



PROACTIVE RELEASE COVERSHEET

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

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Cabinet paper CAB 443/Sub24-0066: Amendments to the National Policy Statement for Highly Productive Land 2022 and associated Appendix 5 (Māori rights & interests and Te Tiriti o Waitangi Analysis)	Ministry for the Environment and Ministry for Primary Industries
31 July 2024	Cabinet Economic Policy Committee Minute ECO-24-MIN-0147: Minute of Decision Amendments to the National Policy Statement for Highly Productive Land 2022	Cabinet Office
5 August 2024	Cabinet Minute CAB-24-MIN-0290: Minute of Decision Amendments to the National Policy Statement for Highly Productive Land 2022	Cabinet Office

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld from the documents under Section 9(2)(a) of the Official Information Act to maintain the privacy of natural persons, under Section 9(2)(f)(iv) of the Official Information Act to maintain the confidentiality of advice tendered by Ministers of the Crown and officials, and under Section 9(2)(h) of the Official Information Act to maintain legal professional privilege.

In Confidence

Office of the Minister Responsible for RMA Reform

Office of the Minister of Agriculture

Chair, Cabinet Economic Development Committee (ECO)

Amendments to the National Policy Statement for Highly Productive Land 2022

Proposal

- 1 This paper seeks Cabinet's approval to amend the National Policy Statement for Highly Productive Land 2022 (NPS-HPL), to enable activities associated with specified infrastructure, intensive indoor primary production and greenhouses on highly productive land (HPL).

Relation to government priorities

- 2 The amendment to enable the construction of specified infrastructure, such as wind or solar farms, on HPL aligns with the Government's Coalition agreement to 'double renewable energy production' (100-day plan).
- 3 The amendment to enable intensive indoor primary production and greenhouses on HPL aligns with the Government's commitment to reduce consenting barriers for primary production, the National Party's 'Getting back to farming' manifesto and enabling normal 'rural' activities on HPL¹.

- 4 9(2)(f)(iv)

Executive Summary

- 5 The NPS-HPL took effect in October 2022. The objective of the NPS-HPL is to protect HPL for use in land-based primary production for current and future generations².
- 6 Since the NPS-HPL came into effect, stakeholders have raised concerns relating to unclear consent pathways for new specified infrastructure (e.g. solar farms), and the development and relocation of intensive indoor primary production and greenhouses in the NPS-HPL.

¹ As set out in 'Getting back to Farming' manifesto commitment and press release (National to make sweeping changes to farm regs, 19th April 2023).

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].

- 7 Public consultation was undertaken on potential amendments to the NPS-HPL, from 5 September 2023 until 31 October 2023, with the majority of submitters supporting both amendments.
- 8 We (the Minister Responsible for RMA Reform and the Minister of Agriculture) are proposing to progress these amendments under section 46A of the Resource Management Act 1991. Progressing the amendments now will give clarity to renewable energy providers and sections of the primary production sector and have already been subject to public consultation and subsequent analysis. We therefore recommend finalising this process now, ahead of further amendments to national direction through the resource management reform programme.
- 9 The main concerns raised by submitters related to minimising any potential adverse impacts on the availability of HPL for primary production activities, particularly around large metropolitan centres (e.g. Auckland) where there would be a higher demand for development on HPL.
- 10 We have considered these concerns alongside the benefits of the amendments to help meet the Government's renewable energy goals and to support a resilient and diverse primary sector. We consider the amendments help to address consenting barriers for infrastructure and primary production.
- 11 Concerns were also raised that the proposed amendment options consulted on would not provide clear consenting pathway in all circumstances. To address this, the original amendment proposals have been modified so they are workable for renewable energy, intensive indoor primary production and greenhouses.
- 12 We recommend that Cabinet agrees that both amendments be progressed. Once agreed through Order in Council, the amendments will be published in the New Zealand Gazette 28-days after.

Background

Purpose of the NPS-HPL

- 13 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 rural lifestyle developments in particular.
- 14 Land Use Capability (LUC) class 1-3 land is currently defined as HPL, and it is important for land-based primary production, export and domestic food production. Such land is typically flat or gently undulating, has inherently fertile soils, and a good climate for growing a range of food and fibre. Approximately 15 percent of New Zealand's land cover is considered highly productive based on the LUC Classification.
- 15 The NPS-HPL's objective is to protect HPL for ongoing use in land-based primary production, but it does provide pathways for some other activities to

occur on HPL subject to specific tests. For example, activities that support existing land-based primary production, and some infrastructure and extraction activities.

Public consultation on amendments to the NPS-HPL

- 16 Since the NPS-HPL came into effect, stakeholders have raised concerns relating to consent pathways for specified infrastructure (e.g. wind or solar farms, flood protection work)³, intensive indoor primary production⁴ and greenhouses⁵ in the NPS-HPL.
- 17 In response to this, public consultation on potential amendments to the NPS-HPL in relation to these issues was undertaken (to gather information and evidence on whether to amend the policy to provide for these activities). Public consultation ran from 5 September 2023 until 31 October 2023. Engagement sessions were held online with industry, councils, Treaty partners and the general public. A total of 83 submissions were received, with feedback being generally supportive of the amendments, especially from industry stakeholders and most councils.
- 18 The number of submissions received from Treaty partners and iwi/Māori organisations was relatively small and there was no clear preferred option identified across those submissions. Some Māori enterprises will have an opportunity to benefit from the proposed amendments to participate in intensive indoor primary production, renewable energy, or greenhouse activities.

