Te Tiriti o Waitangi Analysis

Te Tiriti o Waitangi - Article One

The government gained the right to govern (Kawanatanga)

20. *How does the proposal/policy option affect all New Zealanders? What is the effect on Māori (if different, how, and why?)*

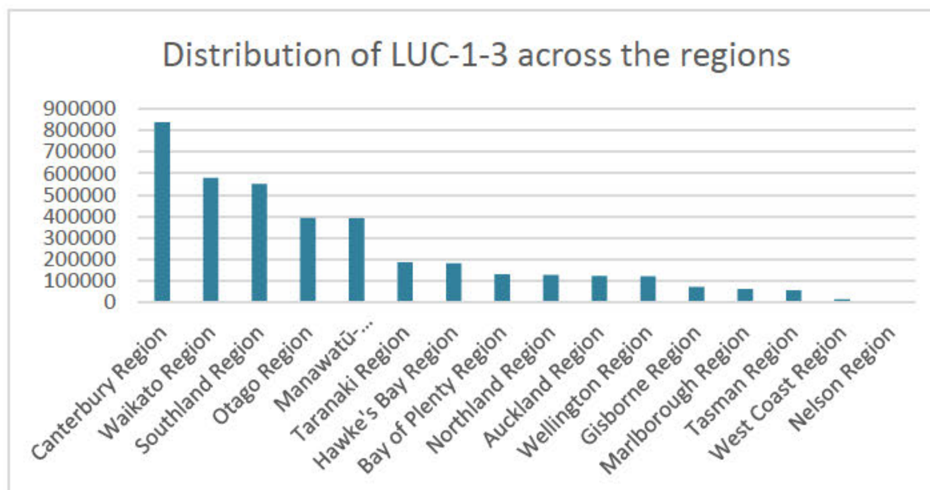
The primary objective of the NPS-HPL is to protect the soil resource for use in land-based primary production. This is achieved by providing guidance to councils on how to identify and map HPL, and what restrictions should be placed on its subdivision, use and development.

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. Specified Māori land (including Māori customary and freehold land, Māori reserves) are exempt from any restrictions of the NPS-HPL. Treaty Settlement Land and Māori customary and freehold land that has been changed into general title land but still held in accordance with tikanga are not part of the definition of specified Māori land and therefore restrictions of the NPS-HPL do apply to this land.

– *Will the proposal/policy option affect different Māori groups differently?*

The total amount of HPL in each region of Aotearoa varies, as shown in the following graph.



The concern that enabling new specified infrastructure, intensive indoor primary production and greenhouses on HPL will result in a 'loss' of HPL for use in land-based primary production

may be of greater concern for people (including Māori) in regions where there is an actual or perceived lack of highly productive land or where competition for the use of that land is high.

The original NPS-HPL TIA also noted the amount of Māori customary and freehold land that is LUC 1-3 varied across the regions. This variation is less relevant to the consulted amendments given that Māori customary and freehold land is exempt from restrictions imposed by the NPS-HPL.

Whilst not included in the definition of specified Māori land, the amount of Treaty Settlement Land that is LUC 1-3 is significantly lower (32,000ha) than the amount of LUC1-3 that is Māori customary and freehold land (113,000ha). Being more enabling of what can occur on this land may have influenced the feedback received from 9(2)(a)

The significant interest and rights of Māori in land-based primary production and primary production as a whole is noted (as this report describes: Te-ohanga Māori Report 2018). Whilst the NPS-HPL seeks to enable and protect the availability of HPL (this finite resource) for land-based primary production, it is recognised that this may also be a limiting factor for some types of primary production including intensive indoor primary production and greenhouses, which Option 2 seeks to address.

– *What could the unintended impacts on Māori be and how does the proposal mitigate these?*

Unintended impacts of retaining the status quo option (for both issues) for Māori is that Iwi/Māori may be looking to undertake specified infrastructure and /or intensive indoor primary production and greenhouses activities on HPL (that is not specified Māori land eg Treaty Settlement land) that are not specifically provided for in the NPS-HPL.

Unintended impacts of enabling these activities on HPL for Māori may mean that there is less HPL available for land -based primary production in the future. Though relative to amount of LUC 1-3 in New Zealand, these impacts are considered to be relatively small and in respect of new specified infrastructure (including solar farms) land-based primary production may be able to continue to occur. For amendments to provide for intensive indoor primary production and greenhouses, the industries are not expected to proliferate beyond serving New Zealand's growing population, export opportunities, and growing international market for low emissions food.

Presenting alternative options to address the issue mitigates these unintended consequences and allow Iwi/Māori to respond according to their primary concerns. Clause 3.9(3) of the NPS-HPL also helps to mitigate the loss of HPL from these activities ie local authorities are required to ensure that the loss of HPL from these activities is minimised/mitigated and reverse sensitivity effects of productive activities on neighbouring land to be avoided if possible or otherwise mitigated.

