

National Policy Statement for Highly Productive Land

Section 32 evaluation report under the Resource Management Act



Ministry for the
Environment
Manatū Mō Te Taiao

Ministry for Primary Industries
Manatū Ahu Matua



Te Kāwanatanga o Aotearoa
New Zealand Government

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Context

This report outlines the evaluation undertaken by the Ministry for the Environment and Ministry for Primary Industries (the Ministries) for the National Policy Statement for Highly Productive Land (NPS-HPL). It has been prepared in accordance with section 32 (s32) of the Resource Management Act 1991 (RMA) and should be read in conjunction with the provisions contained within this direction.

The report is structured in two parts as follows:

Part 1 – Introduction and planning context

Provides background to the National Policy Statement for Highly Productive Land and introduces:

- the purpose of the s32 evaluation
- the legislative requirements that underpin the evaluation
- the relevant statutory and policy context that has informed the development of this NPS.

Part 2 – Evaluation of the proposal

Contains an evaluation of the objectives and policies including:

- identifying and analysing the issues they intend to address
- assessing the scale and significance of the environmental, economic, social and cultural effects anticipated as a result of their introduction and implementation
- quantifying, where practicable, their associated benefits and costs
- assessing the appropriateness of the proposed objectives
- assessing the costs, benefits and the certainty and sufficiency of information to determine the effectiveness and efficiency of the proposed policies and whether they are the most appropriate way to achieve the objective(s) of the proposal.

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Executive summary

The overall focus of the National Policy Statement for Highly Productive Land (NPS-HPL) is to ensure that sufficient highly productive land (HPL) is available for primary production use, both now and for future generations.

The NPS-HPL will provide greater clarity for local government on how to manage Aotearoa New Zealand's most productive land by requiring local councils to identify, map and manage HPL within their region and district (see [appendix A](#)).

The core resource management issue the NPS-HPL seeks to address is the ongoing, incremental loss of HPL, primarily from urban rezoning and land fragmentation arising from rural lifestyle development. Under the NPS-HPL, HPL is primarily determined by the versatility of the land based on the LUC system. The NPS-HPL will require regional councils to spatially map large, geographically cohesive areas of predominately LUC 1–3 land within their region as HPL, with some discretion to include other classes of LUC land based on certain local factors.

The NPS-HPL seeks to improve the way HPL is managed under the RMA to ensure that HPL is available for use in 'land-based primary production'¹ for current and future generations. This is to be achieved by specific policies aimed at:

- ensuring the full range of values and benefits associated with HPL are recognised
- ensuring the identification and management of HPL is undertaken in an integrated way that considers the interactions with freshwater management and urban development
- avoiding fragmentation of HPL from subdivision and rural lifestyle development (unless specific tests, such as retaining the productive capacity of the subject HPL, are met)
- directing new housing development away from productive land where possible and protecting Aotearoa New Zealand's remaining HPL from rural lifestyle rezoning and 'other' specified forms in appropriate subdivision, use and development
- managing reverse sensitivity effects.

The NPS-HPL does not seek to provide absolute protection of HPL, nor does it specify that there should be no loss of HPL within a region or district. The NPS-HPL recognises the need for certain (non-productive) uses and developments to occur on HPL and provides for these in specified circumstances, either through rezoning or resource consents.

The NPS-HPL has been designed to ensure it aligns with the National Policy Statement for Freshwater Management 2020 and National Policy Statement on Urban Development 2020. It will provide for urban rezoning on HPL, but only if the community needs the land to meet demand for housing and/or business, and the alternatives are not feasible, and there are greater benefits from the rezoning.

The NPS-HPL provides strong policy direction that rural lifestyle development (either through rezoning land or through resource consent applications) should generally be avoided on HPL as

¹ Defined in the NPS-HPL as “**land-based primary production** means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land and includes those activities reasonably necessary to support land-based primary production produced on that land (such as packing sheds and equipment storage)”.

this land-use change reduces the availability and potential of HPL to be used for productive purposes. The intent is not to prevent this form of development entirely, but to direct it to less productive land so that HPL is not consumed by activities that do not efficiently use the soil resource and pose other issues (eg, reverse sensitivity).

The NPS-HPL enables a number of appropriate (non-productive) uses on HPL where these provide wider environmental, economic, social and cultural benefits (eg, indigenous biodiversity restoration, renewable electricity generation, new specified infrastructure and mineral or aggregate extraction). The NPS-HPL also provides flexibility to subdivide HPL where it can be demonstrated that the overall productive capacity of the land is retained.

During the development of this National Policy Statement (NPS), extensive testing has been undertaken on whether councils should be required to exclude LUC 1–3 land from being mapped as HPL where this land is not suitable for land-based primary production due to permanent or long-term constraints. After detailed consideration and testing with stakeholders through the Exposure Draft and subsequent engagement, it was determined that requiring this level of assessment at the mapping stage would be too litigious and would risk delaying the HPL maps from becoming operative.

Therefore, the NPS-HPL does provide a consenting pathway for areas of HPL should that land be proven to be subject to constraints on its use that mean it is not economically viable for land-based primary production. This pathway will allow permanent constraints to be assessed on a case-by-case basis, and the intent is this only occurs in exceptional circumstances where the applicant has met certain tests. This includes the following requirements:

- (a) the territorial authority must be satisfied it would not result in any significant loss of productive capacity of HPL in the district or the fragmentation of large and geographically cohesive areas of HPL
- (b) landowners seeking to use their HPL for a use other than land-based primary production through this pathway will be required to demonstrate that land-based primary production on the land is not 'economically viable' in the long term (for at least 30 years); and in doing so have considered a range of reasonably practicable options for addressing identified constraints, including:
 - i. alternate forms of land-based primary production
 - ii. improved land-management strategies
 - iii. alternative production strategies
 - iv. water efficiency or storage methods
 - v. reallocation or transfer of water and nutrient allocations
 - vi. boundary adjustments
 - vii. leasing arrangements.

The tests for allowing subdivision, use and development on HPL due to identified constraints on the land are intentionally strong to avoid undermining the intent of the entire NPS-HPL. These specifically exclude the potential economic benefit of using the HPL for purposes other than land-based primary production and will not allow the size of the parcel to be used by itself to demonstrate the land is uneconomically viable for primary production. A threshold for landowners that is too low would likely result in a continuation of the status quo and loss of HPL for future generations.

Providing this pathway avoids the risk of land being locked into land-based primary production where it cannot be used for this purpose. Providing a consenting pathway to consider permanent constraints is the most practicable approach relative to the alternative which is to consider permanent constraints at the mapping stage.

To address concerns about how permanent or long-term constraints are managed, an integrated management policy (Policy two) requires that “the identification and management of HPL is undertaken in an integrated way that considers the interactions with freshwater management and urban development”. This policy and the associated implementation clause (3.2) highlight the key interactions between HPL, urban development and freshwater management (as the most relevant interactions for the NPS-HPL) and will assist with identifying any trade-offs which will need to be considered as part of the plan-making process. This policy does not override councils’ obligation to implement all national direction equally, and this risk will be managed through guidance and implementation support.

The impacts of the NPS-HPL are expected to vary around the country based on a range of factors, including the nature of the HPL resource within each region, the pressures on that resource, and the nature of existing council provisions relating to HPL. In some areas, the provisions introduced by the NPS-HPL are similar to existing operative plan provisions and the impacts are expected to be relatively minor. In other areas, the NPS-HPL will introduce a stronger and more extensive level of protection for HPL than is currently in place. The NPS-HPL recognises that mapping of HPL and associated plan changes will require time and resources from councils and their communities.

Accordingly, the NPS-HPL includes an interim definition of HPL that will apply until region-wide mapping of HPL is made operative. Every local authority must give effect to the NPS-HPL on and from the commencement date. Once more detailed maps are made operative in a relevant regional policy statement (RPS), territorial councils will have two years to notify changes in a proposed district plan to give effect to this NPS. The exception to this timeframe is the inclusion of HPL maps in district plans. Once a RPS that includes maps of HPL becomes operative, each relevant territorial authority must identify the HPL in its district and must do so using maps that are exactly equivalent to those in the relevant RPS. These maps must be inserted into the district plan without using the Schedule 1 process within six months of the RPS maps becoming operative (relying on section 55(2) of the Resource Management Act 1991 (RMA) instead of Schedule 1).

The NPS-HPL seeks to avoid further constraining the use of specified Māori land and intends to provide greater flexibility for development to occur on specified Māori land compared to general land. The NPS-HPL provides for a range of activities on specified Māori land that includes but is not limited to residential and commercial activities. The definition of Māori land includes Māori customary and freehold land as defined in the Te Ture Whenua Māori Act 1993 as well as Māori reservations and reserves; and land that has been returned not via a settlement process but returned, for example, under the powers of the Waitangi Tribunal.

The NPS-HPL will affect the different priorities of iwi, hapū and whānau, including land being rezoned as urban, land being protected for its freshwater values, as well as opportunities for the development of specified Māori land. For these reasons, the NPS-HPL directs councils to actively involve tangata whenua (to the extent they wish to be involved) in giving effect to the NPS-HPL, in a way that is consistent with the requirements under the Resource Management Act (RMA) and Local Government Act 2002.

Part 1 – Introduction and planning context

Introduction

This report provides an evaluation of the proposed National Policy Statement for Highly Productive Land (NPS-HPL) in accordance with section 32 (s32) of the Resource Management Act 1991 (RMA). The NPS-HPL sets out objectives, policies and implementation requirements to protect highly productive land (HPL) for use in land-based primary production, both now and for future generations.

This s32 evaluation report:

- examines the appropriateness of the NPS-HPL objective to achieve the purpose of the RMA
- examines whether the NPS-HPL provisions² are the most appropriate to achieve the NPS-HPL objective by:
 - identifying other reasonably practicable options for achieving the NPS-HPL objective
 - assessing the efficiency and effectiveness of the provisions in achieving the NPS-HPL objective.

In addition, this s32 evaluation sets out the legal and statutory context for the NPS-HPL and the resource management issues the NPS-HPL seeks to address.

The NPS-HPL was developed in accordance with sections 46A(4) and 51(2) of the RMA. This process included public consultation on the proposed NPS-HPL³ from 14 August to 10 October 2019 and the release of the discussion document ‘Valuing highly productive land: a discussion document on a proposed national policy statement for highly productive land’.⁴ The public consultation phase for the NPS-HPL involved nationwide public and primary sector-focused meetings, workshop sessions with local authorities (councils), and regional hui with iwi/Māori. A total of 250 submissions were received on the proposed NPS-HPL (discussion document) from a wide range of stakeholders. Targeted engagement to test the workability of later drafts also occurred in October/November 2021 and April 2022.

[A report on submissions and recommended amendments to the proposed NPS-HPL](#) has been prepared in accordance with section 46A(4)(c) of the RMA, which should be read alongside this

² ‘Provisions’ in this evaluation refers to policies in Part 2 of the NPS-HPL, the specific requirements to implement the NPS-HPL in Part 3, and the transitional provisions in Part 4.

³ In this document, the ‘Proposed NPS-HPL’ refers to the proposed national policy statement released for public consultation in August 2019. The ‘NPS-HPL’ refers to the final version of the national policy statement as recommended to the Ministers for the Environment for gazetting.

⁴ <https://www.mpi.govt.nz/dmsdocument/36624-discussion-document-on-a-proposed-national-policy-statement-for-highly-productive-land>

evaluation. A Cost Benefit Analysis (CBA) for the NPS-HPL has also been prepared by Market Economics⁵ and has informed this s32 evaluation.

Requirements under section 32

The overarching purpose of s32 of the RMA is to ensure all proposed statements, standards (including national planning standards), regulations, plans, or changes are robust, evidence-based and represent the best means to achieve the purpose of the RMA.

This report provides the rationale for the proposed objectives/policies contained in the NPS-HPL and should be read in conjunction with this direction.

In carrying out an evaluation of the NPS-HPL under s32, an assessment of how the proposal achieves the purpose and principles contained in Part 2 of the RMA is required. Section 5 sets out the purpose of the RMA, to “promote the sustainable management of natural and physical resources”, with sustainable management further defined as:

“Managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

In achieving this purpose, all those involved in exercising functions and powers under the RMA are required to:

- recognise and provide for the matters of national importance identified in section 6
- have particular regard to other matters referred to in section 7
- take into account the principles of the Treaty of Waitangi referred to in section 8.

Prior to deciding whether to recommend any proposed national direction under ss44 or 52 of the RMA, the Minister is required to prepare and publish an evaluation report that examines (s32(1)):

- (a) “the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act
- (b) whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives
 - (iii) summarising the reasons for deciding on the provisions”.

The evaluation report must also contain a level of detail that:

- (c) “corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal”.

⁵ Market Economics (2020), ‘National Policy Statement – Highly Productive Land – Cost-Benefit Analysis’, prepared for the Ministry for Primary Industries.

When assessing the efficiency and effectiveness of the provisions in achieving the objectives of proposed national direction the report must, under s32(2):

- (d) “identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced
 - (ii) employment that are anticipated to be provided or reduced
- (e) if practicable, quantify the benefits and costs referred to in paragraph (a)
- (f) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.”

Requirements for national direction

To give effect to the purpose of the RMA under section 5, the Minister can prepare a national policy statement under sections 45–55 of the RMA.

Once approved, all policy statements and/or plans prepared by regional councils and territorial authorities are required to be prepared and changed in accordance with this direction (sections 61(1), 66(1) and 74(1)).

National policy statements

National policy statements (NPS) are national directions prepared in accordance with section 46A of the RMA and issued under section 52(2). Their purpose is to specify objectives and policies for matters of national significance relevant to achieving the sustainable management purpose of the RMA (s45(1)). Under section 45A(2) they can also state:

- (a) “the matters that local authorities must consider in preparing policy statements and plans
- (b) methods or requirements in policy statements or plans, and any specifications for how local authorities must apply those methods or requirements, including the use of models and formulae
- (c) the matters that local authorities are required to achieve or provide for in policy statements and plans
- (d) constraints or limits on the content of policy statements or plans
- (e) objectives and policies that must be included in policy statements and plans
- (f) directions to local authorities on the collection and publication of specific information in order to achieve the objectives of the statement
- (g) directions to local authorities on monitoring and reporting on matters relevant to the statement, including—
 - (i) directions for monitoring and reporting on their progress in relation to any provision included in the statement under this section
 - (ii) directions for monitoring and reporting on how they are giving effect to the statement
 - (iii) directions specifying standards, methods, or requirements for carrying out monitoring and reporting under subparagraph (i) or (ii)
- (h) any other matter relating to the purpose or implementation of the statement.”

NPS can apply nationally or within a specified part of New Zealand (section 45A(3)) and are required to be ‘given effect to’ in all regional policy statements and regional/district plans (sections 62(3), 67(3) and 75(3)).

Under section 55(2), an NPS can direct local authorities to amend regional policy statements and regional/district plans to include specific objectives and policies or to give effect to an objective or policy contained in the NPS. It can also direct that those consequential amendments are made without going through a formal Schedule 1 RMA public notification and hearing process (section 55(2A)).

Prior to approval of an NPS, the Minister is required, under section 52(1), to:

- (a) “first, consider a report and any recommendations made to him or her by a board of inquiry under s46A(4)–(c) or s51, as the case requires
- (b) secondly, may—
- (c) make any changes, or no changes, to the proposed national policy statement as he or she thinks fit
- (d) withdraw all or part of the proposed national policy statement and give public notice of the withdrawal, including the reasons for the withdrawal
- (e) thirdly, undertake an evaluation of the proposed national policy statement in accordance with s32 and have particular regard to that evaluation when deciding whether to recommend the statement.”

Approach to evaluation

Methodology

A systematic, structured approach to evaluating the NPS-HPL has been applied by the Ministry for the Environment and Ministry for Primary Industries (the Ministries) to ensure a consistent, rigorous and proportionate assessment of the proposal. In accordance with section 32(6) of the Act, the proposal being evaluated comprises the purpose, objectives and provisions (including policies and clauses) that implement or give effect to the NPS-HPL.

The approach broadly comprises the following elements:

- analysing the relevant regulatory and policy context, including associated legislative requirements, other relevant existing and proposed national direction and any non-statutory national policy directives
- identifying and analysing the relevant issues relating to the topic, including the associated research commissioned, consultation undertaken, and information compiled
- evaluating the proposed objectives/purpose/intent to determine their appropriateness in achieving the purpose of the RMA
- evaluating the proposed policies and implementation requirements and reasonably practical alternatives to determine their relative costs, benefits, effectiveness and efficiency in achieving the objectives and the risk of acting or not acting
- assessing the scale and significance of the anticipated environmental, economic, social and cultural effects of the proposal.

Scope of the evaluation

In addition to this evaluation under section 32 of the Act, a Regulatory Impact Assessment has also been undertaken by the Ministry for the Environment and Ministry for Primary Industries for the NPS-HPL. The assessment and associated Regulatory Impact Statement (RIS) have been prepared to support Ministerial and Cabinet consideration of the regulatory proposals

contained in this direction. In contrast to this report, the RIS focuses on the overall policy package and a detailed analysis of the justification for intervention and formulation of the problem definition. In particular, the RIS identifies the core problem as the ongoing loss of HPL nationally, which results from a lack of clarity on how HPL should be managed under the RMA and leads to greater weight being given to other factors (eg, meeting demand for housing and business growth) when making decisions. As the core problem has been linked clearly to a regulatory issue, this has inevitably narrowed the scope of the proposal and options considered to matters that fall squarely within the RMA sphere. This has resulted in three options being considered for intervention, all of which are part of the RMA regulatory framework.

The RIS concludes there is a clear basis for intervention, based on robust evidence gathered over a significant timespan.⁶ Rather than address the individual objective, policies and implementing clauses of the NPS-HPL, the RIS focuses on the three key options for statutory and non-statutory intervention, along with their associated costs and benefits, the consultation undertaken and the proposed arrangements for implementation and review.

These three options included:

1. a National Policy Statement (the chosen option)
2. a National Environmental Standard focused on introducing nationally consistent subdivision provisions to address urban rezoning and land fragmentation, and to reduce instances of reverse sensitivity effects
3. an amendment to the NPS-UD to address the loss of HPL from urban rezoning.

Through the consultation process and the preparation of issues and options papers, it was determined that an NPS was the most appropriate option to address HPL loss as it will achieve a nationally consistent outcome while still allowing for an appropriate level of regional and district variation to account for local conditions. It was also determined that combining the NPS-HPL with the NPS-UD would likely result in HPL loss becoming a sub-set issue of urban development. This could result in consideration of HPL land simply becoming another criteria to be considered, along with a range of other factors, when deciding where urban rezoning would take place. It was also unable to address other issues outside of urban rezoning (ie, land fragmentation and reverse sensitivity).

The RIS is available [on the Ministry for the Environment website](#) and should be read in conjunction with this report.

Statutory and policy context

A fundamental input to carrying out an evaluation under s32 is understanding clearly how the proposal achieves the purpose and principles contained in Part 2 of the RMA, particularly those matters of relevance to the topic under consideration.

Section 5 sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources. To achieve this purpose the Minister is required, when exercising functions and powers under the RMA, to:

⁶ Core evidence is the 'Our Land' reports in 2018 and 2021 and the 'Environment Aotearoa' report in 2019, which show how HPL loss and fragmentation has accelerated over the last 20 years despite efforts from some local authorities to protect HPL.

- recognise and provide for the matters of national importance identified in section 6
- have particular regard to a range of other matters referred to in section 7
- take into account the principles of the Treaty of Waitangi referred to in section 8.

Section 6 – Matters of national importance

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- the protection of historic heritage from inappropriate subdivision, use, and development:
- the protection of protected customary rights:
- the management of significant risks from natural hazards.”

The section 6 matters relevant to the proposal are:

Section	Relevance/ Policy intention
6(a) to (h)	<p>The NPS-HPL will recognise the importance of section 6 matters and provide a pathway to ensure any use or activity relating to a matter of national importance listed in section 6 is provided for on HPL – see analysis of clause 3.8(1)(b) and 3.9(2)(c) on page 91–97.</p> <p>Section 6 matters are further referred to in cl 3.12(1)(b) which provides that territorial authorities encourage opportunities that maintain or increase the productive capacity of HPL but only where those opportunities are not inconsistent with any matter of national importance under s 6.</p> <p>Section 6(e) and (g) are specifically provided for as the NPS-HPL will ensure that specified Māori land (including Māori customary and freehold land and Māori reservations and reserves) that is identified as HPL may be subdivided, used and developed, without being unduly restricted and therefore recognises and provides for ‘<i>the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga</i>’ and ‘<i>the protection of customary rights</i>’.</p> <p>Clause 3.8(1)(b) provides for a general avoidance of subdivision on HPL unless the subdivision is on specified Māori land and the measures in 3.8(2) are applied.</p> <p>Clause 3.9(2)(d) provides that a use or development of HPL is not inappropriate if it takes place on “specified Māori land” and the measures in 3.9(3) are applied.</p>

Section 7 – Other matters

“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
 - (aa) the ethic of stewardship:
 - (b) the efficient use and development of natural and physical resources:
 - (ba) the efficiency of the end use of energy:
 - (c) the maintenance and enhancement of amenity values:
 - (d) intrinsic values of ecosystems:
 - (e) [repealed]
 - (f) maintenance and enhancement of the quality of the environment:
 - (g) any finite characteristics of natural and physical resources:
 - (h) the protection of the habitat of trout and salmon:
 - (i) the effects of climate change:
 - (j) the benefits to be derived from the use and development of renewable energy.”

The section 7 matters relevant to the proposal are:

Section	Relevance / Policy intention
7(a) – kaitiakitanga	The NPS-HPL will provide for the involvement of tangata whenua in giving effect to this NPS including mapping of HPL. Māori will also be exempted from undue restrictions imposed by NPS-HPL on the subdivision, use and development of Māori customary and freehold land, Māori reserves and reservations and land that has been returned not via a settlement process but returned, for example, under the powers of the Waitangi Tribunal.
7(b) – the efficient use and development of natural and physical resources	The NPS-HPL will provide for the efficient use of the non-renewable HPL resource particularly through policies that protect HPL for land-based primary production and that restrict urban rezoning and inappropriate use and development.
7(c) – the maintenance and enhancement of amenity values	The NPS-HPL will consider amenity values in the context of how expectations of non-productive land use for a particular level of amenity (often from sensitive activities) can result in reverse sensitivity effects on land-based primary production activities.
7(g) – any finite characteristics of natural and physical resources	The NPS-HPL will protect the finite characteristics of high-quality soils and seeks to ensure that the limited amount of remaining HPL is prioritised for protection.
7(i) – the effects of climate change	The climate of particular areas and how it contributes to the productivity of the land will be considered as part of the mapping and identification of HPL. The ability for landowners to apply for non-productive uses in circumstances where there are permanent or long-term constraints on their land also anticipates a future scenario where the impacts of climate change may result in HPL no longer being economically viable for land-based primary production.

Section 8 – Treaty of Waitangi

The section 8 principles⁷ relevant to the proposal are:

Principle	Relevance / Policy intention
Partnership – to act in good faith	Partnership is a fundamental component of Te Tiriti of Waitangi/Treaty of Waitangi. It is envisioned that iwi/Māori will work closely with councils during the implementation of the NPS-HPL to give effect to existing settlement agreements.

⁷ [What principles and guidelines underpin the resolution of overlapping interests? | New Zealand Government \(www.govt.nz\)](http://www.govt.nz)

Principle	Relevance / Policy intention
Reciprocity – exchanges for mutual advantage and benefits	The NPS-HPL will protect the HPL resource for land-based primary production recognising it is a finite resource that needs to be preserved for future generations. It is considered that by protecting the loss of this resource through the NPS-HPL there is a mutual advantage and benefit for the Crown and its Treaty partners.
Autonomy – to protect Māori autonomy, to govern themselves	The NPS-HPL will ensure that specified Māori land that is identified as HPL may be subdivided and used and developed without being unduly restricted by the NPS-HPL. This is to recognise both the very small amount of specified Māori land that is likely to be identified as HPL (114,000 ha or 3% of total LUC 1–3 land) and the other restrictions that make use of this land difficult (eg, ownership structures). The provisions relating to Māori land in the NPS-HPL acknowledge that land is taonga and of huge significance to Māori, and decisions on the identification and management of HPL will affect their priorities relating to land being rezoned as urban, land being protected for its freshwater values, as well as opportunities for the development of Māori land. The definition of Māori land provided in the NPS-HPL includes Māori customary and freehold land as defined in the Te Ture Whenua Māori Act 1993 (TTWMA), Māori reservations and reserves; and land that has been returned not via a settlement process but returned, for example, under the powers of the Waitangi Tribunal.
Active protection – duty to protect Māori rights and interests	Councils will still need to comply with their Treaty settlement obligations when implementing NPS-HPL policies. The NPS-HPL will enable development of specified Māori land (including customary and freehold land under the TTWMA). The NPS-HPL will acknowledge that land is a taonga of huge significance to Māori.
Redress – past wrongs give rise to a right to redress.	<p>Specified Māori land (as defined in the NPS-HPL) is exempt from some restrictions imposed by the NPS-HPL. Treaty settlement land and categories of ‘general land owned by Māori’ have not been included from the definition of specified Māori land to avoid establishing a different legal framework for ‘general land’ based on ownership of land and ensure fairness and reasonableness of Government policy.</p> <p>The impact of this decision on Māori is alleviated by the availability of s133 of Te Ture Whenua Māori Act to change the status of this land to Māori freehold land and the route to change land to a Māori purpose zone.</p> <p>Guidance on these pathways will be provided as part of implementation should Māori wish their land identified as HPL (but not captured by the definition of ‘specified Māori land’) to be exempt from NPS-HPL restrictions.</p> <p>Some litigation risk associated with the definition of Māori land is acknowledged, though overall the NPS-HPL is not considered to be inconsistent with the Crown’s settlement commitments to specific iwi, and may contribute to upholding the intrinsic values, objectives and/or strategies associated with each commitment.</p>

National direction

The NPS-HPL has been developed alongside several other RMA national direction instruments that seek to address other nationally significant issues.

There are currently five National Policy Statements in effect:

- New Zealand Coastal Policy Statement 2010
- NPS for Electricity Transmission 2008
- NPS for Renewable Electricity Generation 2011
- NPS for Freshwater Management 2020
- NPS on Urban Development 2020.

Although a range of future NPS are being considered currently, a further NPS is under development that has particular relevance to the NPS-HPL:

- NPS for Indigenous Biodiversity.

These instruments and their relevance to the proposal are described below:

NPS	Relevance
<p>NPS on Urban Development (NPS-UD)</p>	<p>The purpose of the NPS-UD is to ensure that towns and cities in New Zealand are well-functioning urban environments that meet the changing needs of our diverse communities. It also seeks to enable urban development and growth both ‘up and out’ to increase housing supply and improve housing affordability.</p> <p>The NPS-HPL has the potential to impact on urban growth and development, particularly new greenfield development, where this is proposed to occur on HPL. The NPS-HPL addresses this interaction through specifically allowing for urban rezoning of HPL to occur, subject to specific tests:</p> <ul style="list-style-type: none"> (a) the urban rezoning is for the purpose of giving effect to the National Policy Statement on Urban Development 2020; and (b) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land; and (c) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and (d) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of HPL for land-based primary production, taking into account both tangible and intangible values. <p>This is discussed further in relation to specific policies and clauses.</p>
<p>NPS for Freshwater Management (NPS-FM)</p>	<p>The purpose of the NPS-FM is to provide a National Objectives Framework to assist regional councils and communities to plan for freshwater more consistently and transparently.</p> <p>The key area of relevance/interaction with the NPS-HPL is in relation to water quality and quantity and the extent to which decisions about freshwater impact the ability for HPL to be used to support land-based primary production. Also, some land-based primary production activities may degrade or negatively impact on water quality. These interactions are managed through the NPS-HPL by ensuring that the management of HPL considers the interactions with freshwater management at a catchment level and takes a strategic and long-term approach. A pathway to retire HPL from land-based primary production for the purpose of improving water quality is provided for. A pathway for allowing non-productive land uses is also provided where it is demonstrated that the land mapped as HPL is subject to permanent or long-term (at least 30 years) constraints which result in the land not being economically viable for land-based primary production. This is discussed further in relation to specific policies and clauses.</p>
<p>NPS for Electricity Transmission (NPS-ET)</p>	<p>The purpose of the NPS-ET is to recognise the national significance of the electricity transmission network. It facilitates the operation, maintenance and upgrading of existing transmission networks and the establishment of new transmission networks to meet the needs of present and future generations, while managing adverse effects on the network and on other activities.</p> <p>The NPS-HPL has the potential to impact on the establishment of new transmission infrastructure and the upgrading of existing transmission networks when this is proposed or located on HPL. The NPS-HPL addresses this interaction through specifically providing for the maintenance, operation, upgrading or expansion of specified infrastructure (including electricity transmission infrastructure) as an ‘appropriate’ use on HPL, provided there is a ‘functional need’ or ‘operational need’ for that infrastructure to be located on HPL. There is also a pathway for new</p>

NPS	Relevance
	infrastructure to establish on HPL by way of a designation or notice of requirement under the Act. This is discussed further in relation to specific policies and clauses.
Proposed NPS for Indigenous Biodiversity (NPS-IB)	<p>The Government sought feedback on the proposed NPS-IB from 26 November 2019 to 14 March 2020 and is currently seeking feedback on an Exposure Draft. The proposed NPS-IB seeks to provide clear direction to councils on their responsibilities for identifying, protecting, managing and restoring indigenous biodiversity under the RMA to reverse the decline of indigenous biodiversity in New Zealand.</p> <p>The key area of potential interaction/relevance with the NPS-HPL is where Significant Natural Areas (SNA) are located on LUC 1–3 land. The concern is that land that has been identified as HPL that is also a SNA will be prioritised for land-based primary production as opposed to being protected for its significant indigenous biodiversity values, and that these two competing factors will be in conflict. This potential interaction is managed by providing for the protection of SNAs and environmental protection, maintenance, restoration and enhancement of indigenous biodiversity as appropriate uses of HPL. This will ensure that there is no conflict between the NPS-HPL and the proposed NPS-IB.</p>

There are also currently nine National Environmental Standards (NES) in effect:

- NES for Air Quality 2004
- NES for Sources of Human Drinking Water 2007
- NES for Telecommunication Facilities 2008
- NES for Electricity Transmission Activities 2009
- NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
- NES for Plantation Forestry 2017
- NES for Freshwater 2020
- NES for Marine Aquaculture 2020
- NES for Storing Tyres Outdoors 2021.

The standards and associated provisions relevant to the proposal are described below:

NES	Relevance
NES for Freshwater (NES-F)	The NES-F introduced controls on some high-risk activities by setting requirements for certain activities that posed a risk to freshwater and freshwater ecosystems (eg, earthworks that would result in drainage of a wetland). The NES-F permits a range of activities where the relevant permitted activity conditions can be met. If these conditions cannot be met, a resource consent will be required. There is the potential that land-based primary production activities undertaken on HPL may conflict with the provisions in the NES-F where they are seeking to expand or increase their production yield. However, these conflicts will be managed through the NES-F resource consenting process.
NES for Plantation Forestry (NES-PF)	The NES-PF applies to plantation forestry, which is defined in the regulations as a forest deliberately planted for commercial purposes, that will be harvested or replanted, of at least one hectare. This definition allows for variation in the intensity of a harvest but excludes permanent forest that is not intended for harvest. The current Government has committed to amending the NES-PF to cover permanent forests. These amendments will need to consider the NPS-HPL.

Role of regional councils and territorial authorities

Regional councils

Regional councils have the following functions under the RMA:

- the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region (section 30(1)(a))
- the preparation of objectives and policies in relation to the use, development or protection of land that is regionally significant (section 30(1)(b)).

Section 61(1) of the RMA requires regional councils to prepare a regional policy statement that states the significant resource management issues for the region; the objectives sought to be achieved by the RPS; the policies to address those issues and objectives; and the methods (excluding rules) to implement the policies. Regional policy statements must give effect to an NPS (section 62(3)).

As a matter of national significance, the protection of HPL is also a matter of regional significance. Regional councils also have a general obligation to 'give effect to' the other relevant provisions that guide the management and protection of the HPL resource.

Territorial authorities

Territorial authorities have the following functions under the RMA:

- the establishment and implementation of objectives, policies and methods to achieve integrated management of the use, development or protection of land and associated natural and physical resources (section 31(1)(a))
- the control of any actual or potential effects of the use, development or protection of land (section 31(1)(b)).

An NPS for HPL will assist territorial authorities carry out their core RMA function to manage the use and protection of land through specifying the types of district plan provisions and decisions required to appropriately use and protect HPL.