Analysis

Enabling specified infrastructure in the NPS-HPL

- 19 The original proposal was to amend the NPS-HPL to enable the 'construction' of new specified infrastructure on HPL. Some submitters suggested that rather than focussing exclusively on the 'construction' of new specified infrastructure, the NPS-HPL should adopt a life-cycle management approach, enabling 'all activities associated with specified infrastructure' on HPL. These submitters highlighted that 'construction' would not encompass all activities related to the lifecycle of specified infrastructure (for example, decommissioning, replacement and removal).
- 20 The NPS-HPL already provides for the ongoing *maintenance, operation, upgrade, or expansion* of specified infrastructure in clause 3.9(2)(j)(i). Extending this to include all activities associated with the lifecycle of specified

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.

⁵ 'Greenhouses' means the growing of plants inside structures that are predominantly enclosed by glass or other transparent material, regardless of reliance on the soil resources of the land.

infrastructure (rather than just the addition of 'construction') would clarify that activities such as decommissioning, removal and replacement of specified infrastructure are also appropriate uses of HPL.

- 21 Enabling specified infrastructure in this way will remove a barrier for renewable electricity generation infrastructure and other infrastructure on HPL. It also aligns with how specified infrastructure is provided for in other national direction (such as the National Environmental Standards for Electricity Transmission activities)⁶ for more consistency in how councils provide for specified infrastructure on HPL in their plans. For example, it will mean these provisions are applied consistently to resource consent applications for specified infrastructure around the country.
- 22 Based on submission feedback and analysis, we recommend enabling 'all activities associated with specified infrastructure' on HPL. Safeguards to avoid inappropriate loss of HPL will still apply, such as the functional or operational need test (clause 3.9(2)(j)), as well as standard requirements for resource and building consent.
- 23 This approach maintains the overall intent of the NPS-HPL. The amendment also works toward our coalition agreement to 'double renewable energy production' (100-day plan).

Enabling intensive indoor primary production and greenhouses

- 24 Two options were presented in the discussion document for consultation (with no preferred option signalled), one being retaining the status quo, and the other to provide a consent pathway for intensive indoor primary production and greenhouses on HPL, subject to functional or operational need tests⁷.
- 25 Based on feedback from consultation and further analysis, we recommend that these activities be enabled without the requirement to prove a functional or operational need to locate on HPL. While untested in consent decisions and case law pertaining to the NPS-HPL, we believe that meeting functional or operational requirements could mean that the pathway provided is unworkable or continues to result in consenting barriers for these industries.
- 26 These activities would still be required to demonstrate the loss of HPL was minimised and that any reverse sensitivity effects on neighbouring land was avoided or otherwise mitigated⁸, as well as standard requirements for resource and building consent.

⁶ The NES-ET contains provisions relating to the 'alteration, relocation and replacement' of transmission line support structures (regulations 14, 15 and 16), and to the 'removal' of transmission lines (regulations 19 and 20).

⁷ Functional need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

Operational need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints

⁸ As required by clause 3.9(3).

- 27 Enabling these industries to develop on HPL in this way addresses the policy problem and is in line with existing pathways in the NPS-HPL for other non-land-based primary production. It provides flexibility for these primary production activities to adapt to climate change and work toward decarbonising the industries⁹.
- 28 The development and expansion of intensive indoor primary production and greenhouses will also provide primary sector businesses with the flexibility to respond to changing regulatory requirements (e.g. animal welfare), adapt to changing environmental conditions and support the decarbonisation of the primary sector value chain.
- 29 Providing for intensive indoor primary production and greenhouses aligns with the Government's commitment to reduce consenting barriers for primary production ('Getting back to farming' manifesto and enabling normal rural activities on HPL).

Impact on the ongoing availability of HPL

- 30 The most consistent concern raised in submissions was the loss of HPL available for land-based primary production that would occur if the policy was more enabling of specified infrastructure such as solar farms, as well as greenhouses and indoor farming. There were also concerns that certain regions (e.g. Auckland) would be disproportionately impacted due to established markets, transport routes and proximity to end users creating a higher demand for such developments.
- 31 We consider that the losses of HPL would be appropriately managed by measures in the NPS-HPL that provide flexibility for councils to assess the impacts of activities on HPL. The amendments would also work to meet our renewable energy production goals and build resilience in the primary sector.

Future amendments to the NPS-HPL

- 32 Amending the NPS-HPL will provide certainty for stakeholders that these activities can develop on HPL.

- 33 9(2)(f)(iv)
- 

Compliance with statutory requirements

⁹ For example, many greenhouses that currently rely on gas or coal for heating may need to relocate to somewhere with a geothermal or other renewable electricity source. This transition would face challenges without a clear pathway to develop on HPL.

- 34 The statutory processes for amending a national policy statement are set out in section 46A of the RMA. Further requirements are laid out in sections 32 and 51-54 of the RMA.
- 35 The Minister Responsible for RMA Reform and Minister of Agriculture have policy responsibility for the NPS-HPL. The statutory functions of the Minister for the Environment under the RMA for changing national direction may be exercised by the Minister Responsible for RMA Reform pursuant to section 7 of the Constitution Act 1986.
- 36 We (Minister Responsible for RMA Reform and Minister of Agriculture) have worked with officials to ensure we have complied with all statutory requirements.
- 37 The amendments to the NPS-HPL have been drafted by the Ministry for the Environment (the Ministry) rather than the Parliamentary Counsel Office. Crown Law has undertaken a vires review of proposed amendments to the NPS-HPL and has confirmed that the amendments fall within the empowering provisions of the RMA. A memo from the Ministry's Chief Legal Adviser confirming this and the other requirements above is provided in Appendix 6.

Implementation

- 38 The NPS-HPL is implemented by regional and district councils as part of their functions and roles under the RMA. Councils will give effect to changes once they are in force and guidance will be updated as necessary to support the implementation of these amendments.

Cost-of-living Implications

- 39 There are no direct cost-of-living implications from these proposals, however enabling specified infrastructure, intensive indoor primary production and greenhouses may reduce costs to producers enabling them to supply products and services to New Zealanders more competitively.

Financial Implications

- 40 There are no financial implications from the proposals in this paper.

