



December 2022

National Policy Statement for Highly Productive Land

Guide to implementation



Ministry for the
Environment
Manatū Mō Te Taiao



Te Kāwanatanga o Aotearoa
New Zealand Government

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This document may be cited as: Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation*. Wellington: Ministry for the Environment.

Published in December 2022 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-991077-17-2 (online)

Publication number: ME 1726

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This document is available on the Ministry for the Environment website: environment.govt.nz.

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Introduction

Purpose

This guide has been developed to help stakeholders understand and implement the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). There will be two parts to the guidance.

- **Part 1** is this guide, which focuses on providing guidance to local authorities, landowners, applicants and planners on the NPS-HPL provisions that relate to subdivision, use and development and rezoning proposals on highly productive land (HPL). This guide will:
 - assist local authorities to understand and interpret the provisions that influence the processing of resource consent applications and rezoning proposals on HPL
 - benefit landowners and applicants in understanding how the NPS-HPL applies to HPL and in preparing resource consent applications for HPL and private plan changes to rezone HPL.
- **Part 2**, which will be available in early 2023, will focus on mapping, and changes to regional policy statements and district plans to give effect to the NPS-HPL. We may revise Part 1 to align it with the publication of Part 2 in early 2023.

Overarching objective of the NPS-HPL

Highly productive land is protected for use in land-based primary production, both now and for future generations.

The NPS-HPL came into force on 17 October 2022, with most provisions having immediate effect, which will place restrictions on rezoning, subdivision and land-use proposals on land that meets the [transitional definition](#) of HPL (Land Use Capability (LUC) classes 1–3, with some exceptions).

However, the extent to which the NPS-HPL can influence the outcome of resource consent processes will depend on the operative land-use and subdivision rules in each district plan. The influence of the NPS-HPL on rezoning plan changes will depend on whether that area has been identified for future urban development, and whether the plan change is needed to provide sufficient development capacity under the National Policy Statement on Urban Development 2020 (NPS-UD).

Structure of the guide

The guide is divided into the following sections:

General overview

- Provisions with immediate effect
- Implementation timeframes for mapping and updating district plans and regional policy statements
- What is highly productive land?

- What is land-based primary production?

Part 1 – Resource consents and rezoning

- Subdividing highly productive land (Policy 7 and Clause 3.8)
- Land use and development on highly productive land (Policy 8 and Clause 3.9)
- Exceptions on highly productive land for permanent or long-term constraints (Clause 3.10)
- Rezoning highly productive land to an urban zone (Policy 5 and Clause 3.6)
- Avoiding rezoning highly productive land for rural lifestyle (Policy 6 and Clause 3.7)
- Other relevant NPS-HPL policies and clauses (Clauses 3.2, 3.3, 3.11–3.13)

Part 2 – Mapping and plan changes (to be available in early 2023)

- Mapping of highly productive land (policy 3, clauses 3.4 and 3.5)
- Updating district plans and regional policy statements to give effect to the NPS-HPL (clauses 3.2, 3.3, 3.11–3.13)

Provisions with immediate effect and implementation timeframes

Provisions with immediate effect

The NPS-HPL will begin to influence the preparation and processing of plan changes to rezone HPL and resource consents (for both land use and subdivision on HPL) from the day the NPS-HPL came into force (17 October 2022).

Before regionwide mapping of HPL is notified, the [transitional definition](#) of HPL (Clause 3.5(7)) will apply.

Provisions requiring territorial authorities to introduce new policy and rule frameworks that give effect to this NPS will not need to be implemented until two years after the mapping becomes operative in the relevant regional policy statement. However, these provisions may be relevant for local authorities currently undertaking full plan reviews or preparing plan changes.

Identifying and mapping HPL and changes to regional policy statements and district plans will be covered in Part 2 of the guidance— available early 2023.

Timing of changes to regional policy statements and district plans to give effect to the NPS-HPL

The provisions relating to the timing of changes to regional policy statements and district plans to give effect to the NPS-HPL are Clause 3.5 and Part 4: Timing.

- Clause 3.5(1) provides that every regional council must (using [Schedule 1 of the Resource Management Act 1991 \(RMA\)](#)) notify a change to its regional policy statement to include maps of all the land in its region that is required to be mapped as HPL in accordance with Clause 3.4 (Mapping highly productive land). The identification of HPL must be done as soon as practicable, and no later than three years after the commencement date.
- Clause 3.5(2) allows regional councils to sequence the identification of HPL over three years following the commencement date. This may be a useful option for some regions if there is an area of potential HPL that is facing significant urban development or fragmentation pressure and there is a need to prioritise HPL mapping in a particular location.
- Clauses 3.5(3) and 3.5(4) require that territorial authorities insert HPL maps that are the exact equivalent to those included in the regional policy statement into their district plans, without using the [RMA Schedule 1](#) process, as soon as practicable, and no later than six months after the regional policy statement HPL maps become operative.
- Clause 4.1(2) in Part 4 states that territorial authorities are required to update their relevant objectives, policies, and rules to give effect to the NPS-HPL as soon as practicable, but no later than two years after maps of HPL in the relevant regional policy statement become operative. These district plan changes will need to include objectives, policies and

rules to manage subdivision, use and development on HPL in accordance with the implementation requirements in the NPS-HPL. Changes to the provisions of a regional policy statement to align with the NPS-HPL are not explicitly required under a particular clause of the NPS-HPL. However regional councils are required to change their regional policy statements in accordance with a national policy statement under section 61(1)(da) of the RMA and all regional policy statements are required to give effect to a national policy statement under section 62(3). It is anticipated that any amendments to regional policy statement provisions that are necessary to give effect to the NPS-HPL will be undertaken as part of the proposed change to the regional policy statement to include HPL maps for efficiency.

The combined effect of these clauses is that there will be a period of time where local authorities and applicants will need to consider the policy direction and implementation requirements in the NPS-HPL without HPL being mapped (up to three years) and without specific policy direction and implementation requirements in either regional policy statements (up to three years) or in district plans (up to five years) in relation to the protection of HPL for land-based primary production. There may, however, be existing provisions in district plans relating to highly productive land or versatile soils (however defined) that still need to be considered through this period until the NPS-HPL is given effect to.

NPS-HPL provisions relevant to different proposals and activities

The key NPS-HPL provisions for rezoning plan changes and proposals for subdivision, use and development on HPL are included in table 1 below. The NPS-HPL is designed to be read as a whole, and the information in table 1 does not limit the extent to which any single policy or implementing clause may be relevant to an application. Rather, the table is intended as a quick reference guide for users to find the key NPS-HPL provisions relevant to their type of application.

Table 1: Relevant NPS-HPL provisions for different proposals and activities¹

Type of application	Policies	Implementing clauses
Rezoning plan change	1, 2, 4, 9 (for all rezoning) 5 (for urban rezoning) 6 (for rural lifestyle rezoning)	3.3 – Tangata whenua involvement 3.5(6) and (7) – Transitional definition of HPL 3.6 – Urban rezoning of HPL 3.7 – Rural lifestyle rezoning of HPL 3.10 – Exemptions for permanent or long-term constraints
Subdivision consent	1, 2, 4, 6, 7, 9	3.5(6) and (7) – Transitional definition of HPL 3.8 – Avoiding subdivision of HPL 3.10 – Exemptions for permanent or long-term constraints
Land-use consent	1, 2, 4, 6, 8, 9	3.5(6) and (7) – Transitional definition of HPL 3.9 – Protecting HPL from inappropriate use and development 3.10 – Exemptions for permanent or long-term constraints
Mapping	1, 2, 3	3.2 – Integrated management

¹ The NPS-HPL objective is relevant to all types of applications and activities on HPL.

Type of application	Policies	Implementing clauses
(note guidance to be provided in Part 2 in early 2023)		3.3 – Tangata whenua involvement 3.4 – Mapping HPL 3.5 – Identifying HPL in regional policy statements and district plans
Updating plans and regional policy statements (note guidance to be provided in Part 2 in early 2023)	1, 2, 4, 5, 6, 7, 8, 9	3.2 – Integrated management 3.3 – Tangata whenua involvement 3.8 – Subdivision 3.9 – Protecting HPL from inappropriate use and development 3.10 – Exemptions for permanent or long-term constraints 3.11 – Continuation of existing activities 3.12 – Supporting appropriate productive use of highly productive land 3.13 – Managing reverse sensitivity and cumulative effects

Part 1: Resource consents and rezoning

This section of the guide focuses on the key NPS-HPL provisions that will apply to subdivision and land-use applications and rezoning plan change proposals located on HPL (by the [transitional definition](#)) before HPL has been mapped and the maps in a regional policy statement have been made operative.

Relevance of NPS-HPL for consideration of resource consent applications

The NPS-HPL will need to be considered for land-use and subdivision applications involving land that meets the [transitional definition](#) of HPL from the date the NPS-HPL came into force (17 October 2022). This NPS-HPL will generally not be relevant for regional consenting processes as the provisions are focused on restricting urban and rural lifestyle zoning, subdivisions and land use on HPL.

This includes all resource consent applications that were lodged before the NPS-HPL's commencement date, but where a decision has not been made under [section 104 of the RMA](#). That section sets out what consent authorities must consider when making a decision on a resource consent application, including the requirement under section 104(1)(b)(iii) to have regard to "any relevant provisions of... a national policy statement." It is the timing of the decision-making and the statutory environment that dictates which national policy statements are relevant, not the date a consent application is lodged or how long it has been waiting for processing.

Note that "have regard to" does not mean it is optional to consider the NPS-HPL policy direction. The NPS-HPL represents recent national policy direction (which is more up to date than operative plan provisions) and contains clear and directive provisions. This means that if a decision on an application received before the 17 October 2022 NPS-HPL commencement date has not been made, then any relevant provisions of the NPS-HPL must be considered when undertaking the assessment.

The relevant weighting of factors for a section 104 assessment will depend on the circumstances of the case and how it aligns with other national direction. The extent to which the NPS-HPL will be relevant to a subdivision and land-use consent application will largely depend on:

- the activity status of the resource consent and the scope of matters of control or discretion (if it is a controlled or restricted discretionary activity)
- the nature of the application and whether it is consistent with or contrary to the [NPS-HPL objective](#) and the relevant provisions.

Impact of activity status

The likely impact of activity status in the relevant district plan for land-use or subdivision proposals on land identified as HPL under the [transitional definition](#) of HPL is as follows.

- **Permitted activity** – not affected by the NPS-HPL. The NPS-HPL will only become relevant at such time as a territorial authority completes a plan change to give effect to it, which may involve changing which activities are enabled as permitted activities on HPL.
- **Controlled activity** – applications for controlled activities must be granted under [section 104A of the RMA](#). The ability of the territorial authority to impose consent conditions is limited to matters over which control is reserved. If control is reserved over a matter that relates to issues covered by the NPS-HPL – such as managing reverse sensitivity effects, enabling land-based primary production or protecting rural production/HPL (or equivalent term) – then a condition that addresses any of these matters could be appropriate. However, any condition imposed must not frustrate the purpose of the consent.
- **Restricted discretionary activity** – the relevance and impact of the NPS-HPL will be determined by the matters of discretion. Territorial authorities have the right to grant or refuse an application for a restricted discretionary activity under [section 104C of the RMA](#). However, the ability to have regard to the relevant provisions of the NPS-HPL under section 104(1)(b)(iii) is limited to the matters over which discretion is restricted. If a restricted discretionary activity does not have any matters of discretion relating to matters covered by the NPS-HPL, then the NPS-HPL must be recognised in the assessment under section 104 but it is given less weight and it cannot be a reason to decline the application. However, if the matters of discretion relate to matters covered by the NPS-HPL, then the relevant NPS-HPL provisions must be considered as part of the assessment of the application under [section 104C and may be a reason for declining that application](#). This may include more generic matters of discretion relating to rural productivity and protecting the rural environment for primary production activities – the matter does not specifically have to mention HPL or versatile soils (however described).
- **Discretionary and non-complying activities** – all relevant matters can be considered when determining discretionary and non-complying activities under section 104B. Therefore consent authorities must have regard to any relevant provisions of the NPS-HPL when considering whether to grant or refuse a discretionary or non-complying resource consent application.

If bundling the reasons for consent means an activity is discretionary or non-complying overall, all relevant matters in the NPS-HPL can be considered. This applies even if the reason for the application being discretionary or non-complying was not the core reason for consent. For example, a restricted discretionary combined land-use and subdivision application that becomes non-complying because of an earthworks infringement would still allow for full consideration of the NPS-HPL.

Note that this advice regarding the ability of territorial authorities to consider the NPS-HPL when making decisions on resource consent applications relates to district plan provisions that were drafted before the NPS-HPL came into effect. Plan changes or full plan reviews that involve updating general rural or rural production zone provisions for land use and subdivision after the NPS-HPL took effect will be required to give effect to the NPS-HPL.

Status of provisions in district plans

Some territorial authorities will have been in the process of reviewing the rural provisions of their district plans at the time the NPS-HPL took effect. This may result in activities having different activity statuses under the operative and proposed provisions. For example, a rural lifestyle subdivision in the general rural zone may be a controlled activity under the operative plan but a discretionary activity under the proposed plan or plan change. Unless a rule has

immediate legal effect under section 86B, the activity status of the rule in the operative district plan will apply until a territorial authority has made a decision on the proposed plan or plan change. As the activity status of a resource consent application has implications on the extent to which the NPS-HPL can be considered, it is important to identify the correct activity status of each application (including bundled applications) before considering the guidance in the 'Impact of activity status' section above.

What is highly productive land?