Part 2 – Evaluation of the Proposal

Resource management issues

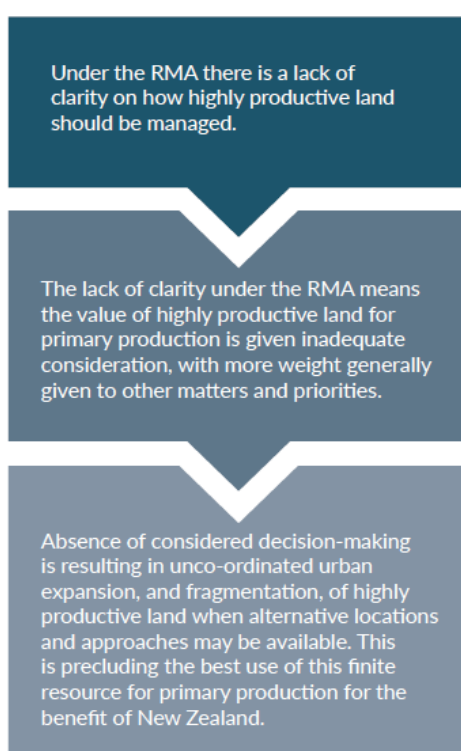
This section of the report outlines the current state/approach to addressing HPL and identifies issues identified through research and raised through consultation relevant to the proposal.

Current state/approach

The absence of clear national direction on the management and protection of HPL is resulting in inconsistent and poor outcomes. While there is evidence of good practice in some areas, there are also examples of failed attempts to provide stronger protection of this resource and poor decision-making that fails to adequately consider cumulative effects and the value of HPL for future generations. These issues are contributing to the ongoing, incremental and permanent loss of this resource nationally, which is now well documented in New Zealand. In particular, the *Our land 2018, 2021* and the *Environment Aotearoa 2019, 2022* reports highlight the ongoing reduction in the availability of HPL for land-based primary production due to urban rezoning and fragmentation by ad hoc development (including rural lifestyle development).

In addition, there have been widespread concerns about the impact of new sensitive and incompatible activities conflicting with established land-based primary production activities using HPL, constraining their operations and resulting in ‘reverse sensitivity effects’.

Figure 1: Problems the NPS-HPL seeks to address



The problem the NPS-HPL seeks to address was articulated in 3.1 of the proposed NPS-HPL discussion document as follows:

As discussed in Part 1 of this report, HPL is a relevant consideration under sections 5 and 7 of the RMA and this has been confirmed by the Courts through a number of judgments. However, the references to HPL in Part 2 of the RMA are much less explicit and directive than other matters and references to this resource compared with previous iterations of resource management legislation (eg, the former Town and Country Planning Act 1977). Consequently, a need for clear national direction has been identified that will address the following two key issues:

- inconsistent approach to managing HPL nationally
- limited weight being given to HPL when balancing the protection of HPL with competing land uses.

Both issues are contributing to the incremental, ongoing loss of HPL and compromising the effective and efficient use of HPL for land-based primary production. These issues are most prevalent around larger urban centres that are experiencing both pressures to expand outwards (greenfield growth) onto HPL and a steady demand for rural lifestyle development.

The sections below provide more details on the key resource management issues the NPS-HPL seeks to address.

Inconsistent approach to managing HPL nationally

Without clear direction from the RMA as to how HPL should be managed, councils have adopted a variety of approaches to oversee the use and protection of HPL across New Zealand. Some regional policy statements and plans have defined HPL, high class soils, versatile soils (or similar terms) and include clear direction in the objectives and policies on how this resource should be managed. Conversely, some plans are completely silent on HPL and provide limited direction on how this resource should be considered alongside other matters and uses, potentially because some regions/districts have very little HPL and its retention is less of a priority in their plans. Examples of how different regions define HPL (or similar) are provided in [appendix B](#).

The LUC classification system is the most used system to classify land in New Zealand. It considers physical factors (rock type, soil, slope, severity of erosion and vegetation) and inventory factors (climate, the effects of past land use and potential for erosion). These factors are used to classify land into eight classes based on the long-term capability of that land to sustain one or more productive uses. As illustrated in **figure 1** below, land that is classified as Class 1 under the LUC system is the most versatile and has the fewest limitations for use, while Class 8 is the least versatile with the highest limitations for use.

Figure 2: Increasing limitations to use and decreasing versatility of use from LUC Class 1 to 8

LUC Class	Arable cropping suitability	Pastoral grazing suitability	Production forestry suitability	General suitability
1	High	High	High	Multiple use land
2	↓ Low	↓ Low	↓ Low	
3				
4				
5	Unsuitable			Low
6				
7				
8		Unsuitable	Unsuitable	Conservation land

Note: Arable cropping suitability includes vegetable cropping: https://www.landcareresearch.co.nz/__data/assets/pdf_file/0017/50048/luc_handbook.pdf

Source: Landcare Research (2009), 'Land Use Capability Survey Handbook – a New Zealand Handbook for the Classification of Land', 3rd edition

Councils across New Zealand use the LUC system to define HPL within their region/district. However, as outlined in [appendix B](#), the classes of LUC land used by councils to define HPL vary substantially. Most regions base their definition of HPL on LUC 1–3 land (Northland, Auckland, Waikato, Bay of Plenty, Hawke’s Bay) or LUC 1–2 land (Horowhenua, Wellington, Canterbury, Southland), although some regions do not define HPL at all. These classes of land are described in the LUC handbook as follows:⁸

- **LUC 1 (0.7 per cent of New Zealand’s land area):** The most versatile multiple-use land with minimal physical limitations for arable use⁹
- **LUC 2 (4.5 per cent of New Zealand’s land area):** Very good land with slight physical limitations to arable use, readily controlled by management and soil conservation practices
- **LUC 3 (9.2 per cent of New Zealand’s land area):** land with moderate physical limitations to arable use. These limitations restrict the choice of crops and the intensity of cultivation and/or make special soil conservation practices necessary.

The LUC system also has some recognised limitations. A key limitation relates to the scale of the mapping (1: 50,000 scale) and the date of the mapping, which was largely undertaken in the 1970s and mid-1980s. As such, it does not take into account changes in land use since that time. Notwithstanding these limitations, the LUC system is generally accepted as the best land classification system in New Zealand by councils and soil scientists alike.¹⁰

⁸ Landcare Research (2009), 'Land Use Capability Survey Handbook – a New Zealand Handbook for the Classification of Land', 3rd edition.

⁹ LUC 1 land is further described in the LUC handbook as “It has high suitability for cultivated cropping (many different crop types), viticulture, berry production, pastoralism, tree crops and production forestry. Class 1 land is flat or undulating (0-7°), has deep (>90cm) resilient and easily worked soils, and there is minimal risk of erosion. Soils are characterised as being fine textured, well drained, not seriously affected by drought, well supplied with plant nutrients, and responsive to fertilisers. Climate is favourable for the growth of a wide range of cultivated crop, and for pasture and forest, and does not significantly limit yields.”

¹⁰ This was emphasised in a number of submissions on the proposed NPS-HPL, including Manaaki Whenua (Landcare Research).

Feedback from submitters on the proposed NPS-HPL identified the lack of direction in the RMA on HPL as the primary reason for inconsistent protection of this resource throughout the country. While the protection of HPL is increasingly recognised as a national-scale problem, it continues to be managed through locally focused planning approaches that do not give sufficient weight to HPL as a nationally strategic resource for current and future generations. This can lead to arguments that small losses of HPL are not significant in the context of what is available locally, without considering how finite the HPL resource is at a national scale. Submitters on the proposed NPS-HPL also provided examples of inconsistent approaches to managing HPL, both between regions and even within regions, even when the relevant regional policy statement provides policy direction to protect HPL (which must be given effect to through district plans).

A review of planning approaches across the country has also found a high level of variation in:

- **The objectives and policies to guide the management and protection of HPL.** This policy direction ranges from very strong (eg, avoiding urban rezoning on HPL) to policy direction that gives priority to urban growth and development, with HPL being just one matter to consider when providing for such growth.
- **Subdivision rules to manage fragmentation of HPL.** Mechanisms to manage fragmentation of HPL (eg, minimum lot sizes, specific rural lifestyle development zones) are not used consistently, and some district plans still have permissive subdivision regimes in their main rural zone(s) that are resulting in ongoing fragmentation of productive rural areas.

The absence of clear direction in the RMA or supporting national direction on the protection and use of HPL also means there can be a reluctance to propose strong provisions to protect HPL and/or the weight of these provisions can be diminished through the statutory process. For example, a number of council submitters on the proposed NPS-HPL highlighted how strong protections for HPL are often diminished through the Schedule 1 process for various reasons (eg, due to political motives) and are typically given less weight than other Part 2 considerations.

The more recent NPS on Urban Development and Freshwater Management create additional challenges for councils as they determine how to manage HPL in an integrated way with these matters. There has always been tension between enabling urban growth, protecting freshwater values and maintaining the productive capacity for HPL, and this tension pre-dates the introduction of the NPS-FM and NPS-UD. However, as there are more directive objectives and policies in more recent NPS relating to urban growth and freshwater, this national direction may be given more weight than objectives and policies managing HPL at the regional policy statement (RPS) or district plan level. An imbalance of national direction on urban growth and freshwater but only RPS and district plan level direction on the management of HPL is unlikely to result in positive outcomes for the retention of the HPL resource.

Limited weight being given to HPL in RMA planning and decision-making

The lack of explicit reference to the protection of HPL in the RMA is resulting in limited weight being given to HPL when making decisions on competing land uses. This has been identified as a key issue when developing the NPS-HPL and submitter feedback on the proposed NPS-HPL confirmed this. This lack of clarity means New Zealand's HPL resource is being permanently lost to urban rezoning or subdivided into less productive rural lifestyle lots, often without due

consideration of the long-term value this finite resource provides to New Zealand.¹¹ The lack of specific reference to HPL in the RMA means that competing considerations that are explicitly referenced in section 6 of the RMA or in national direction take precedence in RMA planning and decision-making. For example, a number of council submitters on the proposed NPS-HPL reported challenges balancing the protection of HPL with competing priorities under the RMA, noting that HPL is generally just one matter of many that decision-makers must 'have regard to'.

Another driver for the limited weight given to HPL under the RMA are the difficulties quantifying the value of the resource for current and future generations. The common approach to valuing land-use change under the RMA is heavily weighted toward changing away from land-based primary production. This is because urban uses always have a higher financial return and land value compared to land-based primary production and it is much easier to quantify these short-term benefits. Feedback from stakeholders has emphasised the difficulties valuing the protection of HPL compared to its conversion to urban uses. Submitter feedback highlighted the difficulties managing development proposals in highly productive areas as the cost of losing HPL is not well understood. Similarly, other submitters emphasised that HPL frequently loses when considered alongside competing issues as an assessment of the highest valued use of the site will always favour other uses. However, this approach fails to consider the overall best interests of the wider community or the long-term benefits provided by the HPL resource (refer to [appendix C](#) for a full list of benefits that HPL provides for communities).

Another issue is that the cumulative loss of HPL for primary production is often overlooked as decision-makers discount the significance of an area when it is considered in the context of the total area of HPL in the region/district. This issue has been commonly referred to as 'death by a thousand cuts'.

Relevant research and supporting information

To establish an evidence base to inform the evaluation process, the Ministry for the Environment and Ministry for Primary Industries commissioned the following research and/or technical advice relevant to the proposal:

Title	Author	Description
Cost Benefit Analysis (CBA)	Market Economics	<p>This analysis describes the expected costs and benefits of having an NPS-HPL (compared with not) in relation to rural lifestyle development and urban rezoning.</p> <p>Two 'with NPS-HPL' scenarios were used for the purpose of modelling rural lifestyle subdivision outcomes. One rural lifestyle modelling scenario reflects a situation where territorial authorities 'deter' lifestyle subdivision of HPL in rural zones. The other reflects a situation where territorial authorities 'avoid' lifestyle subdivision on HPL in rural zones. For the modelling of urban rezoning outcomes – the analysis relies on a single 'with NPS-HPL' scenario.</p> <p>A more detailed description of monetised costs and benefits is provided in relation to specific policies and clauses.</p> <p>The economic value of HPL identified in the CBA is detailed below.</p>

¹¹ Curran-Cournane F, Golubiewski N, Buckthought L. 2018 'The odds appear stacked against versatile land: can we change them?', *New Zealand Journal of Agricultural Research*, DOI: 10.1080/00288233.2018.1430590.

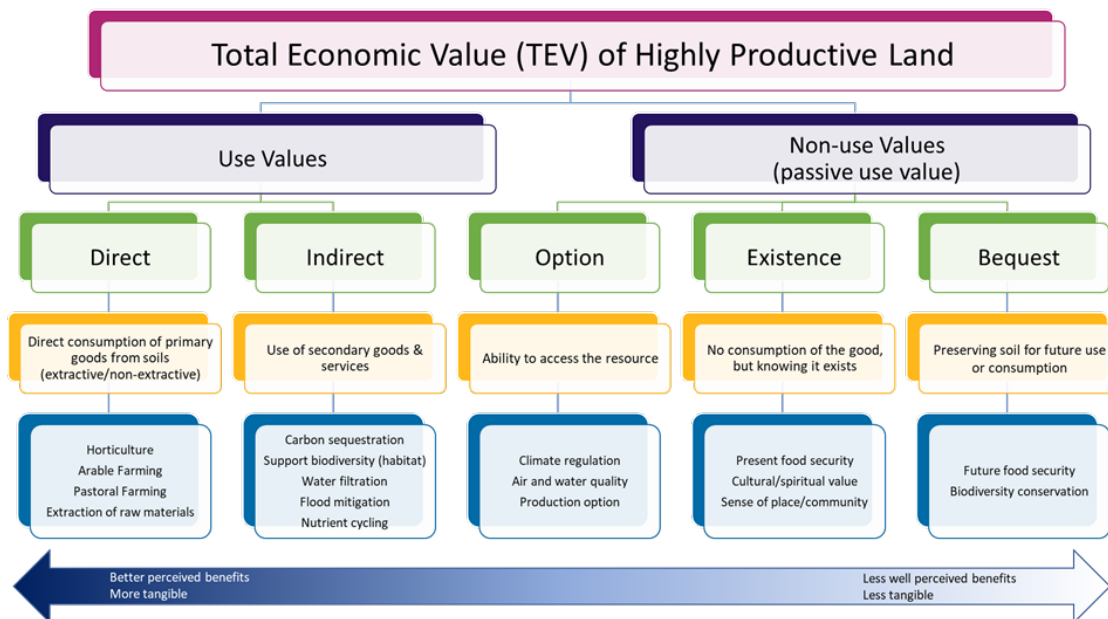
Value of highly productive land

At the most basic level, people need land for survival – for food, water, raw materials and shelter. The land sustains every aspect of the lives and wellbeing of people and communities. It provides life-supporting systems and services, the foundation of our economy and society, and it supports the expression of our culture, spirituality and identity through the connections of people to place and history.

National and international literature demonstrates that HPL is a resource that has value beyond its current or potential uses, and that it provides significant services and benefits that are not necessarily marketable but are vital for the common good.¹² While generally recognised for its economic value when being used for land-based primary production, HPL also has wider societal, cultural and environmental benefits. The value of HPL is therefore not limited to those people that directly use and benefit from the resource (ie, landowners), but also those that get indirect benefits from the HPL resource (eg, local food supply) and those who could use it in the future.

The CBA for the NPS-HPL prepared by Market Economics sought to identify the full range of values associated with HPL using a Total Economic Value (TEV) framework.¹³ The TEV framework was adopted in the CBA to help identify the full range of use and non-use values associated with HPL (and therefore help to ensure these values and benefits are recognised in planning and decision-making). The full range of values associated with HPL using the TEV framework are presented in **figure 3** below.

Figure 1: Total Economic Value of HPL (source: CBA of NPS-HPL prepared by Market Economics)



¹² Market Economics. 2020. 'National Policy Statement – Highly Productive Land – CBA Supporting Spatial Analysis and Literature Review' prepared for Ministry for Primary Industries.

¹³ The TEV framework and non-market values of HPL are discussed in detail in section 5.1 of the CBA and section 9 of the CBA Supporting Analysis and Literature Review report.

As demonstrated by figure 3, the total economic value of HPL is made up of values that are on a spectrum, ranging from more tangible benefits to less well perceived, less tangible benefits. Typically, those benefits that can be monetised are those with measurable market value, such as direct consumption of primary goods, and of the value of primary and secondary level employment. However, as shown in figure 3, a large number of benefits associated with HPL are those with non-market values which are difficult (and some would argue inappropriate) to quantify in monetary terms. Consequently, these non-market values are often undervalued in typical CBAs and planning decisions relating to the use and protection of HPL.¹⁴

Through undertaking a review of relevant national and international literature, the CBA demonstrates it is extremely difficult to attach monetary value to the non-market values of HPL. Common approaches to value natural capital and the services it provides is through ascertaining values ascribed by individuals then aggregated or collating these values. However, surveying how people value resources such as HPL is often problematic and risky due to a range of factors. This includes respondents having imperfect information (particularly around trade-offs between developing and protecting HPL), a lack of understanding of how HPL contributes to wellbeing, and difficulty understanding or appreciating benefits for future generations. Values are also influenced by factors such as the extent or scarcity of the HPL resource, income, occupation or whether the person is an urban or rural dweller. These factors mean there is a high level of complexity and risk in attempting to assign monetary value to the non-use values associated with HPL. As such, the non-market values associated with HPL are not quantified or monetised in the CBA for the NPS-HPL.

The economic benefits associated with HPL, including social, environmental and cultural benefits are described in [appendix C](#). The CBA discusses these benefits in terms of 'non-market values' summarised below.

Non-market values

The non-market values associated with HPL, include environmental, spiritual and cultural benefits, intergenerational benefits such as future food security, and the options value of keeping HPL available for land-based primary production. The value of these benefits is not limited to private owners of HPL. As such, the market 'price' of HPL does not adequately capture the wider non-market benefits that arise from the HPL resource (eg, its ecological functions). An important component of the non-market value of HPL is its option value. This is a non-use value that relates to the willingness of current generations to pay for retaining the option to use HPL sometime in the future. Option value in this context is the opportunity to use HPL for land-based primary production as well as derive benefit from its air, water and climate-regulating functions. If HPL is not protected, then this option value is lost (an opportunity cost).

While recognising the significant non-market values of HPL, the CBA does not attempt to assign monetary value to HPL and the services it provides. The challenges associated with monetising non-market values are discussed in detail in section 5.1 of the CBA for the NPS-HPL and section 9 of the supporting analysis report and summarised in [appendix C](#). The CBA highlighted the risks of attempting to measure the non-market values associated with HPL using willingness to pay approaches based on feedback from small and localised samples of the population. As such, the CBA concludes that "Robust surveying of non-market values is

¹⁴ For example, refer to Greenhalgh S, Samarsinghe O, Curran-Cournane F, Wright W, Brown P. 2017. "Using ecosystem services to underpin cost benefit analysis: Is it a way to protect finite soil resources?" *Ecosystem Services* 27: 1–14.

therefore complex and costly and has not been attempted in this CBA. Indeed, many researchers would argue that any attempt would be inappropriate”.¹⁵

Consultation undertaken

In developing this proposal, the Ministry for the Environment and the Ministry for Primary Industries consulted with iwi/Māori authorities, a range of parties with specific interests in the topic as well as the public more generally. A summary of the consultation undertaken, and the key issues of relevance raised is outlined below.

Further detail is also contained in the summary of submissions received in response to the proposed NPS-HPL. [A copy of this document is available](#) on the Ministry for Primary Industries' website.

A range of hui were held throughout the country in 2019. The hui discussed the need for the NPS-HPL (to protect the finite HPL resource), how the policy would affect iwi/Māori interests and opportunities for engagement. Eight submissions were received from iwi/Māori (this includes various post settlement government entities). The central issues identified in the submissions were:

- definition of Māori land under the NPS-HPL, including both the identification of HPL and interim definition
- sites of significance to Māori, including wāhi tapu, mahinga kai, pā and urupā and how these would be protected/provided for under the NPS-HPL
- cultural uses such as papakāinga on HPL
- iwi/Māori engagement and collaboration throughout the implementation of the NPS-HPL.

Further workshops and stakeholder engagement occurred in March 2021 with local authority representatives and primary sector experts to test several key areas of the proposed NPS-HPL. Later in the year, an 'exposure draft' process took place in October 2021 to test the proposed NPS-HPL provisions with stakeholders, including representatives from local government, the primary sector, developers, infrastructure providers, non-government groups and iwi/Māori as Treaty partners. This process helped to test the workability of the provisions and provide more evidence to support the policy intent and provisions of the proposed NPS-HPL. Targeted engagement on possible amendments to the NPS-HPL post exposure draft testing was also carried out in March and April 2022 with Te Arawhiti and Te Puni Kōkiri; councils; primary sector representatives; Waikato River Authority, Te Rūnanga o Ngāi Tahu and Muaūpoko Tribal Authority.

Summary of relevant resource management issue(s)

Based on the research, analysis and consultation outlined above, the following key resource management issues related to HPL are:

- Issue 1: Urban rezoning onto HPL
- Issue 2: Fragmentation of HPL
- Issue 3: Reverse sensitivity

¹⁵ CBA, pg. 65.

- Issue 4: Appropriate and inappropriate uses of HPL
- Issue 5: Managing interactions with NPS-FM, NPS-UD and other national direction
- Issue 6: Involvement of Māori and defining specified Māori land.

A description of these relevant issues and a summary of the proposed response is provided below.

Issue 1: Urban rezoning onto HPL Description

Urban rezoning into rural areas has had a significant effect on the availability of HPL for land-based primary production. From 2002 to 2019, the amount of HPL converted to new urban areas (from dense urban developments through to lots up to 4,000m² in size) increased by 30% (from 49,185ha to 64,192ha). Over the same period, the total New Zealand urban area increased by 13% to approximately 206,565 hectares.¹⁶ Research has found that urban growth disproportionately occurs on HPL with 27.7% of new urban areas between 2002 and 2019 located on LUC 1–3 land. In 2019, half of New Zealand’s urban area rezoning was located in Auckland, Waikato and Canterbury.¹⁷

Urban rezoning onto HPL is a permanent loss of that land for land-based primary production. Ongoing urban rezoning onto HPL therefore has wide-ranging and intergenerational impacts on rural communities and economies that are based around land-based primary production.

One reason urban rezoning disproportionately impacts HPL is it is often more suitable to develop than non-HPL. Some of the attributes that make HPL desirable for land-based primary production (being flat or rolling, cleared, close to key transport links) also make it attractive for urban rezoning. These attributes also make HPL less costly to develop and service, and therefore more desirable for urban rezoning for councils and developers. Numerous submitters on the proposed NPS-HPL provided examples of recent urban rezoning onto HPL; from ribbon development to the east and west of Palmerston North, to future urban areas identified on the Heretaunga Plains in the Hawke’s Bay. Others highlighted recent urban rezoning on the Taieri Plains outside Dunedin, the Cromwell Basin in Central Otago, Richmond in the Tasman Region, and Cambridge in the Waikato. It is concerning that some of this urban rezoning has occurred despite strong policy direction at the regional and district levels to protect HPL, which indicates the policy tools currently available to protect HPL are not effective enough.

Recommended response

- Introduction of policy to avoid the urban rezoning of HPL unless specifically provided for in the NPS.
- Introduction of an implementation requirement to avoid urban rezoning of HPL but provide a pathway for rezoning in limited circumstances to meet housing demand and fulfil obligations under the NPS-UD.

Issue 2: Fragmentation of HPL and rural lifestyle Description

Fragmentation of HPL is the result of subdividing rural land, often for rural lifestyle or rural-residential use or for the purpose of raising capital. Areas of HPL at greatest risk of fragmentation are in peri-urban areas and/or within rural areas seen as desirable places to live for their rural amenity and character. Fragmentation can occur for a number of reasons,¹⁸ but the prime driver is subdivision for rural lifestyle developments, which typically results in land parcels too small to be used for economically viable land-based primary production.

¹⁶ Curran-Cournane F et al. 2021. Cumulative effects of fragmentation and development on highly productive land in New Zealand. *New Zealand Journal of Agricultural Research*. Pg 6.
<https://doi.org/10.1080/00288233.2021.1918185>

¹⁷ Ibid, Table 3, pg. 7

¹⁸ Other key reasons noted by submitters included the need to subdivide to raise capital for buying out family members or paying for farm improvements and development creep through incremental land-use change eg, a change to a non-productive land-use activity often results in a future subdivision to accommodate that activity.

Issue 2: Fragmentation of HPL and rural lifestyle Description

The Our Land 2018¹⁹ report highlighted a 7% decrease in the total area of agricultural land in New Zealand from 13.4 million hectares in 2002 to 12.6 million hectares in 2012. It also highlighted a disproportionate loss of New Zealand's most productive land reporting that:

- in 2013, rural lifestyle blocks occupied 10% of New Zealand's LUC 1–2 land
- between 1990 and 2008, 29% of new urban areas were located on LUC 1–2 land (LUC 1–2 only makes up 5.2% of New Zealand's land), and
- approximately 8.3% of high-class land (LUC 1–3) around Auckland has been converted to urban development, with most conversions occurring between 1975 and 2012.

Evidence suggests these trends are continuing and potentially accelerating in some areas, with a high portion of planned urban growth around our major urban centres located on LUC 1–3 land. For example, an urban expansion study undertaken by Market Economics found that future urban areas in Auckland, Bay of Plenty (SmartGrowth) and Greater Christchurch occupy 64%, 37% and 76% of LUC 1–3 land respectively.²⁰ As such, there is a demonstrated need for the NPS-HPL objective to address a nationally significant resource management issue.

There has been a sharp increase in rural lifestyle development in recent decades, with 21% of HPL (LUC 1–3) now occupied by land parcels smaller than 40ha that contain a dwelling. On the most highly versatile land (LUC 1–2), 15% of LUC 1 and 10% of LUC 2 land is fragmented into land parcels smaller than 8ha containing a dwelling.²¹ In Auckland, 35% of the region's most versatile land is occupied by rural lifestyle properties.²²

Rural lifestyle development is having a far greater impact on the availability of HPL than urban rezoning. While the outward growth of urban centres between 1990 and 2008 occurred on 0.5% of New Zealand's LUC 1 and 2 land, analysis in the same study shows that rural lifestyle zones occupied 10% of all LUC 1 and 2 land.²³ If fragmentation of all HPL is considered (LUC 1–3), 5% of HPL had been subdivided into lifestyle blocks (parcels between 2 and 8ha in size) in 2019. This is equivalent to 173,800ha (59% increase since 2002).²⁴

Submitters on the proposed NPS-HPL (particularly councils) also provided consistent feedback that rural lifestyle development is the biggest threat to HPL in their region/district.

While the fragmentation of land ownership is legally reversible, in practice this is not common as a property's value generally increases when it is converted to a rural lifestyle property.²⁵ As a consequence, fragmentation of HPL generally results in the permanent loss of that land for land-based primary production.

The extent to which rural lifestyle developments are used for land-based primary production (if at all) varies markedly, from intensively farmed small blocks (producing a range of commercial agricultural and horticultural products) through to low intensity operations (producing for the needs of the household). Past research and surveys have generally found that smaller blocks will experience a moderate to significant fall in overall production when broken up. In contrast larger blocks, and those converted from more extensive grazing, may see an increase in agricultural production and value when subdivided.²⁶

Recommended response

¹⁹ Ministry for the Environment and Stats NZ. 2018. *New Zealand's Environmental Reporting Series: Our land 2018*.

²⁰ Market Economics. 2019. 'Urban Expansion: Assessment of Potential Policy Impacts – Proposed NPS on Highly Productive Land', prepared for the Ministry for Primary Industries.

²¹ *New Zealand's Environmental Reporting Series: Our Land 2021*.

²² Deloitte. 2018. *New Zealand's Food Story: The Pukekohe Hub*. Prepared for Horticulture New Zealand, August 2018.

²³ Andrew R & Dymond JR. 2013. Rezoning of lifestyle blocks and urban areas onto high-class land: An update for planning and policy. *Journal of the Royal Society of New Zealand*, 43(3), 128–140.

²⁴ *New Zealand's Environmental Reporting Series: Our Land 2021*.

²⁵ Andrew R & Dymond JR. 2013. Rezoning of lifestyle blocks and urban areas onto high-class land: An update for planning and policy. *Journal of the Royal Society of New Zealand*, 43(3), 128–140.

²⁶ Lillis et al. 2005. *Smallholdings in New Zealand*. New Zealand Agricultural and Resource Economics Society (Inc). Paper presented at the 2005, NZARES Conference.

Issue 2: Fragmentation of HPL and rural lifestyle

Description

- Introduction of requirements to map large and geographically cohesive areas of HPL to limit fragmentation of HPL at the identification stage.
- Introduction of policies directing subdivision of HPL to be avoided (unless otherwise provided for in the NPS) to address the ongoing fragmentation from rural lifestyle and urban development subdivisions.
- Introduction of implementation requirement to avoid rural lifestyle development except in very limited circumstances.

Issue 3: Reverse sensitivity

Description

Reverse sensitivity is a well-known planning concept under the RMA. It refers to the vulnerability of an existing activity to complaints from newly located activities in close proximity that are sensitive or incompatible with that existing activity. In practice, complaints and potentially legal challenges from these newly established activities can compromise the established activity by restricting when and how it can operate. Reverse sensitivity is not unique to HPL or land-based primary production. However, reverse sensitivity effects can be a particular issue for certain land-based primary production operations.

In productive rural environments, common reverse sensitive effects relate to complaints about the operation and noise of machinery, pesticide and fertiliser spraying and application, and dust and smells associated with land-based primary production. These complaints can lead to subsequent constraints on these established operations. For example, reverse sensitivity associated with development pressures was identified by a local growers' community as one of the key challenges resulting from urban rezoning and rural fragmentation in Pukekohe.²⁷ Feedback from submitters on the proposed NPS-HPL also noted that reverse sensitivity can have a significant impact on land-based primary production, particularly for producers on the edge of existing urban areas where the potential for conflicts is highest.

Submitters on the proposed NPS-HPL provided numerous examples of reverse sensitivity impacting on their operations; from complaints about normal orcharding activities in the Far North District to the spray drift from vineyards in Central Otago.²⁸ An interesting finding was that even if there was no actual adverse effect caused and all consents and other approvals had been obtained correctly, the perceived adverse effect and subsequent complaints from neighbours are often enough to restrict the operation and or/force the closure of rural production activities.²⁹

The pressure on land-based primary production activities to internalise their effects to the extent practicable can be difficult to manage according to submitters. Feedback from growers raised concerns that the requirement to internalise effects essentially sterilises certain parts of production properties in order to provide internal buffers – this increases the cost of operating and ultimately makes operations less economically viable.³⁰ Feedback also suggests that councils have been struggling to regulate the interface between urban and rural activities without putting further considerable pressure on primary producers in terms of operational requirements and costs.³¹

Recommended response

- Introduction of policy to manage reverse sensitivity effects on HPL to not constrain land-based primary production activities.
- Introduction of implementation requirement for territorial authorities to introduce provisions into their district plans to manage reverse sensitivity effects on land-based primary production activities.

²⁷ Curran-Cournane F, Cain T, Greenhalgh S, Samarasinghe O. 2016. 'Attitudes of a farming community towards urban growth and rural fragmentation – an Auckland case study. *Land Use Policy*. 58:241–250.

²⁸ For example, submissions on proposed NPS-HPL from submissions from Horticulture New Zealand and Central Otago Winegrowers Association.

²⁹ For example, submissions on proposed NPS-HPL from submissions from Central Otago Winegrowers Association and Far North District Council.

³⁰ For example, submissions on proposed NPS-HPL from submissions from Horticulture New Zealand.

³¹ For example, submissions on proposed NPS-HPL from the Resource Management Law Association

Issue 4: Appropriate and inappropriate uses of HPL

Description

The value of HPL is in the range of materials it can produce, which includes food, fibre, building materials, medicines and fuel sources. The proposed NPS-HPL released for consultation did not propose prioritising one form of primary production over another (ie, food production over the production of fibre) and instead remained 'agnostic' about what types of primary production activities should be enabled on HPL.

Some submitter feedback suggested that food production (and the need to achieve food security for New Zealand) should be prioritised in the NPS-HPL. While the production of food in New Zealand is often dependent on the availability of HPL, other factors that can influence food production, for example access to supporting infrastructure and labour markets and changes in primary production technologies. Changes to these other factors have significantly increased New Zealand's total food production over recent decades while the availability of HPL has reduced, which lends weight to the argument that New Zealand does not currently have a food production issue. Given the range of materials that HPL can produce, combined with the potential for shifting markets in the future to increase demand for non-food production uses of HPL, the key issue is the need to retain HPL in New Zealand for a range of primary production activities, not just food production.

The other focus of submitter feedback was whether forestry should be enabled on HPL. Submitters were concerned that enabling forestry on HPL would result in loss of HPL for food production opportunities and that forestry is an inefficient use of the soil resource compared to forms of primary production that produce food.