Legislative Implications

- 41 The NPS-HPL is secondary legislation under the Legislation Act 2019. The Minister Responsible for RMA Reform will ensure that publication and process requirements are met.

Regulatory Impact Statement

- 42 The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has reviewed Regulatory Impact Statement: Amendments to the National Policy Statement for Highly Productive Land (the Statement). The RIA Panel considers that the Statement **meets all** the RIA Quality Assurance criteria.

The document provides clear and thorough descriptions of the policy problems, analytical limitations, options, and information gathered through public consultation. The RIA Panel considers that the Statement provides robust advice to support informed decision-making.

43 The Statement is attached at Appendix 4.

Climate Implications of Policy Assessment

44 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do apply to this proposal, as a reduction in greenhouse gas emissions is an objective of the proposal and the proposal is expected to result in emissions impacts.

45 It is not possible to accurately quantify the emissions impact of this proposal at this stage given its high-level nature. Enabling indoor intensive primary production and greenhouses on highly productive land may result in a reduction in greenhouse gas emissions, as existing operations will be more able to relocate closer to renewable forms of energy.

46 Enabling new specified infrastructure on highly productive land is likely to better enable renewable energy targets to be achieved (e.g. through providing a clearer consent pathway for solar farms).

47 As this proposal is progressed, the emissions impact will continually be assessed and disclosed to Cabinet where appropriate.

Human Rights

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

Use of external Resources

49 No external resources were used to support this Cabinet paper.

Consultation

50 The following agencies were provided with a short period to review the content of this paper: Department of the Prime Minister and Cabinet; 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; Waka Kotahi New Zealand Transport Agency; and Te Waihanga – New Zealand Infrastructure Commission.

51 Agencies were broadly supportive of the amendments and their feedback has been incorporated.

Communications

- 52 We intend to gazette and announce the changes shortly after Cabinet approval.
- 53 Following gazettal, we will comply with RMA statutory requirements to inform submitters, Treaty partners and the public.

Proactive Release

- 54 Following Cabinet consideration, we intend to release this Cabinet package, and briefings that sought Ministers' decisions with redactions in line with the Official Information Act 1982.
- 55 We also intend to publish the Regulatory Impact Statement (Appendix 4) on the MfE, MPI and Treasury websites within 30 working days of the final decision on the NPS-HPL.

Recommendations

We recommend that the Committee:

Background

- 1 **note** that the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) came into force in October 2022 and provides national direction on the management of highly productive land (HPL) for use in land-based primary production
- 2 **note** that shortly after coming into effect, stakeholders raised concerns with the NPS-HPL, which led to the previous Government consulting on potential amendments to the NPS-HPL to:
- 2.1 provide a consent pathway for the construction of new specified infrastructure (without a designation); and
- 2.2 provide a clear consent pathway for the development of intensive indoor primary production and greenhouses.
- 3 **note** public consultation occurred for eight weeks in 2023 and 83 submissions were received, with the majority supporting amendments to the NPS-HPL
- 4 **note** the Minister Responsible for RM Reform is exercising the statutory functions of the Minister for the Environment pursuant to section 7 of the Constitution Act 1986 in relation to these decisions.

Changes to the NPS-HPL to enable specified infrastructure, intensive indoor primary production and greenhouses

- 5 **note** that our proposed response to consultation is:
- 5.1 enabling new specified infrastructure and associated activities by amending clause 3.9(2)(j)(i) of the NPS-HPL
- 5.2 enabling intensive indoor primary production and greenhouses on HPL by inserting a new clause 3.9(2)(aa)

6 **note** that these amendments support the Government's commitment to
reduce consenting barriers for infrastructure and primary production

7 9(2)(f)(iv)

8 **note** that these amendments support the Government's commitment to
reduce consenting barriers for infrastructure and primary production

Final agreement to policy changes

9 **note** that the amended NPS-HPL (Appendix 1) gives effect to the policy
decisions in Recommendation 5

10 **authorise** the Minister Responsible for RMA Reform to recommend the
amended NPS-HPL to the Governor-General in Council for approval, in
accordance with section 52(2) of the Resource Management Act 1991

Timing and the 28-day rule

11 **note** that the Minister Responsible for RMA Reform will arrange the gazettal
once approval has been granted

12 **note** that the amendments to the NPS-HPL will take effect 28 days after
gazettal, complying with the 28-day rule.

Statutory requirements

13 **note** that the Minister Responsible for RMA Reform has complied with all
statutory requirements outlined in the Resource Management Act 1991 that
must be completed prior to recommending the amendments be made,
including:

13.1 meeting the process and consultation requirements prescribed in
section 46A of the RMA, including requirements to consult with the
public and iwi

13.2 has considered the summary of submission and recommendations
report (Appendix 2), in accordance with section 52(1)(a)

13.3 has had particular regard to the section 32 evaluation report (Appendix
3), in accordance with section 52(1)(c)

14 9(2)(h)

15 **note** that once the amendments have been gazetted the Minister Responsible
for RMA Reform will comply with the publication and presentation
requirements under section 53 of the RMA and the Legislation Act 2019

Proactive release and publishing

16 **note** that final proofing and formatting changes may be made prior to
publishing the Cabinet package on the Ministry for the Environment and

IN CONFIDENCE

Ministry for Primary Industries website, but there will be no material changes to the content of the Cabinet package

- 17 **agree** to proactively release and publish this Cabinet paper and documents associated with this amendment process to enable compliance with recommendation 13.

Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RM Reform

Hon Todd McClay
Minister of Agriculture



Ministry for the
Environment
Manatū Mō Te Taiao

Māori rights & interests and Te Tiriti o Waitangi Analysis

Amending the National Policy Statement for Highly Productive Land (NPS-HPL) to enable new specified infrastructure and intensive indoor primary production and greenhouses on HPL

Purpose and Context

1. What is the proposed scope of the policy? Which work programme/s does it relate to?

The National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on 17 October 2022. It states how highly productive land (HPL) should be managed under the Resource Management Act 1991 (RMA). The NPS-HPL addresses the incremental loss of HPL from urban rezoning, fragmentation of rural land for lifestyle purposes, development and from uses that are not reliant on the soil resource.