21. *How does the proposal or policy option demonstrate good government within the context of the Treaty?*

The status quo options seeks to protect HPL (a finite resource) for use in land-based primary production. Providing clear consent pathways for new specified infrastructure and intensive indoor primary production to locate on HPL (Option 2) is also considered to be consent with the overall intent of the NPS-HPL which is to provide consent pathways for activities that are 'not inappropriate'. By requiring the consent pathways are subject to Councils ensuring the loss of HPL is minimised or mitigated and reverse sensitivity effects are avoided or mitigated

will help to ensure a balance is achieved. For new specified infrastructure activities must also demonstrate a functional and operational need to locate on HPL.

– *What are the legal and/or Treaty settlement commitments for the Crown?*

The Crown has committed through Te Tiriti settlement deeds and legislation to 'recognise and provide for' and 'have particular regard to' certain post-settlement legal frameworks when exercising a function, power or duty under the RMA (including developing policy). The following settlement acts have been identified as containing provisions, which require an assessment of whether there is an interaction / matters to be considered and provided for in amending the NPS-HPL:

- The Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River
- Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika (Whangaehu River).
- Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River) and Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010
- Fiordland (Te Moana o Atawhenua) Marine Management Act 2005
- Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- The Ngāti Manawa Claims Settlement Act 2012
- Ngāti Whare Claims Settlement Act 2012
- Te Arawa Lakes Deed of Settlement 2004

Key aspects of these settlements were described in the original NPS-HPL TIA (pages 5-12) – also refer to Appendix 1.

Given the existing provisions in the NPS-HPL for implementation to involve tangata whenua and that scope of these potential amendments to the NPS-HPL and that the proposed amendments do not change the impact on specified Māori land, no direct negative conflicts between these potential amendments to the NPS-HPL and these settlement commitments have been identified for the following reasons:

- Given the existing provisions in the NPS-HPL to involve tangata whenua in giving effect to the NPS-HPL, neither options for amending the NPS-HPL (status quo or provide consent pathways for new specified infrastructure, intensive indoor primary production or greenhouses) are considered to result in direct conflicts with these Settlement Acts.
- Whilst the NPS-HPL does not directly affect freshwater or the marine environment, the NPS-HPL ensures that the mapping of HPL and development of provisions to give effect to this NPS will be developed in consultation with tangata whenua. The proposed amendments to do not affect this requirement. The mapping of HPL and development of provisions to give effect to this NPS will need to take into account and provide for:
  - the intrinsic values of the Whanganui and Whangaehu Rivers and
  - Te Ture Whaimana o Te Awa o Waikato (Vision for the Waikato River) which is incorporated into the Waikato Regional Policy Statement as *"a healthy Waikato River that sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come"*

- Any covenant prepared under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019[1], to:
  - (a) promoting the sustainable management of the natural and physical resources of ngā rohe moana o ngā hapū o Ngāti Porou; and
  - (b) protecting the integrity of ngā hapū o Ngāti Porou, including their cultural and spiritual identity with ngā rohe moana.
- the habitat of tuna in the Rangitaiki River
- Te Arawa's views and interests in lakes or freshwater bodies.

- The proposed NPS-HPL will not apply "in" the Marine Area, as described in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.
- If there are any inconsistencies between the Settlement Acts and implementation of the NPS-HPL, the Settlement Acts will override the NPS-HPL.

The Crown has specific obligations to engage with groups at an early stage when preparing national direction such as national policy statements. The 2008 Waikato-Tainui Kiingitanga Accord provides 'a framework for an enhanced relationship between the Crown and Waikato-Tainui' which requires the Crown to provide for effective Waikato-Tainui input and participation by engagement at an early stage on the planning and development of new and amended policies or management initiatives, and on decisions, that may affect the health and wellbeing of the Waikato River (Waikato-Tainui Kiingitanga Accord 2008, s.1.1(d), s.2.5(b)(ii).) As the accord notes, this is "a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult" (s.2.5(b)(ii)).

Further meaningful engagement with Waikato-Tainui on these proposed changes is a requirement under the Kiingitanga Accord. 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.

Te Tiriti o Waitangi - Article Two

The Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain (Rangatiratanga)

22. *Does the proposal or policy option allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?*

Existing policies within the NPS-HPL allow for Māori to exercise rangatiratanga to the extent that:

- specific direction on the involvement of tangata whenua in giving effect to the NPS HPL
  has been provided for: both in mapping (Clause 3.4), and preparation of Objectives, Policies, and Rules in District Plans (Clause 3.3).
- The NPS-HPL includes specific provisions which are intended to ensure that the policy does not unnecessarily constrain the ability of iwi, hapū and whanau to utilise Māori land. Subdivision, use and development of specified Māori land that is mapped as HPL is not inappropriate under clause 3.8 or 3.9.

[1] Section 31 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

- Māori land that is effectively exempt from NPS-HPL restrictions is defined as:

  ***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

(Clause 3.3) Tangata whenua involvement

(1) In giving effect to this National Policy Statement through regional policy statements, regional plans, and district plans, every local authority must actively involve tangata whenua (to the extent they wish to be involved).