As discussed above, the scope of the proposed NPS-HPL as consulted on did not extend to prioritising particular primary production uses. One of the reasons for protecting HPL is the inherent flexibility of this land to be used for a range of different productive land uses. However, the definition of primary production in the proposed NPS-HPL should be more directly related to land-use activities that are reliant on the soil resource of the land and the NPS-HPL should include a new definition of 'land-based primary production'. This definition is differentiated from the National Planning Standards definition of primary production and is intended to be a subset of the wider primary production definition. Therefore, the NPS-HPL should include a definition of 'land-based primary production' including production from agricultural, pastoral, horticultural and/or forestry activities that are reliant on the soil resource of the land. The definition should also clarify that 'land-based primary production' includes activities reasonably necessary to support the production of materials on HPL (eg, packing sheds or equipment storage). This will help avoid potential confusion and implementation issues with the National Planning Standards definition of primary production. It also makes it clear that the focus of the NPS-HPL is to protect HPL for land-based primary production activities reliant on the soil resource – not other forms of primary production with no reliance on soil resource (eg, intensive indoor primary production).

The use of the term 'land-based primary production' and the associated link to activities that are dependent on the soil resource of the land is intended to recognise that while the NPS-HPL protects 'HPL' for land-based primary production, councils retain the discretion over what type of land-based primary production can occur on what type of HPL, including forestry. This gives councils the ability to address concerns about forestry – if forestry is considered an unsuitable use for a particular piece of HPL, it can still be restricted. This enables councils to manage land for particular values if that is a particular local priority. For example, some soils are inherently better for viticulture, while others are better suited for vegetables. Councils are best placed to know whether their region or district's HPL needs to be managed for specific additional values.

Submitters also provided feedback on what other uses of HPL should be enabled and restricted including:

- activities that support land-based primary production
- where there are permanent constraints that prevent that land being used for land-based primary production
- those related to section 6 matters
- nationally and regionally significant infrastructure
- quarrying and mineral extraction
- forestry.

Issue 4: Appropriate and inappropriate uses of HPL

Description

Recommended response

- Be agnostic on the type of land-based primary production.
- Introduce a definition of ‘supporting activities’ that covers those activities reasonably necessary to support land-based primary production on land (such as packing sheds and equipment storage).
- Include forestry in a definition of land-based primary production.
- Define what types of uses are appropriate on HPL including:
 - pathways for specified infrastructure (which include energy generation and transmission) and indigenous biodiversity protection, maintenance, restoration and enhancement to be located on HPL
 - a pathway for subdivision, use and development of HPL in situations where that land is not economically viable for land-based primary production due to long-term or permanent constraints on the productive capacity of the land.
- Consider any additional national direction on location of forests as part of possible amendments to the NES-PF/National Planning Framework (NPF).

Issue 5: Managing interactions with NPS-FM, NPS-UD and other national direction

Description

Ensuring HPL is available for use in land-based primary production now and for future generations is an objective that has the potential to conflict with the Government’s other objectives for freshwater management and urban development under the NPS-FM and NPS-UD. Some food producers on HPL have raised concerns that the constraints on nutrient and water allocation imposed under the NPS-FM may make the use of the land for land-based primary production economically unviable in the long term. Some cities are also surrounded by HPL and are already restricted in how they can grow. This means urban rezoning HPL may be the only practicable option in some circumstances to meet demand for housing and business land. There is a need to resolve the key tensions connected to these two key pieces of national direction and ensure the NPS-HPL does not conflict with other relevant pieces of national direction such as the NPS on Renewable Electricity Generation and Transmission and the proposed NPS on Indigenous Biodiversity.

In addition to National Policy Statements and other secondary legislation there is also the need to recognise and reiterate that this NPS and protection of HPL for land-based primary production does not trump section 6 matters.

Recommended response

- A policy and supporting implementation clause on integrated management to ensure the identification and management of HPL is undertaken in an integrated way that considers the interactions with freshwater management and urban development.
- A policy that avoids the urban rezoning of HPL (unless provided for in the NPS) supported by an implementation clause that allows for urban rezoning of HPL where needed, provided the proposal meets key tests, such as whether the rezoning is needed to provide sufficient development capacity to meet demand and achieve a well-functioning urban environment in accordance with the NPS-UD.
- Pathways for specified infrastructure (which include energy generation and transmission) and s 6 matters including indigenous biodiversity protection, maintenance, restoration and enhancement to be located on HPL.
- A pathway for subdivision, use and development of HPL in situations where that land is not economically viable for land-based primary production due to long-term or permanent constraints on the productive capacity of the land.

Issue 6: Involvement of Māori and defining specified Māori land

Description

An analysis of the impact of the NPS-HPL from a Te Tiriti o Waitangi perspective has identified that decisions on what land is mapped as HPL (included and excluded) could affect the different priorities of the different iwi/hapū/whānau in terms of land being rezoned urban, land being protected for freshwater values, as well as opportunities for the development of Māori land. The RMA Schedule 1 process requires that local authorities consult with iwi authorities, and any customary marine title group, during the preparation of policy statements and plans. However, the Schedule 1 process is limited in that it does not specifically provide for consultation with whānau, hapū, and iwi decision-making bodies beyond 'iwi authorities'. The Schedule 1 process is often critiqued for how it is applied and has resulted in poor levels of engagement with tangata whenua in some regions on some matters.

Parts 2 and 6 of the Local Government Act 2002 (LGA) provide principles and requirements for local authorities that are intended to facilitate participation by Māori in decision-making processes when giving effect to policy statements or plans. However, there remains discretion as to how the LGA provisions are applied.

Being silent on how or whether councils are expected to engage with tangata whenua to give effect to this NPS risks inconsistencies in how RMA and LGA requirements are applied in relation to the NPS-HPL. Direction on tangata whenua involvement is included in recent National Policy Statements for Freshwater Management and on Urban Development.

Another issue in terms of the obligations under Te Tiriti o Waitangi is to avoid further restrictions on the subdivision, use and development of Māori customary or freehold land in recognition of the existing and historic restrictions on the development of that land. Consideration must also be given to whether restrictions imposed by the NPS-HPL should apply to Treaty settlement land and/or categories of 'general land owned by Māori' subject to status changes under the Māori Land Court after 1 July 1993; or Part 1 of the Māori Affairs Amendment Act 1967 or returned public works land.

Recommended response

- Undertake an analysis of the impact of the NPS-HPL on the Treaty and Settlement Acts.
- Clarify the expectations with regards to tangata whenua engagement in giving effect to this NPS to be consistent with RMA and LGA requirements and to ensure Treaty obligations are recognised.
- Define the types of Māori land that need to be given special consideration in accordance with Te Tiriti o Waitangi. A summary of the categories of specified Māori land included in the definition is provided in relation to Clause 3.8 and 3.9 below.
- Clarify the scope of activities that should be enabled on these types of Māori land and exempt from restrictions imposed by this NPS.

Evaluation of objectives and policies

This section of the report evaluates the objective(s) of the proposal to determine whether they are the most appropriate means to achieve the purpose of the RMA, as well as the associated policies relative to these objective(s). It also assesses the level of detail required for the purposes of this evaluation, including the nature and extent to which the benefits and costs of the proposal have been quantified.

Scale and significance

Under s32(1)(c) of the RMA, this evaluation report needs to:

“Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.”

In light of this requirement, key factors that were considered by the Ministry for Primary Industries and the Ministry for the Environment in determining the level of detail required for

this evaluation included the geographic impact, the need for the proposal and the potential significance for the environment and the community (as set out below). **Table 1** provides an assessment of the scale and significance of the effects anticipated from the NPS-HPL.

Scoring: Scale	
Low:	Geographical extent of effects of the NPS HPL or magnitude of change from status quo is small.
Moderate:	Geographical extent of effects of the NPS HPL or magnitude of change from status quo is moderate.
High:	Geographical extent of effects of the NPS HPL or magnitude of change from status quo is large.
Scoring: Significance	
Low:	Need for the proposal and significance for the natural environment and community is low.
Moderate:	Need for the proposal or significance for the natural environment and community is moderate.
High:	Need for the proposal or significance for the natural environment and community is high.

Table 11: Assessment of the scale and significance of the NPS-HPL

Criteria	Assessment
Scale	
Geographical extent	<p>Moderate</p> <p>The proposal will apply nationally and require regional councils and territorial authorities to amend their regional policy statements and district plans to include maps of HPL and develop provisions to protect mapped HPL. The proposal includes a transitional definition of HPL based on LUC 1–3 land that applies until regional mapping of HPL is undertaken.</p> <p>Mapped HPL will comprise large, geographically cohesive areas of predominantly LUC 1–3 land within rural zones, with some exceptions. LUC 1–3 land is unevenly distributed across New Zealand, with some regions having a relatively high proportion of this land and others with limited LUC 1–3 land. While LUC 1–3 land covers approximately 14% of New Zealand’s land area, the spatial extent of mapped HPL is expected to be less as the NPS-HPL requires councils to:</p> <ul style="list-style-type: none"> • prevent land that is not zoned general rural, rural production or equivalent from being mapped as HPL • not map LUC 1–3 land as HPL where it does not form part of a geographically cohesive area of LUC 1–3 land. This will inevitably result in smaller, discrete and isolated areas of LUC 1–3 land being excluded from mapped HPL within each region. <p>Accordingly, the geographical extent of the proposal is assessed as being moderate. While there is varying distribution of LUC 1–3 land nationally, it is a relatively low to moderate percentage of land within any given region.</p> <p>Furthermore, the proposal will primarily apply to rural areas adjacent, or nearby, to urban areas experiencing high demand for urban growth or rural lifestyle development. As such, the proposal is expected to have significantly less impact on HPL in more remote rural areas with no or limited demand for such development. This further reduces the geographical area affected by the proposal.</p>
Magnitude of change from status quo	<p>Moderate</p> <p>The extent to which the proposal is a change from the status quo is highly dependent on existing plan provisions, which vary across the country. As previously noted in this evaluation most RMA plans and policy statements already include some level of protection for HPL (however defined). Some existing provisions are relatively consistent with the NPS-HPL whereas others are based on a narrower interpretation of HPL (ie, LUC 1–2 land) and/or are more permissive management regime, particularly with respect to subdivision and rural lifestyle development.</p>

	<p>A key aim of the proposal is to provide a more nationally consistent approach to managing the use and protection of the HPL resource and improve existing protections of HPL that are not sufficient. Accordingly, the magnitude of change from the proposal compared to the status quo will vary throughout New Zealand. In some regions, the proposal will be more extensive (in terms of land identified as HPL) and take a more restrictive approach than current provisions. In other regions and districts, it is expected there will be limited change from the status quo.</p> <p>Accordingly, the magnitude of change from the proposal compared to the status quo is assessed as moderate overall, although this will range from low to moderate/high in different regions/districts.</p>
Assessment of scale	Overall, the scale of change from the NPS-HPL is assessed as being moderate.
Significance	
Need for the proposal	<p>High</p> <p>The proposal aims to:</p> <ul style="list-style-type: none"> improve the management and protection of HPL from inappropriate subdivision, use and development to preserve the productive capacity of this finite resource for land-based primary production achieve a more consistent approach nationally, while enabling the local context to be considered and incorporated into planning and decision-making as appropriate. <p>These aims reflect the value and importance of New Zealand’s HPL resource to the primary sector and the extent to which national and local economies rely on the use of this land for land-based primary production. Clear evidence of the ongoing, incremental loss of HPL to irreversible non-productive development demonstrates the need to better protect and utilise this resource for current and future generations. The need for the proposal is therefore assessed as being high.</p>
Significance of the proposal on the natural environment	<p>Low to moderate</p> <p>The proposal will have a primarily positive outcome for the natural environment. Protecting New Zealand’s HPL resource from inappropriate subdivision, use and development will maintain its productive capacity for food production and enable this land to provide a number of environmental functions and services, as outlined in appendix C. In particular, HPL used for land-based primary production delivers ecological functions such as water purification/filtration, water storage for plants to use and flood regulation, habitat for many different creatures (supporting biodiversity), nutrient cycling and climate regulation through carbon sequestration.³² Improved protection of HPL through the proposal will therefore help ensure the HPL resource continues to provide these environmental functions and services. The provisions of the proposal also provide for a range of environmental protection, enhancement and restoration activities as appropriate uses on HPL.</p> <p>Accordingly, the significance of the proposal on the natural environment is assessed as low to moderate.</p>
Significance of the proposal on the community	<p>Low to moderate</p> <p>The primary negative impacts on the community from the proposal are the reduced opportunities for urban rezoning and rural lifestyle development due to the increased protection of HPL.</p> <p>Growth and development of urban areas is essential to provide for population growth and the growth of New Zealand’s economy. Housing choice, including rural lifestyle development where there is demand, is also desirable for communities.</p> <p>The extent to which the proposal affects, or limits, growth is highly dependent on the specific circumstances of a region or district. Factors affecting the impact of the proposal on growth include the demand for housing and business land, the extent to which this is already provided for under operative provisions and development</p>

³² CBA for NPS-HPL, refer section 5.1 and section 9 of the supporting analysis and literature review report.

strategies, the prevalence of HPL and the availability of alternative locations for growth and development.

Importantly, the NPS-HPL provides for urban rezoning onto HPL in appropriate circumstances and has been designed to align with the requirements in the NPS-UD for councils to provide 'sufficient development capacity' to meet housing and business land demand over the short, medium and long term. This ensures the proposal will not adversely impact on the housing needs of communities. Demand for lifestyle development is also expected to be largely met under the proposal by directing this demand to land that is not HPL, particularly where councils actively facilitate this. This reduces the overall net impacts on the community.

Conversely, benefits for the community from the proposal are expected to be significant and ongoing. These include greater assurance that land-based primary production can continue to provide essential food and other primary sector products for national and international markets, sustaining primary sector employment opportunities and export earnings. As discussed in [appendix C](#), the primary production sector plays a key role sustaining rural communities throughout New Zealand, delivering opportunities for social connections, and supporting cultural identity and a sense of place/connection to the land. While these social benefits are unquantified in the CBA for HPL, the CBA concludes that the social benefits arising from the proposal are significant.³³

Approximately 22,000 hectares of Treaty settlement land that is LUC 1–3 will be subject to restrictions imposed by the NPS-HPL (not already restricted by higher order legislation eg, Reserves Act or Conservation Act). This is 0.6% of the total LUC 1–3 land in NZ, however, represents 16% of Māori land (including Māori customary and freehold land as defined by TTWMA) and may affect iwi and hapū priorities for this land.

The overall significance of the proposal on the community, balancing both positive and negative impacts, is assessed as **moderate**. However, the significance is expected to be **low** in regions/districts that are not experiencing substantial growth, have sufficient capacity for growth and/or currently have strong protections relating to HPL.

Assessment of significance

Overall, the significance of the NPS-HPL is assessed as being moderate.

Based on this assessment, the scale and significance of the proposed provisions are considered to be **moderate** for the following reasons:

- while LUC 1–3 land comprises 14 per cent of New Zealand's land area (excluding conservation land and urban areas), the area of identified HPL will be less than this due to HPL mapping being focused on large, geographically cohesive areas of predominately LUC 1–3 land in general rural and rural production zones
- the provisions do not apply to urban zoned land, which is where the vast majority of communities live and work
- the provisions will primarily affect areas where there is demand for urban rezoning and rural lifestyle development, and there are many areas throughout New Zealand where demand for such development is low
- the proposal will not impact any significant areas of planned future growth around New Zealand's major urban centres due to the exemptions that apply to future urban zones and areas identified for future urban development (including under Future Development Strategies)
- most councils have existing provisions relating to the protection of HPL (however defined) and some have reasonably strong protections that are consistent with the proposal.

³³ Ibid, pg 130.

Accordingly, the degree of change introduced by the proposal is expected to be low in some regions/districts.

Consequently, a moderately detailed evaluation of these provisions has been identified as appropriate for the purposes of this report.

Quantification of benefits and costs

Section 32(2)(b) requires that, where practicable, the benefits and costs of a proposal are to be quantified. It may not be possible to quantify all costs and benefits.

The requirement to quantify benefits 'if practicable' recognises it is very difficult and, in some cases, inappropriate to quantify certain costs and benefits through section 32 evaluations – particularly those relating to non-market values. Accurately quantifying the costs and benefits of provisions is particularly challenging for national direction as the costs and benefits of the provisions typically vary regionally and locally due to a range of factors.

Given the scale and significance of the proposal, the Ministry for the Environment and Ministry for Primary Industries commissioned a CBA of the NPS-HPL which includes quantification of associated benefits and costs to the extent practicable. In relation to the NPS-HPL, the benefits and costs of the provisions are expected to vary throughout New Zealand based on a range of factors. This includes:

- implementation approach – for example, whether effect is given to the NPS-HPL through a standalone plan change or as part of a full plan review
- the degree of change from current provisions
- the extent and nature of the HPL resources with each region/district
- demand for housing, business land, and rural lifestyle development
- the sufficiency of development capacity to meet demand for housing and business land under operative provisions and through future urban areas identified in future development strategies and other strategic planning documents.

The monetised and quantified costs and benefits in this section 32 evaluation are primarily based on the CBA for the NPS-HPL prepared by Market Economics. Quantified costs in the CBA relate primarily to implementation costs for central government and councils, transaction costs for councils and developers, and opportunity costs for landowners. Quantified benefits in the CBA are limited to the avoided loss of land-based primary production. The approach to quantify these costs and benefits is discussed below. For further details on the methodologies to quantify costs and benefits of the NPS-HPL, [refer to the CBA report](#).

However, as discussed previously in this evaluation, there are a number of indirect and non-market values associated with HPL that are very difficult and problematic to quantify in a meaningful way. It has therefore not been practicable to quantify a number of benefits and costs in the CBA and this section 32 evaluation.

Implementation costs

Central government implementation costs

It is standard (and expected) practice for central government to provide targeted implementation support for RMA national direction. In the past, this has typically been in the form of a single guidance document (ie, user guide). More recently, central government has

provided more comprehensive implementation guidance and support for national direction, with cost estimates of up to \$5 million spread over a number of years.³⁴

Central government implementation costs for the NPS-HPL are expected to be on the lower end of the spectrum, being limited to the development of implementation guidance and liaison with councils as they give effect to the NPS-HPL. The estimates of central government implementation costs in the CBA are based on advice from the Ministry for Primary Industries which estimates that two full-time equivalent staff (FTEs) will be required to develop NPS-HPL implementation guidance over a six-month period and one FTE for the following 24 months to liaise with councils. Based on this advice, the CBA for the NPS-HPL estimates total central government implementation costs at approximately \$400,000 over three years (or \$350,000 in present value terms using 8 per cent discount rate).³⁵

Council implementation (plan change) costs

Council implementation costs are primarily one-off, short-term costs that are incurred when preparing changes to regional policy statements and district plans to give effect to the NPS-HPL. However, there will be some minor ongoing costs to update HPL maps and monitor the effectiveness and efficiency of provisions that give effect to the NPS-HPL.

The actual costs for councils to implement the NPS-HPL are expected to vary substantially based on the degree of change from existing provisions and how councils choose to give effect to the NPS-HPL. The assumption is that councils will give effect to the NPS-HPL as a single plan change or incorporate this into a full plan review, with the latter option generally being more efficient in terms of timing, effort and costs. The implementation timeframes in the NPS-HPL are likely to enable some councils to implement the NPS-HPL through a full regional policy statement or plan review process.³⁶

The requirement to spatially map HPL within each region is new and this will be a key implementation cost for regional councils. Territorial authorities will also incur some costs as they collaborate with regional councils to map HPL (the NPS-HPL requires councils to collaborate when mapping HPL). Data limitations mean the costs to map HPL have not been quantified in this section 32 evaluation or in the CBA for the NPS-HPL.

The CBA provides generic costs estimates for preparing changes to regional policy statements and district plans to give effect to the NPS-HPL. The council implementation cost estimates in the CBA are based on a limited sample of plan change costs from the National Monitoring System for the RMA rather than an estimate of specific plan change costs that reflect the requirements of the NPS-HPL. The sample used for the cost estimates also covers a range of plan change types and situations. Therefore, these council implementation cost estimates are

³⁴ For example, the NPS-FM and the NPS-UDC have involved more comprehensive implementation support programmes compared to other national direction, with the cost estimate ranging from \$2 million to \$5 million spread over four years (source: section 32 report for proposed National Policy Statement for Indigenous Biodiversity).

³⁵ CBA, section 2.3.

³⁶ The NPS-HPL allows three years from commencement date for regional councils to give effect to NPS-HPL and territorial authorities have a further two years from the end of the transitional period (date when HPL is mapped). This is likely to provide territorial authorities with a 5+ year window (depending on the efficiency of the regional council mapping process) to make changes to their district plans, which will allow some territorial authorities to incorporate this work into a full district plan review (provisions need to be reviewed every 10 years).

indicative only. As seen in figure 4, the indicative costs to prepare changes to regional policy statements and district plans to give effect to the NPS-HPL in the CBA are as follows:³⁷

- regional councils: \$1.86 million (or \$1.39 million average in present value terms) per council to make changes to their regional policy statement (excluding the cost of mapping HPL), and
- territorial authorities: \$1.69 million (or \$1.22 million in present value terms) per council to make changes to their district plans.

Figure 2: Estimated council implementation costs to give effect to the NPS-HPL

Indicative Regional Policy Statement change costs

Plan Change Cost	Generally Total Cost Stated	Council Costs – pre-notification	Council Costs – notification to decisions	Council Costs – decisions to operative
max	\$ 4,804,000	\$ 1,257,000	\$ 2,902,000	\$ 644,000
min	\$ 501,000	\$ 28,000	\$ 131,000	\$ 342,000
average	\$ 1,861,000	\$ 594,000	\$ 1,153,000	\$ 462,000

Source: NMS (data filtered on giving effect to national instruments), MPI, M.E
n=6, although breakdown costs based on smaller samples.

Indicative District Plan change costs

Plan Change Cost	Generally Total Cost Stated	Council Costs – pre-notification	Council Costs – notification to decisions	Council Costs – decisions to operative
max	\$ 6,760,000	\$ 2,750,000	\$ 2,445,000	\$ 2,171,000
min	\$ 16,000	\$ 5,000	\$ 16,000	\$ 6,000
average	\$ 1,694,000	\$ 1,446,000	\$ 837,000	\$ 887,000

Source: NMS (data filtered on giving effect to national instruments), MPI, M.E
n=24, although breakdown costs based on smaller samples.

Source: CBA, Market Economics

Opportunity costs

One of the key costs anticipated from the NPS-HPL relates to the opportunity costs for rural landowners on land that is identified as HPL who will be constrained in their ability to subdivide their land. Subdivision of land typically results in capital gain for the landowner through the creation and sale of a new lot, which then enables the construction of (at least) one dwelling. The desire for rural landowners to obtain capital through subdividing their property into smaller lots is evident from the proliferation of rural lifestyle development throughout New Zealand.

The NPS-HPL will introduce a strong policy regime to avoid subdivision of HPL **unless** provided for in the NPS. This will create potential opportunity costs for landowners including Treaty settlement land located on HPL in the form of a potential loss in capital gain that would otherwise result from the subdivision and sale of some of their land. This is somewhat mitigated by the ability to subdivide HPL if “the applicant demonstrates that the proposed lots will retain the overall productive capacity³⁸ of the subject land over the long term” (clause 3.8(1)(a)) or where “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” (clause 3.10(1)). This flexibility in the NPS-HPL was not factored into the CBA modelling of opportunity costs and this was based on a ‘high regulatory

³⁷ The plan change costs for unitary authorities was not estimated separately in the CBA for the NPS-HPL. However, it is expected there will be efficiencies for unitary authorities to give effect to NPS-HPL as a single plan change process.

³⁸ The definition of ‘productive capacity’ in relation to land, means 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.

response' scenario.³⁹ As such, actual opportunity costs under the NPS-HPL are likely to be substantially lower than estimated in the CBA.

Further, when considering the potential opportunity costs from restrictions on subdivision under the NPS-HPL, it is also important to consider the following factors:

- **the existing provisions relating to subdivision** – there is no unfettered right to subdivide land and many councils already have strong protections in place for the subdivision of HPL (however defined)
- **landowner intentions** – not all landowners have the intention of subdividing their land now or in the foreseeable future. Rather, many landowners on HPL are likely to continue to use HPL for land-based primary production regardless of the NPS-HPL. Landowners are also unlikely to seek to subdivide their land into smaller parcels where there is limited demand for such development (eg, in more remote rural areas)
- **the net opportunity costs and distribution of costs** – this is important as tighter restrictions on the subdivision of HPL are likely to be fully or partially offset by the redirection of rural lifestyle demand to other (non-HPL) rural locations. The benefits to those receiving landowners are expected to be similar to those who own HPL, resulting in a net transfer of benefits (and costs).

These factors are important to consider as they collectively mean that 'actual opportunity costs' under the NPS-HPL are likely to be much lower than the theoretical 'potential opportunity costs'. Opportunity costs are also discussed in the assessment of the efficiency and effectiveness of particular policies and clauses of the NPS-HPL. The Treaty implications are considered further in relation to Clause 3.8 and 3.9.

Transaction costs – Rezoning/Plan changes

The NPS-HPL is expected to result in some net transaction costs for proposed plan changes for urban rezoning onto HPL due to the tests and requirements that must be met under clause 3.6 (Restricting urban rezoning of HPL). These transaction costs will be incurred by the plan change proponent – either territorial authorities or private plan change applicants.

Transaction costs under the NPS-HPL reflect the 'marginal increase' in work, time and effort that may be required to be undertaken as part of an urban rezoning plan change to meet the tests set out in clause 3.6 of the NPS-HPL. The need for urban rezoning plan changes will primarily rise from either the NPS-UD requirement to provide sufficient development capacity to always meet demand or from a developer's desire to make commercial profit. Costs associated with either of these scenarios are not directly attributable to the NPS-HPL.

Therefore, it is important to consider the 'net transaction costs' that might be expected under the NPS-HPL compared to the status quo. The transaction costs arising under the NPS-HPL urban rezoning provisions are expected to vary significantly throughout New Zealand based on the following factors:

- existing provisions relating to urban rezoning and HPL (however described)
- existing strategic planning processes to provide for urban growth – including future development strategies and structure plan processes

³⁹ The CBA was based on an earlier version of the NPS-HPL rural lifestyle provisions that took a stronger avoidance approach.

- future demand for urban growth and the market demand for different housing typologies (eg, intensification versus greenfield land)
- the sufficiency of development capacity provided by existing provisions and identified future growth areas to meet short-, medium- and long-term demand for housing and business land.

CBA assessment of transaction costs – urban rezoning/plan changes

The CBA provides an assessment of the potential transaction costs associated with clause 3.6 of the NPS-HPL for territorial authorities and private plan change proponents. This assessment was based on feedback from council representatives from the six case studies⁴⁰ and involved developing an indicative scenario of future plan changes (number and timing) for urban rezoning on HPL over the next 30 years in the six districts.⁴¹

The projected number and relative timing of the urban rezoning plan changes in the CBA are shown in figure 5 below. Across the six case studies, the CBA estimates a total of 10 plan changes for urban rezoning on HPL in the transitional period (ie, years 1 to 3); four plan changes in the medium term (ie, years 4 to 10); 23 in the long term (ie, years 11 to 30); and a fairly even split between council and privately initiated plan changes. This distribution reflects the fact that capacity for short- to medium-term demand is generally already provided for in district plans or strategic planning documents. While this modelling aimed to be as accurate as possible, the CBA emphasised the resulting scenarios of future urban rezoning plan changes on HPL (by type) are indicative only. This is because the nature of urban development means the exact number, timing and cost of future plan changes is highly uncertain, particularly in the medium and long term.

Figure 3: Projected number and timing of urban rezoning plan changes in six case studies

Case Study Council	PC Type	Short Term			Total (30 Years)
		(Transitional Period)	Medium Term	Long Term	
Estimated Distribution of Urban Expansion Plan Changes on HPL *					
Total Case Studies	Council	4	2	10	16
	Private	6	2	13	21
	Total	10	4	23	37

Counts developed through discussion with the Council. Indicative only for the purpose of this CBA. Does not include all projected plan changes or even all projected urban expansion plan changes, only those likely to be on HPL.

** Council plan changes include District Plan Reviews. Private Plan changes include requests for zoning submissions on Proposed District Plans on the basis that the same information requirements would be needed.*

Source: CBA for NPS-HPL, Market Economics

The estimates of ‘net transaction costs’ from clause 3.6 for urban rezoning plan changes in the CBA are based on general feedback from the council representatives rather than a detailed assessment of plan change cost data. Three council representatives provided plan change costs estimates as follows: approximately \$100,000 (Selwyn); approximately \$250,000

⁴⁰ Auckland, Western Bay of Plenty, Waipa, Horowhenua, Selwyn, Ashburton.

⁴¹ The projected scenario of plan changes (by year) for the six case studies took into account: recent trends in council initiated and private plan changes; the effect of strategic planning (eg, future development strategies, future urban zones) on the location and frequency of urban rezoning plan changes, including where future plan changes may be exempt from the NPS-HPL; the location of LUC 1–3 land around existing urban areas in the six districts, the projected rate of growth expected in each district and urban zones; current development capacity of urban zones (and future urban zones) to accommodate growth; and the lead-in time of urban zoning.

(Western Bay of Plenty); and approximately \$300,000 (Auckland). Council representatives then estimated that the net transaction costs attributable to the NPS-HPL (ie, to undertake additional assessment under clause 3.6 compared to the status quo) will be an additional 20 per cent to current plan change costs (ie, a range of \$20,000 to \$60,000).⁴² For more details on the methodology to estimate net transaction costs, refer to section 4 of the CBA.

It is important to emphasise this cost range is based on rough order estimates from a limited number of councils. As such, the net transaction cost estimates attributable to the NPS-HPL in the CBA are indicative only. These indicative cost estimates are also considered to be fairly conservative, particularly for the plan changes giving effect to growth strategies that have already considered factors relevant under clause 3.6 of the NPS-HPL (eg, reasonably practicable and feasible, same locality and market, well-functioning urban environment). Feedback from the case study councils was that the scope of work required for plan changes under clause 3.6 is strongly aligned with what is (or will be) carried out under strategic growth planning and district or local-level planning. This is also consistent with the findings of the urban rezoning study undertaken by Market Economics which found that HPL (however defined) was considered by all councils to some extent as part of the process to assess alternatives and the most suitable location for urban rezoning.⁴³

The results of this evaluation have been used to inform the assessment of reasonably practicable options identified below, including the associated policies.

The CBA is available [on the Ministry for the Environment's website](#) and should be read in conjunction with this report.

In terms of Treaty settlement land, it is noted there is an opportunity for claimants (iwi and hāpu) to avoid restrictions imposed by the NPS-HPL on this land by seeking to rezone Treaty settlement land as 'Special Purpose Zone-Māori Purpose Zone' which as defined in the National Planning Standards are '*areas used predominantly for a range of activities that specifically meet Māori cultural needs including but not limited to residential and commercial activities*'. The time and resource costs (transaction costs) associated with a private plan change can be high and the chances of success are uncertain.

Transaction costs – consenting costs

The CBA was prepared at a point of time based on an earlier version of the NPS that proposed to address permanent constraint through the mapping process. Costs associated with establishing permanent or long-term constraints were not quantified due to uncertainties. It is acknowledged that providing a consenting pathway for land subject to permanent constraints will reduce mapping costs and shift some of this to some consenting costs. Overall, the costs are likely to be less than if they were considered at the mapping stage due to:

- **the existing provisions relating to subdivision** – there is no unfettered right to subdivide land and many councils already have strong protections in place for the subdivision of HPL (however defined)
- **landowner intentions** – not all landowners have the intention of subdividing their land now or in the foreseeable future. Rather, many landowners on HPL are likely to continue

⁴² Two councils provided estimates of 20 per cent and the other case study councils agreed with the applicability of these assumptions for the purposes of the CBA.

⁴³ Market Economics. 2019. '*Urban Rezoning: Assessment of Potential Policy Impacts - Proposed NPS on Highly Productive Land*', prepared for the Ministry for Primary Industries.

to use HPL for land-based primary production regardless of the NPS-HPL. Landowners are also unlikely to seek to subdivide their land into smaller parcels where there is limited demand for such development (eg, in more remote rural areas)

- **the net opportunity costs and distribution of costs** – this is important as tighter restrictions on the subdivision of HPL are likely to be fully or partially offset by the redirection of rural lifestyle demand to other (non-HPL) rural locations. The benefits to those receiving landowners are expected to be similar to those who own HPL, resulting in a net transfer of benefits (and costs).

The actual consenting costs associated with implementing the NPS-HPL, in particular clauses 3.8–3.10 (appropriate subdivision, use and development of HPL and exceptions) will be monitored and reported on as part of the evaluation of this NPS-HPL.

Overview of proposal

A link to the proposed NPS-HPL is included in [appendix A](#) and should be referenced in conjunction with this evaluation report.