Transitional definition of highly productive land

Until such time as HPL has been mapped as part of the regional policy statement and these maps have been made operative (to be covered in Part 2 of the guidance – available early 2023), the 'transitional definition' of HPL in Clause 3.5(7) applies. Clause 3.5(7) states:

(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

(a) is

(i) zoned general rural or rural production; and

(ii) LUC 1, 2, or 3 land; but

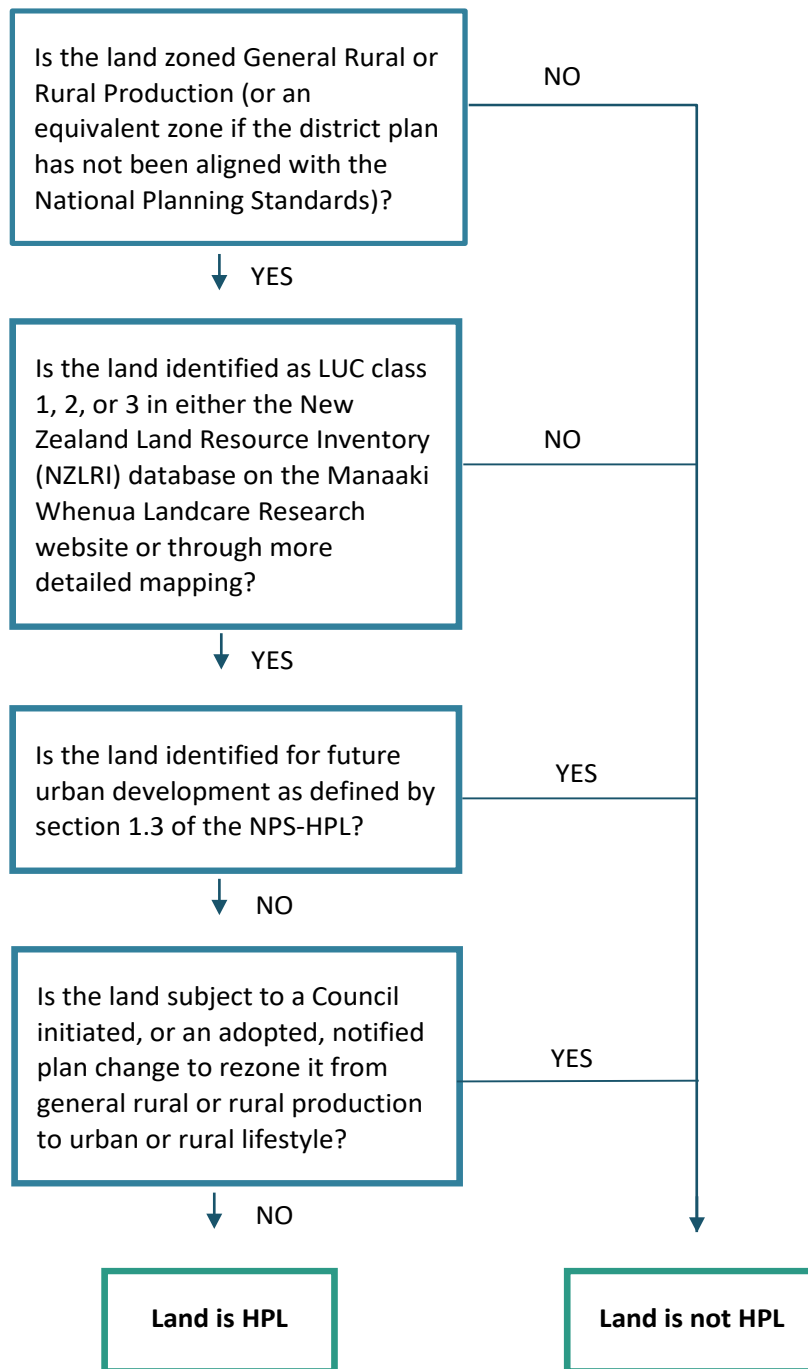
(b) is not:

(i) identified for future urban development; or

(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

A flow chart to assist with interpreting Clause 3.5(7) is in figure 1 below.

Figure 1: Basic flowchart to determine if land is HPL under the transitional definition of HPL



It is important to note that the criteria for the transitional definition of HPL are different to those related to mapping HPL in Clause 3.4. In particular, the transitional definition of HPL applies to all LUC class 1, 2, and 3 land in general rural and rural production zones and there is no requirement to consider whether it forms a ‘large and geographically cohesive area.’

The LUC data layer is either available to view [on the Landcare Research Our Environment’s website](#), or available for download [from the New Zealand Land Resource Inventory](#).

The intention of the exemptions in Clause 3.5(7)(b) is to make sure the NPS-HPL does not undermine work that is well advanced by local authorities to plan for new urban growth areas. Urban growth planning requires significant effort and resources from local authorities, along with community and tangata whenua engagement. The NPS-HPL transitional definition does not apply to land already 'identified for future urban development' through a Future Development Strategy (FDS) or 'strategic planning document', or land subject to a council-initiated or adopted² notified plan change to rezone the land. Land that is already zoned 'future urban' is also exempt. This zone is explicitly excluded from the transitional definition of HPL under Clause 3.5(7)(a)(i). Conversely, where the land is subject to a private plan change that has been 'accepted' (rather than adopted) by the relevant territorial authority, it is captured by the transitional definition of HPL and the NPS-HPL will apply to that plan change.

Interpreting Clause 3.5(7)(a)

Clause 3.5(7)(a) makes it clear the NPS-HPL is only relevant to land zoned general rural or rural production. This means all other zones are excluded from the transitional definition of HPL. All 'urban' zones (including special purpose and future urban zones, as defined in the NPS-HPL) and rural lifestyle zones are excluded from the transitional definition of HPL.

If a district plan has not implemented the National Planning Standards, any reference to zones in the NPS-HPL should be read as applying to the 'nearest equivalent zone' in the district plan (refer Clause 1.3(4)(b)). The nearest equivalent zone should be assessed by referring to the zone descriptions in the National Planning Standards and comparing them to the district plan zone description, objectives, policies, activity table and subdivision provisions (in the round). This is to assess whether a 'rural-type' district plan zone is in fact a rural production/general rural, rural lifestyle or settlement zone in the National Planning Standards (as the only four options for rural zones). For example, there may be a special purpose zone in an operative district plan relating to a productive rural environment that is predominately used for primary production activities. Such a zone should be interpreted as rural or rural production zone for the purposes of Clause 3.5(7)(a)(i) rather than an urban zone.

LUC class 1, 2 or 3 land is defined in Clause 1.3(1) as "*land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory³ or by any more detailed mapping that uses the Land Use Capability classification.*" This means that if a region or district has more detailed LUC mapping than the original New Zealand Land Resource Inventory, then that can be used by the relevant local authority to identify HPL under the [transitional definition](#) of HPL and for subsequent mapping of HPL.

More detailed mapping could be [tools such as S-Map](#), however it is not intended to include site-specific soil assessments prepared by landowners. If a local authority intends to use more detailed mapping information, it must be based on the LUC classification parameters (completing the assessment according to the methodology in the Land Use Capability Survey Handbook (2009)), and not consider other factors such as water availability. Part 2 of the guide

² Adopted in this context means a private plan change that was originally advanced by the private sector but was adopted by a territorial authority at notification stage. If the territorial authority adopts a private plan change, it continues through the process as if it was a council-initiated plan change. This implies that the council generally supports the change proposal and bears the cost of managing the plan change from the date that it adopts it.

³ The LUC data layer is available to view at <https://ourenvironment.scinfo.org.nz/>, or for download at <https://iris.scinfo.org.nz/layer/48076-nzlri-land-use-capability-2021/>

will provide further guidance on best practice for undertaking more detailed assessment of LUC.

Until HPL has been mapped in a regional policy statement and those maps have become operative, the [transitional definition](#) of HPL will apply to all land zoned general rural and rural production that is identified as LUC class 1, 2 or 3, regardless of its shape or size. This means many land parcels may only be partially identified as HPL under the transitional definition of HPL where part of the land parcel is LUC class 1, 2 or 3 and part is not.

See [below](#) for how the NPS-HPL applies to land parcels comprising a mix of HPL and non-HPL under the transitional definition.

Interpreting Clause 3.5(7)(b)

Identified for future urban development

Clause 3.5(7)(b) excludes areas ‘*identified for future urban development*’ from the transitional definition of HPL.⁴ ‘*Identified for future urban development*’ is defined in Section 1.3 of the NPS-HPL as follows:

- (a) *identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or*
- (b) *identified:*
 - (i) *in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and*
 - (ii) *at a level of detail that makes the boundaries of the area identifiable in practice.*

The definition of ‘*identified for future development*’ only applies to areas identified as ‘*suitable for commencing urban development over the next 10 years*’ in a Future Development Strategy or other strategic planning document. ‘*Suitable*’⁵ in this context should be based on whether the area has been clearly identified for urban development/rezoning in the short to medium term (up to 10 years). The intent is to ensure future urban development areas are only excluded from HPL (transitional definition and mapping) when there is a high level of certainty the land will be developed for urban use in the next 10 years. It recognises that areas identified for future urban development in the next 10 years have often already been factored into decisions about servicing, infrastructure, transport links, and so on. Introducing the NPS-HPL should not undermine this work. The 10-year timeframe also aligns with the definition of short term (“*within the next 3 years*”) and medium term (“*between 3 and 10 years*”) in the NPS-UD.

If there is no indication in the Future Development Strategy or strategic planning document that the land is suitable for urban development in the 10 years following 17 October 2022, then the future urban growth area is captured by the definition of HPL. This does not mean future urban development of that area is now inappropriate under the NPS-HPL. It simply

⁴ Operative future urban zones are already excluded from the transitional definition of HPL as they are special purpose zones under the National Planning Standards.

⁵ The reference to ‘*suitable*’ should be interpreted based on its plain and ordinary meaning. It is not intended to align with how that term is used in the NPS-UD in relation to business land.

means the relevant urban rezoning provisions (Policy 5 and Clause 3.6) will apply when that land is rezoned, or the relevant resource consent provisions (Policies 7 and 8 and Clauses 3.8, 3.9 and, in some cases, 3.10) will apply when subdivision and land-use consents for urban development are applied for. Whether a future urban growth area meets the definition of ‘identified for future urban development’ needs to be assessed on a case-by-case basis with reference to the guidance on Future Development Strategies and strategic planning documents below.

Future development strategies

Future development strategies (FDS) are required for tier 1 and 2 territorial authorities under Clause 3.12(1) of the NPS-UD (and were previously also required under the NPS-UDC 2016). However, other local authorities that are not tier 1 or 2 can also prepare a Future Development Strategy under Clause 3.12(4) of the NPS-UD. Both of the following tests must be met for land identified for future urban development in a Future Development Strategy to be excluded from the [transitional definition](#) of HPL:

- **is published** – the Future Development Strategy needs to be approved by the relevant local authority and published on its website before 17 October 2022. This means land identified for future urban development in a Future Development Strategy that was being consulted on 17 October 2022 but is still in draft form would be captured by the [transitional definition](#) of HPL, and
- **identifies the land as being suitable for commencing urban development over the next 10 years** – the land must be identified for urban development **and** identified as being suitable for commencing urban development in the next 10 years from 17 October 2022. The purpose of a Future Development Strategy under Clause 3.13 of the NPS-UD is to provide at least sufficient development capacity over a 30-year timeframe, so not all land identified for future urban development in a Future Development Strategy will be excluded from the [transitional definition](#) of HPL – only the land identified as being suitable for future development in the next 10 years (ie, in the short to medium term to provide development capacity to meet demand).

Strategic planning documents

Many regional councils and territorial authorities have prepared non-statutory growth strategies to plan for future urban growth that are not a Future Development Strategy – either on their own or in collaboration with other local authorities. These strategic documents are covered by the definition of ‘strategic planning document’ in Clause 1.3 of the NPS-HPL as “means any non-statutory growth plan or strategy adopted by local authority resolution.” Both of the following tests need to be met for land identified for future urban development in a strategic planning document to be excluded from the [transitional definition](#) of HPL:

- **identifies the land as being suitable for commencing urban development over the next 10 years from 17 October 2022** — the land needs to be identified for future urban development **and** suitable for commencing development in the 10 years following 17 October 2022. Other types of strategic planning documents, including those prepared as part of Local Government Act processes, or spatial planning processes may also identify land that is suitable for urban development over the next 10 years, and
- **is identified at a level of detail that makes the boundaries of the area identifiable in practice** — strategic planning documents vary in how they identify areas for future urban development. Some documents identify land down to parcel level, so it is easy to determine whether land has been identified for future urban development. Other

documents use indicative layers that may appear like blobs or circles, which provide some indication about where urban growth might occur but no certainty on which land parcels are captured. For future urban development land identified in a strategic planning document to be excluded from the [transitional definition](#) of HPL, it must include mapping that is specific enough to identify the boundaries of the future urban area and know with certainty whether a particular land parcel is included or excluded. Territorial authorities will need to make the assessment of whether the area is identified at a level of detail to meet the definition of 'identified for urban development' in the NPS-HPL based on their detailed knowledge of their own strategic planning document.

Subject to a council-initiated, or adopted, notified plan change

Clause 3.5(7)(b)(ii) is intended to exclude land from the [transitional definition](#) of HPL if there is a council-initiated, or adopted, notified plan change to rezone the land to either an urban zone (defined in Clause 1.3(1) of the NPS-HPL) or to a rural lifestyle zone. If a territorial authority has progressed a plan change to rezone rural land to urban and this has already been notified, then the NPS-HPL does not undermine the work undertaken by territorial authorities and their communities to get to this point in the process.

However, the clause makes a distinction between plan changes (as defined under s43AA) that are council-initiated or adopted under clause 25(2)(a) of Schedule 1 of the RMA vs a private plan change that is 'accepted' for notification under clause 25(2)(b) of Schedule 1 of the RMA. Private plan changes that are not adopted by territorial authorities are often more contentious and driven by individual landowner aspirations for land development as opposed to being considered strategically as part of wider district and urban growth planning by a territorial authority in accordance with a Future Development Strategy. If a notified private plan change was not made operative by 17 October 2022 and is still proceeding through the process in [RMA Schedule 1](#), then the land subject to that plan change is captured by the [transitional definition](#) of HPL. This does not mean that private plan changes should not occur on HPL, but the NPS-HPL will need to be given effect to when making a decision on that private plan change (and the relevant tests of either Clause 3.6 for urban rezoning or Clauses 3.7 and 3.10 for rural lifestyle rezoning).