(2) The active involvement must include consultation with tangata whenua that is:

a) early, meaningful and, as far as practicable, in accordance with tikanga Māori; and

b) undertaken at the appropriate levels of whānau, hapū, and iwi decision-making structures, recognising that:

   i. some delegates will have to represent the interests and perspectives of more than one group; and

   ii. some committees are not always fully representative of every iwi and hapū in the region; and

   iii. each constituent group will continue to be entitled to make submissions on notified plans and retain all other rights to be heard and have standing for appeals

(Clause 3.4) It is recommended that regional councils are directed to undertake the mapping:

a) in collaboration with all relevant territorial authorities; and

b) in consultation with tangata whenua, as required by clause 3.3; and

c) at a level of detail that identifies individual parcels of land or, where appropriate for larger sites, parts of parcels of land.

– *Can/should the proposal or analysis of policy options, or parts of it, be led by Māori?*

Potential amendments include confirming a pathway for new specified infrastructure (particularly for those who aren't requiring authorities) and intensive indoor primary production and greenhouses on HPL. These options extend across private land and are not specific to Māori land or Māori rights and interests, although they may provide significant

diversification opportunities for māori landowners of HPL and māori agri-businesses. The proposal or analysis of options has not been led by Māori.

– *What options/mechanisms are available to enable rangatiratanga and Māori to make decisions for Māori?*

See above regarding existing provisions. Also, requirements under the Resource Management Act and Local Government Act including the requirement to take the principles of the Treaty of Waitangi into account and to involve iwi/Māori.

23. *Have Māori had a role in design/implementation?*

The consultation/submission process sought to provide iwi/Māori an opportunity to have a role in influencing final policy decisions on amendments to the NPS-HPL relating to new specified infrastructure and intensive indoor primary production and greenhouses.

– *If so, who?*

Those that were involved in the development of the NPS-HPL, PSGEs, those notified through Te Komiromiro updates and Māori owned/operated agri-business.

– *If not, should they?*

Given time and resource constraints Māori did not have a role in the design/implementation of the NPS-HPL. Given decisions to exclude Treaty settlement land and general land that is administered by a Whanau or Ahu Whenua Trust in accordance with Te Ture Whenua Maori Act 1993 from being exempt from NPS-HPL restrictions, factsheets were prepared to support the implementation of the NPS-HPL.

- National Policy Statement for Highly Productive Land: Information on changing the status of Māori land and rezoning land to Māori purpose zone | Ministry for the Environment
- National Policy Statement for Highly Productive Land - Information on what it means for Māori and Māori land | Ministry for the Environment.

Iwi/Māori they will not have a direct role in the implementation of proposed amendments – though indirectly this may occur if there are any changes to the definition of specified Māori land through amendments under RMA 2.

24. *Does the proposal:*

– *enhance Māori wellbeing? If so, how?*

Both options (status quo and enabling these activities on HPL) could be considered to enhance Māori wellbeing depending on the values and perspective of each group being represented. As shown from the feedback received, the options preferred are mixed. 9(2)(a) support the proposal to enable intensive indoor primary production on the basis that it enables economic development of on HPL in their region.

9(2)(a) are not supportive of an amendment to the NPS -HPL to enable a consenting pathway for these activities on the basis that:

1. The original intent of the NPS-HPL was not to provide a consenting pathway for intensive indoor primary production and greenhouses but to protect these soils for future outdoor primary production.
2. The NPS-HPL limits what tangata whenua can do on ancestral land within areas where the activity needs to occur and/or there is no other option. If the Ministry is

going to consider a "carve out" for intensive indoor primary production and greenhouses, then before this occurs the Ministry needs to provide a pathway for ancestral land that does not meet the specified Māori land definition.

3. If consideration was to be given to providing a consenting pathway, there is insufficient information within the consultation document of what a possible framework would include and how it would work. It is also unclear how the framework would ensure that the pathway is for consideration of special circumstances only and not as normal practice.
4. Concern that this approach would provide a "backdoor" for inappropriate development of highly productive land. There are examples of where glasshouses were consented for and/or built on land (not appropriate for a glasshouse) and then on sold for unintended subdivision and further development were cited.

In relation to new specified infrastructure there is more agreement on what is the preferred option. 9(2)(a) agree that enabling new specified on HPL is the preferred option. 9(2)(a) submitted that the amendment was in line with the original intent of the NPS-HPL and 9(2)(a) noted their support of the amendment on the basis that these activities ideally require flat land to be as cost effective as possible and the land would still remain highly productive in growing food. Only 9(2)(a) was strongly opposed and preferred the status quo option on the basis that pathways for specified infrastructure on HPL have already been provided for including:

- Providing for supporting activities on the land (3.9(2)(a);
- Addressing a high risk to public health and safety (3.9(2)(b));
- On specified Māori land (3.9(2)(d)).
- Activities by a requiring authority in relation to a designation or notice of requirement under the Act (3.9(2)(h).

– *build Māori capability or capacity? If so, how?*

No direct impact on building Māori capability or capacity. Option 2 amendments (providing consent pathways for these activities) may assist with building/enhancing the already prominent role Māori have in primary sector/opportunities from Renewable Energy Generation.

25. *How does the proposal provide for the relationship between Māori and the environment?*

Targeted amendments to provide clear pathway for new specified infrastructure and intensive indoor primary production and greenhouse don't affect existing provisions providing for the relationship between Māori and the environment.