In summary, the proposal comprises the following provisions:

- one objective and nine policies that seek to protect HPL from urban rezoning and rural lifestyle development and ensure HPL is prioritised for land-based primary production
- 13 implementation requirements dealing with the non-exhaustive list of things that local authorities must do to give effect to the objectives and policies of the NPS-HPL including: integrated management; involvement of tangata whenua; mapping; identifying HPL; avoiding urban rezoning of HPL; avoiding rural lifestyle zoning of HPL; avoiding subdivision of HPL; protecting HPL from inappropriate subdivision, use and development; HPL not suitable for viable land-based primary production; continuation of existing activities; supporting productive uses; and managing reverse sensitivity and cumulative effects
- the identification clause 3.5 includes a transitional definition of HPL. The NPS-HPL will apply to land identified by the transitional HPL definition between the commencement date and the date that maps of HPL are made operative in the RPS within each region.

Evaluation of proposed NPS-HPL objective

Section 32(1)(a) of the RMA requires the evaluation report examine the extent to which the objectives (purpose or intent) of the proposal are the most appropriate way to achieve the purpose of the RMA.

An examination of the proposed objective/purpose or intent (along with reasonable alternatives) is included below, with the relative extent of their appropriateness based on an assessment against the criteria listed below.

1. **Relevance** – is the objective directed to addressing a resource management issue/s? Will it achieve one or more aspects of the purpose and principles of the RMA? Will it assist the Minister to carry out their statutory RMA functions?
2. **Usefulness** – is the intent of the objective clearly expressed? Does it offer sufficient direction to guide decision-making?

3. **Reasonableness** – will the objective result in an unjustifiably high cost being imposed on the public at large, specific areas of interest or discrete parts of the community? Is it consistent with identified outcomes sought by iwi/Māori and/or the wider public?
4. **Achievability** – can the objective be achieved with tools and resources available, or likely to be available, to those charged with implementing the proposal?

For the purpose of this examination, the Ministry for the Environment and Ministry for Primary Industries have considered the following potential objective(s):

- the proposed objective
- alternative objectives for the NPS-HPL.

These are assessed below in relation to the status quo (ie, no NPS).

The proposed objective

The NPS-HPL has a single overarching objective:

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

This objective aims to protect HPL for use in land-based primary production for current and future generations. This does not imply absolute protection of HPL from being used for non-productive purposes. Rather, in recognition of the values and benefits of HPL, the intent of the NPS-HPL objective is to ensure that land uses that are not land-based primary production only occur on HPL:

- in circumstances where it is appropriate and necessary
- when alternative options have been appropriately considered
- where those alternative uses provide wider environmental, economic, social and cultural benefits.

This means urban rezoning and other uses (eg, specified infrastructure, defence facilities and mineral and aggregate extraction) may be appropriate on HPL provided the overall HPL resource within each region is protected for land-based primary production for current and future generations.

This overall purpose /intent of the NPS-HPL for the purposes of evaluating whether the proposal is the most appropriate way to achieve the purpose of the RMA has been summarised as follows:

The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand’s remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.

Table 2 provides an evaluation of the appropriateness of the NPS-HPL objective (as described above) to achieve the purpose of the RMA relative to the status quo. The criteria for appropriateness is assessed in terms of: relevance, usefulness, reasonableness and achievability.

Table 2: Assessment of the overall NPS-HPL objective/intent/purpose

Objective 1: Highly productive land is protected for use in land-based primary production, both now and for future generations	
<i>The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand’s remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.</i>	
Criteria	Assessment
Relevance	
Directly related to a resource management issue	<p>The key issue the NPS-HPL seeks to address is the ongoing, incremental loss of HPL due to irreversible development and fragmentation. This is a nationally significant resource management issue due to the range of benefits and values associated with HPL, and the importance of protecting this finite resource for current and future generations.</p> <p>In particular, the agriculture, horticulture and viticulture industries that rely on HPL (and other land) contribute significantly to national and international markets, and national employment. New Zealand’s primary sector generated \$46 billion in export revenue in 2019 and provides employment to over 350,000 people.⁴⁴ In addition to these economic and employment benefits, the HPL resource provides a number of significant social, environmental and cultural values and benefits as summarised in appendix C of this report. The ongoing loss of HPL therefore poses risks to the social, economic and cultural wellbeing of current and future generations.</p>
Focused on achieving the purpose of the RMA	<p>The purpose of the RMA is the sustainable management of natural and physical resources. This is defined in section 5(2) of the RMA as meaning:</p> <p><i>“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –</i></p> <ul style="list-style-type: none"> • <i>sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and</i> • <i>safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</i> • <i>Avoiding, remedying or mitigating any adverse effects of activities on the environment.”</i> <p>The NPS-HPL is directly focused on achieving the purpose of the RMA as it seeks to:</p> <ul style="list-style-type: none"> • manage the protection and appropriate use of a natural resource in a way that enables people and communities to provide for their social, economic and cultural wellbeing • sustain the potential of a natural resource to meet the reasonably foreseeable needs of future generations (including for local food supply and employment) • safeguard the productive capacity of the finite soil resource. <p>The NPS-HPL does not have primacy above other national direction. In achieving the purpose of the RMA, section 6 sets out matters of national importance that must be recognised and provided for. These matters generally focus on the protection of areas with significant ecological, cultural and historic heritage value. In some cases, the presence of HPL may coincide with the presence of areas recognised under section 6 of the RMA and there may be competing uses and priorities for that land. To avoid any potential conflict, the NPS-HPL considers activities that provide for section 6 matters as an ‘appropriate use’ of HPL. This ensures the NPS-HPL is consistent with section 6 of the</p>

⁴⁴ Ministry for Primary Industries: <https://www.mpi.govt.nz/law-and-policy/legal-overviews/primary-production/>

Objective 1: Highly productive land is protected for use in land-based primary production, both now and for future generations

The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand's remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.

Criteria	Assessment
	<p>RMA and other national direction that relates to section 6 matters⁴⁵ and ensures that these instruments work together to achieve the overall purpose of the RMA. This is also achieved by exempting specified Māori land (including Māori customary and freehold land and Māori reservations and reserves) from undue restrictions on subdivision, use and development of this land.</p> <p>In achieving the purpose of the RMA, particular regard must be had to the 'other matters' in section 7 of the RMA. The section 7 matters of most relevance to the management and protection of HPL are:</p> <ul style="list-style-type: none">(a) <i>kaitiakitanga</i>(b) <i>the efficient use and development of natural and physical resources; and</i>(d) <i>intrinsic values of ecosystems:</i>(g) <i>any finite characteristics of natural and physical resources.</i> <p>The NPS-HPL will provide for the involvement of tangata whenua in giving effect to this NPS including mapping of HPL. The subdivision, use and development of Māori customary and freehold land, Māori reserves and reservations, and land that has been returned not via a settlement process but returned, for example, under the powers of the Waitangi Tribunal, will also be exempt from most restrictions imposed by NPS-HPL. As such, the NPS-HPL objective (as supported by implementing provisions) is consistent with section 7(a).</p> <p>The NPS-HPL seeks to ensure the HPL resource is used efficiently for land-based primary production, in particular through discouraging and avoiding inefficient uses that are not reliant on the soil resource (particularly rural lifestyle development). The NPS-HPL objective also recognises that HPL is a finite natural resource and seeks to ensure the inherent characteristics of HPL that make it productive are better considered in RMA planning and decision-making, whilst the implementing provisions provide for other matters of national importance and the intrinsic value of ecosystems (eg, indigenous biodiversity). As such, the NPS-HPL objective (as supported by implementing provisions) is consistent with sections 7(b) 7(d) and 7(g) of the RMA.</p> <p>In achieving the purpose of the RMA, section 8 requires the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) to be taken into account. Two of these key principles are partnership and participation. The NPS-HPL objective is focused on the protection of HPL. It is expected the process to identify and protect this whenua will involve significant involvement with iwi/Māori, including partnership approaches where appropriate, and this is provided for in the implementing provisions for this objective. This is consistent with the requirements in Schedule 1 of the RMA for councils to undertake early engagement with iwi authorities and have particular regard to their views when preparing and changing plans and policy statements. This will be particularly important when considering how Māori land should be included or excluded from HPL mapping, and how the use and protection of the HPL resource is managed within the rohe of iwi/Māori of each region.</p> <p>The rationale for the definition of specified Māori land is based on the need for the Crown to balance competing rights and interests and ensure fairness and reasonableness to Government policy by ensuring a consistent legal framework for 'general land' that does not distinguish by virtue of its ownership.</p>

⁴⁵ For example, the New Zealand Coastal Policy Statement 2010, the NPS-FM 2017, and proposed National Policy Statement for Indigenous Biodiversity.

Objective 1: Highly productive land is protected for use in land-based primary production, both now and for future generations

The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand's remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.

Criteria	Assessment
	Overall, the NPS-HPL objective is directly focused on achieving the purpose of the RMA. It seeks to protect New Zealand's most versatile land, a finite natural resource, from unnecessary loss and fragmentation and maintain the availability of this resource to provide for the wellbeing of current and future generations. The HPL resource is extensively utilised for food and fibre production to service local and international markets and provides significant employment opportunities and social benefits to communities throughout New Zealand. Improved management and protection of this finite natural resource will provide for the social, economic and cultural wellbeing of people and communities and help achieve the purpose of the RMA.

Usefulness

Assists in addressing the identified resource management issue	<p>The policy direction provided through the NPS-HPL will assist in addressing the lack of clarity under the RMA on managing the use and protection of HPL, as articulated in the issues section of this report. This, in turn, will directly address the ongoing, incremental loss of HPL through better protection of this resource from inappropriate subdivision, use or development. In particular, the NPS-HPL objective and provisions will assist in addressing these resource management issues by providing:</p> <ul style="list-style-type: none"> • a nationally consistent approach to spatially identify the HPL resource in each region, combined with clear policy direction to protect that resource • a national framework that recognises the importance of HPL for current and future generations • clear policy direction to ensure decisions that result in the loss of HPL are only made after careful consideration of the full range of values and benefits provided by HPL (not just financial considerations) • greater clarity and consistency on how to protect the HPL resource through subordinate plan change and consenting processes • clear direction on when alternative (non-productive) uses are appropriate and inappropriate on HPL to assist with more consistent and certain decision-making.
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Assists a council to carry out its statutory functions	<p>A NPS for HPL will assist regional councils to carry out their RMA functions by providing greater direction on how a regionally (and nationally) significant resource should be identified, protected and managed and achieve integrated management of this natural resource within their region. Giving regional councils the ability to consider how important the HPL resource is in a national context will ensure that losses of HPL are considered through the appropriate lens, as opposed to just looking at the local or regional impact, where the loss of HPL in a highly productive area may be given less weight.</p> <p>The provisions that implement the NPS-HPL objective require territorial authorities to protect HPL from certain types of subdivision, use and development. This includes specific implementation requirements for territorial authorities to include plan provisions that avoid the rezoning of HPL for rural lifestyle, protect HPL from inappropriate subdivision, use and development, and manage reverse sensitivity effects. It also provides clear direction to territorial authorities to prioritise the use of HPL for land-based primary production while allowing for appropriate 'non-productive' uses on HPL when these deliver wider economic, social and cultural benefits (eg, environmental restoration and enhancement). Finally, it provides a pathway for non-productive use of HPL land in situations where the land is proven to be subject to long-term or permanent constraints that make land-based primary production economically unviable on the land.</p>
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Reasonableness

Objective 1: Highly productive land is protected for use in land-based primary production, both now and for future generations

The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand’s remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.

Criteria	Assessment
<p>Consistent with desired community and iwi/Māori outcomes</p>	<p>The NPS-HPL has been through an extensive process that has involved ongoing engagement with key stakeholders and a formal public consultation phase, which included nation-wide meetings and formal submissions on the proposed NPS-HPL. 250 submissions were received on the proposed NPS-HPL and 90% of those submitters indicated full or partial support for the policy intent of the NPS-HPL objective to better protect the HPL resource and ensure this resource is available for land-based primary production for future generations. There was also widespread recognition from submitters that:</p> <ul style="list-style-type: none"> • the values and benefits of HPL need to be better recognised under the RMA • this finite resource needs to be better protected from urban rezoning and rural lifestyle development. <p>There have also been persistent calls from soils scientists and some councils for greater national policy direction to better manage the HPL resource.⁴⁶ As such, the NPS-HPL objective is consistent with community outcomes sought throughout New Zealand to better value and protect the HPL resource.</p> <p>Whenua is recognised as being an important cultural and spiritual resource for Māori. Māori are spiritually connected to the land, and land and water are regarded as taonga to Māori. As New Zealand’s productive land and soil are important cultural and spiritual resources for Māori, the NPS-HPL objective to retain HPL for land-based primary production often aligns with Māori aspirations for whenua. Feedback from iwi/Māori in the development of the NPS-HPL and through submissions indicated broad support for the intent of the NPS-HPL objective to protect HPL for future generations. This was seen as particularly important for larger iwi who have multiple council boundaries within their rohe and would appreciate a more consistent framework to protect and manage HPL. Feedback from iwi/Māori submitters on the proposed NPS-HPL also emphasised the importance of partnering with iwi/Māori to identify HPL within their rohe and develop corresponding provisions for the management and protection of their whenua. This is anticipated through the implementation of the provisions that give effect to the NPS-HPL objective. As such, the NPS-HPL objective is broadly consistent with iwi/Māori outcomes, however this may be challenged in relation to the definition of ‘specified Māori land’, specifically the exclusion of Treaty settlement land and ‘general land owned by Māori categories where these have been subject to status changes under the Māori Land Court after 1 July 1993; or Part 1 of the Māori Affairs Amendment Act 1967; or public works returned land.</p>
<p>Will not result in unjustifiably high costs on the community or parts of the community</p>	<p>Any national direction instrument will result in some implementation costs for councils and therefore potential costs on the community in the form of rates. Key implementation costs for councils relate to the mapping of HPL in each region, developing provisions that give effect to the NPS-HPL, and making changes to their regional policy statements and district plans in accordance with RMA Schedule 1. Plan change costs for iwi and hapū and council implementation costs are discussed above in this report, including an overview of the indicative plan change cost estimates provided in the CBA.</p> <p>Some terms may be open to interpretation or debate. Definitions have been provided in the policy to assist with consistent interpretation. The application of these terms will be further clarified in guidance. These terms include:</p>

⁴⁶ Fiona Curran-Cournane, Nancy Golubiewski and Laura Buckthought. 2018. “*The odds appear stacked against versatile land: can we change them?*” New Zealand Journal of Agricultural Research, DOI: 10.1080/00288233.2018.1430590

Objective 1: Highly productive land is protected for use in land-based primary production, both now and for future generations

The overall purpose/intention is to direct new housing development away from productive land where possible and protect Aotearoa New Zealand’s remaining highly productive land from inappropriate subdivision, use and development so it can be prioritised for growing food and primary production.

Criteria	Assessment
	<ul style="list-style-type: none"> – “large, geographically cohesive areas of land” – “reasonably practicable, commercially viable options within the same locality and market” – “rural lifestyle development” – “retention of the overall productive capacity of the land”. <p>Overall, the implementation costs from the NPS-HPL are not considered to be unjustifiably high for the community as:</p> <ul style="list-style-type: none"> • the HPL mapping requirements require councils to define the boundaries of HPL based on large, geographically cohesive areas rather than undertake detailed site-specific LUC assessments. This will reduce overall mapping costs for regional councils and associated costs to the community • the NPS-HPL provides for the mapping of HPL to be sequenced, allowing costs to be spread over three years as appropriate • many councils already have provisions to protect HPL (however defined) and some provisions are largely consistent with the NPS-HPL. Implementation costs are therefore expected to be relatively lower as councils will generally be updating and refining existing provisions as opposed to drafting new provisions from scratch • the NPS-HPL provides a transitional period for councils to give effect to the NPS-HPL (regional councils must initiate the process by notifying HPL maps no later than three years following the commencement date). This enables costs to be spread over a number of years and be integrated with full plan reviews and/or the implementation of other national direction where appropriate • guidance will be developed by central government to assist with implementation, which will help to reduce implementation costs for councils and their communities. <p>The NPS-HPL also has potential opportunity and consenting costs for HPL landowners in the community resulting from restrictions imposed on their land. These are primarily related to the restrictions on rural lifestyle development and subdivision under the NPS-HPL that may limit the ability of landowners to subdivide part of their property for capital gain. As above, many councils already have provisions to protect HPL (however defined) and some provisions are largely consistent with the NPS-HPL. Consenting costs are therefore expected to be relatively lower in that most applicants would have already expected to obtain resource consent for rural lifestyle or subdivision in the Rural Zone. The NPS will provide greater clarity in what information/evidence must be submitted to be successful. These requirements will also reduce costs to the community in avoiding the unnecessary loss of HPL.</p> <p>The potential opportunity costs for landowners on HPL are discussed earlier and in the evaluation of specific policies and clauses. In general, the actual opportunity costs are expected to vary significantly across districts depending on existing subdivision provisions, future development intentions, and the ability to direct demand for lifestyle development to other parts of the district. Overall, this assessment concludes that, while the opportunity costs for individual landowners may be significant, the net opportunity costs from the NPS-HPL restrictions on subdivision and rural lifestyle development are expected to be low at the aggregate level and not unjustifiably high for the community at large.</p> <p>Communities will also experience significant benefits from improved protection of the HPL resource and its ability to support the primary sector. The primary production sector plays a key role in many districts to sustain rural communities by providing social connections, employment opportunities and earning potential. These benefits to the community anticipated from the implementation of the NPS-HPL are assessed as</p>

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Criteria	Assessment
	being significant in the CBA. ⁴⁷ As such, the NPS-HPL is not expected to result in unreasonable costs.
Achievability	
<p>Able to be achieved with the available powers, skills, resources of councils</p>	<p>Achieving the NPS-HPL objective / purpose requires:</p> <p>1: HPL to be identified</p> <ul style="list-style-type: none"> HPL is to be identified based on large, geographically cohesive areas of predominately LUC 1–3 land, with some discretion to include other LUC classes based on identified criteria. This will require a new approach for many regions that have not mapped HPL in this way before. Currently, it is common for plan definitions of HPL (or similar) simply to refer to LUC maps in the New Zealand Land Resource Inventory, which only show LUC land at the 1:50,000 scale. Mapping of HPL at the parcel scale under the NPS-HPL will require expertise and resources, and there may be competition for these resources nationally given the timeframes over which the mapping process is expected to be completed (within three years). However, the NPS-HPL also makes it clear that HPL mapping can be based on the LUC maps in the New Zealand Land Resource Inventory and best aligned to logical geographic boundaries – site-specific LUC assessments are not required for this exercise. The requirement to identify ‘large and geographically cohesive’ areas of LUC 1–3 land also allows regional councils to take a pragmatic approach to setting the boundaries of HPL within their region, rather than require detailed, site-specific assessment of all LUC 1–3 land in the region. This will allow regional councils to align the boundaries of HPL with other logical geographic boundaries (such as roads, reserves and property boundaries) and exclude smaller areas of HPL that are subject to other constraints. The criteria to identify HPL are also focused on physical parameters that are less subject to discretion and debate, which will also help to limit the extent of the required resources, processes and costs for councils. The term ‘large and geographically cohesive’ has been defined in the policy to assist with consistent interpretation. The application of these terms will be further clarified in guidance. As such, the spatial mapping of HPL is achievable within the powers, skills and resources of regional councils. However, it is acknowledged that some degree of central government guidance and support is important to assist with this task to ensure it is feasible and achievable within the implementation timeframes. <p>2: Provisions to protect HPL from inappropriate subdivision, use and development</p> <ul style="list-style-type: none"> This will require changes to regional policy statements and district plans to include objectives, policies and rules to manage and protect identified HPL. As discussed, most councils already have existing provisions relating to the protection of HPL (however described). The NPS-HPL will generally require existing provisions to be refined and strengthened to some degree (particularly where existing protections are limited) and be more specific on how the HPL resource shall be protected from certain development and uses. The development of plan provisions to give effect to the NPS-HPL is therefore in line with standard planning practice and well within the resources and expertise of councils. It is acknowledged that some terms may be open to interpretation or debate, including:

⁴⁷ CBA, pg 78.

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Criteria	Assessment
	<ul style="list-style-type: none"> – “reasonably practicable, commercially viable options within the same locality and market” – “rural lifestyle development” – “retention of the overall productive capacity of the land”. <p>To assist with consistent interpretation; ‘reasonably practicable, commercially viable options within the same locality and market’ relates to terms used in the NPS-UD whilst ‘productive capacity’ has been defined in the policy. ‘Rural lifestyle’ has not been defined in terms of a minimum lot size as it is acknowledged that this varies depending on a range of factors and by region. The application of these terms will be further clarified in guidance.</p> <ul style="list-style-type: none"> • The NPS-HPL provides councils with criteria for considering resource consent or plan change applications for alternative land uses on HPL (not otherwise provided for in the NPS) where there are long-term or permanent constraints on that land that means it is not economically viable for use in land-based primary production. These tests are intentionally high to avoid undermining the purpose of the NPS-HPL and status quo arguments which favour conversion to alternative uses without consideration of long-term costs associated with a loss of HPL resource. <p>Overall, the implementation of the NPS-HPL purpose/objective can be achieved within the available skills, resources and powers of both regional councils and territorial authorities using standard and well understood mapping and planning processes.</p>
<p>An acceptable level of uncertainty and risk</p>	<p>It is considered there is limited uncertainty in the NPS-HPL purpose/objective and the extent to which the NPS-HPL provisions will address the identified resource management issues. As noted, the provisions to achieve the NPS-HPL purpose/objective are similar to those already adopted by some councils and are aimed at providing a greater level of protection than the status quo without introducing a fundamentally different planning regime. This provides a high level of certainty that the intended outcome will be achieved.</p> <p>The main impacts associated with the NPS-HPL purpose/objective at the national level relate to the opportunity costs for landowners resulting from the restrictions on subdivision and rural lifestyle development on HPL. There are risks that a strong avoidance approach will create significant costs for individual landowners seeking to subdivide their land or lead to potential unintended outcomes. However, this risk is effectively mitigated through the ability to subdivide HPL where it can be demonstrated that the productive capacity of that land will be retained or where there are long-term or permanent constraints on that land that make it uneconomically viable for land-based primary production in the long term. As many councils already have provisions to protect HPL (however defined) and some provisions are largely consistent with the NPS-HPL, consenting costs are therefore expected to be relatively lower in that most applicants would have already expected to obtain resource consent for rural lifestyle or subdivision in the Rural Zone. The net opportunity costs to the community from the restrictions on subdivision and rural lifestyle development in the NPS-HPL are also assessed as being minor at the aggregate level. As such, there is an acceptable level of risk associated with the implementation of these provisions to achieve the NPS-HPL purpose /objective.</p> <p>There is also a litigation risk relating to the definition of specified Māori land as discussed above.</p> <p>In contrast, not acting through the NPS-HPL risks ongoing, permanent loss of HPL to irreversible development and fragmentation. This poses risks to the wellbeing of</p>

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Criteria	Assessment
	current and future generations due to the range of benefits and values associated with HPL that will be lost.

Alternative objectives for the NPS-HPL

In relation to alternative objectives considered, the proposed NPS-HPL consulted on the following three draft objectives.

Objective 1: Recognising the benefits of highly productive land

To recognise and provide for the value and long-term benefits of using highly productive land for primary production.

Objective 2: Maintaining the availability of highly productive land

To maintain the availability of highly productive land for primary production for future generations.

Objective 3: Protecting from inappropriate subdivision, use and development

To protect highly productive land from inappropriate subdivision, use and development, including by:

- a) avoiding subdivision and land fragmentation that comprises the use of highly productive land for primary production;
- b) avoiding uncoordinated urban rezoning on highly productive land that has not been subject to a strategic planning process; and
- c) avoiding and mitigating reverse sensitivity effects from sensitive and incompatible activities within and adjacent to highly productive land.

The alternative wording of the three objectives is considered likely to achieve a similar outcome to the single objective of the NPS-HPL. However, feedback from consultation and further analysis confirmed there was greater benefit in rationalising the objectives and ensuring they are clearly framed as outcomes (objectives) rather than actions (policies). An objective is a statement of what is to be achieved through the resolution of a particular issue while policies are the course of action to achieve or implement the objective.

While there are multiple ways of wording the objectives, the primary issue that has been identified is the need to protect HPL from ongoing loss resulting from urban rezoning, rural lifestyle development, and other 'inappropriate' activities to ensure this resource can be used for land-based primary production for current and future generations. It is considered this can be best achieved through a single NPS-HPL objective that addresses both the issue and the outcome sought sufficiently, which will provide clear direction for implementing provisions. This approach is most likely to support the course of action necessary to achieve the objective.

Accordingly, while the three alternative objectives outlined above would likely achieve similar outcomes, the clear, succinct NPS-HPL objective is preferred and considered the more suitable option.

Conclusion – appropriateness of NPS-HPL objective

In summary, the single NPS-HPL objective provides a clear outcome aligned to the core resource management issue the proposal seeks to address – the ongoing, incremental loss of New Zealand’s HPL resource. The NPS-HPL objective has direct relevance to the purpose of the RMA to promote sustainable management as it seeks to protect New Zealand’s most versatile and productive land from unnecessary and irreversible loss due to fragmentation and other inappropriate subdivision, use and development. The HPL resource is extensively used for food and fibre production, serving national and international markets, and provides a significant contribution to the social, economic and cultural wellbeing of people and communities throughout New Zealand. To a lesser extent, it also provides direct and indirect ecological functions that benefit the natural environment.

The NPS-HPL objective seeks to sustain this natural resource to meet the needs of future generations and safeguard the productive capacity of the soil resource, consistent with sections 5(2)(a) and 5(2)(b) of the RMA. The NPS-HPL objective is also consistent with the ‘other matters’ in section 7(b) and 7(g) of the RMA as it will promote the efficient use of a natural resource and ensure better recognition of finite characteristics of the HPL resource in RMA planning and decision-making. The implementation provisions for this objective are also consistent with section 7(a) and 8 of the RMA as they will enable opportunities for iwi/Māori to exercise their kaitiaki role over HPL and enable meaningful partnerships between iwi/Māori and councils when identifying and protecting HPL.

Overall, this section 32 evaluation concludes that the NPS-HPL objective is the most appropriate way of achieving the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

Evaluation of reasonably practicable options and associated provisions

Under s32(1)(b) of the RMA, reasonably practicable options to achieve the objective/s associated with this proposal need to be identified and examined. “Reasonably practicable” is not defined in the RMA, but can include options that:

- are both regulatory and non-regulatory
- are targeted towards achieving the stated objective/s
- are within the Ministry’s resources, duties and powers
- represent a reasonable range of possible alternatives.

This section further requires an assessment to be undertaken of the efficiency and effectiveness of the associated provisions in achieving the proposed objective/s.

In light of these requirements, a range of reasonable options and associated provisions (ie, policies, implementation requirements) to achieve the objectives of this proposal have been identified by the Ministries. For each of these options, an examination has been undertaken of their relative costs, benefits and the risks of acting when there is uncertain or insufficient information to determine the effectiveness and efficiency of the option, and whether it is the most appropriate way to achieve the NPS-HPL objective. These evaluations are set out in tables 3 to 13 below.

Overarching policies: the value of HPL, integrated management and involvement of tangata whenua (Policy 1, Policy 2 and clauses 3.2 and 3.3)

Provisions being assessed

The provisions of the NPS-HPL that are assessed in this section relating to the value of HPL, integrated management and involvement of tangata whenua are Policy 1, Policy 2 and clause 3.2, 3.3 as outlined below. Note however that Policy 1 is implemented through numerous implementation clauses that seek to ensure the values of HPL are better recognised in RMA decision-making, including evaluation of urban rezoning proposals on HPL (eg, clause 3.6(3)).

Policy 1: Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.

Policy 2: 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

- (1) Regional councils and territorial authorities must identify highly productive land, and manage the effects of subdivision, use, and development on highly productive land, in an integrated way, which means:
 - a. considering how land-based primary production, including supporting activities, interact with freshwater management at a catchment level; and
 - b. providing co-ordinated management and control of the subdivision, use, and development on highly productive land across administrative boundaries within and between regions; and
 - c. taking a long-term, strategic approach to protecting and managing highly productive land for future generations.

Clause 3.3 Tangata whenua involvement

- (1) In giving effect to this National Policy Statement through regional policy statements, regional plans, and district plans, every local authority must actively involve tangata whenua (to the extent they wish to be involved).
- (2) The active involvement must include consultation with tangata whenua that is:
 - a. early, meaningful and, as far as practicable, in accordance with tikanga Māori; and
 - b. undertaken at the appropriate levels of whānau, hapū, and iwi decision-making structures, recognising that:
 - (i) some delegates will have to represent the interests and perspectives of more than one group; and
 - (ii) some committees are not always fully representative of every iwi and hapū in the region; and
 - (iii) each constituent group will continue to be entitled to make submissions on notified plans and retain all other rights to be heard and have standing for appeals.

Intent of the provisions

Assessment of efficiency – Policies 1 and 2 and clauses 3.2 and 3.3

Table 3 provides an assessment of the efficiency of Policies 1 and 2 and clauses 3.2 and 3.3 in achieving the NPS-HPL objective.

Table 3 2: Assessment of efficiency – Policies 1 and 2 and clauses 3.2 and 3.3

Criteria	Assessment	
Administrative efficiency	<p>Policies 1 and 2 and clauses 3.2 and 3.3 are administratively efficient as:</p> <ul style="list-style-type: none"> • Policy 1 recognises HPL is a finite resource with long-term values for land-based primary production • Policy 2, clause 3.2 and clause 3.3 help to provide more clarity in how the NPS should be implemented in terms of interactions with freshwater management and urban development and involvement of tangata whenua. This may help to streamline processes and minimise debate and litigation through the statutory process • the requirement for regional councils to engage early with tangata whenua will promote the sharing of resourcing and expertise and may also provide more efficiencies at subsequent planning processes to give effect to the NPS-HPL • the requirement to provide coordinated management of HPL across administrative boundaries and within regions will promote the sharing of resourcing and expertise which may result in efficiency gains • Policy 2 and clauses 3.2 and 3.3 provide a nationally consistent approach to identifying HPL with respect to interactions with other national direction and tangata whenua engagement that will enable efficient and consistent implementation of the NPS-HPL. 	
Environmental	Benefits	Costs
	<ul style="list-style-type: none"> • Policy 2 and clauses 3.2 and 3.3 provide clear direction that the identification and management of the HPL resource needs to be undertaken in an integrated way considering the interactions with freshwater management and urban development and input from tangata whenua. This may help to improve environmental outcomes. • Policy 2 and clause 3.2 reduce risks that identification and management of HPL does not take account of how the protection of HPL interacts with freshwater management and urban development (recognising that local authorities have an obligation to give effect to all relevant national direction through RMA planning processes). • Clause 3.3 reduces risks that identification and management of HPL does not provide for tangata whenua in their role as kaitiaki of HPL and/or other aspirations of tangata whenua in relation to HPL consistent with Treaty obligations. 	<ul style="list-style-type: none"> • N/A – no environmental costs are anticipated.

Criteria	Assessment	
Economic	<ul style="list-style-type: none"> Provides certainty that the identification and management of HPL should be undertaken in an integrated way that considers the interactions with freshwater management and urban development, with the involvement of tangata whenua. The collaboration between regional councils, territorial authorities and early engagement with tangata whenua required by the provisions may result in efficiency gains and sharing of resources. May encourage councils to approach the implementation of NPS-HPL, NPS-FM and NPS-UD in a more integrated and collaborative manner with associated efficiency gains. 	<ul style="list-style-type: none"> Supporting the early involvement of tangata whenua may require greater upfront investment in time and resources from both local authorities and tangata whenua. However, these upfront costs should be offset by the efficiencies and improved outcomes this early engagement would achieve compared to issues being raised at subsequent steps of the statutory process.
Social	<ul style="list-style-type: none"> Ensuring HPL is identified and managed in an integrated way and considering opportunities for achieving the protection of HPL through freshwater management and urban development provides greater assurance that HPL will be retained and utilised for productive purposes. This will help sustain local food supply for current and future generations with flow-on benefits to rural and urban communities. 	<ul style="list-style-type: none"> Implementing these specific policies and clauses will require more time, cost and effort from regional councils and territorial authorities. This work is likely to be funded through rates, potentially reducing the amount of funding for other community initiatives. However, any increase in implementation costs is likely to be minimal and the provisions may achieve efficiency gains (as outlined above).
Cultural	<ul style="list-style-type: none"> Integrated management and involvement of tangata whenua may help to achieve better outcomes for HPL from a Te Ao Māori perspective. It may also deliver associated benefits to Māori communities. 	<ul style="list-style-type: none"> Clause 3.3 may place increasing resourcing pressure on tangata whenua with potential impacts on cultural wellbeing. However, this is mitigated by the direction to involve tangata whenua to the extent they wish to be involved.