HPL is the most fertile soil, it generally has a good climate, suitable soil and is flat or gently sloping. Soil quality is an essential component of HPL. Soil is formed through a complex interaction of climate, underlying geological material, vegetation, animal grazing, management, microorganisms, topography and other factors. Land with an ideal mix of these characteristics is highly suitable for land-based primary production, as it is easier to cultivate and requires less irrigation and fertiliser.

HPL is a limited and non-renewable resource that is required for land-based primary production, both now and for future generations.

The NPS-HPL uses the Land Use Capability (LUC) classification system as the basis for defining what is highly productive land. There are eight land use capability classes, LUC 1 land is the most versatile land, and is suitable for a wide range of primary production activities. Class 8 land is the least versatile for primary production and is typically set aside for conservation. Land in classes 1, 2 and 3 is generally regarded as the most highly productive in Aotearoa New Zealand.

The NPS-HPL is agnostic as to the type of land-based primary production that is undertaken on HPL and has no requirement for HPL to be used to its maximum productive capacity.

The primary objective of the NPS-HPL is to protect the soil resource for use in land-based primary production. This is achieved by providing guidance to councils on how to identify and map HPL, and what restrictions should be placed on its subdivision, use and development.

The NPS-HPL does, however, provide councils with some flexibility to allow for certain activities that are not land-based primary production to develop on HPL in certain circumstances. These activities may need to be located on HPL to deliver wider cultural, social, environmental and economic benefits. Consent pathways in the NPS-HPL are provided for non-land-based activities to develop on HPL, subject to specific requirements being met. These include functional or operational tests.

Subclause 3.9(2) outlines the circumstances where activities would be 'not inappropriate'. These include maintaining, operating, upgrading and expanding specified infrastructure, providing public access and activities that support land-based primary production. Providing for these activities should be balanced against the objective of the NPS-HPL.

Māori rights to exercise rangatiratanga on their land are protected from the restrictions of the NPS-HPL, depending on whether it can be defined as specified Māori land. While specified Māori land (as defined in the NPS-HPL, including Māori customary and freehold land, Māori reserves) is exempt from restrictions of the NPS-HPL, not all Māori-owned land is exempt.

Since the NPS-HPL was gazetted in October 2022, two issues have been raised about its restrictions on non-land-based uses and development. These are:

1. The lack of a clear consent pathway for construction of new specified infrastructure on HPL in clause 3.9(2)(j)(i).
2. There is no clear consent pathway for developing and relocating intensive indoor primary production and greenhouses on HPL.

During 5 September and 31 October 2023 feedback on options to address these issues was sought. The options publicly consulted on are set out below in Table 1:

Table 1 – Options for amending the NPS-HPL consulted on

New specified Infrastructure:		Intensive indoor Primary Production and Greenhouses	
Option 1	Retain Status Quo. No clear pathway except for requiring authorities.	Option 1	Retain Status Quo. No clear pathway except as a supporting activity or small scale/temporary.
Option 2	To amend clause 3.9(2)(j) of the NPS-HPL to clarify that this includes the 'construction' of <u>new</u> specified infrastructure as well as the 'maintenance, operation, upgrade, or expansion of specified infrastructure'.	Option 2	To add a new sub-clause to 3.9(2) to provide a consent pathway for new and relocating intensive indoor primary production and greenhouse activities (as defined in the National Planning Standards) (subclause k).

In February 2024, Ministers agreed to continue considering these changes in accordance with RMA requirements for amending national direction (s46A) – BRF 4054 refers.

1. Is this a cross agency programme/workstream/project or only MfE?

This is a joint workstream between Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI).

2. Who are the key contacts and points of accountability for this programme/project?

Ministry for the Environment

Lottie Borra – Project Lead

Marijke Ransom – Senior Policy Analyst

Alex MacDonald – Senior Policy Analyst

Jo Burton – Manager Land and Water Systems Team

Hayden Johnston – General Manager, Natural Environment Policy

Ministry for Primary Industries

Gustav Chu-Ling – Policy Analyst

Tom Corser- Manager, Land Policy

Charlotte Denny – Director, Natural Resources Policy

3. Are there existing policies that you are refining or is this analysis for a new policy?

Amending the existing National Policy Statement for Highly Productive Land 2022.

4. At what stage of the policy process is the work? How have Māori been involved to date in determining the scope? How will that influence this analysis and your engagement with Māori?

Officials are at the stage of preparing advice to Ministers on which option to proceed with for both policy issues. PSGE's were informed of the potential amendments to the NPS-HPL in advance of formal public consultation and were invited to hui. As outlined below, PSGE's were invited to discuss and provide alternative options to the amendments in the consultation period. Engagement with Māori during this consultation period and submissions received will be used to inform these recommendations. Feedback from Māori received during the development of the NPS- HPL (detailed here: [Appendix 4 Treaty of Waitangi Analysis report 7 September 2022 PDF version.pdf](#)) which will also help inform this Treaty impact analysis and final policy decisions.

PSGE's were informed about potential amendments and invited to hui to discuss potential amendments (link to invitation here: [NPS-HPL Potential Amendments Public Consultation 2023 \(campaign-archive.com\)](#)). PSGE's were invited to provide alternative options to address the issue. As discussed below – some PSGE's raised other issues with the NPS-HPL (specifically in relation to the definition of specified Māori land) which are being considered as part of further amendments to the NPS-HPL as part of wider Resource Management reform.

Understanding Māori rights, interests, and perspectives

6. What is the background and context of this policy topic/issue/area? How have you done your due diligence in terms of understanding Māori rights and interests in relation to this topic?