26. *Is there any aspect of this issue that Māori consider to be a taonga?*

Feedback received during the development of the NPS-HPL confirmed that Māori consider land to be a taonga. Māori rights and interests in respect of their lands and taonga also need to honoured in accordance with te Tiriti and Treaty Settlements.

– *How have policy makers come to their view of whether the issue is a taonga, and is there consensus?*

Officials drew on submissions and feedback received from 9(2)(a) received during the development of the NPS-HPL. All these submissions refer to land as a taonga. Submissions from 9(2)(a) on these consulted amendments to amend the NPS-HPL also reinforce this view.

– *What effect does that have on the proposal?*

As Māori consider land a taonga, and the relationship to land is a dimension of the exercise of Māori rangatiratanga, Māori interests relating to changes to the NPS-HPL are accordingly heightened. It is likely that groups will view the proposed changes through the lens of their rights and responsibilities relating to the use and custodianship of land. For example, in RCT's submission they note their kaitiaki responsibilities "to ensure these land activities are balanced within environmental capacity of the whenua and the wai, to provide for the needs and wellbeing of current and future communities".

27. *Does the proposal provide any opportunities to address Māori rights and interests in natural taonga?*

Submissions received from representatives of Iwi/Māori organisations illustrates there is no clear preferred option for the submitting groups from a Māori rights and interests perspective. Some see the value in enabling new specified infrastructure and/or intensive indoor primary production and greenhouse activities whilst other express caution or rejection of the proposals. The pathways for these activities (option 2) do still provide councils discretion to decline these activities – where the loss from these activities are not minimised or where they generate reverse sensitivity effects (ie limit the production capacity of neighbouring land). On this basis it is considered there is an opportunity to reflect the concerns of Māori rights and interests as portrayed by these submissions. It is important to note that the number of PSGEs and other groups submitting on these changes was relatively small and the positions and views expressed may not represent the full suite of Māori rights and interests in this policy area.

28. *Does the proposal restrict the scope of resolutions for Māori rights and interests issues?*

It is noted that the RM system requires Māori rights and interests to be considered /consulted as part of decisions on resource consents and plan/policy making. These proposals (both Option 1 – status quo and Option 2 – provide clear pathways for these activities) do not restrict the scope of resolutions at a consent /plan making level.

29. *What considerations have been given to hapū/iwi data sovereignty? If mātauranga has been shared by Māori, how will/has this taonga been appropriately used and stored?*

No specific mātauranga has been shared, although submissions from 9(2)(a) refer to a Te Ao Māori perspective of operating within the bounds of te Taiao, specific mātauranga on how to do this has not been shared as part of this engagement.

Te Tiriti o Waitangi - Article Three

The Crown promises that its obligations to New Zealand citizens are owed equally to Māori (Oritetanga)

30. *Does the proposal or policy option aim to achieve equitable outcomes for Māori? If so, are there clear targets and commitment to key deliverables?*

Option 2 for both issues will enable more activities on land that is not specified Māori land (ie Treaty Settlement Land and 'general land owned by Māori'). This option or the status quo (not providing for these activities) will be the same as for other New Zealand citizens. Retaining the status quo may result in grievances in that restrictions are imposed on Treaty Settlement land and general land owned by Māori. These matters will be considered as part of potential amendments to the definition of specified Māori land through RMA2 amendments.

31. *What are the mechanisms to ensure equitable Māori participation and/or leadership in setting priorities, resourcing, implementing, and evaluating the policy?*

PSGEs and submitters from Iwi/Māori organisations will be informed of the final policy advice prior to final amendments being gazetted. There will be an opportunity through engagement on amendments being progressed through RMA Amendment Bill 2 for further discussion on how these consulted amendments relate to any additional amendments to enable more urban development on HPL, provide a clearer pathway for mining and quarrying and broaden the definition of specified Māori land.

32. *How does the proposal or policy option contribute to Māori being sufficiently resourced to participate?*

This has not been addressed specifically for this proposal. It may be something that is considered as part of engagement wider RM Reform processes.

33. *How does the proposal or policy option differ from previous efforts to address the issue ?*

Prior to the NPS-HPL local authorities prepared plans, policies and rules that influenced what activities could occur on productive land. Some were more permissive than others. Evidence published from environmental reporting 'Our Land 2018-2021' showed that HPL was becoming fragmented from subdivision and also being used for urban development.

34. *How does the proposal or policy option demonstrate that policy makers have looked at the proposal or policy option from the perspective of legal values such as natural justice, due process, fairness, and equity?*

Proposals to provide clearer pathways for new specified infrastructure, intensive indoor primary production and greenhouses to locate on HPL were presented alongside the option of retaining the status quo. Feedback was sought from those Iwi/Māori who were involved in the development of the original NPS-HPL and also to all PSGEs. Other Iwi/Māori including Māori agribusinesses were also informed via email and/or the Te Komiromiro pānui. The period of consultation ran for an 8 week period (more than the standard 6 weeks) recognising that it overlapped with the national elections. Extensions to submissions were also granted at the request of submitters.