Occasionally a private plan change needs to be amended during the [RMA Schedule 1](#) process to align with other planning processes affecting other parts of the district plan. The introduction of the Medium Density Residential Standards (MDRS), for example, has necessitated council-initiated variations to private plan changes to align them with the requirements of the MDRS in multiple districts nationally. The policy intent is that the introduction of a council-initiated variation to align a private plan change with national direction (essentially making consequential amendments for consistency) does not mean that the private plan change becomes 'council initiated'. In this scenario, the policy intent is that the land subject to the private plan change and council-initiated variation is still captured by the transitional definition of HPL.

With respect to submissions on proposed plans, plan changes or variations, submissions do not form part of a council-initiated or adopted plan change, and consideration of the NPS-HPL is relevant.

Clause 3.5(6) – approved plan changes

Clause 3.5(6) applies where HPL is subject to an approved plan change to rezone the land from general rural or rural production to an urban or rural lifestyle zone. Clause 3.5(6) states:

If highly productive land is the subject of an approved plan change to rezone the land so that it is no longer general rural or rural production zone, the land ceases to be highly productive land from the date the plan change becomes operative, even if the change is not yet included in maps in an operative regional policy statement.

In Clause 3.5(6), an ‘approved plan change’ applies to plan changes that have become operative. This makes it clear that land identified as HPL (mapped or under the transitional definition) remains as such until it is rezoned through an operative plan change that is beyond challenge. It is anticipated that regional policy statement maps of HPL will be updated periodically to reflect any rezoning changes on HPL occurring at the district level (as per Clause 3.5(5)).

When only part of a land parcel meets the transitional definition of HPL

Where the [transitional definition](#) of HPL applies to part of a land parcel and the balance of the land parcel is LUC class 4–8, the NPS-HPL will only apply to that part of the lot that meets the transitional definition of HPL for land-use activities. If the proposed use or development is located on the HPL part of the parcel and resource consent is required, then Policy 8, Policy 9 and Clause 3.9 of the NPS-HPL will need to be considered. Policies 8 and 9, respectively, are as follows.

Policy 8: *Highly productive land is protected from inappropriate use and development.*

Policy 9: *Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*

Conversely, if a land-use activity is proposed on the portion of the lot that is not HPL, then the NPS-HPL is less likely to be relevant to the decision-making process.⁶ In some situations, a land-use activity may span both HPL and non-HPL land under the transitional definition of HPL. In these circumstances, a holistic assessment should be undertaken with the NPS-HPL provisions applying to the overall land-use activity. The relevant provisions for ‘land-use and development on HPL’ are discussed further below.

A combination of HPL and non-HPL land on a lot has different implications for subdivision. This is discussed further in relation to assessing the overall productive capacity of the land in the ‘Subdividing highly productive land’ section below.

What is land-based primary production?

Land-based primary production is defined in the NPS-HPL as “*production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.*” This definition is deliberately narrower than the National Planning Standards definition of ‘primary

⁶ Policy 8 requiring local authorities to protect HPL from inappropriate use and development and Policy 9 of relating to managing reverse sensitivity effects on land-based primary production on adjacent/nearby HPL may still be relevant, depending on the proposed land-use activity.

production’ as there are some activities covered by the primary production definition that do not need to locate on HPL in the same way as agricultural or horticultural activities do. In particular, the following primary production activities in the National Planning Standards definition of primary production do not fall within the scope of the ‘land-based primary production definition’:

- **Indoor intensive primary production** – this activity was deliberately excluded from the definition of land-based primary production as inherently primary production that occurs predominantly inside buildings (such as intensive pork, poultry or mushroom farming, or hydroponic horticulture) is not ‘reliant on the soil resource of the land.’ The intention is that indoor intensive primary production activities would be encouraged to establish on other rural land that was not HPL. However, refer to guidance on Clause 3.9(2)(a) below as there may be scope for indoor components of a wider land-based primary production activity to be considered ‘supporting activities’ (as defined in the NPS-HPL) in some circumstances. Structures that are erected to protect soil-reliant plants from weather, wind or pests (ie, covered crops) are not regarded as indoor-intensive primary production as the crops use the soil resource.
- **Mining/quarrying** – the intent of the NPS-HPL is not to protect HPL for these primary production activities. However, there is a pathway for mineral and aggregate extraction on HPL under Clause 3.9(2)(j) where these meet certain tests (operational and functional need to be on HPL or provide significant public benefits). Small-scale farm quarries could also potentially have a pathway on HPL as ‘supporting activities’, see discussion in Clause 3.9(2)(a) below for more information.
- **Aquaculture** – excluded on the basis that this is not a land-based primary production activity.
- **Initial processing of commodities** – the intention is that processing of commodities from land-based primary production should occur on land that is not HPL. However, there is the potential for some initial processing activities to be considered ‘supporting activities’ under Clause 3.9(2)(a). Refer to guidance on Clause 3.9 for more information.

The intent of the NPS-HPL is not to create a hierarchy of land-based primary production activities – there should be an opportunity to establish any type of land-based primary production on HPL. Councils may provide more specificity on what types of land-based primary production are supported in their district in objectives and policies of the regional policy statement or district plan – this will be covered in Part 2.

The definition of land-based primary production in the NPS-HPL specifically includes ‘forestry activities’ which can include both plantation forestry and carbon forestry. Although forestry may not be the most productive use of HPL, it has the potential to be converted to other land-based primary production activities, unlike urban rezoning/development and fragmentation into lifestyle lots, which is irreversible.

Subdividing highly productive land

The NPS-HPL will be a relevant consideration for subdivision on HPL under both the [transitional definition](#) of HPL and mapped HPL.

The key policy in the NPS-HPL for subdivision is Policy 7:

The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

The direction that subdivision of HPL be “avoided”, apart from the specific exceptions in the NPS-HPL, is intended to provide a stringent approach for any subdivision proposal on HPL to avoid further fragmentation of this finite resource. The implementing clause for this policy (Clause 3.8 – discussed further below) does provide a pathway for some types of subdivision in some circumstances, but these are limited in scope.

Policy 6 provides further direction that rural lifestyle development on HPL is to be specifically avoided as follows (**emphasis added**):

*The rezoning and **development of highly productive land as rural lifestyle is avoided**, except as provided in this National Policy Statement.*

The National Planning Standards zone standards describe a rural lifestyle zone as areas:

used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.

While rural lifestyle zones may allow primary production to occur, the reason that rural lifestyle on HPL should be avoided is that the use of HPL for predominantly rural lifestyle purposes is an inappropriate use of a scarce resource. Rural lifestyle zoning prevents HPL being used efficiently for land-based primary production as it increases the potential for reverse sensitivity effects, and allows for lot sizes that make land-based primary production less viable.

Subdividing land to create smaller land parcels for rural lifestyle use is not provided for unless there are exceptional circumstances (refer to Clause 3.10). This focus on avoiding rural lifestyle subdivision and development is intentional, as the fragmentation of HPL and its inefficient use for rural lifestyle development was identified through the development of the HPL as one of the key contributing factors to ongoing losses of HPL nationally.

In relation to the National Planning Standards description of rural lifestyle zone, the consideration is not whether the sites are large enough for primary production. It is whether the main land use is primary production or residential activity. It is appropriate to consider specific characteristics of the site and reasonably foreseeable opportunities for using the land for land-based primary production (over a 30-year period) in forming these conclusions.

Clause 3.8 – avoiding subdivision of highly productive land

Clause 3.8 of the NPS-HPL is intended to be clear and directive in terms of the outcomes sought for subdivision of HPL as follows (**emphasis added**).

- (1) *Territorial authorities must **avoid the subdivision of highly productive land** unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:*
 - (a) *the applicant demonstrates that the proposed lots will **retain the overall productive capacity of the subject land over the long term**:*
 - (b) *the subdivision is on **specified Māori land**:*
 - (c) *the subdivision is for **specified infrastructure**, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a **functional or operational need** for the subdivision.*

- (2) *Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
- (a) *avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
 - (b) *avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*
- (3) *In subclause (1), subdivision includes partitioning orders made under Te Ture Whenua Māori Act 1993.*

Guidance on the terms in bold above is provided in the following sections.

Productive capacity

Productive capacity, in relation to land, is defined in Clause 1.3 of the NPS-HPL as:

...the ability of the land to support land-based primary production over the long term, based on an assessment of:

- (a) *physical characteristics (such as soil type, properties, and versatility); and*
- (b) *legal constraints (such as consent notices, local authority covenants, and easements); and*
- (c) *the size and shape of existing and proposed land parcels.*

The productive capacity of land does not depend on whether the current use is land-based primary production, or its past history of land uses. The key measure of productive capacity depends on the potential capacity of the land to support land-based primary production activities. To assess whether the 'overall productive capacity' will be retained in the context of a subdivision application (under Clause 3.8(1)(a)), the emphasis is on the 'overall' productive capacity and not just the productive capacity of the balance lot. This assessment will require the existing productive capacity of the subject land to be assessed so that an overall comparison between the existing and proposed can be made. The relevant factors contributing to the existing productive capacity will vary depending on the local context and may include consideration of:

- a) soil type patterns across a site
- b) the characteristics of soils, including drainage, potential rooting depth, any existing contamination and erosion proneness
- c) land-form features, including slope and aspect, and flood proneness
- d) climate, including general characteristics relating to suitability for productive use
- e) availability of water
- f) legal constraints (such as consent notices, local authority covenants and easements)
- g) current and potential opportunities for using the land for land-based primary production.

These characteristics will influence the type of land-based primary production suitable for that particular site. A full range of suitable types of land-based primary production should be considered as part of the assessment, not just the existing land-use type. Consideration of the

application in terms of a [cumulative loss](#) of HPL may also be relevant, including previous subdivision and planning history of the site and neighbouring sites.

Retaining the overall productive capacity of the land over the long term means there is no loss in the potential of the subject land being used for land-based primary production, when viewed over a 30-year timeframe based on reasonably foreseeable conditions. This should include consideration of effects of the proposed subdivision and/or subsequent proposed land use on the potential land-based primary production use of the subject land, including loss of land from production through access, curtilage development, any setbacks and any changes to the size and shape of property boundaries to mitigate [reverse sensitivity effects](#).

If the proposed subdivision means the productive capacity of the original lots are retained (that is, the likelihood for the land to be used for a particular type or range of land-based primary production has not reduced or has improved), then the test in Clause 3.8(1)(a) would be met. This test envisages enabling:

- i) subdivisions such as boundary adjustments where HPL is amalgamated to form a larger productive landholding, or subdivisions such as boundary adjustments where HPL is amalgamated to form a larger productive landholding, or
- ii) subdividing a large farm into smaller lots that are still capable of being used for a particular type or range of land-based primary production (for example, the separation of a 120-ha farm into two 60-ha farms).

It is unlikely that subdivision into rural lifestyle lots would meet the productive capacity test in this clause.

Where only part of the site is identified as HPL (either under [transitional definition](#) or when mapped in a regional policy statement then the consideration of how the proposal aligns with the direction in the NPS-HPL will be on a case-by-case basis. The intent of Clause 3.8 is that:

- the proposed lot layout should not result in the HPL being further fragmented across multiple lots
- reverse sensitivity effects on land-based primary production activities will be avoided if possible, or otherwise mitigated.

The NPS-HPL deliberately does not contain direction on the size of a lot that will guarantee the productive capacity of HPL will be retained. This will be dependent on a range of factors and will vary from region to region. Whether or not a particular lot can remain productive will vary depending on, for example, fluctuating markets or local conditions in each district. As discussed above, the determining factor is whether the site is large enough so that the predominant use of the site is land-based primary production and not residential lifestyle.

The way rural businesses operate is constantly evolving. The traditional owner/proprietor model is increasingly being replaced by an aggregated agri-business enterprise model, where operations are spread across several blocks of land. The economy of scale of aggregated agri-businesses enables the sharing of equipment, labour, administrative services and capital assets. Therefore, the size of the parcel is not always as relevant as its potential to support land-based primary production in the context of the agri-business. An assessment of productive capacity should consider a range of alternatives that allow the land to remain productive, such as leases to use a parcel as part of a larger agri-business.

Note that economic viability is not a consideration in an assessment of productive capacity under Clause 3.8. Any constraints on using land identified as HPL for land-based primary production that are not short term and result in land no longer being economically viable (including irreversible land fragmentation and/or water or nutrient constraints) for land-based primary production must be assessed under Clause 3.10 (see 'Clause 3.10 — Exemptions for HPL subject to permanent or long-term constraints' below).

The assessment of productive capacity should be at a sufficient level of detail appropriate to the proposal to ensure an informed decision on the application can be reached and needs to be considered over at least a 30-year period. Where the information necessary for an assessment is not readily available to the applicant from existing or previous landowners, or where inadequate or contradictory information has been provided, then further specialist input may be requested from suitably qualified and experienced professionals. The experience and qualifications needed will depend on the particular aspect of the proposal the further information required relates to. This may, for example, include economists with expertise in agriculture, agricultural consultants, valuers, soil scientists or other land or water scientists. Territorial authorities may wish to have information that is submitted as part of an application peer reviewed, including by seeking the advice from relevant specialists in regional councils so as to validate the information provided.

Cumulative loss and reverse sensitivity effects associated with subdivision

Clause 3.8(2) is as follows.

- (2) *Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
 - (a) *avoids if possible, or otherwise mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
 - (b) *avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*

As with Clause 3.8(1) the first direction in Clause 3.8(2) is to avoid a loss of HPL, and provides a strong position for territorial authorities to decline a subdivision application that results in a cumulative loss of HPL in that district, unless under an Operative District Plan that application is for a controlled activity or a restricted discretionary application (and the matters of control or discretion do not include loss of HPL). Historically, cumulative effects have been difficult to consider in terms of HPL. Each application involving a loss of HPL argues that the loss is no more than minor, as it is a small percentage of the entire district/region. The intent of Clause 3.8(2)(a) is to support local authorities taking a strong stance on HPL loss on the basis that any loss should be avoided, because all the minor losses across a district/region collectively result in a more significant loss.

The cumulative loss of HPL must take into account any loss of HPL resulting from the mitigation of reverse sensitivity effects.