Assessment of effectiveness – Policies 1 and 2 and clauses 3.2 and 3.3

Policies 1 and 2 and clauses 3.2 and 3.3 of the NPS-HPL are assessed as being effective in achieving the NPS-HPL objective and addressing the identified resource management issues. In particular:

- Policy 1 will help ensure the full range of values associated with HPL are considered in RMA decision-making, leading to better protection of this finite resource
- integrated management Policy 2 and implementation clause 3.2 provide high-level direction on how the identification and management of HPL should be undertaken in relation to freshwater management and urban development which both heavily interact with the protection and management of the HPL resource. The interactions with the objectives of the National Policy Statements on Urban Development and Freshwater Management are considered without creating primacy of one piece of national direction over another. This allows for a consideration of which piece(s) of national direction may be the most relevant in different contexts. It is considered more effective to provide high-level direction to consider these integrations within each region rather than be

too prescriptive, as this could have unintended consequences (noting clause 3.6 provides more detailed policy direction on interactions with NPS-UD when considering urban rezoning on HPL)

- integrated management Policy 2 and implementation clause 3.2 mirror a similar integrated management clause in the NPS-FM (clause 3.5) which requires freshwater, land use and development in catchments to be managed in an integrated and sustainable way
- clause 3.3 clarifies expectations with regard to the involvement of tangata whenua in giving effect to the NPS-HPL consistent with the RMA and LGA requirements, helping to avoid any ambiguity as to whether HPL is a priority for tangata whenua
- the provisions will help achieve consistency in implementation and support the sharing of resources when giving effect to the NPS-HPL to help ensure its objective is achieved.

Other reasonably practicable options

The other reasonably practicable options for achieving this direction relating to integrated management and involving tangata whenua when implementing the NPS have been identified.

1. Relying on existing provisions for integrated management and involvement of tangata whenua under the RMA.
2. Directing that integrated management means having specific regard to the objectives of the NPS-FM and NPS-UD, creating primacy of these pieces of national direction over others.

Option 1: Relying on existing provisions for integrated management and involvement of tangata whenua under the RMA

Integrated management

Integrated management is already a core function of councils under the RMA as follows:

- Section 30(1)(a) – regional councils have functions for the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region.
- Section 31(1)(a) – territorial authorities have functions for the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.
- Regional policy statement – the purpose is to provide an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region (section 59) and must state processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions (section 62(1)(h)).

As such, this option would involve relying on the existing provisions in the RMA to ensure councils take an integrated approach to implement the NPS-HPL alongside other national direction. However, this approach is not considered to be the most effective to achieve the NPS-HPL as it creates a risk that councils do not recognise the importance of taking an integrated approach to implement the NPS-HPL within and across regions and/or the need to consider key interactions with freshwater management and urban development. The proposed approach is preferred as it helps provide greater assurance that the NPS-HPL will be implemented in a considered and integrated manner consistent with good practice.

Tangata whenua involvement

The RMA Schedule 1 process requires local authorities to consult with iwi authorities, and any customary marine title group, during the preparation of policy statements and plans. However, the Schedule 1 process is limited in that it does not specifically provide for consultation with whānau, hapū, and iwi decision-making bodies beyond 'iwi authorities'. It is up to tangata whenua to determine the most appropriate level of engagement.

Parts 2 and 6 of the Local Government Act 2002 (LGA) provide principles and requirements for local authorities intended to facilitate participation by Māori in decision-making processes when giving effect to policy statements or plans. However, there remains discretion as to how the LGA provisions are applied.

An analysis of the impact of the NPS-HPL from a Te Tiriti perspective suggests that decisions on what land is mapped as HPL (included and excluded) could affect the various priorities of the different iwi/ hapū/whānau in terms of land being rezoned urban, land being protected for freshwater values, as well as opportunities for the development of Māori land. Therefore, it is considered beneficial to ensure there are specific requirements to engage with tangata whenua in giving effect to the NPS-HPL that are consistent with the general obligations in Schedule 1 of the RMA and Parts 2 and 6 of the LGA.

Overall, relying on existing provisions of involvement of tangata whenua under the RMA is not considered to be the most effective and efficient way to achieve the NPS-HPL. Remaining silent with regards to tangata whenua involvement on how the NPS-HPL should be implemented creates ambiguity as to whether HPL is a priority issue for tangata whenua when feedback is received, and treaty analysis suggest it is.

Option 2: Directing integrated management means having specific regard to the objectives of the NPS-FM and NPS-UD

The interactions between freshwater, land use and development are broadly accepted and acknowledged in the NPS-FM. These interactions are heightened in relation to HPL given its finite characteristics and long-term value when used for land-based primary production. However, a policy specifically requiring the management of HPL be consistent with the NPS-UD and NPS-FM creates the risk that these pieces of national direction are given primacy over the NPS-HPL.

In some instances, other national policy statements will and should have primacy over the NPS-HPL. Section 75(3) already requires plans to give effect to "any NPS" and specifying particular NPSs at a policy level may suggest integrated management of HPL may not need to be consistent with the other pieces of national direction.

Overall, it is considered this option would create inconsistency with the resource management system under the RMA, which requires all national direction be considered, where relevant. Accordingly, this option is not the most efficient and effective in achieving the NPS-HPL objective.

Mapping highly productive land (Policy 3 and clause 3.4)

Provisions being assessed

The provisions of the NPS-HPL that are assessed in this section relating to the mapping of HPL are Policy 3 and clause 3.4 as follows:

Policy 3: Highly productive land is mapped and included in regional policy statements and district plans.

Clause 3.4: Mapping highly productive land

- (1) Every regional council must map as highly productive land any land in its region that:
 - (a) is in a general rural zone or rural production zone; and
 - (b) is predominantly LUC 1, 2, or 3 land; and
 - (c) forms a large and geographically cohesive area.
- (2) However, despite anything else in this clause, land that, at the commencement date, is identified for future urban development must not be mapped as highly productive land.
- (3) Regional councils may map land that is in a general rural zone or a rural production zone, but is not LUC 1, 2, or 3 land, as highly productive land if the land is, or has the potential to be (based on current uses of similar land in the region), highly productive for land-based primary production in that region, having regard to the soil type, physical characteristics of the land and soil, and climate of the area.
- (4) Regional councils must undertake the mapping required by this clause:
 - (a) in collaboration with relevant territorial authorities; and
 - (b) in consultation with tangata whenua as required by clause 3.3; and
 - (c) at a level of detail that identifies individual parcels of land or, where appropriate for larger sites, parts of parcels of land.
- (5) For the purpose of identifying land referred to in subclause (1):
 - (a) mapping based on the New Zealand Land Resource Inventory is conclusive of LUC status, unless a regional council accepts any more detailed mapping that uses the Land Use Capability classification in the New Zealand Land Resource Inventory; and
 - (b) where possible, the boundaries of large and geographically cohesive areas must be identified by reference to natural boundaries (such as the margins of waterbodies), or legal or non-natural boundaries (such as roads, property boundaries, and fence-lines); and
 - (c) small, discrete areas of land that are not LUC 1, 2, or 3 land, but are within a large and geographically cohesive area of LUC 1, 2, or 3 land, may be included; and
 - (d) small, discrete areas of LUC 1, 2, or 3 land need not be included if they are separated from any large and geographically cohesive area of LUC 1, 2, or 3 land.

Intent of the provisions

The consistent identification and spatial mapping of HPL is fundamental to the effective management and protection of this resource. The NPS-HPL provisions relating to the protection and use of HPL apply to land identified and mapped as HPL. What constitutes HPL therefore has a significant bearing on the location and geographical extent to which the NPS-HPL provisions apply and is critical to the achievement of the NPS-HPL objective.

The policy intent is that regional councils will first identify all the land covered by clause 3.4(1), before removing any land that is captured by the criteria in clause 3.4(2) – the balance remaining will be land that must be identified as HPL in the regional policy statement. The intention is for this process to be a relatively straightforward exercise for regional councils by basing this assessment on the LUC system. Councils will be able to exclude land from HPL maps where this is no longer economically viable for land-based primary production due to permanent or long-term constraints, but only where this is demonstrated through a resource consent or plan change process in accordance with clause 3.10. The intent is that all land meeting the criteria to be mapped as HPL under clause 3.4 is included and any consideration of permanent or long-term constraints is undertaken on a case-by-case basis (the rationale for this approach rather than dealing with constraints at the mapping stage is considered in Option 2 below). As discussed further below, the tests in clause 3.10 are intentionally high to avoid undermining the objective of the NPS-HPL to protect HPL for land-based primary production for future generations.

The NPS-HPL provisions relating to the mapping of HPL, particularly the criteria to consider when identifying HPL, were a key focus of public consultation on the proposed NPS-HPL and have been refined accordingly. The approach to mapping HPL in the NPS-HPL is focused on the physical properties of land and requires regional councils to map land as HPL within their region when the land:

- is in a general rural or rural production zone (or equivalent zone if national planning standards have not yet been given effect to)
- is predominantly LUC 1, 2 or 3 land
- forms a large and geographically cohesive area.

The references to areas of “predominately LUC 1–3 land” and “large and geographically cohesive area” are important. The intent is to give regional councils flexibility to define the spatial extent of HPL based on logical, pragmatic geographic boundaries (eg, roads, reserves, property boundaries) rather than require detailed, site-specific mapping of all LUC 1–3 land in the region. This will logically result in smaller, discrete and more isolated areas of LUC 1–3 land not being mapped as HPL, as appropriate. This is clarified through clause 3.4(5), which provides further direction on how large and geographically cohesive areas of HPL are to be identified and mapped.

The NPS-HPL also requires that regional councils must not map land as HPL when it is “identified for future development” at the commencement date, which is defined as follows:

- the land is identified in a published future development strategy as land suitable for commencing urban development over the next 10 years
- the land is identified, in a strategic planning document as an area suitable for commencing urban development over the next 10 years and at a level of detail that makes the boundaries identifiable in practice.

Clause 3.4(3) of the NPS-HPL specifically provides for regional councils to map other rural land (that is not classified as LUC 1–3 land) as HPL where this land is (based on current uses of similar land in the region), or has the potential to be, highly productive in that region taking into account soil type, physical characteristics of land and soil and climate of the area. This is primarily of relevance to viticulture and stone fruit orchards, which are often located on lower classes of LUC land, but which are utilised productively and provide significant employment and economic benefits. Clause 3.4(3) recognises that some regions with a disproportionately low amount of LUC 1–3 land have classes of LUC land that are highly productive in the context

of the region. As such, the NPS-HPL provides discretion for regional councils to identify this productive land as HPL under the NPS-HPL so it can be protected as such.

Clause 3.4(4) of the NPS-HPL makes it clear that regional councils must collaborate with territorial authorities when mapping HPL, consult with tangata whenua (to the extent they wish to be involved as required by clause 3.3) and undertake mapping at the parcel scale. The intent of these clauses is to ensure mapping is done once at a scale that can be used and relied upon by all parties and that is not subject to multiple iterations/challenges.

Criteria to map HPL

The criteria and factors to consider when identifying HPL was a key focus of submitter feedback on the proposed NPS-HPL. While a range of views were expressed, there were two main views:

- the criteria to identify HPL should all be mandatory
- the criteria to identify HPL should focus on the versatility of the soil and relate to ‘physical parameters only’.

The NPS-HPL aligns with both of these viewpoints – it provides a set of mandatory criteria that focuses on mapping of HPL based on physical parameters, as outlined above. The basis for this approach is that the inherent physical properties and versatility of the land are the key factors providing long-term value for land-based primary production. Excluding an area of land from being mapped as HPL based on a constraint that effects its long-term ability to be used for land-based primary production brings significant subjectivity into the assessment process and may diminish the area of HPL that is ultimately protected for future generations. Councils will be able to exclude land from HPL maps where it is not economical for land-based primary production based on permanent or long-term constraints, but only where this is demonstrated by applicants through a resource consent or plan change process under clause 3.10 (and any subsequent changes to regional and district plan maps resulting from resource consent decisions will need to be rolled into subsequent plan reviews or plan changes). The tests for determining a permanent or long-term constraint are intentionally high to avoid undermining the purpose of the NPS (refer to pages 104–109 for further discussion).

Basing the mapping of HPL on the physical attributes of the land simplifies the identification process by enabling mapping to be undertaken based on a widely used and accepted classification system (ie, LUC).⁴⁸ While this approach may result in more land identified as HPL (compared to an approach that considers all factors relevant to land productivity), the ability to use HPL for other (non-productive) uses and development is not precluded. Rather, the circumstances where these other uses are ‘appropriate’ on HPL is guided by other NPS-HPL provisions (namely Policies 5, 6, 7 and 8 and clauses 3.6 to 3.10) as detailed further below.

⁴⁸ There are recognised limitations with the LUC system (eg, scale, date). However, it remains the primary classification system used by councils to define HPL (or similar) throughout New Zealand and is generally supported by soil scientists. It is also the best tool available in New Zealand to classify land at this point in time.

Assessment of efficiency – Policy 3 and clause 3.4

Table 4 provides an assessment of the efficiency of Policy 3 and clause 3.4 in achieving the NPS-HPL objective.

Table 4 3: Assessment of efficiency – Policy 3 and clause 3.4

Criteria	Assessment	
Administrative efficiency	<p>Policy 3 and clause 3.4 are administratively efficient as:</p> <ul style="list-style-type: none"> • the provisions require HPL to be identified and mapped primarily based on physical properties of land using a widely used and accepted land classification system (LUC). This minimises the scope for subsequent debate as to what constitutes HPL within each region, that is, disputes on the location of HPL will largely be of a technical nature, rather than subjective debates based on wide range a range of factors relating to land productivity • utilising a small, nationally consistent set of criteria to map HPL across all councils will enable more efficient and consistent implementation • the provisions provide scope for regional councils to map large, geographically cohesive areas of land that are predominately LUC 1–3. This will allow councils to take a pragmatic approach to identifying HPL in their region based on logical geographical boundaries, rather than requiring detailed site-specific surveys of all LUC 1–3 land in the region (although there will likely still be some debate about what constitutes large, geographically cohesive areas) and this will be mitigated through the provision of guidance • the requirement for regional councils to collaborate with territorial authorities and consult early with tangata whenua in the mapping of HPL will: <ul style="list-style-type: none"> – promote the sharing of resourcing and expertise – help to minimise debate and litigation through multiple statutory processes • mapping to a parcel scale will provide certainty to all parties as to what areas of land are identified as HPL and hence subject to the NPS-HPL provisions. This will create efficiencies in subsequent plan change and consenting processes. The provisions also clarify that HPL mapping can be based on the New Zealand Land Resource Inventory and site-specific LUC assessments are not required (which would have significant implementation costs). 	
Environmental	<p>Benefits</p> <ul style="list-style-type: none"> • Ensures clear spatial identification of the HPL resource in statutory plans which is critical to the improved management and protection of this resource. Better protection of HPL from irreversible development will enable this natural resource to continue to provide a number of direct and indirect ecological functions and services. • The identification of large cohesive areas of predominately LUC 1–3 land (and other highly productive areas) as HPL will ensure New Zealand’s most versatile and productive land is protected through the NPS-HPL. • Avoids the exclusion of land from HPL mapping where this is subject to temporal constraints that may be addressed in the future (eg, water availability, transport links, 	<p>Costs</p> <ul style="list-style-type: none"> • Excluding rural lifestyle zones, future urban zones and areas identified for future urban development will reduce the extent of HPL that is identified and subsequently protected. • Relying primarily on the LUC classification system (and associated limitations in terms of the scale and age of mapping) may reduce the extent of HPL that is identified and subsequently protected. • There is a risk there is debate over what is ‘large and geographical cohesive’ however this will be mitigated through the provision of guidance. • The scale of mapping also doesn't distinguish or weed out areas with s6 values including water body margins and SNAs. There is a risk that the NPS-HPL could be suggesting that primary production should be “prioritised” in those areas because they have been identified as

Criteria	Assessment	
	<p>infrastructure). This will help to retain this resource for use in land-based primary production for future generations.</p>	<p>HPL although this interpretation is not consistent with case law or RM practice.</p>
<p>Economic</p>	<ul style="list-style-type: none"> • Spatial mapping in statutory plans provides certainty to all parties on the location of the HPL resource, which has flow-on benefits in terms of investment certainty. • The certainty provided by accurate mapping down to land parcel scale eliminates (or significantly reduces) future debate on the boundaries of HPL. • The flexibility to map large cohesive areas of HPL based on logical geographic boundaries and features is expected to significantly reduce HPL mapping costs for councils compared to an approach that requires detailed site-specific assessments. • The focus on physical parameters to define HPL using nationally consistent criteria will assist in a more efficient mapping process and reduce debate, litigation and associated costs associated with mapping HPL. • The collaboration between regional councils and territorial authorities in the mapping of HPL will help to provide efficiency gains and sharing of resources. • The mapping approach does not require regional councils to undertake a detailed assessment of whether there are permanent or long-term constraints affecting the ability of the land to be used for land-based primary production which would be a complex, expensive and litigious exercise. 	<ul style="list-style-type: none"> • The identification and mapping of HPL will require time, resources and costs. These implementation costs will primarily be incurred by regional councils, but territorial authorities will also incur costs collaborating with regional councils to map HPL in their district. • The exact costs to map HPL are not known and cannot be estimated with confidence due to data limitations.⁴⁹ It is expected that the costs to map HPL will vary depending on existing datasets (eg, S-Map⁵⁰), extent of LUC 1–3 land within each region, expertise within councils and the approach taken. Overall, these costs are not expected to be significant given that clause 3.4 allows for a pragmatic approach to HPL mapping and clarifies that mapping can be based on New Zealand Land Resource Inventory and site-specific LUC assessments are not required (which would have significant implementation costs). • Clause 3.4 does not require regional councils to exclude land from HPL where there is evidence of permanent or long-term constraints affecting the ability of the land to be used for land-based primary production. Therefore, landowners will have to apply through a resource consent or plan change for alternative subdivision, use and development if land-based primary production is no longer economically viable on HPL (and none of the other pathways for urban rezoning, subdivision, use and development apply). Preparing this evidence will be at the landowners' cost although it is expected that they would only pursue this pathway where it provides a greater economic return than retaining land in land-based primary production.

⁴⁹ The CBA for the NPS-HPL includes consideration of HPL mapping costs, taking into account the capabilities and expertise within regional councils, datasets needed to map HPL, and S-Map coverage. However, the CBA does not quantify HPL mapping costs due to data limitations, including limited feedback from councils and soil scientists on HPL mapping costs through public consultation. The costs will also differ between the proposed NPS-HPL approach and the refined NPS-HPL approach.

⁵⁰ S-Map is an existing soil spatial dataset developed and maintained by Manaaki-Whenua that currently provides partial coverage of New Zealand at a 1:50,000 scale and offers a number of benefits over the New Zealand Land Resource Inventory dataset (including greater accuracy and utility for a range of other land-use modelling applications). Some councils have already invested heavily in S-Map for their region, and it is therefore reasonable to assume that S-Map might be used for HPL mapping.

Criteria	Assessment	
Social	<ul style="list-style-type: none"> • Efficient and effective identification of HPL provides greater assurance that it will be retained and utilised for productive purposes and will sustain local food supply for current and future generations. This will have flow-on benefits to rural and urban communities. • The certainty provided by spatial mapping of HPL in statutory plans benefits all sectors of the community. • The exceptions allow for planned urban growth/areas identified for future development to be excluded from HPL. This ensures the HPL mapping process recognises where councils and communities have identified areas suitable for urban growth to meet housing and business land requirements and subsequently meet the needs of communities. 	<ul style="list-style-type: none"> • Mapping HPL will require time, cost and effort from regional councils and territorial authorities. This work is likely to be funded through rates, potentially reducing the amount of funding for other community initiatives. However, the actual mapping costs are not expected to be significant as outlined above.
Cultural	<ul style="list-style-type: none"> • Areas of HPL land will be identified and protected for land-based primary production. This may help iwi/Māori to utilise their whenua more effectively and productively for land-based primary production and deliver associated benefits to Māori communities. • The provisions enable regional councils, in partnership with iwi authorities, hapū, or Māori who have legal authority to make decisions in respect of specified Māori land, to identify areas of specified Māori land that must not be mapped as HPL. This will ensure specified Māori land is only identified as HPL when supported by tangata whenua. 	<ul style="list-style-type: none"> • May result in a greater area of Māori customary and freehold land and Treaty settlement land being identified as HPL and subsequently protected for use land-based primary production. However, the NPS-HPL provisions enable use and development of specified Māori land without being restricted by the NPS-HPL provisions, as all use of specified Māori land is identified as being an appropriate use of HPL.

Assessment of effectiveness – Policy 3 and clause 3.4

Policy 3 and clause 3.4 of the NPS-HPL are assessed as highly effective in achieving the NPS-HPL objective and addressing the identified resource management issues. In particular, the provisions:

- ensure clear spatial mapping of HPL in statutory plans which is critical to the improved management and protection of that resource
- utilise a land classification system that is well accepted and used throughout New Zealand and require large, geographically cohesive areas of LUC 1–3 land to be mapped as HPL within in each region. Accordingly, there is a high level of certainty that the mapping of HPL will be robust and encompass cohesive areas of HPL within each region, providing long-term protection of the HPL resource and value for current and future generations

- the provisions allow for a pragmatic approach to identify large, geographically cohesive areas of LUC 1–3 land within each region. This will ensure the HPL mapping process is focused on areas of HPL with the most long-term value for current and future generations
- provide for a collaborative process to map HPL between regional councils and territorial authorities, with involvement of tangata whenua to the extent they wish to be involved. This will help ensure: HPL is identified and mapped with certainty and accuracy by councils; informed by knowledge of local values and issues; and input from tangata whenua and the wider community is received
- provide a nationally consistent approach to identify and map HPL, addressing key inconsistencies under the status quo in terms of how HPL (or similar) is defined and spatially mapped in RMA planning document which will be supported by guidance
- explicitly enable land that is highly productive (but not LUC 1–3 land) to be mapped as HPL and be protected by the NPS-HPL provisions. This will help ensure all land that is currently or potentially highly productive can be mapped (and subsequently protected) as HPL.

Other reasonably practicable options

The identification and mapping of HPL is critical to determining the extent and application of the NPS-HPL provisions and has been a key focus of policy development, submissions and subsequent analysis. Through this process, the following other reasonably practicable options have been identified.

1. A combination of mandatory criteria (LUC 1–3 and other physical attributes) and optional criteria.
2. A range of optional and/or mandatory criteria focused on a range of factors that make land productive that also takes into account permanent or long-term constraints on land that make it unsuitable for land-based primary production (eg, water quality and quantity constraints)
3. Using LUC 1 and 2 as the primary determinant of HPL.

Option 1: A combination of mandatory criteria (LUC 1–3 and other physical attributes) and optional criteria

This option is consistent with what was proposed in the NPS-HPL discussion document. This option reflects the view that a range of factors contribute to the overall productivity of land – that is, a combination of natural, physical and social factors make land highly productive, not just the physical properties of soils. The primary benefit of this option is the mandatory and optional factors enable the assessment of HPL to be specific to a region or district. It also has some additional benefits such as providing certainty (once mapping has been undertaken) and the ability to exclude some highly versatile land from being mapped as HPL based on a wide range of circumstances where there may be constraints to utilising the soil resource for productive purposes.

However, this option also has some significant limitations and risks:

- mapping becomes more subjective and open to debate and challenge through the Schedule 1 process. This will make this process more contentious, longer and more subject to challenge. In turn this will significantly increase the cost of this process
- the ability to apply optional criteria will likely result in significantly different outcomes for the identification and subsequent protection of HPL across regions and councils

- it is likely to lead to less HPL being identified due to the wide range of factors that could be used as justification to exclude land from being identified as HPL, including temporal factors that may be addressed in the future. As such, there is a risk the spatial extent of HPL gets progressively reduced through the HPL mapping and plan change process.

Overall, this option is not the most efficient and effective option to achieve the NPS-HPL objective, as it is likely to be more contentious and litigious and be less effective in identifying and subsequently protecting the HPL resource for future generations.

Option 2: Range of optional and/or mandatory criteria focused on land productivity also taking into account permanent or long-term constraints on land that make it unsuitable for land-based primary production (eg, water quality and quantity constraints)

This option would involve identifying and mapping HPL by considering a broad range of factors that contribute to the overall productivity of land. This would include consideration of land versatility and capability plus a range of other factors that influence whether land can be used productively. These might include: the availability of water and the ability to assimilate discharged contaminants from land-based primary production activities; access to transport routes and labour markets; and the location of industry-specific infrastructure and other infrastructure.

The primary benefit of this approach is that it reflects the range of factors determining the overall productivity of land. Under this option, versatile land with constraints on the ability to utilise that land for land-based primary production would not be identified as HPL and hence not subject to the controls of the NPS-HPL. Optional criteria would enable councils who might want to exclude land with long-term constraints from doing so at the mapping stage if they consider that is more efficient for them. However, this option has a number of significant limitations and risks, including:

- defining what the key criteria are – there are a wide range of ‘essential’ criteria that could be used with significant differences in opinion as to which are essential, and which are factors that can alter over time. These are also likely to vary between regions/districts
- greater complexity and cost associated with the consideration of a wide range of criteria – the more criteria, the greater assessment required to identify the relevance of each factor in a particular location and the greater uncertainty of outcome. There may also be significant debate as to the relevance of particular criteria in a specific location and whether some criteria represent permanent or temporal constraints
- more scope for debate and litigation – more criteria, including more subjective and value-based criteria, will lead to increased debate as to the extent to which the other factors are relevant and should be ‘given weight’ in any given circumstance. This will likely result in greater debate and litigation in the HPL mapping process
- less emphasis on HPL as a finite, physical resource – the use of additional mandatory criteria lessens the emphasis on HPL as the fundamental natural, finite resource being protected through the NPS-HPL. By giving significantly greater weight to other criteria, the HPL resource may continue to be fragmented and permanently lost based on other criteria – some of which may be temporal or able to be addressed in the long term. This is likely to lead to a lesser spatial extent of land being identified as HPL
- optional criteria would increase inconsistencies and debate over what is mapped as HPL across the different regions undermining the purpose of national direction.

Overall, it is considered this option will be more difficult and complex to implement, and there will be more scope and incentive to challenge HPL mapping decisions based on subjective criteria – thus reducing the protection of the HPL resource for future generations. Accordingly, this option is not the most efficient and effective in achieving the NPS-HPL objective.

Option 3: Using LUC 1 and 2 as the primary determinant of HPL

This option is essentially the same as the NPS-HPL except the starting point for identifying HPL is areas of predominately LUC 1–2 land rather than LUC 1–3 land. This option recognises that some councils already base their protection of HPL (however defined) on LUC 1 and 2 land and these classes of land are the most versatile with fewest limitations on productive use. LUC 1–2 land comprises of 5.2 per cent of New Zealand’s land area (compared to 14.4 per cent for LUC 1–3 land) so this would result in a significant reduction in the land that is used as a basis for defining HPL.

This option was the subject of submissions on the proposed NPS-HPL, with some parties favouring the use of LUC 1 and 2 only on the basis that LUC 3 land covers a much broader area and has moderate physical limitations for arable use. However, most submitters that commented on this issue supported the use of LUC 1–3 as a basis for defining HPL, as it reflects the widespread and productive use of LUC 3 land for land-based primary production nationally. Using LUC 1–3 was also supported as it is consistent with the approach taken by councils in a number of regions.

Overall, utilising LUC 1–2 rather than LUC 1–3 is not considered to be the most effective and efficient way to achieve the NPS-HPL objective as:

- mapping LUC 1–3 land is consistent with a number of regional approaches – using a smaller range of LUC classes will reduce existing protection given to HPL in some regions which is contrary to the NPS-HPL objective
- often it is very difficult to separate out classes of LUC 1–2 land from within LUC 3 land so this could lead to a very piecemeal, disconnected mapping approach
- a more conservative approach is warranted to reduce the ongoing, incremental loss of the HPL resource to irreversible development
- mapping LUC 1–3 land was broadly supported by stakeholders, including a number of soil science experts
- LUC 3 land can be highly productive and there are numerous examples of this across the country.

Including highly productive land in regional policy statements and district plans (Policy 3 and clause 3.5)

Provisions being assessed

The NPS-HPL provisions assessed in this section relating to the timeframes for mapping HPL and the process for incorporating HPL maps into regional policy statements and district plans in accordance with Policy 3 and clause 3.5 as follows:

Policy 3: Highly productive land is mapped and included in regional policy statements and district plans.

Clause 3.5 Identifying highly productive land in regional policy statements and district plans

- (1) As soon as practicable, and no later than three years after the commencement date, every regional council must, using a process in Schedule 1 of the Act, notify in a proposed regional policy statement, by way of maps, all the land in its region that is required by clause 3.4 to be mapped as highly productive land.
- (2) The identification of highly productive land in regional policy statements may be sequenced over the three years following the commencement date.
- (3) As soon as practicable, and not later than six months, after a regional policy statement that includes maps of highly productive land becomes operative, each relevant territorial authority must identify the highly productive land in its district and must do so using maps that are exactly equivalent to those in the relevant regional policy statement.
- (4) 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 adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
- (5) The inclusion of the maps of highly productive land in district plans is an amendment subject to section 55(2) of the Act (which means the territorial authority must make the amendment without using a process in Schedule 1 of the Act).
- (6) All maps of highly productive land in proposed regional policy statements, regional policy statements, and district plans must be updated at the next appropriate plan review to reflect relevant changes to zoning, land-use capability classification, or any other matter affecting the classification of land as highly productive land.

Intent of provisions

Mapping of HPL in regional policy statements and district plans provides certainty on the areas of land that are HPL and therefore subject to the NPS-HPL provisions. It will ensure accurate identification of the spatial extent of the HPL resource within each district and region and provide certainty to all parties.

After mapping HPL in accordance with clauses 3.4 and 3.5 of the NPS-HPL, regional councils are required to include these HPL maps in their regional policy statements within three years of the commencement date of the NPS-HPL. Mapping HPL in regional policy statements allows for wider consideration of HPL alongside other regional priorities and pressures and can account for cross-boundary issues between districts in the region. Clause 3.5(2) of the NPS-HPL clarifies that the inclusion of the maps into regional policy statements (and district plans) can be sequenced, allowing councils to prioritise HPL mapping in areas subject to more development pressures on the resource.

Clause 3.5(3) requires territorial authorities to incorporate HPL maps into their district plans within six months (or as soon as practicable after) of these maps being made operative in the relevant regional policy statement, and to do so without using the Schedule 1 RMA plan change process. This ensures the identification of HPL and associated mapping is only undertaken once and not relitigated through subordinate district plan change processes, helping to avoid any inconsistencies and reduce overall implementation effort and costs. It also reflects the requirement for district plans to **give effect to** a regional policy statement (section 75(3) of the RMA) so there is no scope to alter the boundaries of HPL maps at the district plan stage except via a plan change.

Clause 3.5(4) confirms what land the NPS-HPL applies to from commencement date and when the maps prepared under clause 3.4 will be made operative. Areas that have been identified for future urban development or council initiated, or adopted, notified plan changes that rezone LUC 1–3 land from general rural or rural production to urban or rural lifestyle zones will be excluded. This is to avoid re-litigating decisions that have already been made by councils and their communities.

Assessment of efficiency – Policy 3 and clause 3.5

Table 5 provides an assessment of the efficiency of Policy 3 and clause 3.5 in achieving the NPS-HPL objective.

Table 54: Assessment of efficiency – Policy 3 and clause 3.5

Criteria	Assessment	
Administrative efficiency	<p>The provisions are administratively efficient as:</p> <ul style="list-style-type: none"> • enabling territorial authorities to include HPL maps in their district plans without using the RMA Schedule 1 process streamlines the process and avoids the costs associated with two sequential RMA Schedule 1 processes. This is efficient given a district plan must give effect to a regional policy statement and ensures there is no scope to alter the boundaries of HPL maps through subordinate district plan processes • mapping HPL in regional policy statements will achieve efficiencies as it: <ul style="list-style-type: none"> – promotes consistency across the region – allows HPL to be considered alongside other regional and national priorities as part of a strategic planning process – may allow for the HPL maps to be more easily translated into future Regional Spatial Strategies as part of the RMA reforms • the provisions specifically enable HPL mapping to be sequenced – allowing councils to focus on areas subject to greater pressure within each region as appropriate • the timeframe to include HPL maps in regional policy statements and district plans strikes a balance between recognising the time and resources needed to map HPL and the greater clarity and certainty provided through spatial mapping the HPL resource in statutory plans. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • HPL maps in statutory plans will provide a clear and unambiguous indication of what land has been identified as HPL. This will lead to improved protection of that land and enable this natural resource to continue to provide a number of direct and indirect ecological functions and services. 	<ul style="list-style-type: none"> • The interim definition of HPL – in clause 3.5(4) applies until HPL is mapped and included in the regional policy statement and district plans (approximately three years). There will be less certainty of outcome during this period and potentially more scope to argue that an area is not HPL.