35. *How does the proposal or policy option demonstrate that policy makers have looked at the issue from the perspective of tikanga values?*

The issue of whether to provide for these activities on HPL was not looked at from the perspective of tikanga values. However, in the consultation section of the NPS-HPL webpages have stated, "Our land is a taonga – an irreplaceable treasure and a source of life and wellness for our country". Whilst the actual text of the NPS-HPL doesn't refer to land as a taonga, it may demonstrate some high-level consistency with certain tikanga values.

Costs and Benefits for Māori

36. *Will the proposal or policy option impose costs on Māori?*

The final amendments (to be confirmed) will have some costs on Māori depending on whether the final amendment is consistent with the preferred option of any particular Iwi/Māori organisation representing particular Māori groups. These costs may involve additional consenting costs to obtain consent for an activity or an application being declined.

37. *Will the proposal or policy option result in benefits to Māori in addition to those related to the programme outcomes?*

The final amendments (to be confirmed) will have some benefits on Māori depending on whether the final amendment is consistent with the preferred option of any particular Iwi/Māori organisation representing particular Māori groups. These benefits may include No additional benefits (beyond those related to the programme outcomes) have been identified.

38. *How does the proposal or policy option contribute to improved central and local government capability to effectively work with Māori?*

Effort had been made to arrange joint hui across different MfE workstreams (eg natural Hazards and National Planning Framework), however due to the other two workstreams being pulled at the last minute these did not eventuate. It is hoped that some good lessons in terms of making it easier for iwi/Māori to participate and engage were learnt and are able to be drawn on for future engagement.

Lessons learned from engaging with Māori on potential amendments to the NPS-HPL will increase the capability of central government to effectively work with Māori. This will hopefully be reflected in any further/future engagement. Firstly, we will be able to reflect back what we have heard to date and options being considered eg implementation issues with the definition of specified Māori land. We will also work to ensure engagement across work streams is integrated – particularly with climate /natural hazard issues that are important to iwi/Māori.

39. *Will the implementation of the proposal or policy option require any specific guidance or training?*

No.

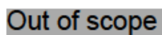
Māori Crown relations risks and opportunities

40. *Are there any relationship risks involved in this proposal or policy option?*

There could be impacts on existing relationships with PSGEs and other Māori representative groups who have expectations (some enshrined in relationship agreements) of early and comprehensive engagement on matters such as national direction (e.g. The Kiingitanga Accord). There is also a more general expectation of the part of settled iwi that engagement with the Crown will be open, reciprocal and in good faith as a result of their agreeing to settle their historical claims. Some PSGEs voiced concern in the development of the NPS-HPL that they were being informed about the proposal rather than being engaged with meaningfully.

What are the limitations of this assessment?

The amount of engagement on these potential amendments from Iwi/Māori was relatively low. This probably reflects the timing and resourcing constraints limiting the level of engagement that was undertaken. However, on balance the level of engagement is considered to have been proportionate to the scale of the changes and relevance to Iwi/Māori relative to other issues.



Appendix 1: Te Tiriti Analysis

Using the Tiriti Analysis policy guidance, fill out the Tiriti Analysis template and distill your key messages below:

Understanding Māori rights and interests
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 National Policy Statement – Highly Productive Land (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).** As Māori consider land a taonga, and the relationship to land is a dimension of the exercise of Māori tino rangatiratanga, Māori interests relating to changes to the NPS-HPL are accordingly heightened. It is likely that groups will view the proposed changes through the lens of their rights and responsibilities relating to the use and custodianship of land. For example, in RCT's submission they note their kaitiaki responsibilities "to ensure these land activities are balanced within environmental capacity of the whenua and the wai, to provide for the needs and wellbeing of current and future communities". An assessment of the options to amend the NPS-HPL in terms of the three articles of Te Tiriti is summarised later in this analysis. The Crown has committed through Te Tiriti settlement deeds and legislation to 'recognise and provide for' and 'have particular regard to' certain post-settlement legal frameworks when exercising a function, power or duty under the RMA (including developing policy). The following settlement acts have been assessed for whether there is an interaction / matters to be considered and provided for in amending the NPS-HPL: • The Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River • Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika (Whangaehu River). • Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River) and Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 • Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 • The Ngāti Manawa Claims Settlement Act 2012

- Ngāti Whare Claims Settlement Act 2012
- Fiordland (Te Moana o Atawhenua) Marine Management Act 2005
- Te Arawa Lakes Deed of Settlement 2004

As part of the Treaty settlement process, settlement legislation is passed that gives effect to the agreement between the iwi and the Crown. These settlements include statutory acknowledgement areas. A statutory acknowledgement is an acknowledgement by the Crown that recognises the mana of a tangata whenua group in relation to specified areas particularly the cultural, spiritual, historical and traditional associations with an area. While a statutory acknowledgement may vary for each claimant group, in essence, a statutory acknowledgement requires councils to:

- Forward summaries of all relevant resource consent applications to the relevant claimant group governance entity - and to provide the governance entity with the opportunity to waive its right to receive summaries;
- Have regard to a statutory acknowledgement in forming an opinion as to whether the relevant claimant group may be adversely affected in relation to resource consent applications concerning the relevant statutory area; and
- Within the claim areas, attach for public information a record to all regional policy statements, district plans, and regional plans of all areas affected by statutory acknowledgements.

