



Ministry for Primary Industries
Manatū Ahu Matua



To: Hon David Parker, Minister for the Environment
Hon Damien O'Connor, Minister of Agriculture

From: Charlotte Denny, Director, Land, Water and Climate, Ministry for Primary Industries
Hayden Johnston, Director, Water and Land Use Policy, Ministry for the Environment

Draft recommendations report: National Policy Statement for Highly Productive Land

Date	23 March 2021	MPI Reference	B21-0168
		MfE Reference	2021-B-07753

Decision required	Date decision required by
YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	1 April 2021

Recommendations
Note that on 9 March 2021, officials held workshops to discuss the intent of the criteria for identifying highly productive land, and the test for allowing urban expansion onto highly productive land, with local government and primary sector stakeholders.
Agree to direct officials to prepare an exposure draft in line with the draft recommendations report.
Note officials will keep you informed of the exposure draft process and further policy development and will provide a final recommendations report and a draft Cabinet paper in mid-2021.

Consultation
The Ministry for Housing and Urban Development (Te Tūāpapa Kura Kāinga) (HUD) has been engaged in preparing the draft recommendations relating to the consideration of urban expansion onto highly productive land.

Contacts for telephone discussion (if required)			
Name	Position	Contact number	First contact
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Key messages

Officials are continuing work on the proposed (NPSHPL). Officials anticipate being able to provide final recommendations on the NPSHPL to you in mid-2021.

The Ministry for Primary Industries (MPI) and the Ministry for the Environment (MfE) have prepared a draft recommendations report and seek your direction to develop an exposure draft of the NPSHPL in line with this draft report.

We have included commentary and a summary of the key issues and changes we are recommending in this briefing. The key areas to consider are the identification of highly productive land (HPL) and how to provide for urban expansion onto HPL.

If you agree with our draft recommendations, or once we have resolved any concerns you have, we will produce a final draft of the NPSHPL. The final draft will then be tested with stakeholders through an exposure draft process, to ensure that the NPSHPL will achieve its policy intent and not result in any unintended consequences.

Purpose

1. The purpose of this briefing is to seek your provisional approval for the recommendations in the draft recommendations report (the Report), so we can:
 - a. Prepare a draft NPSHPL, which will then be used in an exposure draft process; and
 - b. Progress key evaluation documents, including a section 32 analysis, which require near final policy decisions to assess.

Context

2. In August 2019, Cabinet agreed to release the discussion document to consult on the NPSHPL and noted that the Minister for the Environment and the Minister of Agriculture would report back to Cabinet seeking agreement to the final national direction instrument that incorporates amendments following consultation.
3. The work to further develop the NPSHPL was affected by the government's need to focus on the response to COVID-19 and ongoing recovery. Officials are now working to complete the NPSHPL mid-year, with gazettal of the NPSHPL in the third quarter of 2021, subject to Cabinet approval.
4. Since consultation was undertaken on the NPSHPL, we have undertaken significant work to refine the policy recommendations we are proposing. Notably, we have:
 - a. Analysed all submissions, and feedback from roadshow workshops, and provided this as a summary of submissions report (available at www.mpi.govt.nz/highlyproductiveland).
 - b. Undertaken additional analysis on areas of interaction with the National Policy Statement on Urban Development (NPSUD), as directed by ministers (B20-0234 / 2020-B-06721 refers).
 - c. Undertaken additional, targeted, engagement with some submitters, including councils and the primary sector.

5. We have worked with the HUD on the recommendations contained in the Report, given the links between urban development and managing HPL. They are comfortable with the majority of the recommendations, but their view differs from the joint MfE and MPI view on one area, noted below.
6. We have also worked with teams within MfE who are working on Resource Management System Reform on the recommendations contained in this Report, given that we are proceeding with this National Policy Statement while reform of the Resource Management System is occurring.
7. Should you agree to the recommendations in the draft report we will prepare a draft of the NPSHPL for exposure draft testing. If you have any areas of concern or comments, we will work to resolve these with you.
8. Following exposure draft testing, we anticipate providing you the final recommendations report, a draft Cabinet paper, Regulatory Impact Statement and a Section 32 Analysis in mid-2021.
9. Prior to consultation on the NPSHPL in 2019, Treasury raised concern with Cabinet about the impact the NPSHPL will have on urban development and requested that further cost benefit analysis work was undertaken. We have since undertaken further cost benefit analysis of the impact the NPSHPL will have on: transaction costs to councils; opportunity costs to individual landowners; and the non-market values of HPL. We intend to work closely with Treasury in preparing the Regulatory Impact Statement.

Key matters in the draft Recommendations Report

10. We are seeking provisional approval for the recommendations in this Report to enable us to draft the next version of the NPSHPL. If there is an area or recommendation that you wish to comment on, or disagree with, please note this in the report.