Criteria	Assessment	
	<ul style="list-style-type: none"> The ability to sequence HPL mapping enables areas subject to more development pressures to be mapped first (if required). This will deliver greater protection of HPL sooner for those areas most at risk of permanent loss. 	
Economic	<ul style="list-style-type: none"> Reduced plan change/administrative costs by allowing territorial authorities to adopt HPL maps in their district plan without using the RMA Schedule 1 process. Clear identification of HPL in statutory plans reduces the scope for debate and litigation about the location and extent of HPL through subsequent plan change and consenting processes. The ability to sequence HPL mapping enables councils to spread resourcing and focus on areas experiencing greater pressure for urban rezoning or rural lifestyle development first. This will allow councils to sequence implementation costs and may lead to efficiency gains. Improved investment certainty through an accurate understanding of the location and extent of HPL within each region. 	<ul style="list-style-type: none"> Implementation costs for regional councils to change their regional policy statements are discussed on page 37. The CBA for the NPS-HPL provides an indicative cost estimate of \$1.4 million for regional policy statement changes to give effect to the NPS-HPL (the cost of all provisions – not limited to clause 3.5). However, it is important to emphasise that: <ul style="list-style-type: none"> these costs are indicative and based on limited data from NMS actual implementation costs are expected to vary based on a range of factors (eg, extent of resource, existing provisions, approach taken). The requirement to update HPL maps as necessary will require further regional policy statement and district plan changes and associated costs. However, these changes are generally expected to be relatively minor and straightforward (eg, where urban rezoning has occurred on HPL) with limited costs for councils.
Social	<ul style="list-style-type: none"> Greater certainty for the community and landowners on the location and extent of HPL. Reduced costs to community associated with one (as opposed to two) RMA Schedule 1 processes to include maps of HPL in regional policy statements followed by district plans. 	<ul style="list-style-type: none"> Having a single RMA Schedule 1 process at the regional level risks reducing community participation in the HPL mapping process as communities are generally more engaged at the district plan level. However, it is expected that this will be mitigated through regional councils and territorial authorities working together to undertake effective, joined up consultation processes with affected landowners and their communities.
Cultural	<ul style="list-style-type: none"> Greater certainty to iwi/Māori as to what land has been identified as HPL, particularly as it pertains to Māori land. 	<ul style="list-style-type: none"> N/A

Effectiveness – Policy 3 and clause 3.5

Policy 3 and clause 3.5 are assessed as being effective to achieve the NPS-HPL objective and address the identified resource management issues. In particular:

- clear identification of the HPL resource in statutory plans will provide certainty to all parties on the location and extent of HPL in each region and facilitate better protection of that resource
- the provisions ensure that HPL is mapped in statutory plans as soon as practicable
- the provisions ensure HPL mapping is done accurately and robustly up-front through a single RMA Schedule 1 process and that there are no inconsistencies between statutory instruments. This in turn will minimise the risk of inconsistent protection of the HPL resource
- the ability to sequence mapping enables councils to prioritise mapping HPL in areas facing greater development pressures. This will deliver greater protection of HPL sooner for those areas most at risk of permanent loss
- the provisions provide greater clarity and consistency in how HPL is to be identified and mapped in RMA planning documents, addressing some key inconsistencies under the status quo.

Overall, the HPL mapping requirements in Policy 3 and clause 3.5 provide for the efficient, effective and consistent mapping of HPL in RMA planning documents in a realistic and achievable timeframe. This will provide greater certainty to all parties on the location and extent of the HPL resource in each region, which is essential for the better protection of that resource.

Other reasonably practicable options

Effective implementation of the NPS-HPL provisions requires a clear and unambiguous understanding of where the HPL resource is located – the main consideration relates to whether HPL is mapped up-front as a strategic regional planning exercise or if HPL is identified through criteria in an ad hoc manner as land-use change is proposed on areas (or potential areas) of HPL. Other reasonably practicable options identified as alternatives to clause 3.5 follow.

1. No mapping of HPL in RMA planning documents.
2. Sequential RMA Schedule 1 processes to include HPL in regional policy statements and district plans.

Option 1: No mapping of HPL within plans

Under this option the mapping of HPL would not be required to be included in regional policy statements and district plans – plan changes and resource consent applications would be required to identify and assess HPL on an as-required basis with reference to a generic definition of HPL.

The main benefit of this option is the reduction in mapping and plan change costs for councils. Costs would instead be incurred when development or land-use change is proposed on areas of land that are potentially HPL, which would generally be determined through a site-specific LUC/land capability assessment. However, this option has significant limitations:

- it provides less certainty to all parties as to what land is HPL and hence subject to the provisions of the NPS-HPL. While it is acknowledged retaining the definition of HPL as

including LUC 1–3 will provide an indication of what land is likely to be considered HPL, the benefit of mapping is that it provides clear lines on planning maps and therefore provides a clear and unambiguous understanding of where the HPL resource is located

- it would require ad hoc, case-by-case assessments on whether land is HPL, which presents two key issues:
 - this approach is not consistent with the strategic approach to map HPL alongside other national and regional priorities to ensure it is spatially identified as the finite resource it is
 - this approach is likely to lead to ongoing assessments, debates and uncertainty through plan change and consenting processes as to whether land is in fact HPL
- managing reverse sensitivity is more difficult and less certain where the location and spatial extent of HPL has not been confirmed.

Accordingly, this option is not the most efficient or effective option to achieve the NPS-HPL objective.

Option 2: Sequential RMA Schedule 1 processes to map HPL in regional policy statements and district plans

This option would involve two sequential RMA Schedule 1 processes to map HPL; first in regional policy statements followed by district plans. This would follow the standard sequential plan-making processes under the RMA and would help ensure affected landowners and the wider community are engaged in the HPL mapping process. However, these potential benefits are clearly outweighed by the following limitations:

- it fails to recognise that district plans must give effect to regional policy statements so there should be no scope to challenge HPL at the district plan stage (unless the mapping under the regional policy statement and district plan was done at different scales, which would present other issues)
- it significantly increases the timeframe by which HPL maps will realistically be incorporated into a district plan
- it increases implementation costs through multiple RMA Schedule 1 processes
- it creates a possibility that mapping in district plans will be subsequently challenged, leading to potential inconsistencies (noting the requirements for district plans to ‘give effect to’ regional policy statements)
- it limits the ability to sequence the mapping of HPL by requiring multiple plan processes to introduce the maps. Similarly, updating HPL mapping will require multiple plan change processes for both regional and territorial authorities.

As such, this option is substantially less efficient and more costly than the NPS-HPL provisions and is not the most efficient or effective option to achieve the NPS-HPL objective.

Urban rezoning restricted on HPL (Policy 5 and clause 3.6)

Provisions being assessed

The provisions being assessed in this section relating to restricting 'urban rezoning'⁵¹ on HPL are Policy 5 and clause 3.6 as follows:

Policy 5: The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

Clause 3.6 Restricting highly productive land from urban rezoning

- 1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
 - (a) 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; and
 - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
 - (c) the environmental, social, cultural and economic benefits of rezoning 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.
- 2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:
 - (a) greater intensification in existing urban areas; and
 - (b) rezoning of land that is not highly productive land as urban; and
 - (c) rezoning different highly productive land that has a relatively lower productive capacity.
- 3) In subclause (1)(b), development capacity is **within the same locality and market** if it:
 - (a) is in or close to a location where a need 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; and
 - (b) is for a market for the types of dwelling or business land that the additional development capacity is required for (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).
- 4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:
 - (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and
 - (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and

⁵¹ Urban rezoning is defined in the NPS-HPL as changing from a rural zone to an urban zone.

- (c) the environmental, social, cultural and economic benefits of rezoning 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.
- 5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

Intent of the provisions

Urban rezoning into HPL is one of the key issues the NPS-HPL seeks to manage more effectively due to the ongoing, permanent loss of New Zealand's most productive land to urban use. Achieving the right level of protection from urban rezoning through the NPS-HPL has been a key focus in policy development given the potential conflict with Government objectives for housing and the specific requirements in the NPS-UD to provide 'sufficient development capacity'⁵² and achieve competitive land markets. It also reflects the fact that many of New Zealand's urban areas are largely or completely surrounded by HPL and/or are limited in the extent to which HPL can be avoided due to other constraints such as hazards.

The intent of Policy 5 and clause 3.6 of the NPS-HPL is not to provide absolute protection of HPL from urban rezoning. Rather the intent is to provide clear direction that urban rezoning should generally avoid HPL where there are other options to provide development capacity to meet demand and achieve good urban outcomes, and to ensure there is a robust consideration of costs, benefits and trade-offs when urban rezoning is proposed on HPL.

Feedback from submitters on the proposed NPS-HPL reinforced the need for the NPS-HPL to provide some degree of flexibility to allow for urban rezoning onto HPL in certain circumstances. However, there were also requests to clarify and strengthen the tests to ensure the NPS-HPL does not lead to a continuation of the status quo. There was also strong feedback that the NPS-HPL and NPS-UD need to align to ensure there is no conflict when councils give effect to these instruments alongside each other. As such, the NPS-HPL urban rezoning provisions have been refined to clarify the circumstances where urban rezoning can occur on HPL and to ensure alignment with key requirements in the NPS-UD.

Effectively, clause 3.6 of the NPS-HPL prescribes three tests that need to be met before Tier 1 and Tier 2 local authorities can propose urban rezoning of HPL:

- **Clause 3.6(1)(a) – must give effect to the NPS-UD.** This test is required to ensure HPL is only considered for potential urban rezoning if it is needed to give effect to the NPS-UD. HPL should not be considered for urban rezoning in any other circumstance and this test aims to prevent HPL being rezoned for urban use before it is necessary to meet the 'sufficient development capacity' test (as described below). If an urban rezoning proposal cannot demonstrate it is needed to give effect to the NPS-UD then it should not be supported under clause 3.6 of the NPS-HPL.

⁵² This term is defined in clauses 3.2 and 3.3 of the NPS-UD. This takes into account whether development capacity is plan-enabled, infrastructure ready, feasible, and reasonably likely to be realised.

- **Clause 3.6(1)(a) – sufficient development capacity.** This clause states that urban rezoning can only occur on HPL when it is required to provide ‘sufficient development capacity’⁵³ to meet demand for housing or business land. This aligns with the requirements in the NPS-UD to always provide sufficient development capacity⁵⁴ and recognises the lead-in time needed for urban development, while also avoiding urban rezoning occurring on HPL well before it is needed. In doing so, this will:
 - ensure HPL on the urban fringe remains available for land-based primary production for as long as possible before it is permanently lost to urban rezoning
 - help to avoid situations where land is rezoned urban (and no longer protected as HPL) and subsequently not seen as necessary or desirable for urban use
 - deter plan changes that are not needed to meet demand for housing and business land.

- **Clauses 3.6(1)(b) and 3.6(2) – reasonably practicable and feasible options.** These clauses require plan change proponents to demonstrate there are no other ‘reasonably practicable and feasible’ options for providing at least sufficient development capacity within the same ‘locality and market’, while achieving a ‘well-functioning urban environment’. The terms used in this clause are important and deliberate.
 - **Reasonably practicable** – this is intended to ensure plan change proponents undertake a genuine and transparent assessment of viable alternative options and locations for the urban rezoning. The term ‘reasonably practicable’ is consistent with the requirement to identify other options under section 32(1)(b)(i) of the RMA.⁵⁵ Case law on the term ‘reasonably practicable’ has emphasised this is not absolute but is an objective test that must be considered in relation to the purpose of the requirement and the problems with complying with it so an overall weighing exercise is involved.⁵⁶ In practice, this will allow for consideration of other constraints (eg, hazards, natural geographic boundaries) and issues (eg, sensitive or high value receiving environments) in determining whether other options are practicable or not. Although the individual circumstances of the rezoning will dictate the range of reasonably practicable options considered, clause 3.6(2) specifies that territorial authorities must consider greater intensification of urban areas, zoning of non-HPL land as urban and rezoning different HPL with a relatively lower production capacity as urban (ie, rezoning LUC–3 land may be preferable to further losses of LUC–1 or LUC–2 land). Although these three options must be considered, they can be discounted if they are not ‘feasible’ and/or do not achieve a ‘well-functioning urban

⁵³ It is expected that the Housing and Business Development Capacity Assessment (HBA) prepared every three years under the NPS-UD will be the key mechanism for identifying the need for additional development capacity in Tier 1 and Tier 2 urban environments. These assessments are required to identify demand for housing and business land in the short, medium and long term, and assess the sufficiency of development capacity to meet that demand for different locations. For other local authorities that are not Tier 1 or Tier 2, clause 3.10 of the NPS-UD still requires an assessment of the sufficiency of development capacity to meet demand and therefore determine whether additional development capacity is required under clause 3.6(4)(a) of the NPS-HPL.

⁵⁴ Policy 2 of the NPS-UD.

⁵⁵ Section 32 guidance on identifying other reasonably practicable options has emphasised that this should always involve more than one option, but it is not necessary to identify and assess all options in detail. Refer: Ministry for the Environment (2017), ‘A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017’, pg.17.

⁵⁶ *Royal Forest and Bird Society of New Zealand Incorporated v Whakatane District Council* [2017] NZEnvC 51.

environment’ (as discussed below) – clause 3.6(2) does not mean that if one of the listed options is available the proposed urban rezoning cannot proceed, simply that these three listed options should be considered as reasonably practicable alternatives as part of the overall assessment under clause 3.6.

- **Feasible**⁵⁷ – this aligns with the NPS-UD requirements for development capacity to be feasible (ie, commercially viable) and makes it clear that only commercially viable options need to be assessed. In practice, this will enable options to be discounted where these are not commercially viable from a developer’s perspective (eg, areas are too costly to develop due to topography, geotechnical issues etc.).
- **Locality**⁵⁸ and **market**⁵⁹ – these terms provide additional guidance as to the scope and type of assessment required under this clause. It makes it clear an exhaustive assessment of all options within a district is not required – rather the assessment of options should focus on whether there are alternative non-HPL areas that could be rezoned urban and provide for at least sufficient development capacity within the same location and market. The NPS-HPL defines these terms with references to assessments of demand and development capacity required for locations under the NPS-UD.
- **Well-functioning urban environment** – this aligns with Objective 1 and Policy 1 of the NPS-UD that aim for New Zealand to have well-functioning urban environments.⁶⁰ In practice, this will allow for consideration of urban form and cohesion, urban design, transport links, sustainability and so on when assessing alternative options to ensure good urban outcomes are achieved. In some cases, the benefits of achieving a well-functioning urban environment may outweigh the benefits of protecting an area of HPL. For example, well-planned outward growth on the urban edge on HPL will generally be preferred over sporadic urban development on non-HPL away from urban centres with less cohesion, accessibility, diversity and so on.
- **Clause 3.6(1)(c) – costs and benefits.** This clause requires plan change proponents to consider whether the environmental, social, cultural and economic *benefits* of the urban rezoning outweigh the environmental, social, cultural and economic *costs* associated with the loss of the HPL for land-based primary production. That assessment must consider both tangible and intangible values, which are particularly important as many of the values associated with the retention of HPL for land-based primary production are intangible and not able (or are inappropriate) to be monetised. The intent is to ensure the longer-term benefits of HPL to future generations are given more consideration when this resource may be permanently lost to urban rezoning and to change the status quo

⁵⁷ Feasible is defined in the NPS-UD as commercially viable to a developer based on current relationship between cost and revenue.

⁵⁸ In the NPS-HPL “**Locality** means if it is in or close to a location where a need 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”.

⁵⁹ In the NPS-HPL “**Market** means if it is for a market for the types of dwelling or business land that the additional development capacity is required for (as determined, for a Tier 1, 2, or 3 local authority by a housing and business assessment in accordance with the National Policy Statement on Urban Development 2020)”.

⁶⁰ **Well-functioning urban environment** is defined in Policy 1 of the NPS-UD as “urban environments that have good diversity of housing typologies, accessibility, resilient, support reductions in greenhouse gas emissions etc”.

approach to assessing rezoning proposals on HPL, which tends to favour the economic argument supporting urban land-use change.

Overall, the tests and considerations set out in clause 3.6 of the NPS-HPL seek to achieve the right balance between providing flexibility for urban rezoning to occur on HPL when this is needed (to deliver good urban outcomes) while also providing for improved protection of HPL.⁶¹

Importantly, the considerations and tests in clause 3.6 are consistent with existing strategic growth planning processes and exercises, which generally give some consideration to HPL when identifying areas for future urban growth. For example, council feedback through the CBA was that the tests and considerations in clause 3.6 of the NPS-HPL are consistent with their current practices and are strongly aligned with what is (or would be) carried out through a strategic growth planning exercise.⁶²

In understanding the impacts of the NPS-HPL on urban rezoning, it is also important to recognise the significant exemptions provided for in the NPS-HPL for planned urban growth that is already identified for future development at the commencement date (clause 3.5(4)). These provisions effectively allow for planned urban growth that meets short- to medium-term demand for housing or business land to be excluded from the transitional definition of HPL and from the HPL mapping process, thereby significantly limiting the impact of the NPS-HPL on short- to medium-term urban growth, particularly around Tier 1 urban centres. For example, the CBA for the NPS-HPL found that in four of the six case studies, the NPS-HPL is not expected to materially alter the urban growth outcomes currently planned over the next 30 years.⁶³ This is largely due to the way the NPS-HPL exempts future urban areas and the extent to which the case study councils provide for such growth.

Assessment of efficiency – Policy 5 and clause 3.6

Table 6 provides an assessment of the efficiency of Policy 5 and clause 3.6 in achieving the NPS-HPL objective.

Table 6: Assessment of efficiency – Policy 5 and clause 3.6

Criteria	Assessment
Administrative efficiency	<p>The provisions are assessed as being administratively efficient as:</p> <ul style="list-style-type: none"> the requirements are strongly aligned with existing considerations and practices councils use when undertaking strategic urban growth planning exercises the provisions are aligned with the requirements in the NPS-UD and there are cross-references to key terms and provisions (eg, sufficient development capacity, feasible). This will help ensure consistent interpretation between these two instruments and help achieve more efficient implementation the provisions ensure the assessment of alternatives is limited to reasonably practicable, commercially viable options within the same locality and market. This ensures the

⁶¹ This finding is consistent with the urban rezoning study undertaken by Market Economics which concluded “The proposed NPS-HPL recognises the need for a practicable approach to urban rezoning planning. This should limit the potential for the NPS-HPL to restrict the urban rezoning process while also improving opportunities to protect HPL where options are available to councils (particularly for longer-term urban planning)”: Refer: Market Economics (2019), ‘Urban Rezoning: Assessment of Potential Policy Impacts – Proposed NPS on Highly Productive Land’, prepared for the Ministry for Primary Industries, pg.11.

⁶² Refer section 4 of the CBA for further details.

⁶³ CBA, pg. 51.

Criteria	Assessment	
	<p>requirements to assess alternative options are reasonable and there is no need to undertake an exhaustive, onerous assessment of all potential options to provide at least sufficient development capacity within a region/district. Clause 3.6(2) clarifies that there are three options to be considered as a minimum (intensification, non-HPL land and HPL land with relatively lower productive capacity) but these still need to meet the tests of reasonably practicable, commercially viable options within the same locality and market for them to be realistic alternatives. Guidance can further clarify what is required when assessing alternative options</p> <ul style="list-style-type: none"> • plan change proponents will be able to draw on Housing and Business Development Capacity Assessments and future development strategies prepared under the NPS-UD to confirm the need for additional development capacity in different locations, market demand for dwelling types, and to help identify suitable locations for urban rezoning. This will provide efficiencies in meeting the requirements in clauses 3.6(1)(b) and 3.6(3) in particular • the requirements to assess other options, benefits and costs are consistent with the requirements in section 32 of the RMA. As such, the provisions reinforce good, standard planning practice rather than introducing completely new requirements • the transaction costs to comply with the provisions are expected to be minor when considered in the context of overall plan change and urban development costs (detailed further below). 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • Greater protection of HPL from urban rezoning will help this resource continue to provide ecosystem functions and services (that would be lost once the HPL is 'sealed' by urban rezoning). • Requires urban rezoning to achieve a well-functioning urban environment. This may result in urban rezoning with a number of environmental benefits, including reduced emissions, improved resilience and retention of natural systems. • Ensures the environmental benefits and costs of urban rezoning are explicitly and transparently assessed and considered when urban rezoning is proposed on HPL. This will help ensure that urban rezoning provided under clause 3.6 achieves good environmental outcomes. 	<ul style="list-style-type: none"> • Urban rezoning may be redirected to areas that are less desirable from an environmental perspective (although this would be considered when weighing up the costs and benefits of the proposal).
Economic	<ul style="list-style-type: none"> • Loss of land-based primary production output is avoided where urban rezoning is redirected away from HPL. However, these benefits are assessed as being relatively minor given the scale and infrequent nature of urban rezoning.⁶⁴ • Improved protection of New Zealand's most productive and versatile land on the urban fringe. This includes key food hubs under pressure from urban rezoning such as Pukekohe in Auckland and Heretaunga Plains in Hawke's Bay. 	<p>Net transaction costs</p> <ul style="list-style-type: none"> • Plan change proponents will face transaction costs to meet the requirements of clause 3.6. While these tests and considerations are largely consistent with existing urban growth planning exercises, there may be additional work/costs associated with: <ul style="list-style-type: none"> – reviewing, collating and assessing existing information

⁶⁴ For example, the CBA for the NPS-HPL concluded that consequent benefit of avoiding forgone productive output on HPL on the urban fringe is expected to be very minor when compared to the benefit arising from redirecting rural lifestyle subdivision away from HPL. Refer pg 130.

Criteria	Assessment
	<ul style="list-style-type: none"> • Better protection of HPL from urban rezoning will support a more resilient primary production sector. This will help ensure land-based primary production activities continue to provide significant direct and indirect employment opportunities in New Zealand. • More consistent decision-making on plan changes for urban rezoning onto HPL nationally. This may lead to improved certainty and efficiency gains over time as the tests and considerations in clause 3.6 become embedded in standard planning practice. <ul style="list-style-type: none"> – undertaking more detailed assessments of alternative options for urban rezoning – providing a more detailed assessment of benefits and costs. <ul style="list-style-type: none"> • The CBA provides an assessment of the net transaction costs that may be incurred by plan change proponents to meet the requirements of clause 3.6. The methodology to estimate these costs is discussed on page 40. Essentially, it is based on: <ul style="list-style-type: none"> – indicative plan change costs from three case study councils (ranging from \$100,000 in Selwyn to \$300,000 in Auckland) – a broad assumption that clause 3.6 will result in an additional 20% in overall plan change costs. • Based on these assumptions, the CBA estimates an average net transaction cost of \$11,000 per plan change attributable to clause 3.6⁶⁵ (approximately 14% of total plan change costs) for the six case study districts. • When considered in the context of overall development and plan change costs, the CBA concludes that these potential net transaction costs from clause 3.6 are: <ul style="list-style-type: none"> – of low significance – likely to have negligible impact on the returns from development – unlikely to act as a deterrent for future plan change proponents (council or private).⁶⁶ • It is also important to emphasise that the net transaction costs estimated in the CBA are indicative only and based on a limited sample and some broad assumptions. Actual transaction costs are likely to vary based on a range of factors (eg, existing provisions, existing growth strategies, the presence/lack of viable alternatives, demand). <p>Opportunity costs</p> <ul style="list-style-type: none"> • Landowners with HPL on the urban fringe may incur opportunity costs where this land is no longer able to be developed for urban rezoning.

⁶⁵ This is based on 8 per cent discount rate. Under a 4 per cent discount rate, the total present value cost is an average of \$15,300 per plan change. Under a 2 per cent discount rate, the total present value cost an average of \$18,600 per plan change.

⁶⁶ Refer to section 4 of the CBA for further details and conclusions.

Criteria	Assessment	
		<ul style="list-style-type: none"> The CBA for the NPS-HPL estimated the potential opportunity costs to rural landowners from the urban rezoning provisions (ie, loss of urban development potential through redirecting this away from HPL). Potential for net opportunity costs was found in two of the six case studies whereas opportunity costs were nil in the other four– and concluded the latter situation was more indicative of the national pattern. Overall, the CBA concludes the potential opportunity costs on rural landowners from clause 3.6 are likely to be immaterial or very minor.⁶⁷
Social	<ul style="list-style-type: none"> The provisions ensure urban rezoning can be located on HPL when there is a need to provide sufficient development capacity to meet demand for housing. This makes sure the housing needs of communities are met in terms of location and dwelling type. Will help ensure job opportunities directly and indirectly associated with land-based primary production on HPL are maintained. This benefits both rural and urban communities. The character, heritage and sense of place associated with HPL (existence values) are often valued by communities. The NPS-HPL will help to protect these values by directing urban rezoning away from HPL unless there is a strong case for it that meets the tests of clause 3.6. The NPS-HPL includes provisions that specifically exempt areas identified for future urban development from being HPL, both through the transitional definition and when HPL is mapped. This will ensure the NPS-HPL does not undermine work that councils have done with their communities to identify suitable areas for future urban growth. 	<ul style="list-style-type: none"> Transaction costs incurred by councils to meet the requirements of clause 3.6 may be passed onto the community through rates. However, these costs are very minor in the context of overall plan change costs. Transaction costs incurred by developers to meet the requirements of clause 3.6 may be passed onto the community through increased house prices. However, these potential costs are very minor in the context of overall development costs.
Cultural	<ul style="list-style-type: none"> The provisions ensure urban rezoning contributes to a well-functioning urban environment. The NPS-UD defines a well-functioning urban environment as including housing that enables tangata Māori to express their cultural traditions and norms. Māori cultural and spiritual values associated with HPL are protected from urban rezoning. 	<ul style="list-style-type: none"> N/A

⁶⁷ CBA for the NPS-HPL, pg. 7.

Assessment of effectiveness – Policy 5 and clause 3.6

Policy 5 and clause 3.6 are assessed as being effective in achieving the NPS-HPL objective and addressing the identified resource management issues. In particular, the provisions:

- seek to strike the right balance between providing flexibility for urban rezoning to occur on HPL in appropriate circumstances while redirecting this development away from HPL unless it can meet the specific tests set out in clause 3.6
- align with the NPS-UD requirements to always provide sufficient development capacity and achieve a well-functioning urban environment. The alignment of clause 3.6 of the NPS-HPL with key requirements in the NPS-UD will ensure the NPS-HPL and NPS-UD work together to achieve the overall purpose of the RMA
- provide a nationally consistent set of considerations and tests that must be met before urban rezoning can occur on HPL. This will provide greater certainty to all parties and lead to better consideration and protection of HPL over time when identifying areas suitable for urban rezoning
- ensure the protection of HPL is given more weight when assessing the most suitable option for urban rezoning rather than it being just another ‘relevant matter’ to consider. This will help provide better protection of HPL over time compared to the status quo
- recognise that urban areas are often significantly constrained by a range of factors that severely restrict urban rezoning options. Factors such as natural hazards (flooding, liquefaction, geotechnical issues), geographic constraints (rivers, significant transport routes), and sensitive receiving environments often provide limited options for urban rezoning. Clause 3.6 specifically provides for these factors to be considered in a transparent manner when assessing alternative options and provides for urban rezoning to occur on HPL in appropriate circumstances.

Other reasonably practicable options

Effective implementation of the NPS-HPL provisions requires a clear and unambiguous understanding of the restrictions on allowing HPL to be rezoned for urban uses. Other reasonably practicable options to the NPS-HPL provisions follow.

1. A stronger avoid policy that prevents urban zoning on HPL under any circumstances.
2. Combining the NPS-UD and NPS-HPL into a single NPS to provide clear direction as to when urban rezoning of HPL can be considered as an option.

Option 1: A stronger avoid policy that prevents urban rezoning on HPL under any circumstances

This option would involve directing urban capacity assessments and future development strategies prepared under the NPS-UD to explicitly avoid providing for urban growth on HPL. Whilst this may be possible in some regions and cities, some cities (for example Hastings and Hamilton) are almost completely surrounded by high quality land, and their ability to provide sufficient development capacity in accordance with the NPS-UD would be severely compromised if rezoning HPL was not able to be considered. Conflict between the NPS-HPL and the NPS-UD would also cause problems from a resource management systems perspective if one piece of national direction undermined the other.

A more appropriate option is to ensure the policy direction in the NPS-HPL is aligned with the NPS-UD, encouraging councils to comprehensively plan for future urban development, and directing that development to occur off HPL – either within existing urban areas, or on land that is less productive, unless the tests in clause 3.6 can be met.

Option 2: Combining the NPS-UD and NPS-HPL into a single NPS to provide clear direction as to when urban rezoning of HPL can be considered as an option

This option would involve amendments to the NPS-UD to explicitly require HPL to be considered and protected when councils are providing development capacity and identifying new urban areas in their future development strategy. This option could be effective in restricting urban rezoning of HPL to ensure this only occurs in appropriate situations.

This option has the benefit of consolidating the number of national policy statements that councils must give effect to and providing a clear integration between providing for urban development capacity while protecting HPL. This may lead to reduced implementation costs and effort for councils and reduce potential inconsistencies across different national direction instruments. However, these benefits are less relevant in the content of resource management reforms given councils will be giving effect to the National Planning Framework which will provide national direction on all environmental outcomes (including well-functioning rural and urban environments) as part of a single framework.

Additionally, there are a number of significant limitations to this option:

- it only addresses urban rezoning of HPL with no or limited ability to address other key issues, including rural lifestyle development (which has been identified as the key threat to HPL), and reverse sensitivity
- there is a potential risk that HPL is seen as a sub-issue associated with urban development rather than a matter of national significance in its own right
- it has the potential for policy confusion in terms of the overall purpose of the combined NPS, the objectives it seeks to achieve, and what objectives prevail in the event of conflict.

Further, the consistent identification of HPL is fundamental to its successful management and protection. Therefore, additional policies would be required in the NPS-UD to ensure that HPL was consistently identified and mapped, which is inconsistent with the focus and scope of the NPS-UD.

Overall, while this option may be effective in addressing the issue of urban rezoning of HPL, it would not address all identified resource management issues and is therefore not the most appropriate option to protect HPL and achieve the purpose of the RMA.

Avoiding zoning highly productive land for rural lifestyle development (Policy 6 and clause 3.7)

Provisions being assessed

The provisions being assessed in this section relating to protecting HPL from zoning for rural lifestyle development are Policy 6 and clause 3.7 as follows:

Policy 6: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.

Clause 3.7 Avoiding zoning highly productive land for rural lifestyle

- (1) Territorial authorities must avoid rezoning highly productive land as rural lifestyle, except as provided in clause 3.10.

Intent of the provision

The intent of the NPS-HPL is to include strong and directive provisions to manage rural lifestyle development on HPL to help address the ongoing fragmentation of this resource into unproductive lifestyle lots. Rezoning of highly productive land for rural lifestyle is to be avoided except where it has been demonstrated that the land is unsuitable for viable land-based primary production due to permanent or long-term constraints in accordance with clause 3.10 – refer to pages 104–109 for more detail and assessment of this clause.

It is intended the use of the strong ‘avoid’ wording will give clear direction to territorial authorities that there are no circumstances, outside the scenarios outlined in clause 3.10, that will justify HPL being used for rural lifestyle zoning. The intended outcome is there will be **no further loss of HPL through rezoning to rural lifestyle** from the commencement date unless the landowner can prove (in accordance with clause 3.10) that the long-term or permanent constraints on the HPL make land-based primary production economically unviable. This recognises that encouraging rural lifestyle subdivision of HPL through specific zoning should be avoided except in limited, specific circumstances (ie, the land is not economically viable for land-based primary production due to long-term or permanent constraints).

Assessment of efficiency – Policy 6 and clause 3.7

Table 7 below provides an assessment of the efficiency of Policy 6 and clause 3.7 in achieving the NPS-HPL objective.