Given the existing provisions in the NPS-HPL to involve tangata whenua in giving effect to the NPS-HPL, neither options for amending the NPS-HPL (status quo or provide consent pathways for new specified infrastructure, intensive indoor primary production or greenhouses) are considered to result in direct conflicts with these Settlement Acts or Statutory Acknowledgements. There are no direct negative conflicts identified between these potential amendments to the NPS-HPL and these Settlement Acts or the Statutory Acknowledgements, in particular:

- Whilst the NPS-HPL does not directly affect freshwater or the marine environment, the NPS-HPL ensures that the mapping of HPL and development of provisions to give effect to this NPS will be developed in consultation with tangata whenua. The proposed amendments to do not affect this requirement. The mapping of HPL and development of provisions to give effect to this NPS will need to take into account and provide for:
  - the intrinsic values of the Whanganui and Whangaehu Rivers and
  - Te Ture Whaimana o Te Awa o Waikato (Vision for the Waikato River) which is incorporated into the Waikato Regional Policy Statement as *“a healthy Waikato River that sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come”*

- Any covenant prepared under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019[2], to:
  - (a) promoting the sustainable management of the natural and physical resources of ngā rohe moana o ngā hapū o Ngāti Porou; and
  - (b) protecting the integrity of ngā hapū o Ngāti Porou, including their cultural and spiritual identity with ngā rohe moana.
- the habitat of tuna in the Rangitaiki River
- Te Arawa's views and interests in lakes or freshwater bodies.

- The proposed NPS-HPL will not apply "in" the Marine Area, as described in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.
- If there are any inconsistencies between the Settlement Acts and implementation of the NPS-HPL, the Settlement Acts will override the NPS-HPL.
- Whilst land covered by statutory acknowledgments encompasses general land, which would not be afforded the same discretion as specified Māori land under the current policy 3.9(2), the requirement for iwi to be considered an affected party for the purposes of an activity requiring consent on a piece of land that is subject to a statutory acknowledgment will not be affected by the NPS HPL or proposed amendments.

The significant interest and rights of Māori in land-based primary production and primary production as a whole is noted (as this report describes: Te-ohanga Māori Report 2018). Whilst the NPS-HPL seeks to enable and protect the availability of HPL (a finite resource) for land-based primary production, it is recognised that this may also be a limiting factor for some types of primary production including intensive indoor primary production and greenhouses, which Option 2 (enabling a consent pathway for these activities) seeks to address.

Engagement with Māori and feedback received

Post-Settlement Governance Entities (PSGEs) and Te Tiriti partners that engaged in the development of the NPS-HPL were informed about potential amendments and invited to joint hui or to meet separately. 6 of the 83 submissions received were from Iwi/Māori organisations. 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. the National Planning Framework, Renewable Energy Generation, etc which would have impacted the ability of iwi/hapū to be actively involved.

[2] Section 31 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

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

9(2)(a)

The options preferred by submitters representing Iwi/Māori organisations are summarised in the following table.

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**	
		√		**√**

9(2)(a)	No comment		√

Submissions received from representatives of Iwi/Māori organisations illustrates there is no clear preferred option for the submitting groups from a Māori rights and interests perspective. Some see the value in enabling new specified infrastructure and/or intensive indoor primary production and greenhouse activities whilst other express caution or rejection of the proposals. The pathways for these activities (option 2) do still provide councils discretion to decline these activities – where the loss from these activities are not minimised or where they generate reverse sensitivity effects (i.e. limit the production capacity of neighbouring land). On this basis it is considered there is an opportunity to reflect the concerns of Māori rights and interests as portrayed by these submissions. It is important to note that the number of PSGEs and other groups submitting on these changes was relatively small and the positions and views expressed may not represent the full suite of Māori rights and interests in this policy area.

Submissions from 9(2)(a) 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) also noted that *"further engagement regarding Māori Land and Climate change is required"* and 9(2)(a) 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 RMReform process later this year and will be covered in the accompanying Treaty Impact Analysis.

Submitters and PSGEs 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 further engagement.

Te Tiriti o Waitangi – legislative responsibility

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. In particular:

- Whilst the NPS-HPL does not directly affect freshwater or the marine environment, the NPS-HPL ensures that the mapping of HPL and development of provisions to give effect to this NPS will be developed in consultation with tangata whenua. The proposed amendments to do not affect this requirement. The mapping of HPL and development of provisions to give effect to this NPS will need to take into account and provide for:
    - the intrinsic values of the Whanganui and Whangaehu Rivers and
    - Te Ture Whaimana o Te Awa o Waikato (Vision for the Waikato River) which is incorporated into the Waikato Regional Policy Statement as *“a healthy Waikato River that sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come”*

- Any covenant prepared under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019[3], to:
  - (a) promoting the sustainable management of the natural and physical resources of ngā rohe moana o ngā hapū o Ngāti Porou; and
  - (b) protecting the integrity of ngā hapū o Ngāti Porou, including their cultural and spiritual identity with ngā rohe moana.
- the habitat of tuna in the Rangitaiki River
- Te Arawa's views and interests in lakes or freshwater bodies.