11. The key matters for you to consider in the report are:

Policy Area	Issue that we need manage or consider	Our recommendation
Identification and mapping of HPL	We need to ensure that we identify land that is capable of supporting a diverse range of primary productive activities, while ensuring that mapping is workable for councils and we do not constrain land that is not suitable for primary production.	<p>Protection for LUC 1-3 during the transitional period before councils identify and map HPL through a plan change process.</p> <p>Regional Councils identify and map areas of HPL in their region, in collaboration with their districts.</p> <p>Councils map large and geographically cohesive areas of LUC 1-3 unless:</p> <ul style="list-style-type: none"> ○ The area is urban, or an identified area of urban growth (e.g. zoned as future urban or identified in a strategic planning document). ○ The land is “not suitable for a diverse range of primary productive land uses”. <ul style="list-style-type: none"> • This phrase is defined to mean the land is constrained by factors that are not fully considered by the LUC specifically: <ul style="list-style-type: none"> ○ Water quality and quantity; ○ Existing environment; ○ Contamination; and ○ Natural hazard management. • Retain provision for councils to map land that is not LUC 1-3, but is considered to be HPL in that region (e.g. for growing stone fruit or certain types of viticulture)
Urban expansion	We need to recognise that there will be some situations where urban areas need to expand onto HPL and provide for those appropriately.	<ul style="list-style-type: none"> • Urban expansion can occur on HPL if: <ul style="list-style-type: none"> ○ Expansion is needed to provide sufficient development capacity to meet demand for housing or business land; and ○ No reasonably practicable and feasible options for providing for the required development capacity in the same locality or market¹; and ○ There are net benefits from the urban expansion compared to maintaining and protecting the land in land-based primary production.

¹ We intend to work through the definition of ‘locality and market’ in the drafting process, and then test this definition with stakeholders through an exposure draft process.

Exposure Draft Process

12. The above policy areas (particularly the mapping factors that constrain the use of HPL) may require further refinement as a result of feedback received during the exposure draft process. If changes to policy are needed as a result of the exposure draft, we will seek your agreement to any changes. These areas are very technical, and it is important that the final policy addresses all the necessary issues while being workable and implementable for councils, stakeholders and the public.

Stakeholder Workshops

13. We discussed the policy intent of these two matters with local government and the primary sector stakeholders on 9 March 2021. We received a range of feedback at these meetings, with general support for addressing these issues, and feedback on a number of specific criteria. In response, we have made further refinements to the recommendations including removing some of the permanent constraints that were found to be impractical or not necessary to consider during the identification process. We will also make further refinements through the exposure drafting process.
14. The issue of LUC 3 land that is not highly productive has been raised by a small number of submitters. We think that this concern is worth investigating further, but want to ensure that allowing council to exclude those areas of LUC3 land that is not productive does not have unintended adverse effects. We will continue to develop this option and investigate whether the provision is viable through the exposure draft process, which will also allow us to test its workability with stakeholders.

HUD Feedback on Mapping Criteria and Consideration of Urban Expansion onto HPL

15. HUD considers that the protection of all LUC 3 land² will place an unnecessary planning barrier to housing development and potentially the ability of councils to provide the development capacity required by the National Policy Statement on Urban Development. HUD's view is that only the LUC 1-2 land should have this blanket protection and that councils should be able to identify additional productive land on a localised basis regardless of the LUC class. HUD would accept the transitional provisions still including LUC 1-3 land until the local council had completed the mapping exercise.
16. MPI and MfE do not agree that including all of LUC 3 in the NPSHPL will place unnecessary planning barriers to housing development. The policy has strong protection against life-style subdivisions on HPL but provides for urban development, if it is needed (i.e. urban expansion referred to in the table below paragraph 11). It is unclear how the NPSHPL could prevent councils from providing development capacity, as the NPSHPL specifically references "sufficient development capacity" as part of the test for considering urban expansion onto HPL.
17. It's also important to note that the NPSHPL does not require blanket protection for all LUC 3 land. Councils will need to identify 'large and geographically cohesive' areas of LUC 1-3 as highly productive. In addition, this land must be:

² LUC class 3 land makes up 9.2 percent for New Zealand's landmass, while LUC class 2 makes up 4.5 percent and LUC class 1 makes up just 0.7 percent

- a) in a rural zone and not identified as a future urban area in a Future Development Strategy or other strategic planning document, and
- b) compatible with supporting primary production activities.

18. MPI and MfE consider that LUC 1-3 should be retained as:

- a. LUC 1-3 is consistent with a number of regional approaches – using a smaller range of LUC will reduce existing protections, including some areas of prominent food growing hubs that are LUC 3;
- b. LUC1-3 subject to significant loss already, particularly to lifestyle subdivisions;
- c. Mapping LUC 1-3 was broadly supported by submitters, including soil scientists; and
- d. The scale of LUC (1:50,000) makes it difficult to correctly identify LUC 1 and 2, but the scale is appropriate to identify 'large and geographically cohesive' areas of LUC 1-3.