Due diligence in terms of understanding of Māori rights and interests in this topic involved considering the proposed changes in the context of:

- Te Tiriti o Waitangi and the following principles:
 - the Crown and Māori obligations to act in good faith, fairly, reasonably and honourably towards the other; (partnership)
 - the Crown duty to protect Māori interests which may include property, taonga, resources, mātauranga etc (active protection); and
 - that past wrongs give rise to a right to redress. This principle includes the need to avoid the creation of fresh injustice.

- Feedback received on the [2019 Discussion Document – Valuing Highly Productive Land](#) and early drafts of the NPS-HPL.
- Feedback received on the [2023 Discussion Document - Potential Amendments to the NPS-HPL](#)
- Statutory obligations including Settlement Acts, the Public Service Act 2020 and the Resource Management Act 1991.
- Analysis of the distribution and tenure of Māori owned land and recognition of the implications of the constraints on Māori customary and freehold land as defined by Te Ture Whenua Māori Act.
- Initial Māori rights and interests and Treaty settlements advice provided as part of briefing BRF-4054 [Tiriti considerations regarding amendments to the NPS-HPL .docx](#)

7. *What is the opportunity or problem that needs to be addressed? What is the proposed objective? What is the problem that needs to be solved? What are the policy outcomes being sought?*

Issue 1: no clear pathway for new specified infrastructure is provided

As worded, the NPS-HPL does not provide a clear consent pathway for any person, company or organisation wishing to undertake development of new specified infrastructure on HPL, if they are not a requiring authority under the Resource Management Act 1991 (RMA). This limits the ability to construct new specified infrastructure on HPL at pace. It also limits certain providers, such as renewable electricity generators or installers of fibre for broadband, who are not requiring authorities.

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

The NPS-HPL does not have a clear consent pathway for intensive indoor primary production and greenhouses to be located on HPL. These activities contribute to a diverse and resilient primary sector. Due to reverse sensitivity effects, these activities require rural locations, and may have difficulty finding appropriate locations, particularly in some regions that contain higher proportions of HPL.

Public consultation on options for addressing these issues was undertaken from 5 September -31 October 2023. Post settlement governance entities were specifically informed of the consultation and invited to attend webinars. Notice of consultation and webinars were also posted on MfE Te Komiroiro newsletter. Māori agribusiness were also targeted.

8. *Does this new policy sit under or relate to any of the reform programmes, policy areas or mahi in MfE, or other government agencies?*

9(2)(f)(iv)

9. What have Māori already said to the Ministry and/or Government that may relate directly, or indirectly, to this policy area?

NPS-HPL Development (2019-2022):

Feedback from iwi/Māori received during the development of the NPS-HPL (2019-2022) indirectly relates to the amendments consulted on, but directly relates to the general policy area of the NPS-HPL. As summarised on p.14 of the NPS-HPL TIA analysis:

“Feedback from (iwi/Māori) to the 2019 Discussion Document which was reiterated during exposure draft testing in November 2021 highlighted:

- *the general support for protecting highly productive lands for primary production purposes*
- *the importance of highly productive land to the health and wellbeing of marae, hapū, whānau and the wider community*
- *the general support for the policy intent to give councils and their communities the flexibility to identify highly productive land based on a range of considerations”.*

Feedback received from iwi/Māori during the development of the NPS-HPL also related to the process for how the NPS-HPL was developed:

- Several iwi submitters on the NPS-HPL 2020 raised concerns iwi had not been appropriately engaged with throughout the development of the NPS-HPL, and that the engagement process did not satisfy the Crown’s obligations under the Treaty of Waitangi and related settlement legislation. 9(2)(a)



- Several PSGEs asked to be meaningfully engaged with on future reform to the NPS-HPL. 9(2)(a)

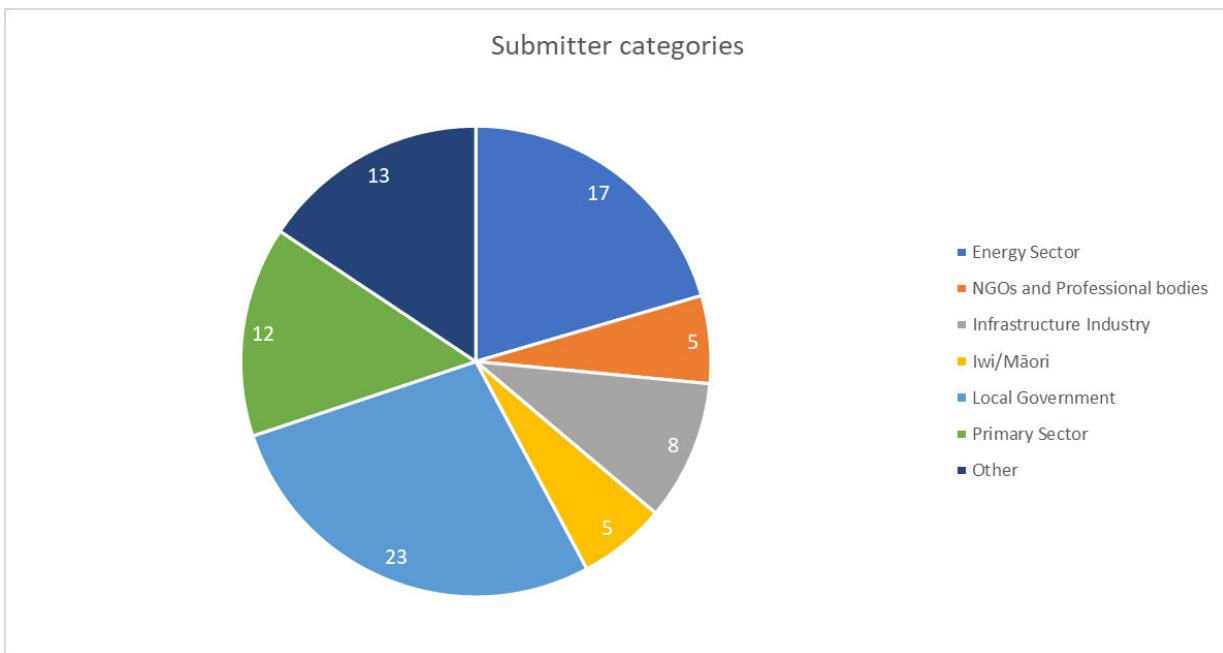


Whilst implementation of the NPS-HPL is led by local government and the NPS does direct local authorities to involve tangata whenua in giving effect to the NPS, it is clear that provision for the involvement of 9(2)(a) (and other PSGE's) needed to have been provided for as part of potential amendments to the NPS-HPL.