Table 7: Assessment of efficiency – Policy 6 and clause 3.7

Criteria	Assessment	
Administrative efficiency	<p>The provisions are assessed as being administratively efficient as:</p> <ul style="list-style-type: none"> the ‘avoid’ policy for rezoning highly productive land for rural lifestyle is intentionally strong the only exception is where it has been demonstrated there are permanent or long-term constraints on that land being used for viable land-based primary production in accordance with clause 3.10 the cross-reference to clause 3.10 avoids having separate criteria for exceptions repeated in various clauses having no exceptions will create uncertainty of how applications for rezoning land with long-term or permanent constraints should be considered this policy and clause will have immediate effect from commencement date and will provide strong direction to assist territorial authorities with declining private plan change applications to rezone highly productive land to rural lifestyle that do not meet the tests of clause 3.10. guidance will be provided to support councils in defining rural lifestyle specific to their region and on a site-by-site basis. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> Greater protection of HPL from rural lifestyle rezoning will help avoid demands of residential activities on the environment such as domestic waters, and onsite wastewater systems. 	<ul style="list-style-type: none"> Rural lifestyle rezoning may be redirected to areas that are less desirable from an environmental perspective.
Economic	<ul style="list-style-type: none"> Loss of primary production output is avoided where rural lifestyle rezoning is redirected away from HPL. Improved protection of New Zealand’s most productive and versatile land, 	<p>Net transaction costs – plan changes</p> <ul style="list-style-type: none"> Plan change proponents will face transaction costs to meet the requirements in clause 3.7 (and clause 3.10). While these tests and

Criteria	Assessment
	<p>including the urban fringe and key food hubs under pressure from rural lifestyle development such as Pukekohe in Auckland and Heretaunga Plains in Hawke’s Bay.</p> <ul style="list-style-type: none"> • Better protection of HPL from rural lifestyle rezoning will support a more resilient primary production sector. This will help ensure land-based primary production activities continue to provide significant direct and indirect employment opportunities in New Zealand. • More consistent decision-making on plan changes for rural lifestyle rezoning onto HPL nationally. This may lead to improved certainty and efficiency gains over time as the tests and considerations in clause 3.7 (and clause 3.10) become embedded in standard planning practice. <p>considerations are largely consistent with existing resource management planning exercises, there may be additional work/costs associated with:</p> <ul style="list-style-type: none"> – reviewing, collating and assessing existing information – undertaking more detailed assessments of alternative options for rezoning – providing a more detailed assessment of benefits and costs. <ul style="list-style-type: none"> • The CBA estimates an average net transaction cost of \$11,000 per plan change attributable to urban rezoning applications. This figure can also be used to provide an estimate of the average net transaction cost of rural lifestyle rezoning applications. • The strong signal that applications to rezone HPL to rural lifestyle will not be supported may mean there are fewer private plan change applications submitted. • It is also important to emphasise the net transaction costs estimated in the CBA are indicative only and based on a limited sample and some broad assumptions. Actual transaction costs are likely to vary based on a range of factors (eg, existing provisions, existing growth strategies, the presence/lack of viable alternatives, demand). <p>Net transaction costs – consents</p> <ul style="list-style-type: none"> • Overall, the costs are likely to be less than if they were considered at the mapping stage. • The actual consenting costs associated with implementing clauses 3.8–3.10 (appropriate subdivision, use and development of HPL and exceptions) will be monitored and reported on as part of the evaluation of this NPS-HPL on an annual basis. <p>Opportunity costs</p> <ul style="list-style-type: none"> • Landowners with HPL seeking rural lifestyle rezoning may incur opportunity costs where this land is no longer able to be developed for rural lifestyle purposes. • The CBA for the NPS-HPL estimated the potential opportunity costs to rural landowners seeking rezoning. The CBA modelling approach overstates the net opportunity costs by assuming all landowners will want to subdivide their land.

Criteria	Assessment	
		<ul style="list-style-type: none"> Overall, the CBA concludes the potential opportunity costs on rural landowners from restrictions on rural lifestyle rezoning will be outweighed by the benefits of an avoidance policy.
Social	<ul style="list-style-type: none"> The character, heritage and sense of place associated with HPL (existence values) are often valued by communities. The NPS-HPL will help to protect these values by directing rural lifestyle rezoning away from HPL. The NPS-HPL includes provisions that specifically exempt rural lifestyle zones (including those subject to a council notified, or adopted, plan change) from being mapped as HPL, both at commencement and when HPL is mapped. This will ensure the NPS-HPL does not undermine work councils have done with their communities to identify suitable areas for rural lifestyle development. 	<ul style="list-style-type: none"> Transaction costs incurred by councils to meet the requirements of clause 3.7 (and in some cases clause 3.10) may be passed onto the community through rates. However, these costs are very minor in the context of overall plan change costs. Transaction costs incurred by developers to meet the requirements of clause 3.7 (and clause 3.10) may be passed onto the community through increased house prices. However, these potential costs are very minor in the context of overall development costs.
Cultural	<ul style="list-style-type: none"> Māori cultural and spiritual values associated with HPL are protected from rural lifestyle rezoning. 	<ul style="list-style-type: none"> N/A

Assessment of effectiveness – Policy 6 and clause 3.7

Policy 6 and clause 3.7 are assessed as being effective in achieving the NPS-HPL objective and addressing the identified resource management issues. In particular:

- Policy 6 takes a strong avoid approach to new rural lifestyle zones on HPL to address the loss of HPL that has been occurring because of rural lifestyle development to date. This recognises that encouraging rural lifestyle subdivision of HPL through specific zoning should be avoided except in limited, specific circumstances (ie, the land is not economically viable for land-based primary production due to long-term or permanent constraints)
- reference to clause 3.10 provides direction to councils and applicants on what information is needed and how a decision on any rezoning for rural lifestyle needs to be assessed. The tests in clause 3.10 are intentionally high to avoid undermining the objective of the NPS-HPL.

The provisions provide a nationally consistent set of considerations and tests that must be met before rural lifestyle rezoning can occur on HPL and set a clear expectation that the use of HPL for rural lifestyle purposes is generally inappropriate and should be prevented in most circumstances. This will provide greater certainty to all parties and lead to better consideration and protection of HPL over time.

Other reasonably practicable options

Other reasonably practicable options to the NPS-HPL provisions in relation to rural lifestyle rezoning on HPL follow.

1. An even stronger avoidance approach that prevented rezoning of HPL to rural lifestyle under any circumstances.

2. Allowing rural lifestyle rezoning on HPL so it can be a receiver zone for a transferable development rights subdivision framework.
3. Having a national definition of rural lifestyle or minimum lot size.

Option 1: A stronger avoidance approach preventing rezoning of HPL to rural lifestyle under any circumstances

One option considered was a complete avoidance approach for rezoning HPL to rural lifestyle. There are some strong supporting arguments for this approach, namely that rural lifestyle development is a very inefficient use of HPL and setting aside HPL for this purpose through a specific enabling zone is a poor use of a valuable, finite resource. Unlike urban development, rural lifestyle development does not have to be contiguous with existing urban or rural lifestyle areas and there is more flexibility to direct rural lifestyle development away from HPL. Although there is often demand for rural lifestyle-sized lots in a district, rural lifestyle development is not an efficient way to provide housing and should not be considered an efficient use of HPL in the same way that urban development to provide sufficient development capacity for housing and business land might be. In this context, it could be arguable that rezoning HPL for rural lifestyle is never an appropriate use of this finite resource and should be completely avoided.

However, it is recognised that some areas identified as HPL through the mapping process might be subject to permanent or long-term constraints that prevent the HPL being used for economically viable land-based primary production, either now or in the future (ie, water quantity or quality concerns may not be a constraint at the time of HPL mapping, but they may become a constraint over time as councils give effect to freshwater national direction). Owners of HPL that are subject to proven constraints can undertake non-productive activities on their land in accordance with clause 3.10 – although, in most cases, this will be considered through a resource consent process, there may be a scenario where a larger area of land is subject to a constraint and the rezoning of that land may result in a more well-planned, cohesive response than a more piecemeal resource consent approach. As such, it was considered more appropriate to provide rural lifestyle rezoning with the same pathway under clause 3.10 as other forms of rural lifestyle development. This is to account for situations where a constraint impacts a larger area and a plan change to rezone the land is a more efficient response than ad hoc resource consent applications to change the land use over time.

Option 2: Allowing a rural lifestyle zone on HPL as a receiver zone for transferable development rights

The initial rationale for considering the rezoning of HPL to a rural lifestyle zone and using a transferable development rights scheme was that some territorial authorities only have HPL in their rural environment (ie, all their rural land is either LUC 1, 2 or 3 land). In this scenario it could be beneficial to identify the least valuable HPL in the context of the district (eg, some LUC-3 land) and use it as a recipient zone to transfer lots away from the more valuable LUC-1 or 2 land. This would ensure the most productive land in the district was being consolidated and protected and rural lifestyle was able to be concentrated in a smaller area. The intent was to achieve an increase in the productive potential of the highest quality HPL while still providing for rural lifestyle development on a smaller, more concentrated area of HPL, thus preserving the productive potential of the HPL in a district overall.

This option was tested as part of the Exposure Draft. The clear feedback from territorial authorities was that subdivision frameworks that rely on transferable development rights between donor and recipient zones are very complex, time consuming to administer and do not result in positive outcomes for the rural environment. Ultimately, the pathways for transferable development right subdivisions simply increased the number of subdivision

pathways for rural lifestyle development on HPL and would be unlikely to deliver meaningful consolidation of the best quality HPL in a district. The clear message received from territorial authorities was that even if this option was provided for in the NPS-HPL, it would be very unlikely to be implemented in district plans given the past experiences of councils dealing with similar frameworks. On balance it was decided not to refer to transferable development rights as a potential pathway for rezoning HPL to rural lifestyle given the administrative burden, low potential benefits (or potential perverse outcome of allowing more rural lifestyle subdivision on HPL) and anticipated low uptake of the option by territorial authorities.

Option 3: Having a national definition of rural lifestyle or minimum lot size.

Defining 'Rural Lifestyle' in terms of a minimum lot size to suit all regions is problematic as this varies depending on a range of factors and will not be the same for all the regions. It was decided that it would be better to provide guidance to support councils in defining rural lifestyle specific to their region and on a site-by-site basis. In reference to 'Rural Lifestyle Zone' the interpretation section of the NPS-HPL clause 1.3(4) refers to the National Planning Standards definition of Rural Lifestyle Zone being: *"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"*.

Avoiding subdivision of highly productive land (Policy 7 clause 3.8)

Provisions being assessed

The provisions being assessed in this section relating to protecting HPL from subdivision are Policy 7 and clause 3.8 as follows:

Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

Clause 3.8 Avoiding subdivision of highly productive land

- (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.
- (4) Territorial authorities must include objectives, policies and rules in their district plans to give effect to this clause.

Intent of the provision

The intent of the NPS-HPL is to include strong and directive provisions to manage subdivision on HPL to help address the ongoing fragmentation of this resource into unproductive lifestyle lots (or other inefficient forms of subdivision that do not support land-based primary production). Under clause 3.8, subdivision is only appropriate in limited circumstances where:

- the applicant demonstrates the proposed lots will retain the overall productive capacity of the subject land over the long term (eg, the subdivision is for a boundary adjustment that still leaves both lots large enough to support land-based primary production, or the subdivision involves amalgamation of land parcels to create more productive lots):
- the subdivision is on specified Māori land
- 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.

In these contexts, territorial authorities must take measures to ensure any subdivision on highly productive land:

- (f) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district, and
- (g) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

Note the other scenario where subdivision of HPL may be appropriate is when it is demonstrated the land is not economically viable for land-based primary production under clause 3.10 (discussed further on pages 104–109 of this report).

The intent is not to prevent all subdivision of HPL. It is recognised that not all subdivision creates rural lifestyle development, as subdivision includes activities such as boundary adjustments and some leases that can still retain the overall productive capacity of the subject land in the long term. However, it is intended that rural lifestyle subdivision would be difficult to apply for under this clause as a rural lifestyle lot is not a productive use of land and the creation of such lots would be unable to meet clause 3.8(1)(a). This reflects the fact that rural lifestyle subdivision poses the greatest threat to HPL nationally as evidenced in the *Our Land 2021* report.⁶⁸ Rural lifestyle subdivision on HPL also creates a number of other issues including being an inefficient use of otherwise productive land, taking land out of land-based primary production, providing fewer community benefits (compared to urban rezoning), acting as a barrier to future urban rezoning, and creating reverse sensitivity effects.

Further, the intention to enable subdivision on specified Māori land (as defined) is to recognise that Māori land is often subject to a large number of constraints that restrict options for its use (eg, collective ownership, poor land quality). Being more enabling of subdivision on this land (despite it being identified as HPL), is a balance between identifying that the land has characteristics that make it inherently more productive than other land, but also recognising that iwi and hapū may have other aspirations for their land. Given that a very small proportion of specified Māori land is expected to be identified as HPL (114,000 ha or 0.03 per cent of total LUC 1–3 land) and that most Māori land faces a range of barriers to development, it was not considered appropriate to unduly restrict development options further through the NPS-HPL.

⁶⁸ If fragmentation of all HPL is considered (LUC 1–3), 5 per cent of HPL had been subdivided into lifestyle blocks (parcels between 2 and 8 ha in size) in 2019. This is equivalent to 173,800 ha (59 per cent increase) since 2002.

Finally, provision has been made for subdivision for specified infrastructure or defence facilities. This is a pragmatic approach, recognising there is often a functional or operational need to subdivide around particular facilities or infrastructure that need to be located on HPL and it is reasonable to allow this to occur.

The measures in clause 3.8(2) are intended to direct territorial authorities to consider both cumulative effects and reverse sensitivity effects when developing provisions for subdivision on HPL in their district plans and considering and making decisions on subdivision consent applications. It is intended that the direction in clause 3.8(2) will be translated directly into objectives and policies that manage subdivision of HPL and that the starting point for both types of adverse effects is 'avoid' in the first instance.

Assessment of efficiency – Policy 7 and clause 3.8

Table 8 below provides an assessment of the efficiency of Policy 7 and clause 3.8 in achieving the NPS-HPL objective.

Table 8: Assessment of efficiency – Policy 7 and clause 3.8

Criteria	Assessment	
Administrative efficiency	<p>The provisions are assessed as being administratively efficient as:</p> <ul style="list-style-type: none"> the 'avoid' policy for subdivision of highly productive land sets an intentionally high bar and limits types of subdivision of HPL to clearly defined circumstances, addressing a key issue under the status quo these provisions will have immediate effect from the commencement date and will provide strong direction to decline subdivisions that cannot meet the established criteria the provisions provide clear policy direction to councils that subdivision of HPL should generally be avoided unless one of the tests in clause 3.8 (or alternatively clause 3.10) can be met. The clear direction provided by the provisions will create efficiencies in subordinate plan change and consenting processes clause 3.8 applies to all subdivisions on HPL rather than trying to control different types of subdivisions in different ways (ie, for rural lifestyle purposes v land-based primary production). This will help avoid arguments and debates about the underlying purpose of subdivision and associated inefficiencies. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> Greater protection of HPL from subdivision fragmentation may help to reduce the loss of regulating ecosystem services provided by the HPL resource now and in the future. However, it is recognised these ecological services may still be provided where HPL is subdivided, depending on the scale of the subdivision and the land-use activity that it enables. 	<ul style="list-style-type: none"> Rural lifestyle subdivision may be redirected to areas that are less desirable from an environmental perspective.
Economic	<ul style="list-style-type: none"> Loss of land-based primary production output is avoided where rural lifestyle subdivision is redirected away from HPL. The CBA estimates this benefit based on a modelling approach that directs projected demand for rural lifestyle development to non-HPL in six case study districts. The CBA estimates the total net benefits across the six 	<ul style="list-style-type: none"> Costs for district councils to develop objectives, policies and rules to give effect to the provisions (council implementation costs are discussed on page 37. <p>Opportunity costs</p> <ul style="list-style-type: none"> Landowners with HPL seeking rural lifestyle subdivision may incur

Criteria	Assessment	
	<p>case studies at \$265 million over a 30-year period (8% discount rate).⁶⁹</p> <ul style="list-style-type: none"> • The CBA concludes that the benefit from the NPS-HPL of avoided loss of land-based primary production from rural lifestyle subdivision is of high significance as it is an ongoing, cumulative benefit.⁷⁰ • Improved protection of New Zealand’s most productive and versatile land, including the urban fringe and key food hubs under pressure from rural lifestyle development such as Pukekohe in Auckland and Heretaunga Plains in Hawke’s Bay. • Better protection of HPL from rural subdivision will support a more resilient primary production sector. This will help ensure land-based primary production activities continue to provide significant direct and indirect employment opportunities in New Zealand. • More consistent decision-making on subdivision applications onto HPL nationally. This may lead to improved certainty and efficiency gains over time as the tests and considerations in clause 3.8 become standard planning practice. • A reduction in resource consent applications for rural lifestyle subdivision on HPL and associated costs (including litigation) over time. • Subdivision to support specified infrastructure and defence facilities will have flow-on positive economic effects from being enabling and supporting of these land-use activities. 	<p>opportunity costs where this land is no longer able to be developed for rural lifestyle subdivision.</p> <ul style="list-style-type: none"> • The CBA for the NPS-HPL estimated the potential opportunity costs to rural landowners seeking rural lifestyle subdivision. The CBA modelling approach overstates the net opportunity costs by assuming all landowners will want to subdivide their land. Overall, the CBA concludes the potential opportunity costs on rural landowners from restrictions on rural lifestyle subdivision will be outweighed by the benefits of a ‘restrict’ policy. <p>Net transaction costs – consents</p> <ul style="list-style-type: none"> • The term ‘Productive Capacity’ may result in increased consenting costs in the short term. The application of this term will be further clarified in guidance. Over time, more consistent decision-making on subdivision applications onto HPL nationally may lead to improved certainty and efficiency gains as the tests and considerations in clause 3.8 become standard planning practice.
Social	<ul style="list-style-type: none"> • The character, heritage and sense of place associated with HPL (existence values) are often valued by communities. The NPS-HPL will help to protect these values by directing inappropriate subdivision (including rural lifestyle) away from HPL. • The capacity of HPL to service local and international food markets is maintained through avoiding fragmentation of this resource into 	<ul style="list-style-type: none"> • Fewer opportunities for rural lifestyle subdivision in some areas, which may be desired by some parts of the community.

⁶⁹ The CBA notes that this is an underestimate as it does not factor in the likelihood that councils will provide additional capacity for rural lifestyle development on non-HPL in response to the NPS-HPL which is considered to be the likely response.

⁷⁰ CBA, pg.136.

Criteria	Assessment	
	<p>unproductive lots and rural lifestyle properties (and associated decrease in productivity). This has direct and indirect benefits to rural and urban communities.</p> <ul style="list-style-type: none"> Land-based primary production job opportunities and livelihoods in HPL areas are maintained (and potentially enhanced). 	
Cultural	<ul style="list-style-type: none"> Opportunities for subdivision of specified Māori land is not restricted by clause 3.8. Māori retain discretion over specified Māori land including cultural and spiritual values associated with HPL. 	<p>There is some identified litigation risk associated with the definition of ‘specified Māori land’, particularly the exclusion of Treaty settlement land and particular categories of ‘general land owned by Māori’. This decision was made exercising the Crown’s responsibility to balance competing rights and interests and ensure fairness and reasonableness of Government policy to ensure that ‘general land’ should be subject to the same legal framework irrespective of ownership.</p>

Assessment of effectiveness

Policy 7 and clause 3.8 are assessed as being effective in achieving the NPS-HPL objective and addressing the identified resource management issues. In particular:

- policy 7 takes a strong ‘avoid’ approach to subdivision of HPL (unless specifically provided for in clause 3.8) to address the loss of HPL that has been occurring as a result of ongoing fragmentation (including from rural lifestyle subdivision) to date. It also provides a basis to decline applications that cannot demonstrate that they meet the tests of clause 3.8 (or clause 3.10)
- clause 3.8 applies from the date the NPS-HPL comes into effect and will therefore increase the protection of HPL prior to councils completing plan changes to give effect to the NPS-HPL. This will be effective in protecting HPL from fragmentation, particularly in preventing further subdivision of HPL into unproductive rural lifestyle blocks, which has been identified as the key threat to the HPL as a resource at the national level
- clause 3.8 provides clear direction to councils and applicants on what information is needed and how a decision on any subdivision of HPL needs to be assessed. The tests are intentionally high to avoid undermining the objective of the NPS-HPL
- the provisions provide a nationally consistent set of considerations and tests that must be met before subdivision can occur on HPL. This will provide greater certainty to all parties and lead to better consideration and protection of HPL over time
- exempting specified Māori land from NPS-HPL restrictions on subdivision (and subsequent use and development of that land under clause 3.9) will have a relatively small effect on the continued availability of HPL in New Zealand. This is primarily due to the small amount of land under consideration (114,000 ha or 3 per cent of total LUC 1–3 land), as well as the likelihood of this land being converted for urban or rural lifestyle purposes. In general, Māori land does not face great development pressure as this land is typically far from urban centres. In addition, constraints under the Te Ture Whenua Māori Act 1993, which

require 75 per cent of ownership interests to support the sale of Māori freehold land, also promotes the likelihood of this land remaining in Māori possession.

It is acknowledged this option may be less effective in protecting HPL than an absolute avoidance approach to subdivision. There is a risk that allowing for flexibility in subdividing HPL in specific circumstances could result in a decrease in productivity and/or a move away from land-based primary production (ie, a continuation of the status quo) in some cases. However, as noted above, this risk is mitigated through the policy placing a clear responsibility on applicants to demonstrate their subdivision proposal meets one of the scenarios set out in clause 3.8 (or alternatively clause 3.10). Clear guidance on these provisions with practical examples will also help mitigate these risks.

Other reasonably practicable options

Other reasonably practicable options to the NPS-HPL provisions in relation to subdivision on HPL are:

1. Expand the definition of specified Māori land to include Treaty settlement land and specific categories of 'general land owned by Māori'.
2. Restrict the subdivision of HPL for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force.

Option 1: Expand the definition of specified Māori land

The definition of specified Māori land in the NPS-HPL is intended to capture land in which Māori have a special interest, to ensure the Government and local authorities understand and deliver their obligations in accordance with the Treaty of Waitangi (te Tiriti) including the Crown's right to govern New Zealand and to represent the interests of all New Zealanders. It includes:

Māori customary and freehold land – Limb (a)

This limb is the definition of Māori land in the Te Ture Whenua Māori Act 1993.

Māori reserves and reservations – Limbs (b) and (c)

These limbs relate to Māori reservations established under Te Ture Whenua Māori Act 1993 or its predecessors, or Māori reserves under the Māori Reserved Land Act 1955. Only those reserves constituted by or under the Māori Reserved Land Act 1955 that 'continue to be vested in the Māori Trustee' are captured by limb (b). These reserves are deemed under that Act to be Māori freehold land. Māori reservations under the Te Ture Whenua Māori Act 1993 or its predecessors are 'inalienable' and also unable to be compulsorily acquired under any Act including the Public Works Act.

Natural features declared a legal entity or person – Limb (d)

This limb refers to land that forms part of a natural feature which has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014). Some parts of these areas do include LUC 1–3 soils, for example, 38 ha of Te Urewera land and river margins alongside the Waikato River and Whanganui River. Exempting these areas from undue restrictions imposed by the NPS-HPL will avoid impinging on these Settlement Acts.

Specified maunga – Limb (e)

This limb refers to the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. This limb is not relevant to the implementation of the NPS-HPL policy as these maunga do not comprise LUC 1–3 land but are included for consistency with the decision on the NBA/SPA definition.

‘Other land’ – Limb (f)

This limb is intended to capture land that has been returned not via a settlement process but returned, for example, under the powers of the Waitangi Tribunal. A similar provision is also included as part of “protected land” under s 17 of the Urban Development Act and s 11 of the Infrastructure Funding and Financing Act.

Consideration was given to including the following within the definition of ‘specified Māori land’

- Treaty settlement land (limb (h) of the IFFA definition), and
- former Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993) that had its status changed to ‘general land owned by Māori’ under the Māori Land Court after 1 July 1993; or Part 1 of the Māori Affairs Amendment Act 1967 (limb (i) of the IFFA definition), and
- former Māori customary or freehold land that was acquired under the Public Works Act and subsequently returned as ‘general land owned by Māori’ and that continues to hold the same significance to Māori as customary and freehold land (a limb which was included in the Exposure Draft version of the NPS-HPL).

In reaching this decision, the Crown must consider a number of objectives and principles which may be in conflict, including:

- the principle of active protection of Māori interests – in this case, the option of excluding such land from the restrictions of the NPS-HPL
- the principle of redress to recognise and avoid impacting on past redress unless overriding considerations apply
- the objective of protecting HPL
- the interests of the Crown as kawanatanga in maintaining effective, efficient and principled legal frameworks to govern and manage land (and other matters more generally).

The balance is whether the principles of active protection and redress outweighs the other two objectives. In terms of the objective of protecting HPL, the area concerned is only a small proportion of the total HPL resource in New Zealand. Not subjecting this land to the restrictions of the NPS-HPL is unlikely to have a significant impact on the overall objective of protecting HPL.

The rationale for excluding this land is based on the importance of ensuring fairness and reasonableness to Government policy by ensuring a consistent legal framework for ‘general land’ that does not distinguish by virtue of its ownership. This decision also addresses the risk that excluding Treaty settlement land from restrictions imposed by the NPS-HPL implies that the Crown will and should always avoid applying policy instruments that could devalue assets acquired through the Treaty settlement process. This could have consequences across a wide range of policy decisions, making it difficult for the Crown to apply new law for a range of purposes.

It is also noted that:

- section 133 of Te Ture Whenua Māori Act (TTWMA) provides a pathway for these types of land to change to Māori freehold land (limb (a) of the definition in NPS-HPL)
- there is an opportunity for land to be rezoned as ‘Special Purpose Zone – Māori Purpose Zone’ land, as defined in the National Planning Standards. This then means that this land will not be subject to restrictions imposed by NPS-HPL.

For these reasons, Option 1 is not the preferred option.

Option 2: Restrict the subdivision of HPL for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force, and/or widening the definition of specified infrastructure

Restricting the subdivision of HPL for specified infrastructure and defence facilities would frustrate the delivery of projects in the national interest. The preferred definition of specified infrastructure is limited to the following:

- (a) infrastructure that delivers a service operated by a lifeline utility:
- (a) 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:
- (b) any public flood control, flood protection, or drainage works carried out:
 - (iv) 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
 - (v) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908.

Defence facilities are included in clause 3.8 to enable the New Zealand Defence Force to meet its obligations under the Defence Act 1990. Subdivision proposals under this category must demonstrate ‘a functional or operational need’ for which there is established case law. The alternative of restricting subdivision for specified infrastructure and defence facilities and or widening the definition of specified infrastructure is not considered practicable or desirable in terms of the national interest.

Protecting highly productive land from inappropriate use and development (Policy 8 and clause 3.9)

As discussed above, the scope of the proposed NPS-HPL as consulted on did not extend to prioritising particular primary production uses. One of the reasons for protecting HPL is the inherent flexibility of this land to be used for a range of different productive land uses. However, the definition of primary production in the proposed NPS-HPL should be more directly related to land-use activities that are reliant on the soil resource of the land and that the NPS-HPL should include a definition of ‘land-based primary production’. This definition is differentiated from the National Planning Standards definition of primary production and is intended to be a subset of this wider primary production definition. It is therefore recommended the NPS-HPL definition of ‘land-based primary production’ mean production from agricultural, pastoral, horticultural or forestry activities that is reliant on the soil resource of the land.

The use of the term ‘land-based primary production’ and the associated link to activities that are dependent on the soil resource of the land is intended to recognise that while the NPS-HPL protects ‘HPL’ for land-based primary production, councils retain the discretion over what types of land-based primary production can occur on what type of HPL, including for forestry.

This gives councils the ability to address concerns about forestry – if forestry is considered an unsuitable use for a particular piece of HPL, it can still be restricted. This enables councils to manage land for particular values if that is a local priority. For example, some soils are inherently better for viticulture, while others are better suited for vegetables. Councils are best placed to know whether their region or district’s HPL needs to be managed for specific additional values.

While forestry may not be the most productive use of HPL, there is no strong evidence that large areas of HPL are being converted to forestry and that this presents a risk to the overall HPL resource at a regional or national scale. While the forestry cycle takes place over a longer timeframe (approximately 30 years), it is not irreversible to the same extent as urban rezoning/development and fragmentation into lifestyle lots. Therefore, plantation forestry on HPL can be converted to other more productive primary sector uses over time.

The Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017 (NES-PF) permits afforestation for plantation forestry in many areas of the country. However, councils retain the ability to make rules for activities or effects that are out of scope of the NES-PF. Existing guidance on the NES-PF confirms councils can make rules to manage activities that are out of scope (such as permanent forestry) or effects such as water yield. If forestry, or a particular type of forestry, poses a risk to HPL resources in a region, a council could likely make rules to limit afforestation as the protection of HPL is out of the scope of the NES-PF. The Government is also considering changes to the NES-PF to better manage both plantation forestry and permanent forestry which may include controls for forestry activities on HPL.

Provisions being assessed

Policy 8 and clause 3.9 are the provisions of the NPS-HPL that relate to ‘other’ inappropriate subdivision, use and development on HPL as follows:

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

Clause 3.9 Protecting highly productive land from inappropriate use and development

- (1) Territorial authorities must avoid the inappropriate use or development on highly productive land that is not land-based primary production.
- (2) A use or development on highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:
 - (a) it provides for supporting activities on the land:
 - (b) it addresses a high risk to public health and safety:
 - (c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:
 - (d) it is on specified Māori land:
 - (e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:
 - (f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality:
 - (g) it is a small-scale or temporary land-use activity that has 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:
- (i) it provides for public access:
- (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.
- (2) 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.
- (3) Territorial authorities must include objectives, policies and rules in their district plans to give effect to this clause.

Intent of the provisions

Central to the NPS-HPL objective is the avoidance of ‘inappropriate’ subdivision, use and development of HPL and prioritising the use of HPL for land-based primary production. As such, the proposed NPS-HPL included general policy direction to avoid ‘other’ new inappropriate subdivision, use and development on HPL. It was intended this would result in controls on activities that bring about the irreversible loss of HPL and/or compromise the use of HPL for land-based primary production. It was also intended the proposed NPS-HPL did not inappropriately restrict other (non-productive) uses of HPL, particularly where these uses deliver wider environmental, economic, social or cultural benefits, and there is clarity on how such uses should be considered and provided for under the NPS-HPL.

Feedback from submitters on the proposed NPS-HPL and further policy analysis confirmed the need to better define ‘appropriate’ and ‘inappropriate’ uses of HPL to provide further clarity and ensure consistent interpretation and implementation. Feedback also highlighted the need to minimise the risk of certain activities being precluded from HPL when they deliver wider benefits or relate to matters of national importance under section 6 of the RMA that must be recognised and provided for. In response to this feedback, clause 3.9(2) of the NPS-HPL provides a set of criteria to guide when particular use and development of HPL may be appropriate and therefore allowed in certain circumstances.

Appropriate uses on HPL recognised in clause 3.9(2) follow.

- **Supporting activities** – the NPS-HPL includes a definition of ‘supporting activities’ which is intended to cover activities that support land-based primary production activities on the land where the land-based primary production is taking place. The ‘supporting activities’ definition is deliberately non exhaustive (although some examples such as on-site processing, packing sheds, equipment storage and animal housing are included in the

definition), as it is anticipated territorial authorities will use the definition as the starting point for deciding the range of permitted activities they will provide for on HPL in their district plan. The key point is that the supporting activity needs to relate to the land-based primary activity on the land where the production is taking place, that is, on-site processing of eggs or produce grown on the HPL would be a supporting activity, but a larger-scale milk processing facility that processed milk from a large number of HPL properties would not (as this activity could just as easily be set up on non-HPL land, retaining the HPL for the actual production of milk).

- **Address a high risk to public health and safety** – this ensures the NPS-HPL does not prevent subdivision, use and development that is needed to address public health and safety concerns, such as the construction of flood protection structures.
- **Section 6 matters of national importance** – the NPS-HPL should not prevent councils from meeting their obligations to recognise and provide for matters of national importance under section 6 of the RMA. As such, clause 3.9(2)(c) recognises the use and protection of land that provides for these matters is an appropriate use of HPL. In practice, there is expected to be limited interaction or potential conflict between the NPS-HPL and providing for certain section 6 matters.⁷¹ HPL will often be able to be utilised for land-based primary production while providing for certain section 6 matters at the same time. However, there is potential for conflict between the NPS-HPL and section 6 of the RMA in some situations, such as where a Significant Natural Area is located on HPL and there are conflicting priorities for the use of that land for ecological protection versus land-based primary production. Accordingly, the NPS-HPL enables section 6 matters to prevail in the event of such conflict.
- **Activities on specified Māori land** – this is intended to ensure the NPS-HPL does not unduly restrict Māori land, particularly where the development of that land can deliver significant cultural, social and economic outcomes for iwi/Māori. It also ensures the NPS-HPL does not conflict or compromise any redress under a Treaty of Waitangi Settlement Act (eg, where land given to iwi as part of settlement redress is HPL). Refer to page 91 to 94 for further discussion about the definition of specified Māori land.
- **Activities for the purpose of protecting, maintaining, restoring, and enhancing indigenous biodiversity** – this ensures a pathway for activities that protect, maintain, restore or enhance indigenous biodiversity on HPL. This may involve a landowner diversifying their operation and planting some of their land with vegetation that increases or supports an area of indigenous biodiversity where this planting does not compromise the current or future use of HPL for land-based primary production (as work to improve indigenous biodiversity on a site is generally compatible with the balance of the land being used for productive purposes).
- **Provides for the retirement of land from land-based primary production for the purpose of improving water quality** – this is intended to provide a pathway for the retirement of areas of land that are classified for HPL if a landowner wants and/or needs to retire the land to improve water quality. Providing for this scenario is important to ensure there isn't potential conflict with the NPS-FM if retiring HPL from productive use is necessary to achieve a water quality objective or comply with the National Environmental Standard for Freshwater. Retiring parts of HPL from being used for land-based primary production is still compatible with neighbouring areas of HPL continuing to be used productively.

⁷¹ For example, there is expected to be limited interaction with sections 6(a) and 6(d) as these fringe areas are not likely to be mapped as HPL. There is also expected to be limited historic heritage located on HPL that cannot co-exist with land-based primary production.