- The proposed NPS-HPL will not apply "in" the Marine Area, as described in the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.
- Whilst land covered by statutory acknowledgments encompasses general land, which would not be afforded the same discretion as specified Māori land under the current policy 3.9(2), the requirement for iwi to be considered an affected party for the purposes of an activity requiring consent on a piece of land that is subject to a statutory acknowledgment will not be affected by the NPS HPL or proposed amendments.
- The 2008 Waikato-Tainui Kiingitanga Accord provides 'a framework for an enhanced relationship between the Crown and Waikato-Tainui' which requires the Crown to engage early with Waikato-Tainui on the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. Further meaningful engagement with Waikato-Tainui on these proposed changes is a requirement under the Kiingitanga Accord. 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.

Te Tiriti o Waitangi – Articles
One
Two
Three

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

[3] Section 31 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Treaty Partner submitters did raise the issue of the definition of specified Māori land in that it didn't exempt Treaty Settlement Land or certain general land owned by Māori from restrictions imposed by the NPS-HPL, even when that land had the same significance to Māori as Māori customary and freehold land.

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)

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

Costs and Benefits for Māori

The final amendments (to be confirmed) will have some costs and benefits on Māori depending on whether the final amendment is consistent with the preferred option of any iwi/Māori organisation representing particular Māori groups. Costs of Option 1 may involve additional consenting costs to obtain consent for an activity or an application being declined, benefits of Option 2 may include having more opportunity to develop specified infrastructure and intensive indoor primary production and greenhouses on HPL whilst also being able to balance this against the impact on the finite resource and ensuring availability for use in land-based primary production now and for future generations.

Māori Crown relations risks and opportunities

There could be impacts on existing relationships with PSGEs and other Māori representative groups who have expectations (some enshrined in relationship agreements) of early and comprehensive engagement on matters such as national direction (e.g. The Kiingitanga Accord). There is also a more general expectation of the part of settled iwi that engagement with the Crown will be

open, reciprocal and in good faith because of their agreeing to settle their historical claims. Some PSGEs voiced concern in the development of the NPS-HPL that they were being informed about the proposal rather than being engaged with meaningfully.

Overall Assessment

Based on this assessment it is concluded that the impacts of amending the NPS-HPL on Māori rights and interests are relatively benign. Both the status quo (Option 1) and enabling new specified infrastructure, intensive indoor primary production and greenhouses on HPL (Option 2) provide some support for Māori rights and interests. Both options have some support from Iwi/Māori submitters. Neither option (status quo or providing a consent pathway for new specified infrastructure, indoor intensive primary production) conflicts with rights and interests as confirmed in Treaty Settlement Acts. Specifically, the mapping of HPL and giving effect to the NPS-HPL will need to take account and provide for intrinsic values defined in relevant Treaty Settlement Acts and involve tangata whenua.

On balance, it is possible that providing a pathway for these activities to occur whilst still ensuring that the loss of HPL is minimised or mitigated and the reverse sensitivity effect on land based primary production are avoided or mitigated (and in the case of new specified infrastructure that there is a functional or operational need to locate on HPL) might ensure a balance can be struck that is more consistent with Māori rights and interests than the status quo (Option 1). This is particularly relevant for Māori interests in land that are not captured by the definition of specified Māori land as specified Māori land is exempt from all restrictions imposed by the NPS-HPL.

9(2)(f)(iv)

Limitations of the Assessment

This analysis does not describe the full range of Māori rights and interests in highly productive land given feedback was from a limited number of PSGEs.

The amount of engagement on these potential amendments from iwi/Māori was relatively low. This probably reflects the timing and resourcing constraints limiting the level of engagement that was undertaken. However, on balance the level of engagement is considered to have been proportionate to the scale of the changes and relevance to iwi/Māori relative to other issues.

Appendix 2: Tiriti Analysis Summary/Key Messages

For use in briefings, Cabinet papers, Regulatory Impact Statements etc. In a briefing note you will be expected to summarise your analysis. Specifically, you will need to demonstrate what engagement with Māori occurred, what they said and how has this shaped the policy options/proposals you are putting forward. If your policy advice differs from what Māori said, you will need to say why and provide rationale and evidence to back up your advice. You will also be expected to briefly summarise the treaty impacts and opportunities of each of your options.

There is an obligation on the Crown to ensure that amendments to the National Policy Statement – Highly Productive Land (NPS-HPL) are developed in a way that is consistent with the principles of the Treaty of Waitangi (Te Tiriti). As Māori consider land a taonga, and the relationship to land is a dimension of the exercise of Māori tino rangatiratanga, Māori interests relating to changes to the NPS-HPL are accordingly heightened. The Crown has committed through Te Tiriti settlement deeds and legislation to 'recognise and provide for' and 'have particular regard to' certain post-settlement legal frameworks when exercising a function, power or duty under the RMA (including developing policy).