Subdividing land in and of itself does not create reverse sensitivity effects – it is the subsequent land uses that are enabled by the subdivision which can result in reverse sensitivity effects on existing land-based primary production activities. Consideration should be given to potential future reverse sensitivity effects resulting from the subsequent land uses

at the time of subdivision. It may be appropriate to implement subdivision consent conditions, such as:

- requiring future dwellings to be constructed on specified building platforms away from boundaries with land-based primary production activities
- restricting the number of future dwellings on a property (if the rules would otherwise allow for more than one dwelling) by way of a consent notice on the title
- requiring the construction of a barrier or screen (eg, shelter belt planting, fencing) to help block potential odours, noise, dust or the visual presence of the land-based primary production activity from a future sensitive activity.

Any loss of HPL that may result from these requirements needs to be taken into account when calculating any loss of productive capacity under Clause 3.8(1).

Should a substantive decision to grant a consent to subdivide HPL under Clause 3.8 be reached then Clause 3.8(2) also requires territorial authorities to mitigate actual or potential loss of HPL and reverse sensitivity effects. Consent notices preventing further subdivision and precedent effects may be considered to avoid cumulative loss in the future.

In terms of mitigating reverse sensitivity effects, some territorial authorities (either currently or historically) impose no-complaints covenants (sometimes known as rural emanations easements) registered on the titles at the time of subdivision as a means to manage reverse sensitivity effects. These covenants contain clauses that remind buyers that they are living in a rural area, and that farming activities may be undertaken in the area without interference or restraint, with the intention of discouraging neighbouring properties from complaining about effects from adjacent production activities. There are known limitations associated with no-complaints covenants in terms of enforceability, particularly as they do not negate the responsibility of a local authority to follow up on a complaint if it is lodged. Feedback received on the use of no-complaints covenants as a reverse sensitivity tool is they are largely ineffective and do not afford rural activities the same protection as physical measures to separate sensitive land uses from productive rural activities. We would caution local authorities that are considering relying on no-complaints covenants as the main tool for managing reverse sensitivity effects that they are unlikely to provide sufficient protection for land-based primary production activities using HPL.

Some territorial authorities may already have specific direction in their district plans to consider cumulative loss of HPL and potential reverse sensitivity effects at the time of subdivision (ie, as a matter of restricted discretion or as part of a subdivision objective and/or policy). If not, territorial authorities can still consider whether reverse sensitivity effects have been avoided if possible, or mitigated, as part of their assessment under [section 104 of the RMA](#) for discretionary or non-complying subdivision activities (or restricted discretionary activities if reverse sensitivity is a matter over which discretion has been restricted).⁷

Specified Māori land

Clause 3.8(1)(b) provides a pathway for subdivision of HPL on Māori land that meets the definition of specified Māori land in the NPS-HPL. The types of Māori land captured by the definition of specified Māori land (representing approximately 3 per cent of LUC 1, 2 and 3

⁷ See 'Impact of activity status' section, above.

land) will be evident from existing or historical title records retrievable from [Land Record Search | Toitū Te Whenua — Land Information New Zealand \(linz.govt.nz\)](#).

Subdivision of specified Māori land should still take measures to minimise the actual and cumulative loss of HPL in the district, and mitigate reverse sensitivity effects that may adversely affect the productive use of HPL on neighbouring sites.

Further guidance on what the NPS-HPL means for Māori and Māori land is available.⁸ An information guide⁹ is also available on changing the status of general land owned by Māori to Māori freehold land and rezoning land to Māori purpose zone (as defined in the [National Planning Standards](#)).

Specified infrastructure

Subdivision that is required to deliver specified infrastructure is exempt from Clause 3.8, provided there is a **functional or operational need** (see definitions below). ‘Specified infrastructure’ is defined in the NPS-HPL in a manner consistent with other national direction as (**emphasis added**):

specified infrastructure means any of the following:

- (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:*
- (c) *any public flood control, flood protection, or drainage works carried out:*
 - (i) *by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or*
 - (ii) *for the purpose of drainage, by drainage districts under the Land Drainage Act 1908.*

Lifeline utility has the meaning in section 4 of the [Civil Defence Emergency Management Act 2002](#).

The NPS-UD is an example of national direction that identifies ‘nationally significant infrastructure’, and most regional policy statements include lists of the types of infrastructure assets that are ‘regionally significant’ in the context of their region. These will be the most common places to find information on whether a particular infrastructure project is ‘regionally or nationally significant’ and therefore meets the definition of ‘specified infrastructure’.

Subdivision for the purposes of developing specified infrastructure is enabled. Some new specified infrastructure may be developed under the maintenance, operation, upgrade or

⁸ Ministry for the Environment. 22 September 2022. *National Policy Statement for Highly Productive Land: Information on what it means for Māori and Māori land*. Retrieved from <https://environment.govt.nz/publications/national-policy-statement-for-highly-productive-land-information-on-what-it-means-for-maori-and-maori-land/>

⁹ *National Policy Statement for Highly Productive land: Further information on changing the status of Māori land and rezoning land to Māori purpose zone*. Retrieved from <https://environment.govt.nz/publications/nps-hpl-further-information-on-changing-the-status-of-maori-land-and-rezoning-land-to-maori-purpose-zone>

expansion of specified infrastructure, others may choose to seek a designation for the activity which is then enabled on HPL under 3.9(2)(h). There is a pathway to become a requiring authority under [s167 of the RMA](#).

Functional need is defined in the [National Planning Standards](#) as follows.

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 is defined in the [National Planning Standards](#) as follows.

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.

Applicants and consent planners are expected to have regard to relevant case law on functional and operational need when interpreting the relevant provisions in the NPS-HPL that use these terms.

Land use and development on highly productive land

The NPS-HPL will be relevant for proposals for land use and development on land identified as HPL under the transitional definition of HPL from 17 October 2022. The process for determining whether land is HPL is covered in the ‘What is highly productive land (transitional definition)?’ section above.

The key NPS-HPL policy for land use and development on HPL is Policy 8:

Highly productive land is protected from inappropriate use and development.

The policy direction that HPL is to be ‘protected’ from inappropriate use and development sends a clear message that territorial authorities must prevent inappropriate use and development occurring on HPL. In terms of what types of use and development are ‘inappropriate’ on HPL, Clause 3.9 provides further direction by setting out a list of land uses and activities that may be appropriate on HPL.

Clause 3.9 – protecting highly productive land from inappropriate subdivision, use and development

Policy 8 is to be implemented through Clause 3.9, with Clause 3.9(1) providing strong direction as follows.

Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.

The starting point is that all land use and development activities that are not land-based primary production are inappropriate on HPL and to be avoided. Clause 3.9(2) provides further direction to implement Policy 8 by providing a specific list of activities that may be appropriate on HPL – provided the measures relating to cumulative loss of the availability and productive capacity of HPL and reverse sensitivity effects in Clause 3.9(3) are applied.

[Table 2](#) below provides some guidance on the list of activities that may be appropriate on HPL under Clause 3.9(2) and gives examples of the types of activities anticipated under this clause.

The intent is that Clause 3.9(2) applies to the main purpose of the use and development, ie, the ‘core’ activity being proposed. For example, where the main purpose of the activity is not listed in Clause 3.9 (eg, a proposed golf course or retirement village) but elements of the activity will provide public access and restore some indigenous biodiversity, this does not mean the core activity is also appropriate on HPL by association. Only the public access and indigenous biodiversity elements would be appropriate on HPL.

Table 2: Examples of activities that may be appropriate on HPL under Clause 3.9(2)

Appropriate land-use activity	Intention and examples of activities anticipated
(a) it provides for supporting activities on the land	<p>Note: Further guidance on preparing objectives, policies and rules that give effect to clause 3.9(2)(a) with respect to ‘supporting activities’ will be provided in Part 2 of the guide.</p> <p>‘Supporting activities’ are defined in Clause 1.3 of the NPS-HPL as <i>“those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing).”</i></p> <p>The intention of this clause is that activities that support land-based primary production on surrounding HPL or as part of a landholding¹⁰ where the production is occurring, have a pathway to occur on HPL. Activities such as residential accommodation for the landowner and/or farm staff, seasonal worker accommodation, sheds for farm machinery, workshops for repairing and maintaining equipment and roadside sales of goods produced on site would all be anticipated under this clause where these support land-based primary production. This clause could also cover on-site processing and manufacturing of goods that were produced on HPL, packing produce, or installing a water reservoir to support the land-based primary production activity. However, the purpose of these activities must be to directly support land-based primary production. For example, a water reservoir would not be appropriate on HPL if it was used to irrigate a golf course.</p> <p>A ‘supporting activity’ may also include some elements of a wider land-based primary production activity that occur within buildings and/or do not need the HPL soil resource and that might otherwise be excluded from the definition of land-based primary production. Territorial authorities will need to look at the farm system being proposed as a whole to assess whether all components are ‘supporting’ the land-based primary production activity, including whether the farm system occurs on a single parcel or across multiple parcels that are part of the same operation or landholding.</p> <p>Similarly, ‘supporting activities’ may include small-scale farm quarries that only supply aggregate to support land-based primary production enterprise on the same landholding.</p> <p>Clause 3.9(2)(a) is not intended to cover larger-scale activities that might support land-based primary production indirectly but have no direct or exclusive link to the HPL where the production is taking place. This includes, for example, rural industries like large-scale dairy factories, large-scale processing facilities that process goods from multiple operations, and transport depots. These larger-scale rural industries are</p>

¹⁰ Note ‘landholding’ in this context is intended to have the same meaning as the definition of ‘landholding’ in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 which is defined as “means one or more parcels of land (whether or not they are contiguous) that are managed as a single operation”.

	considered to be inappropriate on HPL and are more appropriately located in industrial zones or other parts of the rural environment that are not HPL.
(b) it addresses a high risk to public health and safety	Activities such as flood mitigation works, emergency works, removal of dangerous trees and repairs to infrastructure are all anticipated as appropriate activities on HPL under this clause, provided they are only undertaken to address a high risk to public health and safety. Whether these activities are needed to address a 'high risk' to public health and safety will need to be assessed on a case-by-case basis, but the intent is that it applies where there is a clear and obvious risk that needs to be addressed.
(c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act	Many of the matters covered in section 6 of the RMA are addressed more specifically in other sub-clauses in this section (eg, public access, management of natural hazards, indigenous biodiversity). However, this clause covers all other section 6 matters not otherwise referred to in other sub-clauses. This includes, for example, the protection of outstanding natural features and landscapes, historic heritage and protected customary rights. The purpose of this clause is to confirm that activities are appropriate on HPL when these are necessary to recognise and provide for one of the matters of national importance in section 6 of the RMA.
(d) it is on specified Māori land	This clause provides a pathway for activities to occur if they are proposed on specified Māori land. The types of Māori land captured by the definition of specified Māori land will be evident from existing or historical title records retrievable from Land Record Search Toitū Te Whenua — Land Information New Zealand (linz.govt.nz) .
(e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity	While the protection of 'significant natural areas' ¹¹ is provided for under clause (c), this clause is broader and covers the full range of activities to protect, maintain and restore all indigenous biodiversity not just the protection of significant natural areas. Activities such as pest control, replanting and restoration of significant natural areas, riparian margins, wetlands, etc, are all anticipated as appropriate activities on HPL under this clause. Mitigation planting proposed as part of non-land-based primary production would not justify such an activity. The planting itself would be appropriate on HPL, but it would not justify the associated 'core' activity, as discussed above.
(f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality	It is recognised that, in some situations, it may be necessary to retire portions of land from being actively used for land-based primary production, to improve water quality standards under the National Policy Statement for Freshwater Management 2020 (NPS-FM). This clause provides for that to occur as an appropriate land use and activity on HPL. However, retiring land for water quality purposes does not automatically mean the land is suitable for other non-land-based primary production. Any proposed alternative use would need to meet the tests in the NPS-HPL on its own merits.
(g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land	Activities such as home businesses, festivals/events, markets, small-scale visitor accommodation (eg, bed and breakfast) are anticipated as small-scale and temporary activities (temporary will likely mean short-term activities with a defined start and end date) that may be appropriate on HPL under this clause, provided they have no impact on productive capacity of the land. 'Productive capacity' is defined in the NPS-HPL and the information requirements to assess productive capacity are outlined in the 'Overall productive capacity' section above in relation to Clause 3.8.

¹¹ 'Significant natural areas' is the term commonly used to refer to areas of significant indigenous vegetation and significant habitat of indigenous fauna that are to be protected under section 6(c) of the RMA.

	There is some overlap with clause (g) and clause (a) as some supporting activities may also be small scale with no impact on the productive capacity of the land.
(h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act	This clause recognises that requiring authorities may either already have designations on HPL, or may need new or extended designations in the future. Designations are generally for essential public works, and this clause provides for such works as appropriate for use and development on HPL.
(i) it provides for public access	Accessways (walking, cycling or road access, depending on the situation) to provide the public with access to public areas such as beaches or reserves is anticipated under this clause as appropriate use and development on HPL. Providing for public access on HPL under this clause is expected to have no, or very limited, impact on the availability and productive capacity of HPL. For the access to be 'public' it would need to be unfettered (no restrictions on the time of day or year) and assured by legal means (eg, land vested to council or access guaranteed via easement).
(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land: (i) the maintenance, operation, upgrade, or expansion of specified infrastructure (ii) the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990 (iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand (iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.	<p>The intention of this clause is to recognise situations where the use or development of specified infrastructure, defence facilities or mineral or aggregate extraction may occur on HPL. The key test is to demonstrate that the use and development has a 'functional need' and/or 'operational need' to be on HPL, which are terms that are defined in the National Planning Standards (as discussed in the 'Specified infrastructure' section above, in relation to Clause 3.8) and fits into one of the categories listed.</p> <ul style="list-style-type: none"> • Specified infrastructure – this test recognises that the functional and operational needs of specified infrastructure (as defined in Clause 1.3 of the NPS-HPL) means that they may need to be located on HPL – such as where a new road or transmission lines may need to traverse over an area of HPL. Further, in many cases, the presence of specified infrastructure on HPL does not preclude the balance of the HPL being used by land-based primary production. For example, land surrounding structures used for infrastructure can often be used for animal grazing or some forms of horticulture. • Defence facilities – this test recognises there are existing New Zealand Defence Force facilities located on HPL and that, to meet obligations under the Defence Act 1990, there will be occasions where these facilities need to be upgraded or expanded, and this may involve new Defence Force activities on HPL. Provided the proposal is needed to meet obligations under the Defence Act 1990 and it also has a functional or operational need to be on HPL, defence facilities will have a pathway to be an appropriate use and development on HPL under this clause. • Mineral or aggregate extraction – there are two tests for determining whether mineral or aggregate extraction can occur on HPL: there must be a significant national public benefit for mineral extraction and a significant national or regional benefit for aggregate extraction. It must also be proven that the same benefit could not be achieved elsewhere in Aotearoa New Zealand on non-HPL land. The national test is intentionally high, as the activity of extracting minerals or aggregate from land permanently removes that land from ever being able to be used for land-based primary production. This activity is envisaged to only be appropriate where the mineral or aggregate being extracted cannot be supplied domestically from another source on non-HPL land. Note that Clauses 3.9(j)(iii) and (iv) are intended to apply to larger commercial-scale mineral and aggregate extraction and there is a potential pathway for small-scale farm quarries as 'supporting activities' under clause (a).