Potential Amendments to NPS-HPL – Public Engagement Sept-Oct 2023

As noted in 4. Above all PSGE's were informed about potential amendments and invited to hui to discuss potential amendments (link to invitation here: [NPS-HPL Potential Amendments Public Consultation 2023 \(campaign-archive.com\)](https://campaign-archive.com)). PSGE's were invited to provide alternative options to address the issue.

A total of 83 submissions on potential amendments were received. Five of these were from Iwi/Māori representative groups. Officials note that the overall number of submissions may have been affected by the consultation period running over an election period and during a time when there were also a number of other consultations on e.g National Planning Framework, Renewable Energy Generation, etc which would have impacted the ability of iwi/hapu to be actively involved.



These were:

9(2)(a)

The following Māori agribusiness also submitted:

9(2)(a)

Additional submissions relating to the definition of specified Māori land were also received from:

- Bay of Plenty Regional Council
- Te Uru Kahika – Regional and Unitary Councils Aotearoa

Submissions from 9(2)(a) [REDACTED], Bay of Plenty Regional Council and Te Uru Kahika (Regional and Unitary Councils Aotearoa) were entirely related to the definition of specified Māori land, requesting that Treaty Settlement Land and land that is administered by a Whanau or Ahu Whenua Trust in accordance with Te Ture Whenua Maori Act 1993, be added to the definition (be exempt from NPS-HPL restrictions). 9(2)(a) [REDACTED] also noted that “*further engagement regarding Māori Land and Climate change is required*” and 9(2)(a) [REDACTED] noted that “*MfE should urgently consider amending the NPS-HPL to include Māori owned land that is under General title so Māori are not disproportionately affected in developing their land because of the requirements of the NPS-HPL*”. It is understood that the definition of specified Māori land will be considered as part of potential amendments to be progressed under another RM Reform process later this year and will be covered in the accompanying Treaty Impact Analysis.

Work on a climate adaptation framework, including te ao Māori principles to guide the development of the framework and a specific whenua Māori and cultural infrastructure policy within it, is being developed over the next 6-12 months. This work is likely to provide further opportunities for engagement that 9(2)(a) [REDACTED] is seeking. The NPS-HPL is not a barrier to relocating cultural assets on HPL given that any use and development that addresses a high risk to public health and safety and/or or is for a purpose associated with, a matter of national importance under section 6 of the Act (which includes natural hazards) is expressly provided for in clause 3.9 as a ‘not inappropriate’ use of HPL.

A summary of the remaining submissions relating to the consulted amendments by representatives of iwi/Māori organisations is as follows.

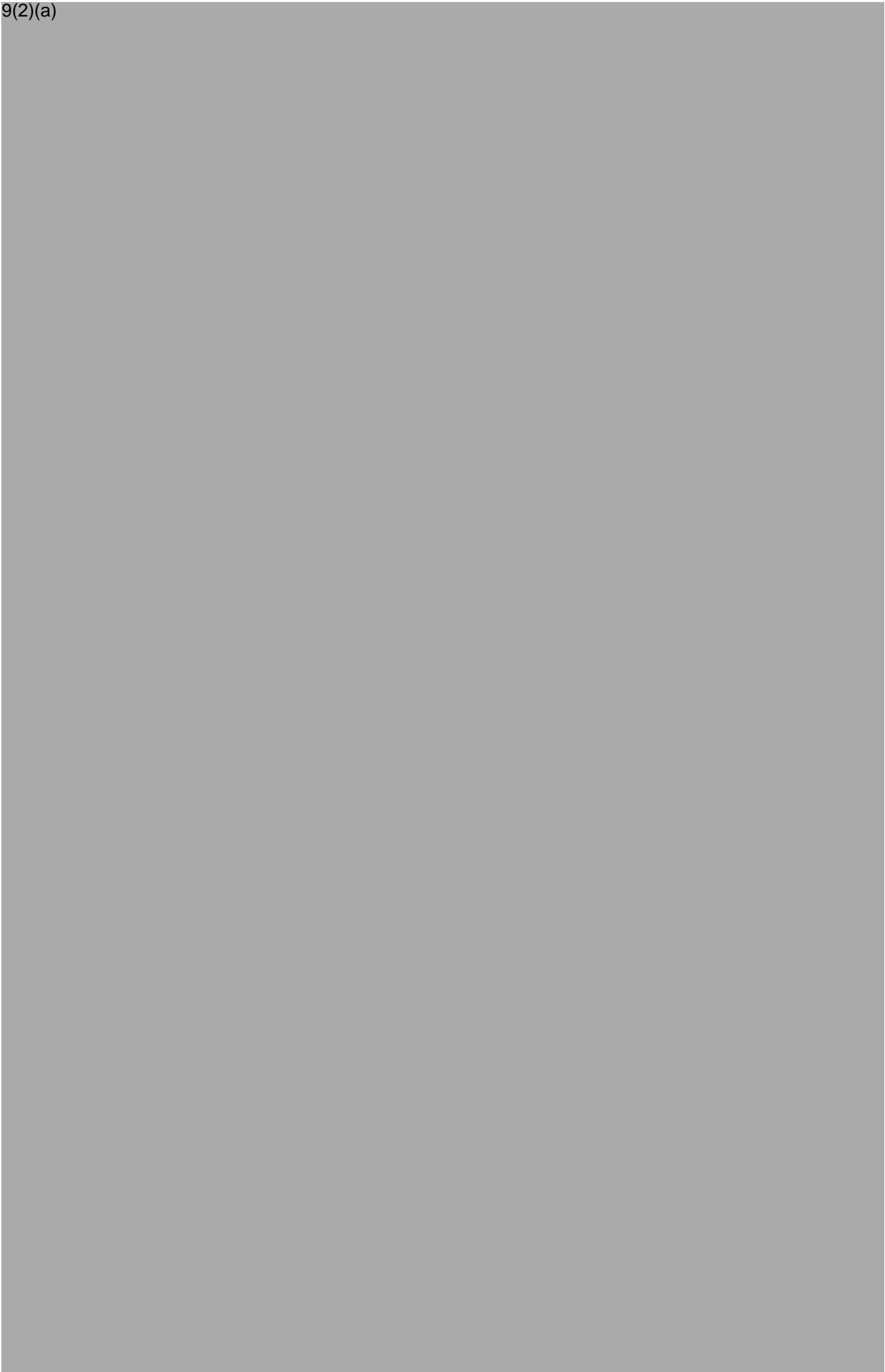
9(2)(a) [REDACTED]