Given the existing provisions in the NPS-HPL to involve tangata whenua in giving effect to the NPS-HPL, neither option (status quo or provide consent pathways for new specified infrastructure, intensive indoor primary production or greenhouses) are considered to result in direct conflicts with these Settlement Acts or Statutory Acknowledgements. If there are any inconsistencies between the Settlement Acts and implementation of the NPS-HPL, the Settlement Acts will override the NPS-HPL.

The Crown has specific obligations to engage with groups at an early stage when preparing national direction such as national policy statements. The 2008 Waikato-Tainui Kiingitanga Accord provides 'a framework for an enhanced relationship between the Crown and Waikato-Tainui' which requires the Crown to provide for effective Waikato-Tainui input and participation by engagement at an early stage on the planning and development of new and amended policies or management initiatives, and on decisions, that may affect the health and wellbeing of the Waikato River (Waikato-Tainui Kiingitanga Accord 2008, s.1.1(d), s.2.5(b)(ii).) As the accord notes, this is "a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult" (s.2.5(b)(ii)).

Submissions received from representatives of Iwi/Māori organisations illustrates there is no clear preferred option from a Māori rights and interests perspective. Some see the value in enabling new specified infrastructure and/or intensive indoor primary production and greenhouse activities whilst other express caution or rejection of the proposals. The pathways for these activities (option 2) do still provide councils discretion to decline these activities – where the loss from these activities are not minimised or where they generate reverse sensitivity effects (i.e. limit the production capacity of neighbouring land). On this basis it is considered there is an opportunity to reflect the concerns of Māori rights and interests as portrayed by these submissions. It is important to note that the number of PSGEs and other groups submitting on these changes was relatively small and the positions and views expressed may not represent the full suite of Māori rights and interests in this policy area.

Submissions from 9(2)(a) 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) also noted that "*further engagement regarding Māori Land and Climate change is required*" and 9(2)(a) 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*". 9(2)(f)(iv)

It is recommended that iwi/Māori submitters (including those that engaged in the development of the NPS and potential amendments) be given advance notice of the recommended options with respect to specified infrastructure and intensive indoor primary production and greenhouses as well as be advised of any further amendments being progressed as part of wider RM reform programme including any opportunities for further engagement.

CAB-24-MIN-0290

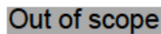
Cabinet

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.

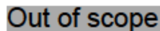
Report of the Cabinet Economic Policy Committee: Period Ended 2 August 204

On 5 August 2024, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 2 August 2024:

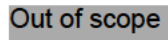


Out of scope

ECO-24-MIN-0147	**Amendments to the National Policy Statement for Highly Productive Land 2022** Portfolios: RMA Reform / Agriculture	CONFIRMED



Out of scope



Rachel Hayward
Secretary of the Cabinet

ECO-24-MIN-0147

Cabinet Economic Policy Committee

Minute of Decision

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Amendments to the National Policy Statement for Highly Productive Land 2022

Portfolios **RMA Reform / Agriculture**

On 31 July 2024, the Cabinet Economic Policy Committee:

Background

1 **noted** 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 **noted** 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 **noted** that the public consultation occurred for eight weeks in 2023, and that 83 submissions were received, with the majority supporting amendments to the NPS-HPL;

4 **noted** that the Minister Responsible for RMA 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 **noted** that the proposed response to consultation is to:

5.1 enable new specified infrastructure and associated activities by amending clause 3.9(2)(j)(i) of the NPS-HPL;

5.2 enable intensive indoor primary production and greenhouses on HPL by inserting a new clause 3.9(2)(aa) in the NPS-HPL;

6 **noted** that the above amendments support the Government's commitment to reduce consenting barriers for infrastructure and primary production;

7 9(2)(f)(iv)

Final agreement to policy changes

8 **noted** that the amended NPS-HPL, attached as Appendix 1 to the paper under ECO-24-SUB-0147, gives effect to the policy decisions in paragraph 5 above;

9 **authorised** 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 (RMA);

10 **noted** that the Minister Responsible for RMA Reform will give further consideration to matters relating to solar farms;

Timing and the 28-day rule

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

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

Statutory requirements

13 **noted** that the Minister Responsible for RMA Reform has complied with all statutory requirements outlined in the RMA 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, attached as Appendix 2 to the paper under ECO-24-SUB-0147, in accordance with section 52(1)(a);

13.3 has had particular regard to the section 32 evaluation report, attached as Appendix 3 to the paper under ECO-24-SUB-0147, in accordance with section 52(1)(c);

14 9(2)(h)

15 **noted** 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 **noted** that final proofing and formatting changes may be made prior to publishing the Cabinet package on the Ministry for the Environment and Ministry for Primary Industries websites, but that there will be no material changes to the content of the Cabinet-approved package.

Rachel Clarke
Committee Secretary

Present:
Rt Hon Winston Peters
Hon David Seymour
Hon Chris Bishop (Chair)
Hon Brooke van Velden
Hon Erica Stanford
Hon Paul Goldsmith
Hon Todd McClay
Hon Tama Potaka
Hon Melissa Lee
Hon Penny Simmonds
Hon Nicola Grigg
Hon Andrew Bayly
Hon Andrew Hoggard
Hon Mark Patterson
Simon Court MP

Officials present from:
Office of the Prime Minister
Officials Committee for ECO