Cumulative loss and reverse sensitivity effects associated with land use

Clause 3.9(3) sets out the other measures that must be taken by territorial authorities when considering a use or development on HPL. These measures must be applied before any of the activities listed in Clause 3.9(2) can be considered not ‘inappropriate’ on HPL. Clause 3.9(3) is as follows.

- (3) *Territorial authorities must take measures to ensure that any use or development on highly productive land:*
- (a) *minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
 - (b) *avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.*

The wording of Clause 3.9(3)(a) is slightly different to the equivalent cumulative loss clause for subdivision in Clause 3.8(2)(a). It is intended to recognise that most land use or development that has a pathway under Clause 3.9(2) will inevitably lead to some loss of the availability and productive capacity of HPL¹² – so an ‘avoid if possible’ test as a starting point was not considered appropriate. Instead, Clause 3.9(3)(a) requires territorial authorities to focus on minimising or mitigating any actual loss or potential cumulative loss of the availability and productivity capacity of HPL, when considering any proposed use and development on HPL. When considering if a use or development ‘minimises’ or ‘mitigates’ a loss of productive capacity, territorial authorities should consider:

- **the location of the activity** – whether it can be sited anywhere on the subject site that can minimise the actual amount of HPL that is unable to be used for land-based primary production
- **the footprint of the activity** – whether efforts have been made to keep the footprint of the activity as small as possible to minimise the actual loss of HPL
- **clustering of activities** – whether there is an option to group a number of activities in a similar location to mitigate the cumulative loss of HPL that would occur through activities being spread out across a wider area of HPL (eg, clustering of buildings, co-location of telecommunications infrastructure or containing multiple activities in the same building, such as using an existing residential dwelling for a home business or visitor accommodation activity, rather than constructing multiple buildings)
- **co-existing with land-based primary production** – whether the activity can be designed in such a way that it does not preclude being able to carry out land-based primary production around the activity (eg, the potential for using the land around specified infrastructure to be used for vegetable production or animal grazing).

Clause 3.9(3)(b) requires applicants to “avoid if possible or otherwise mitigate” any actual or potential reverse sensitivity effects on land-based primary production activities from the proposed use or development. Many of the activities listed in Clause 3.9(2) are unlikely to create reverse sensitivity effects (eg, restoring indigenous biodiversity or flood mitigation works). However, supporting activities such as residential dwellings for farm

¹² With the exception of small-scale and/or temporary activities which are required under Clause 3.9(2)(g) to have no impact on the productive capacity of the HPL.

owners/managers, farm worker accommodation or small-scale activities such as home businesses or small-scale visitor accommodation, do have the potential to cause reverse sensitivity effects. Often, potential reverse sensitivity effects can be avoided (or, if not fully avoided, mitigated) by either:

- physically separating the potentially sensitive activity from the land-based primary production activity
- using a barrier or screen (eg, shelter belt planting, fencing) to help block potential odours, noise, dust or the visual presence of the land-based primary production activity.

Most territorial authorities will have existing provisions in the rural chapters of their district plans to manage potential reverse sensitivity effects and may already have setback rules – for example, rules that require the separation of residential dwellings from productive rural areas or require setbacks from effluent-spreading areas or setbacks to manage spray drift. An applicant demonstrating compliance with existing district plan provisions to manage reverse sensitivity effects may be sufficient to give effect to Clause 3.9(3)(b). Non-compliance with an existing rule to manage reverse sensitivity may mean that Clause 3.9(3)(b) may have more relevance when making a determination under [section 104 of the RMA](#) as to whether the activity is appropriate or inappropriate on HPL. If a district plan does not currently include provisions to manage reverse sensitivity effects in rural areas, territorial authorities are still able to consider whether reverse sensitivity effects have been avoided if possible, or mitigated, as part of their section 104 assessment for discretionary or non-complying activities (or restricted discretionary activities if reverse sensitivity is a matter over which discretion has been restricted).

Exemptions for HPL subject to permanent or long-term constraints

For the majority of proposed activities seeking to establish on HPL (rezoning, subdivision, use and development) there is a specific policy and set of implementing clauses in the NPS-HPL to direct whether or not that activity should be allowed. The starting point is to protect HPL for use in land-based primary production (as per the NPS-HPL objective). If an activity is for another purpose, proposals should refer to:

- Urban rezoning – Policy 5 and Clause 3.6
- Rural lifestyle rezoning of HPL – Policy 6 and Clause 3.7
- Subdivision – Policies 6 and 7 and Clause 3.8
- Use and development – Policy 8 and Clause 3.9.

If a proposed activity is unable to find a pathway through these policies and implementing clauses, then in most cases it should not be able to occur on HPL and the HPL should continue to remain available to be used for land-based primary production.

However, in rare circumstances it may be that the HPL is subject to ‘permanent or long-term constraints’ that mean the use of land for land-based primary production is not economically viable for at least 30 years. Clause 3.10 provides a series of specific and deliberately stringent tests to determine whether the permanent or long-term constraint on the land justifies the HPL being used for a purpose that is not land-based primary production. It is not expected that Clause 3.10 will be used regularly, and it has been designed to apply to genuine scenarios where land is subject to permanent or long-term constraints that cannot be addressed through

reasonably practicable options. An applicant would need to first demonstrate there is not a pathway for their proposal under any other clause of the NPS-HPL, then show their particular situation meets the requirements of Clause 3.10, before a non-land-based primary production activity could occur.

Clause 3.10 cannot be used as a pathway for urban rezoning if a proposal has not met the requirements of Clause 3.6. If there is justification for land that is subject to a permanent or long-term constraint being zoned urban, then it should be able to pass the tests in Clause 3.6 on its own merits. Essentially, urban rezoning of HPL always has a potential pathway under Clause 3.6, whereas rural lifestyle rezoning and some types of subdivision and land-use activities do not have pathways under 3.7, 3.8 and 3.9. Therefore, for these activities, Clause 3.10 is the only available pathway, which can only be used when the relevant territorial authority is satisfied the specific tests have been met.

Clause 3.10 contains an intentionally high bar in terms of evidence needed to justify the subdivision, use or development of HPL in a way that is not provided for in Clauses 3.7, 3.8 and 3.9. It should only be used in situations where the use of HPL for land-based primary production is not economically viable for at least 30 years because of a permanent or long-term constraint, and where the other relevant tests in Clause 3.10 are met.

Clause 3.10(1) – tests

Clause 3.10(1) sets out three tests that must be met for an activity not otherwise provided for under Clauses 3.7, 3.8 or 3.9 to occur on HPL. A proposal must meet **all parts of all three tests** to be allowed on HPL (although meeting these tests does not presume an application will be approved). The three tests are met where:

- (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and*
- (b) the subdivision, use, or development:*
 - (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and*
 - (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and*
 - (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and*
- (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

Test 3.10(1)(a) – permanent or long-term constraints

The first step is to demonstrate there is a permanent or long-term constraint on the land that will be present for at least 30 years. The types of constraints envisaged under this clause include the following.

- **Access to water** – water constraints are the most likely constraint to create a situation where the absence of water means that land-based primary production is no longer economically viable. It is anticipated that potential restrictions on water takes arising out of processes under the NPS-FM and National Environmental Standards for Freshwater 2020 (NES-F) may result in some HPL needing to be considered under Clause 3.10. It would need to be clear these constraints are indeed permanent and not short term (ie, not able to be resolved by improvements or reallocation of resources within the catchment within the next 30 years).
- **Contamination** – although less likely to occur compared to water constraints, it is possible a piece of HPL has been contaminated by a past land use to the point where it cannot be used for land-based primary production. This contamination would need to be severe, extensive and unable to be remediated to the point where land-based primary production could not take place. In the case of contamination, a territorial authority will also need to consider what is an appropriate alternative use for the land. Extensive contamination that makes land unsafe for land-based primary production will usually make the land unsuitable for residential use or other sensitive activities such as rest homes, childcare centres, healthcare or community facilities.
- **Natural hazards or climate change-related hazards** – note that works to mitigate natural hazards or climate change-related hazards are provided for under Clause 3.9(2)(b) if they are needed to address a high risk to health and safety, or under Clause 3.9(2)(c) if they are needed to manage significant risks from natural hazards under [section 6\(h\) of the RMA](#). Territorial authorities will need to consider whether there are any other uses for the land, as, if the natural hazard or climate change hazard risk is so severe it prevents the HPL from being used for land-based primary production, it is also likely to mean the land is unsuitable for other types of subdivision, use and development.
- **Non-reversible land fragmentation** – territorial authorities may consider that some areas of HPL in their district have become highly fragmented (eg, extensive amount of rural lifestyle-sized lots covering a particular area due to historic or operative subdivision rules) that there are no reasonably practicable options available to consolidate the land and return it to a productive use. Note that although the size of a landholding in which the HPL occurs is not of itself a determinant of a permanent or long-term constraint (Clause 3.10(4) — see discussion below), a territorial authority could look at a large area of fragmented HPL and determine whether the fragmentation is significant enough to pass the tests in Clause 3.10. If subdivision patterns across a territorial authority’s district indicate areas of extensive fragmentation, this could potentially be a permanent or long-term constraint. Councils have the discretion to decide whether non-reversible fragmentation is relevant to a resource consent application made under Clause 3.10.

Test 3.10(1)(a) – economic viability

The second step once a permanent or long-term constraint has been identified is to demonstrate that the constraint means that land-based primary production cannot be economically viable for at least 30 years. Applicants will need to demonstrate it is **the presence of the constraint** that makes land-based primary production economically unviable, not simply that the landowner thinks it is uneconomic to use the HPL productively. Using 30 years as a timeframe for ‘long term’ is intended to ensure it is a genuine long-term constraint that cannot be addressed – recognising the importance of protecting the finite HPL resource for current and future generations. This timeframe also ensures the assessment of constraints and economic viability can take account of potential changes in technology and markets that are reasonably foreseeable over this 30-year period.

Technical evidence supporting the presence of the constraint will be required in the first instance (eg, information on available water, contaminated land analysis). Secondly, economic analysis will generally need to be provided as part of the evidence base for the impact that the constraint is having on the economic viability of land-based primary production.

Note that the size of the landholding containing the HPL is not in itself a permanent or long-term constraint. This is discussed further in the 'Clause 3.10(4)' section below.

Test 3.10(1)(b) – avoidance and/or mitigation

The second test involves looking at the wider context for the potential loss of HPL within a district, and the potential impact the change of land use or subdivision might have on the ability of surrounding HPL to continue to be used for land-based primary production. It gives territorial authorities the ability to decline an application for subdivision, use or development which relies on the Clause 3.10 pathway if it will compromise the ability of other HPL in the district to be used for land-based primary production.

- Clause 3.10(1)(b)(i) is strong direction that a subdivision, land use or development must 'avoid' any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district. Whether the loss of productive capacity in a district is 'significant' is somewhat subjective and will need to be assessed by the territorial authority on a case-by-case basis. Generally, the larger the proposed loss of HPL in a spatial sense, the less likely a proposal will be to pass this test. Significant loss of HPL can also result from the cumulative effects of very small losses of HPL adding up over time, as opposed to just single subdivision, use or development resulting in a significant loss of HPL. In assessing the significant cumulative loss of HPL, territorial authorities should consider past subdivision patterns or approvals for non-productive land uses to determine if HPL in their district is at a tipping point for unacceptable cumulative loss of productive capacity of HPL. Refer to information requirements for assessment of productive capacity in relation to Clause 3.8 in the 'Overall productive capacity' section above.
- Clause 3.10(1)(b)(ii) is another strong 'avoid' test that focuses on avoiding the fragmentation of large and geographically cohesive areas of HPL. Again, this test is subjective and will depend largely on how HPL is spatially distributed in a district. For example, if the proposed loss of HPL is limited to a small area on the edge of an already isolated small area of HPL, then this test could be met. However, if the proposal involves subdivision, use or development in the middle of a large area of HPL, then this test may not be met. It will be up to the territorial authority to determine whether a proposal constitutes fragmentation of a large and geographically cohesive area of HPL based on the individual circumstances of the proposal.
- Clause 3.10(1)(b)(iii) focuses on reverse sensitivity and is the same reverse sensitivity test as proposed for both subdivisions and land use in Clauses 3.8(2)(b) and 3.9(3)(b), respectively. Refer to advice on how to consider reverse sensitivity effects in the guidance above for these clauses.

