These amendments could be included in the later iterations of the NPF, if it is determined the amendments are warranted.

Financial Implications

54. There are no immediate financial implications from the public consultation proposed in this paper. Wider financial implications arising from the amendment of the NPS-HPL will be detailed in the final RIS and provided to Cabinet in early 2024.

Legislative Implications

55. There are no legislative implications arising from the proposal in this paper.

Cost-of-living implications

56. The potential amendments to the NPS-HPL do not have any direct cost-of-living implications.
57. The discussion document does however facilitate a discussion on how the potential amendment may drive some aspects of food affordability, and how the food production sector can be best supported to increase primary sector resilience now and into the future.

Impact Analysis

Regulatory Impact Statement

58. The discussion document is supported by an interim RIS (Appendix Two). The Treasury's Regulatory Impact Analysis team has determined that the proposal to release the discussion document is exempt from the requirement to provide a full RIS.
59. The Ministry for Primary Industries' Regulatory Impact Analysis (RIA) panel has reviewed the *Interim Regulatory Impact Statement: Potential amendments to the National Policy Statement for Highly Productive Land*. The regulatory impact statement has been jointly prepared by the Ministry for the Environment and Ministry for Primary Industries and functions as an interim RIA. The RIA panel considers that the interim RIA **fully meets** the RIA requirements. The problem, constraints and limitations have been explained well, and the objectives and analysis of options are clear. The interim RIA also identifies information gaps that are intended to be addressed through forthcoming public consultation.

Climate Implications of Policy Assessment (CIPA)

60. The Ministry for the Environment confirms that the CIPA requirements do not apply to this proposal.

Consideration of the principles of te Tiriti o Waitangi / the Treaty of Waitangi

61. Officials have considered the implications of the proposed amendments in terms of te Tiriti o Waitangi and note that the potential amendments will not impact on activities that can be undertaken on specified Māori land (see Appendix Three). Engagement will assist with informing a final Treaty impact assessment based on any amendments.
62. Officials will provide an updated report as part of the final package to seek Cabinet approval of any amendment to the NPS-HPL.

Population Implications

63. There are no human rights issues, gender implications or issues from a disability perspective associated with this paper.

Use of external resources

64. No external resources were used to support this Cabinet paper. However, MPI officials contracted 4Sight Consulting ('contractor') to assist with the development of the NPS-HPL from 2018 to March 2023.

Agency and Ministerial Consultation

65. A draft Cabinet paper and discussion document have been provided to the following agencies for comment: Crown Law Office; Department of Conservation; Department of Internal Affairs Te Tari Taiwhenua; 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.

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66. The Department of the Prime Minister and Cabinet has been informed.
67. The majority of the agencies consulted were supportive about consulting on potential amendments to the NPS-HPL. Some agencies noted the importance of retaining the objective of the NPS-HPL of protecting the land for use by land-based primary production, and that any amendment should align with the policy intent and objective of the NPS-HPL.¹¹

Communications

68. The potential amendments will be published in the discussion document for public consultation outlined above.

Proactive Release

69. Following Cabinet consideration, we intend to release this paper, and briefings that sought Ministers' decisions with redactions in line with the Official Information Act 1982.

¹¹ Such as the Ministry of Business, Innovation & Employment and the Department of Internal Affairs who noted that the amendments should be align with the policy objective and intent of the NPS-HPL.

Recommendations

We recommend that the Committee:

1. **note** that the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) took effect in October 2022;
2. **note** that the NPS-HPL provides national direction to prevent further irreversible loss of highly productive land (HPL), ensuring that it is available for use in land-based primary production, both now and for future generations;
3. **note** concerns raised by industry stakeholders that it is unclear whether there is a consent pathway for the construction of new specified infrastructure (not via a designation process) in the NPS-HPL;
4. **note** concerns raised by industry stakeholders that the absence of a consent pathway for certain non-land-based activities on HPL could make climate adaptation and decarbonisation of certain industries more challenging, which could impact the resilience of the primary sector;
5. **approve** the release of the discussion document (Appendix One) and interim Regulatory Impact Statement (Appendix Two) for public consultation;
6. **authorise** the Minister of Agriculture and the Minister for the Environment to make minor amendments to the discussion document, and officials to make minor amendments to the interim RIS prior to release;
7. **note** that public consultation will be carried out for 8 weeks commencing 5 September 2023;
8. **note** that any changes to the NPS-HPL would be enacted by Cabinet in early 2024.

Authorised for lodgement

Hon Damien O Connor

Minister of Agriculture

Hon David Parker

Minister for the Environment

I N C O N F I D E N C E

Appendix One (Discussion Document)

Appendix Two (interim Regulatory Impact Statement)

9.

Appendix Three (definition of specified Māori land in the NPS-HPL)

In the NPS-HPL specified Māori land means land that is any of the following:

- a) Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- b) land vested in the Māori Trustee that—
 - (i) is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and
 - (ii) remains subject to that Act:
- c) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:
- d) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):
- e) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
- f) land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of the mana whenua over the land.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

National Policy Statement for Highly Productive Land: Release of Discussion Document on Potential Amendments

Portfolios **Agriculture / Environment**

On 23 August 2023, the Cabinet Economic Development Committee:

- 1 **noted** that the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) took effect in October 2022;
- 2 **noted** that the NPS-HPL provides national direction to prevent further irreversible loss of highly productive land (HPL), ensuring that it is available for use in land-based primary production, both now and for future generations;
- 3 **noted** that concerns have been raised by industry stakeholders that it is unclear whether there is a consent pathway for the construction of new specified infrastructure (not via a designation process) in the NPS-HPL;
- 4 **noted** that concerns have been raised by industry stakeholders that the absence of a consent pathway for certain non-land-based activities on HPL could make climate adaptation and decarbonisation of certain industries more challenging, which could impact the resilience of the primary sector;
- 5 **approved** the release of the discussion document, attached as Appendix One to the paper under DEV-23-SUB-0192, and the interim Regulatory Impact Statement, attached as Appendix Two to the paper under DEV-23-SUB-0192, for public consultation;
- 6 **authorised** the Minister of Agriculture and the Minister for the Environment to approve minor amendments to the discussion document, and for officials to make minor amendments to the interim RIS prior to release;
- 7 **noted** that public consultation will be carried out for eight weeks, commencing on 5 September 2023;
- 8 **noted** that any changes to the NPS-HPL are expected to be submitted to Cabinet for approval in early 2024.

Janine Harvey
Committee Secretary

Attendance: (see over)

Present:

Hon Grant Robertson (Chair)
Hon Dr Ayesha Verrall
Hon Damien O'Connor
Hon Andrew Little
Hon David Parker
Hon Peeni Henare
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Dr Duncan Webb
Hon Dr Deborah Russell
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Officials Committee for DEV