



The National Policy Statement for Highly Productive Land 2022 (NPS-HPL) definition of 'specified Māori land'

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Delete/add Ministers as appropriate	Action sought:
To/CC Hon David PARKER, Minister for the Environment Hon Damien O'CONNOR, Minister of Agriculture	For noting only

Actions for Minister's Office Staff	
Number of appendices and attachments #	0

Ministry for the Environment and Ministry for Primary Industries contacts

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NPS-HPL definition of 'specified Māori land'

Purpose

1. To confirm the changes to the definition of 'specified Māori land' in the NPS-HPL, further to BRF-2057.

Background

2. You are seeking final Cabinet approval of the proposed National Policy Statement for Highly Productive Land 2022 (NPS-HPL) on 12 September 2022.
3. On 24 August 2022, Cabinet Economic Development Committee (DEV) authorised you to finalise the drafting of the NPS-HPL definition of 'specified Māori land', particularly regarding general land owned by Māori [DEV-22-MIN-0192 refers]. Under the NPS-HPL, 'specified Māori land' that is also highly productive land is subject to fewer restrictions.

4. 9(2)(g)(i)

5. The intent for the revision of this definition is to give effect to the Crown's responsibility to balance competing rights and interests, and ensure fairness of Government policy by asserting the principle that 'general land' should be subject to the same legal framework irrespective of ownership.
6. This decision also addresses the risk that excluding Treaty Settlement Land from restrictions imposed by the NPS-HPL implies that the Crown will and should always avoid applying policy instruments that could devalue assets acquired through the Treaty settlement process. This could have consequences across a wide range of policy decisions, making it difficult for the Crown to apply new law for a range of purposes.

¹ "General land" refers to ordinary privately owned freehold land, and the category "General land owned by Māori" means General land that is now beneficially owned by one Māori person or by a group of people the majority of whom are Māori.

7. Section 133 of Te Ture Whenua Māori Act (TTWMA) provides a pathway for the land set out in 4(a) (above) to be changed to Māori freehold land² – Māori freehold land is captured by the definition of 'specified Māori land' in the NPS-HPL.
8. There is also an opportunity for land to be rezoned as 'Special Purpose Zone – Māori Purpose Zone' land, as defined in the National Planning Standards. Land zoned as Māori Purpose Zone will not be subject to restrictions imposed by NPS-HPL, and therefore would assist to alleviate some of the impact of this exclusion in the definition.

Analysis and risks identified from the revised definition

9. Te Arawhiti has provided advice on the decision in Paragraph 4(a) above:
 - 9.1. Te Arawhiti advised that Māori may not wish to change the status of their land through TTWMA because claimant groups often associate the court with historical land loss and therefore avoid the jurisdiction of the Māori Land Court.
 - 9.2. The application of TTWMA may result in a further complication for claimant groups. The Waitomo claim settlement (WAI51) is an example of inheritance complications arising from changing ownership and status of Māori land.
 - 9.3. Treaty partners who were involved in exposure draft testing were supportive of the original broad definition of specified Māori land, particularly the inclusion of treaty settlement land (including right of first refusal land). Officials have not consulted with these Treaty partners on the removal of these two categories from the definition.

10. 9(2)(h)

Next Steps

11. Cabinet will consider the finalised NPS-HPL on 12 September 2022.
12. Officials intend to inform Treaty Partners engaged in testing of exposure draft of the NPS-HPL of the changes to the definition following final approval of the NPS-HPL by Cabinet.
13. Information on the pathways to change the title or rezone land (set out in paragraphs 7 and 8) will be provided as part of implementation process.
14. The NBA/SPA definition of 'protected Māori land' will be considered through the Select Committee and Parliamentary process for those pieces of legislation.

² "Māori Freehold Land" is land where Māori customary interests have been converted to freehold title by the Māori Land Court or its predecessors by a freehold order. This land has therefore never been out of Māori ownership.

Recommendations

We recommend that you:


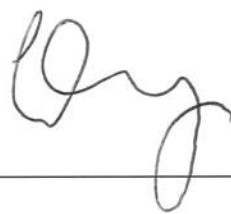
- a. **Note** that we have provided your office updated versions of the six appendices to the Cabinet Paper (including the NPS-HPL, S32, Treaty Analysis, Regulatory Impact Statement, Recommendations Report, Legal Certificate).

Noted

- b. **Note** that officials will inform Treaty Partners engaged in testing of exposure draft of the NPS-HPL of the changes to the definition following final approval of the NPS-HPL by Cabinet.

Noted

Signature

Hayden Johnston Director - Water and Land Use Policy (MfE)	
Date: 8 September 2022	
Charlotte Denny Director – Natural Resources Policy (MPI)	
Date: 8 September 2022	