Test 3.10(1)(c) – benefits outweighing costs

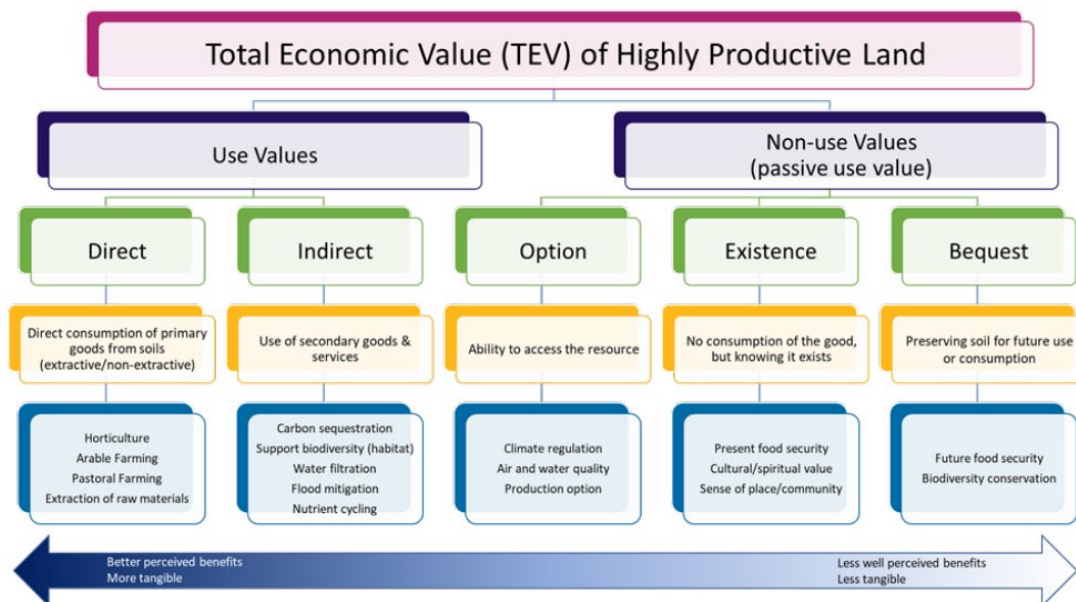
The third test is intended to shift the assessment of whether or not HPL can be used for a non-productive purpose away from a purely economic assessment, towards a more robust consideration of the environmental, social, cultural and economic impacts of a proposal. Clause 3.10(1)(c) directs territorial authorities to only allow HPL to be subdivided, developed or used in a manner not provided for by Clauses 3.7, 3.8 or 3.9 if they are satisfied that:

...the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

Examples provided by territorial authorities during the development of the NPS-HPL highlighted the difficulties in assessing the benefits and costs of converting HPL to a non-productive use, and the relative weight given to economic arguments that the highest and best use of the land was the use that generated the highest monetary return. This narrow focus on economic costs and benefits has a tendency to skew decision-making in favour of urban or rural lifestyle land uses, as landowners will naturally experience a higher return on their land if it can be used for those purposes, compared to land-based primary production. The purpose of this third test is to build on best practice decision-making and direct both applicants and territorial authorities to consider the environmental, social and cultural costs and benefits of a proposal, including tangible and intangible benefits.

The section 32 analysis for the NPS-HPL¹³ identified a range of benefits of retaining HPL for land-based primary production that are often intangible, and it is inappropriate to assign them a monetary value. This includes, for example, connection of a farming community to land, sense of identity, ecological functions of retaining land in productive use, and intergenerational benefits such as future food security, and the value of keeping HPL available for land-based primary production. The range of benefits and costs discussed in the NPS-HPL section 32 analysis may provide a good starting point for considering an application under Clause 3.10(1)(c). Some of the tangible and intangible benefits associated with retention of HPL are covered in figure 2.

Figure 2: Total economic value of HPL



Source: CBA of NPS-HPL prepared by Market Economics

Note that, to pass this test, the benefits of the subdivision, use or development must outweigh the costs when considered over the long term (at least 30 years). As with any weighting

¹³ Above, n Error! Bookmark not defined..

exercise, territorial authorities will be required to consider each proposal on a case-by-case basis using best practice methodologies aligned with section 32 evaluations.

Clause 3.10(2) – assessing reasonably practicable options

The second part of the Clause 3.10 assessment is a consideration of reasonably practicable options that could result in the HPL being retained for land-based primary production use. The purpose of this exercise is to require an applicant to:

- demonstrate they have considered alternatives for continuing land-based primary production on their HPL
- provide relevant evidence as to why these alternative options were not reasonably practicable.

The list of potential options in Clause 3.10(2) is deliberately non-exhaustive, as individual situations nationally may warrant consideration of other options not on this list. However, the list of options in Clause 3.10(2) may be a useful starting point for an assessment. [Table 3](#) provides some examples of solutions to retain HPL for land-based primary production,

Table 3: Examples of reasonably practicable options under Clause 3.10(2)

Subclause of 3.10(2)	Example
(a) alternate forms of land-based primary production	As per Clause 3.10(3)(c), the future productive potential of highly productive land must be considered, and this should not be limited to past or present uses.
(b) improved land-management strategies	Should an existing form of primary production be found to be unviable due to permanent or long-term constraints, this subclause requires consideration of the economic viability of alternative forms of primary production. For example, should reduced access to water result in an area of HPL no longer being considered economically viable for its continued use in dairy farming, consideration should be given to alternative pastoral, arable or horticultural uses that may be economically viable within the water access constraints.
(c) alternative production strategies	<p>An alternative production strategy should be considered in cases where conventional (or regenerative) primary production practices (to the region) are no longer profitable in the long term.</p> <p>A combination of improved land-management strategy with an alternative productive strategy may typically involve:</p> <ul style="list-style-type: none"> • investment in methodology improvement • alternative approaches from advancements in agricultural technology • diversification of use • or adopting new methods that improve the productivity of the landowner’s existing primary sector operations. <p>Some examples are:</p> <ul style="list-style-type: none"> • increasing the diversity of pasture species • grazing management, such as a rotational grazing plan • planting of perennials over single winter crops. <p>Other considerations may include the investment of technology to reduce manual labour, in cases where the uncertainty within the labour market have resulted in the unviability of primary production. Landowners are encouraged to consider alternative production strategies so they are prepared for future challenges. These include climate change adaptation, managing disruptions to supply chains, and responding to changing consumer preferences.</p>

(d) water efficiency or storage methods	Availability of water is anticipated to be one of the key constraints that may make land-based primary production economically unviable. This sub-clause requires consideration of whether alternative options for more efficient water usage or storage have been explored, such as developing systems that use significantly less water – eg, drip irrigation, using less water-intensive crops or products, so that what water is available can be used efficiently. Additionally, for some properties with water permits, there may be the option of constructing storage and taking water at generally higher winter flows for use during the summer.
(e) reallocation or transfer of water and nutrient allocations	For properties that are mainly limited by water and/or nutrient restrictions, this clause requires an assessment on whether those restrictions can be managed or mitigated. For example, depending on the region and specific rules in place, it may be possible to seek a transfer of a water permit or part of a nutrient load to the property from areas of land that have excesses available (eg, a farm converting to a forest may be able to transfer nutrients and water takes to elsewhere in the catchment). Other options include joining schemes or groups that enable water or nutrients to be shared between participants, for example irrigation schemes or water and nutrient user groups. While these options may come at a cost, we expect them to be seriously considered.
(f) boundary adjustments (including amalgamations)	As per Clause 3.10(4), discussed below, the size and shape of land parcels is not in of itself a permanent or long-term constraint. However, it is recognised that the legal configuration of land parcels can be a contributing factor to a constraint. For example, it may be more difficult to adapt to an alternative form of land-based primary production to make better use of a water resource if the land parcel is undersized for that activity. Rearranging legal boundaries, either through boundary adjustments or amalgamation of land parcels, should be considered as an alternative to losing more HPL to unproductive uses.
(g) lease arrangements	Another option to altering legal boundaries between land parcels, as discussed in respect of subclause (f) above, is investigating whether a piece of HPL can be leased so that it becomes part of a wider land-based primary production operation. It is not essential that a piece of leased land be physically adjoining a land-based primary production activity on another site for a leasing arrangement to work, as many farming operations can operate on multiple, physically separated land parcels across a district (although physical proximity can help with making operations more efficient).

Clause 3.10(3) – cost-benefit analysis

Clause 3.10(3) addresses several status quo arguments that are typically used to justify the conversion of HPL to unproductive land uses. The clause provides direction on how to complete the evaluation of reasonably practicable options under Clause 3.10(2), as follows.

- (3) *Any evaluation under subclause (2) of reasonably practicable options:*
- (a) *must not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production; and*
 - (b) *must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs; and*
 - (c) *must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.*

Clause 3.10(3)(a) removes the ability for an applicant to use the potential economic benefit of using the HPL for an activity other than land-based primary production as an argument for

converting it to a non-productive use. Historically, there have been examples of cost-benefit analysis reports placing more weight on the economic benefits of other land uses (rural residential subdivision, residential housing, business land, etc) over the benefits of retaining the land for land-based primary production.

HPL will always be more valuable in monetary terms when converted to an urban or rural residential use, particularly in the short term, compared to being retained for land-based primary production. The purpose of Clause 3.10(3) is to explicitly remove this argument from consideration of the merits of various, reasonably practicable options.

Clause 3.10(3)(b) requires specific consideration of the loss that the HPL would have on the landholding in which that HPL is located. This is in response to arguments that the loss of a small portion of HPL does not impact on what the balance of the property can be used for. In the wider context of a Clause 3.10 assessment (where the core argument is that there is a permanent or long-term constraint that makes the use of HPL for land-based primary production economically unviable), the loss of a small portion of HPL may exacerbate a constraint on the balance of the landholding by reducing the size of the land parcel. This should be factored into the wider assessment of reasonably practicable alternatives.

Clause 3.10(3)(c) aims to shift the discussion away from the previous or current use of an area of HPL and move it towards the potential use of the HPL. Under the status quo, arguments for using HPL for non-productive purposes, and arguments around the economic viability of a land-based primary production activity, often centre around the ability of a current landowner to make that land productive. Economic analysis often focuses on the cost of new technology, or the capital investment needed in the operation to make it economically viable, and argues that it is beyond the means of the current landowner to afford to make those changes. However, a lack of resources and/or willingness from the current landowner to adapt the land-based primary production activity does not mean that another owner with different resources and/or willingness to invest in new technology would not be able to make the operation economically viable. It also does not mean the HPL itself no longer has characteristics that make it productive. The purpose of Clause 3.10(3)(c) is to focus on future potential of the HPL and whether or not the reasonably practicable options considered as part of Clause 3.10(2) could enable the HPL to remain in use by land-based primary production.

Clause 3.10(4) – size is not a determinant

Clause 3.10(4) makes it clear that “the size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent or long-term constraint.” This is important, as landowners will often use the size of their particular land parcel as a reason for why it cannot be used productively and why it should be allowed to be developed further. The legal arrangement of parcel boundaries does not make HPL inherently any less productive – the same soil, slope and climatic conditions exist regardless of where legal boundaries are placed. However, the existing pattern of land ownership on HPL is challenging, and it is acknowledged the more fragmented HPL is, the more difficult it is to find solutions to enable its use in land-based primary production (refer to the commentary on non-reversible fragmentation as a potential constraint above). However, there are multiple options available for either amalgamating land parcels or finding other ways to combine parcels that enables them to be used productively (and these options are required to be explored, as discussed in the 'Clause 3.10(2) – assessing reasonably practicable options' section above).

Relevance of NPS-HPL for considering rezoning highly productive land

The NPS-HPL will need to be considered for proposals to rezone land identified as HPL (under the [transitional definition](#) of HPL) from a rural or rural production zone to an 'urban' or rural lifestyle zone. This section provides guidance on plan changes that propose to rezone HPL to either an 'urban' (as defined in the NPS-HPL) or a rural lifestyle zone. Further advice on amendments to give effect to the NPS-HPL which may include rezoning and plan changes to amend provisions will be provided in Part 2 of the guide (available early 2023).

The NPS-HPL does not apply to council-initiated, or adopted, plan changes to rezone rural land to urban or rural lifestyle if they were notified before 17 October 2022 but where a decision has not yet been made. This is because these types of plan changes are excluded from the [transitional definition](#) of HPL (as discussed in more detail in the 'What is highly productive land (transitional definition)?' section above). The NPS-HPL will be relevant for all rezoning proposed plan changes on HPL after that date. The urban rezoning provisions apply equally to all types of plan changes – whether initiated by a council or lodged privately, and whether they use the responsive planning pathway under the NPS-UD or not. The NPS-HPL tests under Clause 3.6 are the same.

The various rezoning provisions (policies and implementation clauses) in the NPS-HPL are intended to work together to provide clear, coherent policy direction on when rezoning HPL to urban or rural lifestyle zoning may be appropriate to achieve the overall objective of the NPS. The NPS-HPL provides a more stringent 'avoid' approach for rural lifestyle zoning on HPL given this is an inefficient (and generally inappropriate) use of this finite resource. A more enabling 'restrict' approach provides for urban rezoning on HPL. This recognises the need for HPL to be used in some circumstances to provide sufficient development capacity for housing and business land while also ensuring a robust assessment of alternatives is undertaken before this occurs. This also recognises that urban rezoning typically provides significantly greater benefits than rural lifestyle zoning in terms of efficient use of land as it can minimise the loss of HPL by allowing for more intensive urban development on a smaller area of land.

Rezoning HPL to an urban zone

The NPS-HPL provides a pathway for urban rezoning on HPL to align with both the requirements in the NPS-UD and the RMA functions of all local authorities. In this way the NPS-HPL provides a pathway for councils to enable sufficient development capacity to meet demand for housing and business land in regions and districts. Policy 5 is the key policy relating to urban rezoning, which states:

The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

This requires local authorities to avoid rezoning HPL unless they follow the process set out in Clause 3.6 of the NPS-HPL (restricting urban rezoning of highly productive land). This means that urban rezoning should be avoided on HPL unless all tests in Clause 3.6 can be met.

Policy 5 and Clause 3.6 applies to urban rezoning; it does not apply to ‘urban development’ generally. Resource consents, designations or other processes for ‘urban development’ that do not involve rezoning are to be assessed under the provisions relating to the subdivision, use, and development of HPL (Clauses 3.8 and 3.9) as discussed above.