9(2)(a)





9(2)(a)



9(2)(a)

9(2)(a)



Table 2 Options preferred by Iwi/Māori

Organisation	Issue 1 Specified Infrastructure		Issue 2 – Intensive Indoor Primary Production and GH	
	Status Quo (Option 1)	Enable (Option 2)	Status Quo (Option 1)	Enable (Option 2)
9(2)(a)		✓	✓	
	✓		✓	
	Requires careful consideration		Need to strike a balance	
		✓		✓
	No comment			✓

10. *How are you giving effect to specific te Tiriti articles and principles in your policy work? For example: How is rangatiratanga, kawanatanga and ōritetanga being given effect to? How are you giving effect to Treaty Principles such as Māori autonomy, partnership, active protection, options, Māori rights of development, equity, redress, etc?*

As part of the Crown, there is an obligation for Ministry for Primary Industry (MPI) and Ministry of the Environment (MfE) to ensure that amendments to the NPS-HPL are developed in a way that is consistent with the principles of the Treaty of Waitangi (Te Tiriti). These principles are generally agreed to include:

- the Crown and Māori obligations to act in good faith, fairly, reasonably and honourably towards the other; (**partnership**)
- the Crown duty to protect Māori interests which may include property, taonga, resources, mātauranga etc (**active protection**); and
- that past wrongs give rise to a right to redress. This principle includes the need to avoid the creation of fresh injustice (**redress**).

The options for amending the NPS-HPL (to enable new specified infrastructure and/or intensive indoor primary production and greenhouses on HPL or not) do not directly impact on Māori rights to exercise rangatiratanga/autonomy over their lands, resources or taonga or the Crown's right to govern/exercise kawanatanga and responsibility to provide ōritetanga/equity. However, some Treaty Partner submitters did raise the issue of the definition of specified Māori land (not part of the consultation) in that it didn't exempt Treaty Settlement Land or certain general land owned by Māori (when that land it had the same significance to Māori as Māori customary and freehold land) from restrictions imposed by the NPS-HPL.

It is noted that Option 2 (to enable these activities) would provide clearer pathways for these activities to occur on all HPL (specified Māori land or not). Some Iwi/Māori submitters supported retaining the status quo and emphasised the importance of striking a balance between 'protecting HPL' and enabling activities that aren't reliant on the soil to establish/occur; whilst other Iwi/Māori submitters supported Option 2.

Providing an opportunity for Iwi/Māori to influence final policy decisions demonstrates partnership. ^{9(2)(f)(iv)}



Further assessment of how the proposal relates to articles of the Treaty is set out in sections 20-35 below.

11. *What has Te Rōpū Whakamana i te Tiriti o Waitangi / the Waitangi Tribunal said that might be relevant?*

The tribunal stated that 'we hold the firm view that, in delegating, the Crown cannot divest itself of its Treaty duty of active protection of Māori interests. It has a responsibility to see that local government and resource management legislation is Treaty-compliant. It also has a duty to monitor and audit the performance of local authorities in terms of Treaty outcomes.

Part of that duty is to ensure that the activities of district and regional councils do not interfere with the ability of Māori to retain and enjoy the use of their lands.’ (WAI0215 – Tauranga Moana, 1886-2006 Report on the Post-Raupatu Claims Volume 2, pg 486).

Also in the above report: “the Waitangi Tribunal found that the Crown’s ‘persistence in viewing land from a Pakeha perspective’ and its failure to empower iwi and hapū to protect their land as they wanted, means that they failed to ‘uphold the principles of partnership and equity.’ This is relevant for the definition of specified Māori land, but not considered to be directly relevant to these proposal to provide clearer pathways for new specified infrastructure and intensive indoor primary production on HPL.

12. What have the Courts said that may relate to this policy area?

There is no relevant Case Law that is relevant to NPS-HPL from a Treaty settlements or Waitangi tribunal perspective.

13. Who are the appropriate Tiriti partners to be forming relationships and working with in relation to things policy design, drafting, decision-making and governance?

All Tiriti partners were informed of the potential amendments to the NPS-HPL in advance of formal public consultation and were invited to hui, including:

- Those representatives of Iwi/Māori organisations who contributed to the development of the NPS-HPL via submissions and targeted engagement. These are:

9(2)(a)

- PSGEs which the Crown has specific commitments to engage with on relevant policy matters under relationship agreements and accords, including certain actions when preparing national direction such as national policy statements. These include settlement commitments that require the Crown to have ‘have particular regard to’ the following post-settlement legal frameworks when exercising a function, power or duty under the RMA.
 - Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River);
 - The Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River; and
 - Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika (Whangaehu River).