Other recommendations

19. On 23 July 2020 we provided you with the Summary of Submissions report which was proactively released on 30 July 2020. A summary of the key issues raised in submissions and our recommendations is below:

Subject and purpose	Recommendation
NPSHPL Objective (the Report pg 21): <ul style="list-style-type: none"> - Reducing from three to one overarching objective 	The objective should ensure that highly productive land is protected for use in land-based primary production, both now and for future generations.
Definition of primary production – Forestry (the Report pg 17) <ul style="list-style-type: none"> - retain forestry in the definition of primary production 	We recommend that the NPSHPL is agnostic on the type of primary production that can take place on HPL, however we note that councils may choose to manage specific areas of HPL for specific primary production activities.
Subdivision and rural lifestyle development (the Report pg 62): <ul style="list-style-type: none"> - to avoid the fragmentation of HPL 	Avoid new rural lifestyle development on HPL.
'Other' subdivision, use and development (the Report pg 66): <ul style="list-style-type: none"> - recognise other activities that occur on HPL 	Ensure that we provide for activities that may occur on HPL, including ecosystem restoration and provide for matters of national importance.
Prioritising highly productive land for land-based primary production (the Report pg 69):	Require councils to prioritise land based primary production on HPL, while enabling effects of those activities to be managed
Reverse sensitivity (the Report pg 71):	Require councils to manage activities that may result in reverse sensitivity effects on primary production
Transitional protection of highly productive land (the Report pg 73):	Manage resource consents and plan changes until councils have undertaken required mapping.

Whenua Māori (Maori Land) (the Report pg 75):	Recognise particular constraints of Maori land and provide for appropriate activities on that land, including papakainga.
Treaty (Te Tiriti) settlement commitments (the Report pg 75)	Ensure government meets its requirements under treaty settlement legislation.
Other national direction (the Report pg 79): <ul style="list-style-type: none"> - interactivity with other pieces of national direction 	To reserve the right for Ministers to revisit decisions on the NPSHPL before its gazettal, in light of any decisions made on other national direction instruments currently under development, notably the National Policy Statement for Indigenous Biodiversity.

Next Steps

20. If you agree, we will develop an exposure draft of the NPSHPL in line with the Report. We will test the exposure draft with local government and primary sector stakeholders to ensure the wording aligns with the policy intent.
21. In parallel, we will develop a Regulatory Impact Statement and an evaluation report as required under Section 32 of the RMA, which we will provide to you in mid-2021.
22. We will have the policy drafted and aligned with MfE's new drafting standards for national direction. The new standards will make it easier for national direction instruments be interpreted and applied alongside each other.
23. The table below sets out the next steps for developing the NPSHPL with indicative dates to implement in the third quarter of 2021. MfE is prioritising the Resource Management Reform and the timeline below provides some flexibility to ensure that the NPSHPL can be delivered alongside that work programme.
24. Given the close link between our urban expansion policy and the NPSUD, you are invited to forward this briefing to Hon Phil Twyford, Associate Minister for the Environment.

Step	Indicative date (2021)
Policy drafting	April – May 2021
Exposure draft testing with targeted stakeholders	Late May (tentative)
Cabinet package for Ministerial consultation	Third quarter 2021
Cabinet consideration	
Gazettal	

Implementation	28 days following gazettal
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Recommendations

25. The Ministry for Primary Industries and the Ministry for the Environment recommended that you:

- a) **Note** that we have provided a draft recommendation report attached as Appendix One.

YES / NO

- b) **Agree or disagree or comment** on any recommendations that are of interest to you in the recommendations report.

COMPLETED

- c) **Agree** to any recommendations where you have not provided a specific comment on the recommendations report attached as Appendix One.

YES / NO

- d) **Agree** to officials meeting with you to discuss any of the recommendations if necessary.

YES / NO

- e) **Agree** to direct officials to prepare an exposure draft of the NPSHPL and test this with a targeted group of stakeholders to ensure the wording in the NPSHPL will deliver the policy intent.

YES / NO

- f) **Note** that the final recommendations report and a draft Cabinet paper will be provided to you in the third quarter of 2021.

YES / NO

- g) **Forward** a copy of this briefing to Hon Phil Twyford, Associate Minister for the Environment.

YES / NO

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Minister of Agriculture

/ / 2021

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Hon David Parker
Minister for the Environment

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Minister's comments

Proactively released under the Official Information Act

Appendix One: Draft recommendations report on the National Policy Statement for Highly Productive Land

Proactively released under the Official Information Act