The zones that are considered to be ‘urban’ zones are defined in Clause 1.3 of the NPS-HPL and this includes nearly all the zones defined in Standard 8 (Zone Framework Standard) in the National Planning Standards. Note that:

- Rezoning of HPL to a Māori purpose zone is not covered by the NPS-HPL on the basis that this zone specifically provides for Māori aspirations for the development of their land.
- The reference to special purpose zone within the definition of ‘urban’ is intended to capture the standard special purpose zones listed in the Zone Framework Standard in the National Planning Standards. It is not intended to capture bespoke special purpose zones that may be more rural in nature when considering the ‘nearest equivalent zone’.
- Rezoning of HPL to a natural open space zone is not covered by the NPS-HPL as land is usually zoned natural open space due to the presence of a natural hazard, or because the land is part of a coastal or riparian margin. Natural open space zones may also be suitable for use as parks. However, a natural open space zoning does not result in the permanent or irreversible loss of HPL for land-based primary production.

Relationship with the National Policy Statement for Urban Development 2020

Regional councils and territorial authorities are required to give effect to both the NPS-HPL and the NPS-UD as relevant through plan change processes.¹⁴ Proposed plan changes to rezone HPL to an urban zone are where the NPS-HPL and NPS-UD directly interact. The wording of Clause 3.6 of the NPS-HPL has been drafted specifically with this interaction in mind — it enables territorial authorities to implement the NPS-HPL urban rezoning provisions to effectively fulfil their obligation to provide sufficient development capacity to meet demand for housing and business land under the NPS-UD.

The NPS-HPL also deliberately uses wording and terms that are consistent with those used in the NPS-UD (eg, sufficient development capacity, feasible, well-functioning urban environment), to ensure consistent terminology and interpretation across both national direction instruments. Clause 1.3(3) of the NPS-HPL confirms that terms defined in the NPS-UD have the same definition in the NPS-UD unless otherwise specified.

Additionally, Policy 2 and Clause 3.2 of the NPS-HPL requires that HPL is managed in an integrated way that considers the interactions with urban development. This encourages local authorities and developers to consider the relationship between the NPS-HPL and the NPS-UD in an integrated and effective manner to enable outcomes that best achieve the objectives and requirements of each national direction instrument.

¹⁴ Noting that the NPS-UD does not apply if a district does not have an ‘urban environment’ (as defined in the NPS-UD).

Sufficient development capacity

The NPS-HPL enables rezoning of HPL to an urban zone (provided certain tests can be met) to enable local authorities to provide ‘sufficient development capacity’ to meet demand for housing and business land to give effect to the NPS-UD. This also aligns with the general function of regional councils and territorial authorities under the RMA to provide sufficient development capacity to meet demand for housing and business land (section 30(1)(ba) and section 31(1)(aa) of the RMA).

Part 3, subpart 1 (providing development capacity) of the NPS-UD has specific requirements to determine whether there is “sufficient development capacity” to meet demand for housing and business land. Those provisions should be referred to when interpreting Clause 3.6(1)(a) of the NPS-HPL which applies to tier 1 and tier 2 local authorities. The use of the same term in the NPS-HPL is intended to provide alignment with the NPS-UD.

Well-functioning urban environment

The use of the term ‘well-functioning urban environment’ is another example of consistent terminology between the NPS-HPL and the NPS-UD. It is used to clearly incorporate the considerations of Policy 1 of the NPS-UD into any decision on an urban rezoning proposal on HPL by a tier 1 and 2 local authority. Policy 1 of the NPS-UD requires planning decisions to contribute to well-functioning urban environments, which are defined as:

...urban environments that, as a minimum:

(a) have or enable a variety of homes that:

(i) meet the needs, in terms of type, price, and location, of different households; and

(ii) enable Māori to express their cultural traditions and norms; and

(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) support reductions in greenhouse gas emissions; and

(f) are resilient to the likely current and future effects of climate change.

Using the term ‘well-functioning urban environment’ in Clause 3.6(1)(b) when assessing reasonably practicable and feasible options makes it clear that all options should result in good urban outcomes where the plan change contributes to, or achieves, a well-functioning urban environment. This is particularly relevant when considering alternative locations for urban rezoning which are not on HPL but are further away from existing urban environments. For example, it may be possible to avoid HPL further away from the urban edge but this option may not achieve a well-functioning urban environment when considering factors such as transport links, provision of infrastructure, accessibility and so on.

The requirement for an urban rezoning proposal to achieve a well-functioning urban environment should also be considered in the context of the wider 'urban environment' it is located within. An urban rezoning proposal does not have to meet all the requirements listed in Policy 1 of the NPS-UD to be considered a well-functioning urban environment in its own right, but it should contribute to meeting requirements as appropriate to the specific urban rezoning proposal and location.

Clause 3.6(1) – when urban rezoning can occur on HPL for tier 1 and 2 local authorities

Clause 3.6 of the NPS-HPL sets out slightly different processes for territorial authorities considering urban rezoning on HPL depending on what 'tier' they are as defined in the NPS-UD. Tier 1 and 2 local authorities have a particular pathway for urban rezoning of HPL because of their requirement to prepare a Housing and Business Development Capacity Assessment (HBA) under the NPS-UD. These are also the larger urban centres with generally more pressure for urban growth and expansion onto HPL. Clause 3.6(1) describes the three requirements that must be met before urban rezoning of HPL can occur within the district of a tier 1 or 2 local authority.

Clause 3.6(1)(a) – sufficient development capacity

Clause 3.6(1)(a) requires that a tier 1 or 2 local authority may only allow urban rezoning of HPL if (**emphasis added**):

*the urban rezoning is **required to provide sufficient development capacity** to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020.*

As noted above, 'sufficient development capacity' is defined in Part 3, subpart 1 of the NPS-UD. The intention of this test is that rezoning HPL to an urban zone can only be considered if it is 'required' to provide sufficient development capacity to meet demand for housing and business land (as assessed in a HBA for tier 1 and 2 local authorities). Where there is already sufficient development capacity to meet demand for housing and business land within the district, Clause 3.6(a) is not met and urban rezoning on HPL cannot occur.

The intent is the test could support the rezoning of HPL to an urban zone if needed to provide for short term (within next 3 years) and/or medium term (3–10 years) sufficient development capacity as this is required to be zoned for housing and business land for it to be 'plan-enabled' (refer Clause 3.4 of the NPS-UD). Rezoning HPL to an urban zone to provide for long-term development capacity (10–30 years) would not meet this test. This is to avoid the premature loss of HPL to urban rezoning and ensure the maximum amount of HPL remains available for land-based primary production until it is actually needed to be rezoned to provide sufficient development capacity.

Clause 3.6(1)(b) – no other reasonably practicable and feasible options

Clause 3.6(1)(b) is intended to ensure there is a robust assessment of reasonably practicable, alternative options for providing the required development capacity before urban rezoning can occur on HPL. It provides specific direction on how to assess reasonably practicable options for providing the required development capacity which is clarified further in Clause 3.6(2). This

makes is clear the assessment of ‘reasonably practicable options’ needs to focus on options that:

1. are feasible (as defined in the NPS-UD)
2. are within the same locality and market
3. achieve a well-functioning urban environment.

These three components are heavily interrelated and should be considered together ‘in the round’ when identifying and assessing reasonably practicable options for providing sufficient development capacity.

A key point to note is that the assessment of options must be **both** ‘reasonably practicable’ (discussed further below) and ‘feasible’. The reference to ‘feasible’ is another example of consistent terminology with the NPS-UD where ‘feasible’ is defined as follows:

Feasible means:

for the short term or medium term, commercially viable to a developer based on the current relationship between costs and revenue

for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship.

The next part of the test is intended to ensure the assessment of reasonably practicable and feasible options focuses on providing development capacity ‘within the same locality and market’. This is discussed further in the ‘Clause 3.6(3) – same locality and market’ section below. The last part of the test on Clause 3.6(1)(b) makes it clear all options must still achieve ‘a well-functioning urban environment’ as defined in the NPS-UD (outlined above).

Clause 3.6(1)(c) – cost-benefit assessment

Clause 3.6(1)(c) requires an assessment of the benefits and costs of rezoning. It is intended to ensure a more robust assessment of benefits and costs across the four wellbeings (environment, economic, social, cultural) is undertaken for all urban rezoning proposals on HPL and that this specifically considers long-term benefits and costs and tangible and intangible values.

This assessment can be undertaken as part of an evaluation under [section 32 of the RMA](#), or it can be a separate assessment specifically focused on meeting the tests of Clause 3.6. Wherever the assessment is completed, the evaluation should be cohesive and comprehensive. Ideally it will be part of a single document, rather than spread across a piecemeal range of documents.

The intent of Clause 3.6(1)(c) is to build on best practice in terms of section 32 evaluations but also to emphasise that, in the case of urban rezoning of HPL, there is an even greater need to look beyond the short-term economic benefits of any urban rezoning proposal and to consider the full spectrum of environmental, economic, social and cultural benefits and costs. A robust section 32 assessment that covered both the section 32 tests and the requirements of Clause 3.6(1)(c) is recommended as best practice.

The references in Clause 3.6(1)(c) to the “loss of HPL for land-based primary production” and “tangible and intangible values” require a consideration of the values of HPL that may be lost if an urban rezoning proposal is approved. This consideration should go beyond the economic

value of transitioning from rural to urban use. Intangible values of HPL that should be considered as part of this assessment include:

- its value to future generations
- its finite characteristics and limited supply
- its ability to support community resilience
- the limited ability of other land to produce certain products.

The section 32 evaluation report for the NPS-HPL identified a range of benefits of retaining HPL for land-based primary production that are often intangible and where it is inappropriate to assign them a monetary value. The range of benefits and costs discussed in the NPS-HPL section 32 evaluation report include those shown in [figure 2](#) of this report, which may provide a good starting point for considering a cost-benefit assessment for an urban rezoning proposal on HPL to meet the requirements of Clause 3.6(1)(c).

Clause 3.6(2) – range of reasonably practicable options

Clause 3.6(2) provides more specific direction on how a territorial authority must consider a range of reasonably practicable options to provide the required development capacity to meet the requirements of Clause 3.6(1)(b). Clause 3.6(2) provides a non-exhaustive list of options that should be considered (as a minimum) before pursuing urban rezoning of HPL. As the list is not exhaustive, other reasonably practicable and feasible options may also be considered as appropriate.

Clause 3.6(2) needs to be read with Clause 3.6(1)(b) in terms of what a reasonably practicable option needs to achieve. For example, an option that does not serve the same locality and market that is proposed for development (for example, a completely different part of the district or within a completely different and distinct part of a large urban city) is not a reasonably practicable option that needs to be assessed. Additionally, the reasonably practicable options assessed must be 'feasible' (ie, commercially viable for developers as defined in the NPS-UD). Options that are not commercially viable for developers do not need to be assessed and likewise a territorial authority cannot require developers to assess options that are not commercially viable. This may be due to a range of reasons, for example, infrastructure limitations, development constraints, or the inability to acquire other land.

Finally, while Clause 3.6(2) sets out a minimum list of options that must be assessed, the requirement to assess 'reasonably practicable' options does not require an exhaustive assessment of all possible options. The use of the words 'reasonably practicable option' is intended to align with the assessment of reasonably practicable options in section 32(1)(b)(i) and ensure a pragmatic assessment of realistic and achievable options to provide the required development capacity is completed. It is also important to recognise there are often limitations on the ability to undertake a detailed assessment of other reasonably practicable options. For example, other options may involve constraints that are not readily apparent or cannot be easily identified by territorial authorities or private plan change applicants as part of the scoping and site selection process.

In the case of private plan changes proposing urban rezoning of HPL, there are often more limitations on the reasonably practicable options that can be assessed – particularly as it is often not possible for a private landowner or developer to acquire a range of other landholdings for development. However, consideration of the listed options in Clause 3.6(2) and any other reasonably practicable options is still required for private plan changes to meet

the requirements of Clause 3.6(1)(b). Other key factors to consider when assessing reasonably practicable options for providing the sufficient development capacity include:

- the extent of HPL around the existing urban environment
- options for providing development capacity in surrounding suburbs/similar small settlements nearby
- infrastructure servicing and constraints
- the presence of other constraints, such as natural hazards and sensitive and valued natural environments to be protected.

Clause 3.6(2)(a) – greater intensification in existing urban areas

Clause 3.6(2)(a) requires the consideration of whether greater intensification of existing urban areas can provide sufficient development capacity instead of urban rezoning on HPL. This is part of the requirement to demonstrate there are no other reasonably practicable options. In this context, 'greater intensification' could involve 'up-zoning' existing urban zones, removal or reduction of development controls (such as minimum site sizes or recession planes), or a combination of such measures.

The relevance of this potential option will vary depending on the specific urban rezoning proposal and the locality and market it is intended to serve. For some urban rezoning proposals (eg, the rezoning of HPL to a heavy or light industrial zone), intensification is highly unlikely to be a practicable and feasible option to provide the development capacity. This is due to the nature of the activities the zone encourages (ie, industrial activities may find it more challenging to 'intensify' in the same way as residential or some business activities as the space they require usually serves an operational purpose). Greater intensification is likely to be most relevant when the urban rezoning proposal is intended to provide sufficient development capacity to meet demand for housing. In these cases, it is important to consider relevant constraints on intensification, such as a lack of infrastructure, and legal constraints such as covenants. It is also necessary to consider market demand for more intensive residential housing and the likelihood of greater intensification being 'feasible and reasonably expected to be realised' (as defined in Clause 3.26 of the NPS-UD).

The [Resource Management \(Enabling Housing Supply and Other Matters\) Amendment Act 2021](#) and the subsequent introduction of the Medium Density Residential Standards (MDRS) are likely to have resulted in a significant increase in theoretical development capacity in tier 1 and specified tier 2 urban environments across Aotearoa New Zealand. This may have an impact on previously published HBA, or HBA in development, and should be factored into any assessment of reasonably practicable options to provide the required development capacity through greater intensification under Clause 3.6(2)(a).