Those representatives of Iwi/Māori organisations that submitted on potential amendments during consultation in September-October 2023 were:

9(2)(a)

All Tiriti partners will be informed of final decisions to amend the NPS-HPL with respect to specified infrastructure and intensive indoor primary production and greenhouses. They will also be advised of any further amendments being progressed as part of wider RM reform programme including any opportunities for engagement.

Officials note the Court of Appeal's findings in *Muaūpoko Tribal Authority Inc v Minister for the Environment* ([2023] NZCA 641), and their obligation to comply with statutory requirements for public consultation and provide sufficient information for parties to meaningfully engage.

14. Where is it appropriate or necessary to provide for Māori control and/or influence and or participation in different parts of the process and policy?

It is appropriate to provide Iwi/Māori/Tiriti partners an opportunity to influence and participate in the development of policy options and final recommendations. This opportunity was provided during public engagement on alternative options, including inviting PSGE's to hui with others (or separately if they preferred) during this time to discuss the issues and raise alternative options.

15. What do Māori have to say about how te Tiriti principles like rangatiratanga can best be given effect to in relation to this policy area and work? How will this engagement with Māori be resourced?

During the development of the NPS-HPL, Māori have expressed a desire to exercise rangatiratanga over their land, resources and taonga. This resulted in specified Māori land being exempt from restrictions imposed by the NPS-HPL.

Submissions received during consultation on potential amendments highlighted implementation issues with how specified Māori land was defined. Whilst this topic is beyond the scope of what was consulted on, this feedback was used to inform advice on additional amendments being considered under other RM Reform processes. Engagement as part of this process is yet to be confirmed but it is likely to include engagement with Te Tai Kaha, Iwi Leaders Group and PSGE's.

The consulted amendments relating to new specified infrastructure and intensive indoor primary production and greenhouses do not directly change the impact of the NPS-HPL on rangatiratanga as the definition of specified Māori land is not affected by these potential amendments. Māori engagement on this consultation was resourced as part of the wider resourcing for policy, engagement and communications, with the Treaty Settlements team also being involved. The feedback from representatives of Iwi/Māori on which option was preferred was mixed for both issues. It is anticipated that the consulted amendments would provide Iwi/Māori with greater flexibility on how their land is used.

16. What are the opportunities for Treaty partners to participate in the process? E.g., points of influence, co-design of policy, decision-making, opportunities for sharing resources?

The opportunities for Treaty partners to participate in the process was via an invitation to comment on potential amendments to the NPS-HPL set out in a Discussion Document that was published on the MfE website. Emails and notices including an invitation to hui were sent to Post Settlement Government Entities and those who had previously engaged in the development of the NPS-HPL. It is acknowledged that the timing of this engagement was during a very busy time including cyclone recovery and over the election period, as well as other consultation that was occurring or planned for around the same time. Submitters and PSGEs will be contacted to inform them of final policy decisions and drafting.

Providing iwi/Māori (including PSGEs) an opportunity to participate in the development of policy options and final recommendations aligns with the Treaty principles of partnership, active protection of Māori interests and informed decision-making. Undertaking these changes under s46A of the RMA better meets the co-management, relationship and consultation principles contained in Treaty settlement deeds, accords and relationship agreements than doing so via primary legislation.

17. Doing your due diligence: what legislative requirements relating to Māori apply to this work? What tikanga Māori and mātauranga Māori are you aware of that potentially relates to this work?

Key legislative requirements include:

Public Service Act 2020

Subpart 3 of the Public Service Act 2020 outlines the Crown’s relationships with Māori, and specifies that:

- the role of the public service to include “supporting the Crown in its relationships with Māori under the Treaty of Waitangi”; and
- the role of public service leadership to include “developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives.”

Environment Act 1986

The long title of the Environment Act states at c(iii) that the Act is to “...ensure that, in the management of natural and physical resources, full and balanced account is taken of the principles of the Treaty of Waitangi”, among other matters.

Resource Management Act 1991

Part 2 of the RMA, which describes the purpose and principles of the Act, states that persons exercising functions under the RMA must:

- Section 6(e) - Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga as a matter of national importance;
- Section 6(f) – Recognise and provide for the protection of historic heritage (including sites of significance to Māori and wāhi tapu) from inappropriate subdivision, use, and development as a matter of national importance
- Section 6(g) - Recognise and provide for the protection of protected customary rights as a matter of national importance;
- Section 7(a) - Have particular regard to kaitiakitanga; and
- Section 8 - Take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)

In addition, there are various Treaty Settlement Acts and commitments which must be complied with and considered to ensure proposals are consistent with these arrangements . An assessment of how the proposed amendments relate to these Treaty Settlement Acts is included below (21).

Tikanga and mātauranga Māori related to this policy area which has been consistently reflected in submissions relating to the development of the NPS-HPL and consulted amendments is that Māori regard land as a taonga and their rights and interests in land need to be respected and honored including their rights as kaitiaki to ensure the health and wellbeing of the land and its people.

Planning for engagement and working with Māori

18. Please refer to the *Engagement section on the intranet re: creating your plan for Engagement with Māori.*

The engagement plan for these potential amendments to the NPS-HPL is here: [NPS-HPL Engagement Plan_150823.docx](#) Approval of those PSGEs to attend hui was approved here: [RE APPROVAL REQUIRED NPS-HPL potential amendment webinar follow up email.msg](#)

19. Once your Māori engagement evaluation has been finalised and approved, please attach it to this Analysis.

A copy of the approved engagement evaluation on these potential amendments to the NPS-HPL is here: [Evaluating your engagement activities - consulted amendments.docx](#)