Clause 3.6(2)(b) – urban rezoning of land that is not HPL

The purpose of Clause 3.6(2)(b) is to ensure urban rezoning is directed away from HPL as a priority, and this is front of mind when considering reasonably practicable options for providing the required development capacity. Whether it is practicable, feasible and appropriate for non-HPL land to be rezoned urban instead of HPL will depend on a range of factors that will need to be assessed on a case-by-case basis. Relevant factors that may need to be assessed include:

- the amount of development capacity that is needed

- the relative locations of HPL and non-HPL land, particularly compared to the broader locality and market intended to be served by the urban rezoning proposal
- infrastructure availability and capacity
- the range of services and considerations needed to achieve a well-functioning urban environment (eg, a contiguous urban form with good accessibility).

Where an urban environment has a range of feasible options for greenfield development, the intent is that Clause 3.6(2)(b) will result in urban rezoning being directed to non-HPL land as the preferred option. For local authorities planning for future urban growth, the NPS-HPL now requires urban rezoning to be directed to non-HPL land unless this is not practicable, feasible or appropriate in terms of the relevant considerations in Clause 3.6(1). For private plan changes, territorial authorities will need to ensure there is a robust assessment of reasonably practicable options for providing the required development capacity on non-HPL land and this assessment should not be limited to the preferred site for the developer.

For all territorial authority urban rezoning proposals and private plan changes, a key consideration will be whether an option for urban rezoning on non-HPL will achieve a well-functioning urban environment. If urban rezoning of non-HPL would result in a disconnected or poorly functioning urban environment, then this could be justification to discount this as a reasonably practicable option under Clause 3.6(1)(b) and Clause 3.6(2)(b).

Clause 3.6(2)(c) – rezoning different HPL that has a relatively lower productive capacity

Clause 3.6(2)(c) requires consideration of the different options for urban rezoning on HPL with relatively lower ‘productive capacity’ (as defined in the NPS-HPL and discussed above). For example, this will require an urban rezoning proposal on LUC class 1 land to consider whether urban rezoning on LUC class 2 or 3 is a reasonably practicable and feasible option to provide sufficient development capacity and achieve a well-functioning urban environment. This clause recognises there are a number of urban environments that are completely surrounded by LUC class 1, 2 or 3 land, so any future urban growth is going to result in some loss of HPL. In these situations, the intent of Clause 3.6(2)(c) is that urban rezoning should occur on the HPL with lower productive capacity potential as a priority unless that is not a feasible option or would result in a poorly functioning urban environment.

When considering the relative productive capacity of different parcels of HPL, the intent is to focus the inherent productive capacity of the land, irrespective of its current use or the ability of current landowners to use that HPL productively for land-based primary production. Conducting land productivity assessments for various land parcels (discussed in the ‘Land use and development on highly productive land’ section) may assist with determining relative productive capacity of different urban rezoning options on HPL. If the LUC classification of the urban rezoning options is the same or similar (eg, an urban environment surrounded by LUC 3 land), further information and site-specific assessments may be needed to inform an assessment of the productive capacity of the land under Clause 3.6(2)(c).

Clause 3.6(3) – same locality and market

Clause 3.6(3) provides additional guidance to applicants and decision-makers on how to determine whether reasonably practicable options are providing development capacity within the same locality and market as the proposed urban rezoning. This is an important part of the

test under Clause 3.6(1)(b) as it is a qualifier for options considered as alternatives to proposed urban rezoning of HPL. The assessment of reasonably practicable options needs to be based on a ‘like for like’ assessment in terms of development capacity in a location where it is needed, and to the market that is experiencing the demand.

Locality

Clause 3.6(3)(a) clarifies that sufficient development capacity is deemed to be in the same locality as a proposed urban rezoning area if it:

...is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020.

A locality is an urban area (or part of an urban area, or a collection of urban settlements/areas in close proximity) with identifiable demand and supply characteristics for the purpose of assessing demand for housing and the sufficiency of existing development capacity in that locality within an HBA. The intent of Clause 3.6(3)(a) is to ensure options to provide for the required development capacity are located as close as possible to where it is needed, to avoid situations where sufficient development capacity can be provided on non-HPL, but that capacity is not in the right locality to meet the identified demand. This outcome would undermine the provisions of the NPS-UD, which are intended to ensure that sufficient development capacity is available in the localities where it is needed, and that urban rezoning results in a well-functioning urban environment (which inherently involves enabling urban development in the locations where it is needed).

The specification that an urban rezoning proposal is considered to be in the same locality if it is “in or close to a location where demand for additional development capacity has been identified” through an HBA will require an interpretation of any published HBA and the assessment that underpinned it to understand where demand for housing or business land is anticipated. For example, an HBA may cover a whole metropolitan region that comprises multiple districts, each with multiple urban areas. If the HBA identifies different demand characteristics for each of the urban areas, that may be sufficient to determine the locality where additional development capacity is required.

However, a locality should not simply be defined as the entire district administered by the territorial authority (or authorities) that prepared the Future Development Strategy. In a scenario where the territorial authority assessed demand and supply as a whole within the district (and provided no useful distinctions as to locations of demand within the district), consideration of locality is intended to be finer grained than a district as a whole and will require further analysis to understand where the key demand areas for urban growth are. Conversely, not every suburb or settlement will be its own locality – for instance a cluster of similar suburbs, or a group of settlements that cater to the same market may be a single locality. See Market, below.

If there is no guidance or information in the HBA on how development capacity is broken down spatially across the district, it may be appropriate to consider what assessment was undertaken for the Future Development Strategy under Clause 3.13(2)(a) of the NPS-UD, which requires the spatial identification of areas that will require development capacity and refers to Clauses 3.2 and 3.3 of the NPS-UD, and which the HBA is required to inform.

Some HBAs assess capacity and/or demand based on existing methods for spatially identifying small parts of a district, such as neighbourhoods or Stats NZ areas like SA1 or SA2 boundaries.

In these cases, supply and demand may be assessed by the HBA at different scales. In these situations, it is important to consider the ‘within or close to a location’ component within in Clause 3.6(3)(a). Some localities may have high demand but have no or limited options to provide development capacity ‘within’ that location.

Market

Clause 3.6(3)(b) clarifies that sufficient development capacity is deemed to be within the same market as a proposed urban rezoning area if it:

...is for a market for the types of dwelling or business land that [are] in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).

In this context, a development ‘market’ refers to the housing typologies or types of business land that have been identified in the HBA – for example, a single-house typology or heavy industrial land.

Generally, an urban rezoning proposal on HPL considered under Clause 3.6(1)(b) with respect to ‘market’ should serve the market(s) which are experiencing demand, and which do not have sufficient development capacity, as identified in an HBA.

It is not necessary to apply each component of demand rigidly, particularly when there are substitution effects between different elements of demand (eg, between different types of dwellings, such as a three-bedroom terraced house being a substitute, or partial substitute, for a three-bedroom, stand-alone house). It may also be appropriate to provide some capacity for development types for which there is low or no demand, if this is necessary to service the proposed area for rezoning and important to achieving a well-functioning urban environment (eg, a neighbourhood centre zone associated with a predominantly residential development, or open space and active recreation zones).

Clause 3.6(4) – territorial authorities that are not tier 1 or tier 2

Clause 3.6(4) provides a slightly different pathway for urban rezoning in the districts of territorial authorities that are not a tier 1 and 2 local authority (as defined in the NPS-UD). This recognises these territorial authorities are not subject to the same requirements in the NPS-UD (eg, to prepare a HBA and Future Development Strategy), but are still required to provide sufficient development capacity to meet demand for housing and business land under section 30(1)(ba) and section 31(1)(aa) of the RMA. Clause 3.6(4) applies to all other territorial authorities that are not tier 1 or 2, including those that are not tier 3 under the NPS-UD (ie, districts that do not contain a ‘urban environment’ as defined in the NPS-UD). This ensures there are still robust tests for urban rezoning on HPL regardless of the size of the urban area.

The intent of Clause 3.6(4) is consistent with the tests for urban zoning for tier 1 and 2 local authorities outlined above. It outlines three tests that must be met before a territorial authority may allow urban rezoning on HPL:

1. it is required to provide sufficient development capacity to meet demand for housing and business land
2. there are no other reasonably practicable and feasible options for providing the required development capacity

3. a robust assessment of benefits and costs is undertaken that demonstrates the benefits of the rezoning outweigh the costs associated with the loss of HPL.

The key differences in the tests for urban rezoning in Clause 3.6(4) are as follows:

- there is no reference to the NPS-UD (even though this applies to tier 3 local authorities and all local authorities with urban environments)
- there is no reference to 'same locality and market' as those terms are specific to an HBA under the NPS-UD
- there is no reference to the urban rezoning achieving a 'well-functioning urban environment'
- there is no list of options that must be assessed to demonstrate there are no other reasonably practicable and feasible options for providing the required development capacity.

Clause 3.6(5) – loss of HPL to be minimised

Clause 3.6(5) applies to all territorial authorities considering proposals for urban rezoning of HPL. The purpose of Clause 3.6(5) is to minimise the amount of HPL lost to urban rezoning and to ensure the loss of HPL is the minimum necessary to provide the required development capacity and achieve a well-functioning urban environment. In practice, this clause should inform how urban rezoning proposals are designed and assessed and to ensure any urban rezoning of HPL is an efficient use of that land (eg, it provides a high yield of housing to meet the demand for housing, rather than lower density residential development which depletes more HPL). The loss of HPL should only be considered if required to provide enough development capacity. The minimum amount of HPL should be lost to provide that capacity. Acknowledging that the NPSUD refers to providing **at least** sufficient development capacity, significant additional development capacity (beyond that is required for the next 10 years) should not generally be provided on HPL.

Comparisons against other reasonably practicable and feasible options may be a way to demonstrate that the loss of HPL is minimised. For example, an urban rezoning proposal may minimise the loss of HPL by being predominantly on non-HPL land and some smaller areas of LUC class 3 land, while deliberately avoiding larger areas of LUC 1 and 2 land. The design of an urban rezoning proposal can also minimise the loss of HPL and ensure any loss of HPL is an efficient use of this land. For example, this may involve efficient location of infrastructure, key roading connections, and/or a structure plan design that ensures a high yield for the development to minimise the loss of HPL while providing the required development capacity and achieving a well-functioning urban environment.

Avoiding rezoning HPL for rural lifestyle

The NPS-HPL contains strong direction through Policy 6 and Clause 3.7 that rural lifestyle zoning of HPL should be avoided. The rationale is that it is inappropriate to:

- use Aotearoa New Zealand's most productive land for low-density housing, and
- prevent future productive use of this land through allowing fragmented ownership and the construction of dwellings and hardstand areas that have the potential to cause reverse sensitivity effects on land-based primary production activities.

For more detail see section 32 of the evaluation report for the NPS-HPL.

The expectation is that local authorities will not seek to rezone HPL to a rural lifestyle zone and will decline private plan change applications for rural lifestyle zones on HPL in accordance with Policy 6 and Clause 3.7. The only exception to this is if the land is subject to a permanent or long-term constraint that means the use of the HPL for land-based primary production is not able to be economically viable for at least 30 years. In such a scenario, there may be a pathway under Clause 3.10 to rezone the land to a rural lifestyle zone.

Further guidance on the level of information required to support a rural lifestyle rezoning application under Clause 3.10 is contained in the section on ‘Clause 3.10 — exemptions for HPL subject to permanent or long-term constraints’, above.

Integrated management

Policy 2 of the NPS-HPL requires that:

The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.

Clause 3.2 – integrated management

Although the integrated management policy and clause are primarily aimed at regional councils and territorial authorities undertaking plan changes to give effect to the NPS-HPL, Clause 3.2 also contains direction that local authorities must “manage the effects of subdivision, use, and development of highly productive land, in an integrated way”, which has implications for resource consents and rezoning plan changes.

The most relevant subclause is likely to be Clause 3.2(1)(a), which requires consideration of how land-based primary production (including supporting activities) interact with freshwater management at a catchment level. This might be most relevant for proposals seeking to use Clause 3.10 as a pathway for development on the basis there is a permanent or long-term water availability constraint.

The remaining subclauses – Clauses 3.2(1)(b) and 3.2(1)(c) – are more strategic and will be most relevant for mapping and regional policy statement/district plan changes.

Tangata whenua involvement

Clause 3.3 – tangata whenua involvement

Clause 3.3 mainly applies when a local authority is seeking to give effect to the NPS-HPL through changes to regional policy statements and district plans, including any rezoning plan changes initiated by territorial authorities after the commencement of the NPS-HPL on 17 October 2022. Note that some territorial authorities may choose to rezone HPL to an urban zone using Clause 3.6 in advance of wider regionwide HPL mapping being completed.

Clause 3.3 is not intended to specifically direct tangata whenua involvement in resource consent applications relating to HPL unless their involvement has been specifically requested.

Further guidance on engagement with tangata whenua is available on the Local Government New Zealand website.¹⁵

Other clauses

The NPS-HPL contains a number of clauses with the primary purpose of directing future changes to regional policy statement and district plan provisions to give effect to the NPS-HPL. These clauses are:

- Clause 3.11 – continuation of existing activities
- Clause 3.12 – supporting appropriate productive use of highly productive land
- Clause 3.13 – managing reverse sensitivity and cumulative effects.

Further iterations of NPS-HPL guidance will provide more information on how these clauses inform the development of plan changes to amend regional policy statements and district plans to give effect to the NPS-HPL. They may also have some limited applications for resource consents and/or plan change processes from the date of commencement. For example, Clause 3.11 may be used by a decision-maker on a resource consent application to inform whether they should approve an application to upgrade (including potential expansion) of an existing activity that is already located on HPL.

¹⁵ Local Government New Zealand | Ko Tātou. June 2017. *Council-Māori Participation Arrangements: Information for councils and Māori when considering their arrangements to engage and work with each other*. <https://www.lgnz.co.nz/assets/Uploads/2dac054577/44335-LGNZ-Council-Maori-Participation-June-2017.pdf>

Glossary

Term	Description
FDS	Future Development Strategy
HBA	Housing and Business Development Capacity Assessment
HPL	Highly productive land
LUC	Land Use Capability
MDRS	Medium Density Residential Standards
NES-F	National Environmental Standards for Freshwater 2020
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-HPL	National Policy Statement for Highly Productive Land 2022
NPS-UD	National Policy Statement for Urban Development 2020
RMA	Resource Management Act 1991