- **Is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land** – this ensures the NPS-HPL does not prevent temporary land-use activities (such as concerts, farmers markets) from occurring on HPL, where it is acknowledged these activities are of a short duration and will not restrict or compromise the land from being used for land-based primary production. It also allows for small-scale activities (eg, a home business run from a farmhouse) where these have no impact on the productive capacity of the land. Guidance will provide more direction to territorial authorities on the range of activities that could be anticipated under this clause.
- **Designated activities (or activities subject to a Notice of Requirement)** – providing for designated activities (including applications for Notices of Requirement) on HPL in clause 3.9(2)(h) recognises that the suitability of activities, including a consideration of their location, scale and effects, is fully considered through the designation process, noting that there is nothing in the NPS-HPL that precludes new Notices of Requirement being lodged in respect of HPL. If land has been designated for a particular activity, then identifying the land as HPL should not conflict with that activity being allowed to take place. However, it is still important to identify and map land subject to designations as HPL to recognise that the land is inherently productive, and it could be utilised by land-based primary production activities in the future should the designation be uplifted or in the interim before the designation is given effect to. It is anticipated that new specified infrastructure or new New Zealand Defence Force facilities will use clause 3.9(2)(h) to establish on HPL – existing specified infrastructure or New Zealand Defence Force facilities will use clause 3.9(2)(j) below if they do not currently rely on a designation.
- **Public access** – clause 3.9(2)(i) recognises that, in some situations, it will be desirable to enable public access over HPL and this is an activity that is usually compatible with continued use of the HPL for land-based primary production. Potential scenarios where public access over HPL could be desirable include where the public are able to gain access to coastal areas, or where a farmer has allowed public access over their land to enable a walking track into a conservation area.
- **Specific activities that have a functional or operational need to locate on HPL** – clause 3.9(2)(j) lists a range of infrastructure, New Zealand Defence Force and mineral extraction activities that are locally constrained in terms of where they can locate and may necessarily be located on HPL in certain circumstances (eg, where a road needs to be extended through HPL, or the mineral resource is located on HPL). Infrastructure, defence and mineral activities are also activities that can deliver significant economic and social benefits to people and communities. As such, clause 3.9(2)(j) makes allowance for such activities provided they can demonstrate that (in the case of mineral or aggregate extraction) they provide a significant national or regional public benefit and (in all cases) have a functional or operational need to be located on HPL. Note in the case of specified infrastructure and New Zealand Defence Force facilities, provision is made under this clause for maintenance, operation, upgrade, or expansion, but not construction of new infrastructure or facilities. This is because it is expected new specified infrastructure or New Zealand Defence Force facilities will use the designation process to establish and that this clause focuses on existing infrastructure or facilities that may not have been established using a designation.

These provisions recognise that, while the overarching NPS-HPL objective is to protect HPL for use in land-based primary production, there are other activities and uses that are necessarily or appropriately located on HPL in certain circumstances. The criteria in clause 3.9(2) clarify the types of activities and uses that may be appropriate on HPL to provide greater certainty to councils and applicants. Clause 3.9(2) will then ensure territorial authorities provide more

specific direction on appropriate and inappropriate activities in their particular district when giving effect to these provisions.

The wording of clause 3.9(3) has been included to align with the equivalent subdivision direction in clause 3.8(2). The intent is that territorial authorities must consider both cumulative effects and reverse sensitivity effects when developing provisions that allow the specified land uses in clause 3.9(2) on HPL in their district plans and when they are making decisions on land consent applications for those land uses. It is intended the direction in clause 3.9(3) will be translated directly into objectives and policies that clearly define ‘appropriate’ and ‘inappropriate’ uses of HPL.

Assessment of efficiency – Policy 8 and clause 3.9

Table 9 provides an assessment of the efficiency of Policy 8 and clause 3.9 in achieving the NPS-HPL objective.

Table 95: Assessment of efficiency – Policy 8 and clause 3.9

Criteria	Assessment	
Administrative efficiency	<p>Policy 8 and clause 3.9 are assessed as being administratively efficient. The provisions provide:</p> <ul style="list-style-type: none"> • clear direction that inappropriate use and development should be avoided on HPL (ie, when a land-use activity is not listed in clause 3.9(2)) • guiding criteria to determine when use and development activities may be appropriate on HPL and the circumstances where this can occur. This will: <ul style="list-style-type: none"> – help to minimise debate on whether activities are appropriate on HPL or not – provide more consistent interpretation and implementation – assist to simplify and streamline district plan processes to give effect to the provisions • flexibility for territorial authorities to define with greater specificity activities that are inappropriate and appropriate on HPL through their district plans and provide corresponding objectives, policies and rules. This enables some customisation of provisions to suit the local context supported by nationally consistent criteria, for example, the activities considered to be ‘supporting activities’ on HPL can be further defined in a district plan to suit local circumstances • a national and district planning framework that will provide certainty to all parties on the types of use and development that are inappropriate and appropriate on HPL • a clear consenting pathway for certain activities to be located on HPL provided they meet the relevant criteria. This approach is significantly more efficient than councils and applicants determining this on a case-by-case basis. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • The provisions specifically provide for use and development that: <ul style="list-style-type: none"> – recognises and provides for a matter of national importance under section 6 of the RMA (eg, protection of Significant Natural Areas) – the protection, maintenance, restoration and enhancement of indigenous biodiversity – the retirement of land from land-based primary production 	<ul style="list-style-type: none"> • N/A – the provisions specifically provide for activities on HPL when these provide wider environmental benefits and/or relate to section 6 RMA matters. As such, no environmental costs are anticipated from the provisions.

Criteria	Assessment	
	<p>for the purpose of improving water quality.</p> <ul style="list-style-type: none"> • This effectively ensures the NPS-HPL allows for all environmental-related initiatives to be prioritised over land-based primary production on HPL as appropriate. • Will help retain the availability and capacity of the finite HPL resource by limiting non-productive use and development on HPL. This will enable HPL to continue to provide ecosystem services and functions. • The criteria allow a specific list of activities to locate on HPL if they are supporting activities and/or have a national or regional public benefit or a functional or operational need to be on HPL. This allows these activities to be located in close proximity to the activities they support or to the resource they rely on (in the case of mineral or aggregate extraction), thus reducing transport impacts and/or other potential adverse environmental effects associated with choosing a sub-optimal location for an activity, so it avoids HPL. • The provisions help ensure commercial and industrial activities are located in areas zoned for that purpose, reducing the adverse environmental effects of these activities in productive rural areas. 	
Economic	<ul style="list-style-type: none"> • Limiting ‘other’ activities that can be located on HPL provides greater assurance the primary sector can continue to operate efficiently. This will help to ensure New Zealand’s primary sector earnings on HPL are sustained (and potentially enhanced). • Provides for activities that support land-based primary production on that land. This will help ensure the economic output of primary sector supply chains are sustained or enhanced. • Enables small-scale (eg, a home business) or temporary land-use activities on HPL that provide an economic benefit to the landowner, while ensuring the predominant use of the land continues to be land-based primary production. • The criteria provide for infrastructure, defence, and mineral and aggregate 	<ul style="list-style-type: none"> • Costs for district councils to develop objectives, policies and rules to give effect to the provisions (council implementation costs are discussed on page 37 and 38). • Enables a wide range of environmental focused activities as appropriate uses of HPL, which will generally generate fewer economic benefits compared to the use of land for land-based primary production. • Uses not provided for under clause 3.9(2) may incur increased costs to locate on non-HPL. For example, this may require industries and commercial developments to be located within industrial and commercial zones rather than cheaper rural locations. • Potential opportunity costs for landowners where their proposed activity is not provided for as an appropriate use of HPL under clause

Criteria	Assessment	
	<p>extraction activities to be located on HPL when they have a national or regional public benefit (in the case of mineral and aggregate extraction) and a functional or operational need to be located on HPL. This will enable such activities to support local, regional and national economies.</p> <ul style="list-style-type: none"> • More consistent decision-making through clear national criteria on the types of use and development that are appropriate and inappropriate on HPL. This will: <ul style="list-style-type: none"> – lead to efficiency gains over time as councils define appropriate and inappropriate activities with more specificity through their district plans – provide greater certainty to all parties on appropriate (non-productive) uses of HPL. 	<p>3.9(2). However, these costs are expected to be low in practice given the range of uses provided for under clause 3.9(2). Where this occurs, these opportunity costs may be partially or fully offset by the opportunity benefits to undertake this use and development on non-HPL.</p> <ul style="list-style-type: none"> • Risk that the criteria guiding appropriate use of HPL in clause 3.9(2) limits activities that could be otherwise located on HPL and provide more economic benefits than land-based primary production. • Potential increased costs for infrastructure, defence, and mineral and aggregate extraction activities to demonstrate they have a national or regional benefit and a functional or operational need to be located on HPL and/or go through the designation process to establish. However, this generally needs to be demonstrated as standard planning practice so any increase in costs would be minor. • The term 'Productive Capacity' may result in increased consenting costs in the short term. The application of this term will be further clarified in guidance. Over time more consistent decision-making on subdivision applications onto HPL nationally may lead to improved certainty and efficiency gains as the tests and considerations in clause 3.9(2) become standard planning practice.
Social	<ul style="list-style-type: none"> • Protecting HPL from inappropriate uses provides greater assurance that its capacity for productive purposes, including providing a local food supply and local employment for surrounding communities, will be retained (and potentially enhanced). This benefits both urban and rural communities. • The criteria enable infrastructure, defence, and mineral and aggregate extraction activities to be located on HPL when they have a national or public benefit and a functional or operational need to be located on HPL. This will enable such activities to support the social needs of communities. • The criteria guiding appropriate use of HPL provides for activities that deliver wider social benefits (eg, works to address risks to public health and safety, environmental restoration). 	<ul style="list-style-type: none"> • Risk that the criteria guiding appropriate uses of HPL in clause 3.9(2) limits alternative uses that would deliver more social benefits than land-based primary production. However, this risk is low given the criteria in clause 3.9(2) provide for a wide range of uses that deliver social benefits to people and communities.

Criteria	Assessment	
Cultural	<ul style="list-style-type: none"> The criteria explicitly provide for the use and development of specified Māori land identified as HPL. Māori retain discretion over specified Māori land including cultural and spiritual values associated with HPL 	<ul style="list-style-type: none"> There is some identified litigation risk associated with the definition of 'specified Māori land', particularly the exclusion of Treaty settlement land and particular categories of 'general land owned by Māori'. This decision was made exercising the Crown's responsibility to balance competing rights and interests and ensure fairness and reasonableness of Government policy to ensure that 'general land' should be subject to the same legal framework irrespective of ownership.

Assessment of effectiveness of Policy 8 and clause 3.9

As the NPS-HPL objective is to protect HPL for land-based primary production, allowing other (non-productive) uses on HPL is potentially contrary to that objective. However, it is also necessary to allow for other (non-productive) uses on HPL in certain circumstances, otherwise there is risk the NPS-HPL will prevent appropriate and necessary uses of HPL that deliver wider environmental, economic, social and cultural benefits. Clause 3.9(2) (supported by clause 3.9(3)) seeks to strike a balance between ensuring alternative uses are provided for on HPL while still achieving the overarching NPS-HPL objective to protect HPL for land-based primary production. In particular:

- the criteria provide a set of clearly defined circumstances where use and development on HPL that does not directly support land-based primary production can be appropriate; all other non-productive activities that do not meet the criteria are deemed inappropriate. This will help ensure HPL is protected and retained for land-based primary production for current and future generations
- the criteria guiding appropriate use of HPL specifically provide for activities that have a national or regional benefit and a functional or operational need to be located on HPL (eg, infrastructure, defence, and quarrying and mining), uses that deliver wider benefits (eg, environmental enhancements), and supporting activities that support land-based primary production on that land (eg, storage sheds, packing houses, on-site processing). This is an effective way to protect HPL for land-based primary production without precluding appropriate uses of HPL
- the alternative uses provided for under clause 3.9(2) are generally not expected to directly conflict with the overarching objective of protecting HPL for land-based primary production either because:
 - the uses can co-exist with land-based primary production (eg, some forms of infrastructure, environmental restoration, works to provide for health and safety)
 - the uses do not pose a significant threat to HPL (eg, public access, historic heritage)
 - the uses are reversible (eg, most obsolete infrastructure can be removed, native bush can revert to land-based primary production) and therefore do not preclude the future use of that HPL for land-based primary production
- the criteria provide clear guidance to councils on appropriate and inappropriate uses of HPL, with territorial authorities to define this more specifically through their district plans based on their local context. This is an effective way to ensure that HPL is protected from inappropriate use and development as best suits the needs of each district.

Other reasonably practicable options

The identification of other reasonably practicable options has focused on the how the NPS-HPL allows for 'other' (non-productive) use and development on HPL, as opposed to whether such uses should be completely avoided on HPL. Complete avoidance of all other non-productive uses on HPL would conflict with section 6 of the RMA and be inconsistent with other national direction instruments.

The other options identified follow.

1. Requiring councils to identify inappropriate use and development without guiding criteria.
2. Listing specific types of inappropriate use and development on HPL within the NPS-HPL.
3. Expanding the definition of specified Māori land and restricting the use of specified infrastructure on HPL as discussed above in relation to clause 3.8.

Option 1: Requiring councils to identify inappropriate use and development on HPL without guiding criteria

This option would require councils to identify 'inappropriate' use and development without any supporting criteria (as per the proposed NPS-HPL). This would give councils full discretion to identify any land-use activities that are presenting issues for HPL in their region/district or identify those they are seeking to encourage/discourage on HPL.

This option is less efficient than the NPS-HPL provisions, as it would require each council to determine which activities are considered inappropriate on HPL without guidance and would likely lead to substantial inconsistencies, uncertainty and debate across regions and districts. It would create uncertainty for councils and applicants alike as to whether certain activities are appropriate or not and how such activities should be considered and provided for under the NPS-HPL framework.

There is also a risk that this option will be less effective in achieving the NPS-HPL objective. The broad scope given to councils to determine what 'other' activities they avoid or provide for on HPL is likely to spark intense debate. It is anticipated it will result in great local pressure to allow a wide range of activities to be able to locate on HPL, which has the potential to conflict with the NPS-HPL objective and produce a continuation of the status quo.

Option 2: Listing specific inappropriate types of use and development in the NPS-HPL

Option 2 entails listing specific activities that may be appropriately located on HPL (or conversely listing inappropriate activities on HPL). This option would provide greater national consistency and certainty and would be administratively efficient as each council would be adopting the same list of activities – thus limiting debate and challenge through plan changes processes.

However, the main limitation of this option is the difficulty in providing an exhaustive, fit-for-purpose list of appropriate activities on HPL that suits all local and regional contexts. As such, this option risks the unintended outcome of listing specific 'inappropriate' activities which may be appropriate within a particular local context – or vice versa. This has the potential to reduce environmental benefits by allowing more extensive use of HPL by non-primary production activities that are inappropriate, depending on the context/circumstances. Alternatively, a prescribed list of 'inappropriate' activities could have adverse economic and social consequences by limiting activities that do not conflict with the NPS-HPL objective and do have a legitimate operational or functional requirement to be undertaken on HPL or deliver wider economic and social benefits in a local context.

Option 3: Expanding the definition of specified Māori land and restricting the use and development of specified infrastructure on HPL

Refer to pages 91–94 above where these matters are discussed in relation to subdivision.

Highly productive land not suitable for viable land-based primary production (clause 3.10)

Provisions being assessed

The provisions of the NPS-HPL that are assessed in this section relate to where HPL is not suitable for land-based primary production and the protections that apply in Policy 6, Policy 7, Policy 8 and clause 3.10 as follows:

Policy 6: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.

Policy 7: The subdivision of highly productive land is avoided, except as provided for in this National Policy Statement.

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

Clause 3.10 Exemption for highly productive land subject to permanent or long-term constraints

- (1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:
 - (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.
- (2) In order to satisfy a territorial authority as required by subclause (1)(a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):
 - (a) alternate forms of land-based primary production:
 - (b) improved land-management strategies:
 - (c) alternative production strategies:

- (d) water efficiency or storage methods:
 - (e) reallocation or transfer of water and nutrient allocations:
 - (f) boundary adjustments (including amalgamation):
 - (g) lease arrangements.
- (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.
- (4) 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.
- (5) In this clause:
- landholding** has the meaning in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020
- long-term constraint** means a constraint that is likely to last for at least 30 years.

Intent of the provisions

The criteria in clause 3.4 to define the extent of HPL through mapping was the preferred approach for the reasons outlined on page 61. The consequence of this approach means there may be some areas that are mapped as HPL but are (or become) subject to permanent or long-term constraints that make that land uneconomically viable for land-based primary production. This may result in restrictions on land that are inconsistent with the objective of the NPS-HPL, which is to protect HPL for use in land-based primary production (not protect land that is not viable for that purpose). However, establishing there are permanent or long-term constraints on HPL that make it uneconomically viable for land-based primary production is a complex and site-specific exercise that would have made the HPL mapping process unworkable.

Therefore, the intent of clause 3.10 is to provide a pathway for alternative subdivision, use and development not provided for under clauses 3.7, 3.8 and 3.9 to be considered, provided specified tests are met by resource consent or plan change applicants. The tests under clause 3.10 will require applicants to provide evidence of permanent or long-term constraints on their land, and then demonstrate the landholding is not economically viable when used for land-based primary production 'because of those constraints'. It is not enough for applicants to argue their land is not economically viable for land-based primary production (as has been the status quo) – there needs to be clear evidence of a permanent or long-term constraint as the cause of that economic unviability for the tests under clause 3.10 to be met.

An assessment under clause 3.10 must satisfy a territorial authority that (see clause 3.10 above for full wording):

- 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

- b) the subdivision, use or development avoids significant losses of productive capacity, avoids fragmentation of large and geographically cohesive areas of HPL and avoids or otherwise mitigates reverse sensitivity effects
- c) there has been consideration of the environmental, social, cultural and economic costs and benefits, including tangible and intangible values
- d) a range of reasonably practicable options for addressing identified constraints and retaining the productive capacity of the HPL have been considered (clause 3.10(2) contains a non-exhaustive list)
- e) the consideration of reasonably practicable options has not taken into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production, but it has taken into account the impact that the loss of the HPL would have on the landholding in which the HPL occurs and the future productive potential of land-based primary production on the HPL, not limited by its past or present uses.

Clause 3.10(4) also makes it clear that the size of the landholding containing HPL is not in of itself a determinant of a permanent or long-term constraint. If the only factor limiting the ability of the HPL to be used for land-based primary production is its size, then this should not be used as an argument to allow the land to be used unproductively as a small parcel can usually be amalgamated with a larger landholding or leased to another operator who is able to use it productively, provided it is not subject to other permanent or long-term constraints.

The consideration of ‘reasonably practicable options’ in clauses 3.10(2) and (3) is a fundamental part to this clause. Clause 3.10(3) in particular is designed to avoid applicants using economic benefit arguments as the primary reason why HPL should be rezoned and/or used for non-productive purposes and ensure full consideration has been given to the impact the loss of HPL would have on the ability of the landholding to be productive, particularly in the context of its ‘future’ productive potential (not limited by its past or present uses). Based on feedback from stakeholders (particularly territorial authorities), these are the key arguments used by applicants under the status quo to justify conversion of HPL to non-productive uses. The intent of clauses 3.10(2) and (3) is to provide councils with the ability to discount those arguments, which heavily favour land-use change away from land-based primary production.

Clause 3.10 is intended to avoid a scenario where land genuinely facing permanent or long-term constraints (that prevent it from being used for economically viable land-based primary production) is inappropriately ‘stranded’ or ‘locked-in’ when it may better be utilised for alternative subdivision, use and development. There would need to be a strong evidential basis to allow alternative uses on these grounds to ensure this is not an avenue for landowners to argue that their land should not be subject to NPS-HPL restrictions due to short-term constraints or a higher value land use. This is a significant risk to the achievement of the NPS-HPL objective and may potentially result in a highly litigious process (although the incidence is expected to be much lower than considering such constraints at the mapping stage). Clear and directive guidance on this matter will be essential to provide clarity on how the tests are to be applied and to avoid unintended outcomes.

Assessment of efficiency – Policies 6, 7 and 8 and clause 3.10

Table 10 provides an assessment of the efficiency of Policies 6,7, and 8 and clause 3.10 in achieving the NPS-HPL objective.

Table 10: Assessment of efficiency – Policies 6, 7 and 8 and clause 3.10

Criteria	Assessment	
Administrative efficiency	<p>Policy 6, Policy 7, Policy 8 and clause 3.10 are assessed as being administratively efficient compared to the alternative of excluding land subject to constraints through the mapping process. The provisions provide:</p> <ul style="list-style-type: none"> • clear direction on how to consider subdivision, use and development not provided for under clauses 3.7, 3.8 and 3.9 when there are permanent or long-term constraints on that land. This will: <ul style="list-style-type: none"> – help to minimise debate on whether activities are appropriate on HPL or not – provide more consistent interpretation and implementation – help to simplify and streamline district plan processes to give effect to the provisions • clear direction on how to consider permanent or long-term constraints on the use of HPL for economically viable land-based primary production which will be supported by implementation guidance. This will help provide certainty to all parties and reduce the risk of debate and litigation (recognising that some degree of litigation risk is unavoidable and addressing this issue on a case-by-case basis as and when potential constraints emerge is preferable to trying to address this issue through the mapping process). 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • Will help ensure large areas of potential HPL are not excluded from the HPL mapping process from the outset due to landowner interests. This will help retain this resource for use in land-based primary production for future generations. 	<ul style="list-style-type: none"> • Clause 3.10 may be perceived as creating a potential loophole that enables more HPL to be lost, however, compared with the status quo, providing strict criteria is considered to reduce environmental costs and result in greater protection of HPL.
Economic	<ul style="list-style-type: none"> • Consideration of whether there are permanent or long-term constraints affecting the ability of the land to be used for land-based primary production are made on a case-by-case basis and guided by clear criteria. This will help reduce costs to all parties compared to an open consideration of constraints at the mapping stage. • Provides a pathway for alternative subdivision, use and development on HPL when the specified tests are met. This will ensure unviable HPL is not 'locked into' land-based primary production and can be used for a more economically viable use in situations where a genuine constraint is identified. • Avoids the alternative of requiring regional councils to undertake a detailed assessment of whether there are permanent or long-term constraints affecting the ability of the entire HPL resource to be used for land-based primary production at the mapping stage, which would be a complex, expensive and litigious exercise. 	<ul style="list-style-type: none"> • Time, cost and resources for landowners to demonstrate their land is not economically viable for land-based primary production due to a permanent or long-term constraint in accordance with clause 3.10 (and none of the other pathways for urban rezoning, subdivision, use and development apply). Preparing this evidence will be at landowners' cost although it is expected they will only pursue this pathway where it provides a greater economic return. • Clause 3.10 may be perceived as creating an economic inefficiency by allowing ad hoc decision-making, however compared with the status quo, providing national criteria is considered to be an overall improvement in terms of economic efficiency. • The terms 'productive capacity', 'rural lifestyle' and 'economically viable' may result in increased consenting costs in the short term. The application of these terms will be further clarified in guidance. Over time, more consistent decision-making on subdivision, use

Criteria	Assessment	
	<ul style="list-style-type: none"> Works in combination with clauses 3.7, 3.8 and 3.9 to provide suitable pathways for rezoning, subdivision, use and development on HPL while protecting this finite resource for productive use contributing to economic wellbeing. The provisions are ‘future focused’ and will enable future constraints on the use of HPL for viable land-based primary production to be considered rather than just enabling this to be considered at initial mapping stage. 	<p>and development applications onto HPL nationally may lead to improved certainty and efficiency gains as the tests and considerations in clause 3.10 become standard planning practice.</p>
Social	<ul style="list-style-type: none"> N/A – no specific social benefits anticipated from the provisions. These provisions are intended to apply to land at the landholding level with limited wider social impacts. 	<ul style="list-style-type: none"> N/A – no specific social costs anticipated from the provisions. These provisions are intended to apply to land at the landholding level with limited wider social impacts.
Cultural	<ul style="list-style-type: none"> N/A – no specific cultural benefits anticipated from the provisions. The ability to exclude specified Māori land from HPL combined with the flexibility for any subdivision, use and development on specified Māori land means this pathway will not need to be used. 	<ul style="list-style-type: none"> N/A – no specific cultural costs anticipated from the provisions. The ability to exclude specified Māori land from HPL combined with the flexibility for any subdivision, use and development on specified Māori land means this pathway will not need to be used.

Effectiveness – Policies 6, 7 and 8 and clause 3.10

- Policies 6, 7 and 8 and clause 3.10 are assessed as being effective to achieve the NPS-HPL objective and address the identified resource management issues. In particular, clause 3.10 will ensure large areas of potential HPL are not excluded from the HPL mapping process from the outset due to landowner interests. This will help to retain this resource for use in land-based primary production for future generations.
- The provisions will ensure applicants need to demonstrate there are permanent or long-term constraints that mean their land cannot be used for economically viable land-based primary production. As part of this assessment, applicants must consider a full range of reasonably practicable options for resolving the constraint and must exclude consideration of the benefits of using the HPL for higher-value land uses. This will help address key issues under the status quo where applicants can easily argue their land is more valuable/suitable for urban or rural lifestyle uses based on increases in land value and lead to better protection of HPL for land-based primary production.
- The provisions will ensure land is not inappropriately ‘locked-in’ to land-based primary production.
- The provisions are ‘future focused’ and will enable future constraints on the use of HPL for viable land-based primary production to be considered as and when they arise, rather than just enabling this to be considered at the initial mapping stage. This is particularly important for constraints such as water quality and quantity, as access to water on a landholding may change over time and although it may not be a constraint at the time of mapping, it may become a critical issue in the future.

Other reasonably practicable options

Other reasonably practicable options to clause 3.10 follow.

1. Ensure land mapped as HPL does not include any land that is subject to permanent or long-term constraints or provide councils with the option to exclude land subject to permanent constraints at the mapping stage.

Option 1: Ensure land mapped as highly productive land does not include any land that is subject to permanent or long-term constraints or provide councils with the option to exclude land subject to permanent constraints at the mapping stage

The benefits and costs of this option are outlined in detail in the assessment of Policy 3 and clause 3.4 in Table 4 on pages 62–63 and also in the assessment of the provisions above. This has demonstrated that attempting to identify constraints at the mapping stage is not the best option to achieve the NPS-HPL objective as it will be less efficient (more implementation costs, litigation and uncertainty) and less effective (less land identified and subsequently protected as HPL).

Continuation of existing activities (clause 3.11)

Provisions being assessed

Clause 3.11 provides for existing activities on HPL as follows:

Continuation of existing activities

- (1) Territorial authorities must include objectives, policies, and rules in their district plans to:
 - (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and
 - (b) ensure that any loss of highly productive land from those activities is minimised.
- (2) In this clause, **existing activity** means an activity that, at the commencement date:
 - (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or
 - (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act.

Intent of the provision

Clause 3.11 makes it clear that territorial authorities must include objectives, policies and rules in their district plans to provide for the continuation of existing activities (ie, maintenance and operation) and to allow territorial authorities to consider upgrades (but not expansions) of existing activities, provided any further loss of HPL is minimised. The intent of this clause is to recognise there are existing, non-productive activities on HPL that have a genuine expectation to continue to exist. There is nothing in the NPS-HPL that is intended to undermine protection afforded to existing activities under sections 10 or 20A of the RMA, or to undermine any existing resource consents or designations that an activity is relying on. Instead, clause 3.11 recognises that territorial authorities should enable the continued maintenance and operation of existing activities and that they also have an option to allow for upgrades of existing activities (eg, an extension to an existing wedding venue or an extension to an industrial facility) where the loss of HPL is minimised. This is a pragmatic way of recognising that small

upgrades to non-productive activities on HPL can be appropriate in some circumstances where either there is no further loss of HPL or the loss of HPL is minimal.

Assessment of efficiency – clause 3.11

Table 11 provides an assessment of the efficiency of clause 3.11 in achieving the NPS-HPL objective.

Table 11: Assessment of efficiency – clause 3.11

Criteria	Assessment	
Administrative efficiency	<p>Clause 3.11 is administratively efficient as it clarifies how territorial authorities are meant to manage existing non-productive land uses on HPL by confirming that:</p> <ul style="list-style-type: none"> the NPS-HPL does not undermine sections 10 or 20A of the RMA and does not undermine any existing resource consents or designations that existing activities are relying on territorial authorities have the ability to consider upgrades to existing activities and can provide for that using objectives, policies and rules, provided upgrades minimise the loss of HPL. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> This provision ensures any future loss of HPL resulting from an upgrade of an existing activity is minimised – it is anticipated that in demonstrating the loss of HPL had been minimised, an applicant will need to demonstrate options for the upgrade to occur within the existing footprint of the activity had been considered but were not practical. 	<ul style="list-style-type: none"> Environmental cost that HPL could be lost to upgrades of existing activities.
Economic	<ul style="list-style-type: none"> Provides a level of certainty to requiring authorities they will be able to expand their designations onto HPL if needed (in addition to clause 3.9(2)(h) which confirms new designations can be applied for on HPL). Provides certainty that existing uses of HPL that are not land-based primary production can continue to operate as per their existing consent conditions or relying on existing use rights. 	<ul style="list-style-type: none"> Costs for district councils to develop objectives, policies and rules to give effect to the provisions (council implementation costs are discussed on page 37). Potential opportunity costs for landowners if they wish to expand their existing activity and territorial authorities are not satisfied that the loss of HPL had been minimised. Potential additional cost for requiring authorities having to demonstrate how they are managing the adverse effects on HPL to the greatest extent practicable.
Social	<ul style="list-style-type: none"> Protecting HPL from significant losses by requiring existing activities propose upgrades to minimise HPL losses. This provides greater assurance that HPL's capacity for productive purposes, local food supply and local employment for surrounding communities will be retained (and potentially enhanced). This benefits urban and rural communities. 	<ul style="list-style-type: none"> Restricts the ability for landowners to significantly change or expand an existing activity on their property in the future, particularly if the HPL losses cannot be demonstrably minimised.

Criteria	Assessment	
Cultural	<ul style="list-style-type: none"> The existing activities provision enables iwi/Māori to continue to utilise their customary, freehold land and Treaty settlement land for an activity that is not land-based primary production on HPL. 	<ul style="list-style-type: none"> Limits the ability of existing activities on HPL that may provide significant benefit to iwi/Māori that are not land-based primary production to expand in scale.

Assessment of effectiveness – clause 3.11

Clause 3.11 is assessed as being effective in achieving the NPS-HPL objective as:

- it recognises existing non-productive activities on HPL need to be able to continue to operate and be maintained and clarifies the NPS-HPL does not undermine activities relying on sections 10 or 20A of the RMA or on existing resource consents or designations
- strikes the right balance between providing flexibility for any existing activity or designation to continue while limiting effects on the HPL
- provides a nationally consistent set of considerations for how to deal with existing activities, which will provide certainty to all parties.

Other reasonably practicable options

Other reasonably practicable options to clause 3.11 follow.

- Exclude existing activities from being identified as HPL during mapping.

Option 1: Exclude existing activities from being identified as HPL during mapping

The key alternative option to clause 3.11 was to identify land parcels that contain existing lawfully established and consented activities and designated land through the HPL identification process and exclude them from the HPL mapping layer on the basis that this land is effectively 'lost' and is unlikely to be used for land-based primary production, so it should not be mapped as HPL. Although, this may result in some additional complexity and cost at the mapping stage, it would deal with the issue of existing activities on HPL upfront through the mapping process and ensure only that land which can support land-based primary production is identified and subject to the protections in the NPS-HPL. This would also remove the need to leave decisions about the appropriateness of existing activities to the resource consent process. However, one main limitation of this option is it could result in spot zoning of land based on the extent of current activities at the time of mapping, which could potentially change over time as activities expand/retract or relocate/shut down. Excluding this land at the mapping stage would only provide a limited snapshot of existing activities and would then be quickly outdated as land-use change occurred over time, so this option was not considered to be the most efficient or effective way to manage existing activities on HPL.

Supporting productive uses (Policy 4 and clause 3.12)

Provisions being assessed

The provisions being assessed in this section, relating to supporting productive uses, are Policy 4 and clause 3.12 as follows:

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.

3.12 Supporting appropriate productive use of highly productive land

- (1) Territorial authorities must include objectives, policies, and rules in their district plans that:
- (a) prioritise the use of highly productive land for land-based primary production over other uses; and
 - (b) encourage opportunities that maintain or increase the productive capacity of highly productive land, but only where those opportunities are not inconsistent with:
 - (i) any matter of national importance under section 6 of the Act; or
 - (ii) any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020.

Intent of the provisions

Clause 3.12 makes it clear that identified HPL should generally be prioritised for use in land-based primary production, except as provided in other clauses in the NPS-HPL, for example relating to urban rezoning.

To maintain and support productive uses of HPL, clause 3.12 requires territorial authorities to include objectives, policies and rules in their district plans to “prioritise” the use of HPL for land-based primary production over other uses. In practice, this will be achieved through district plan provisions that are enabling of land-based primary production activities and restrictive of non-productive uses through rules and supporting objectives and policies.

Assessment of efficiency – Policy 4 and clause 3.12

Table 12 provides an assessment of the efficiency of Policy 4 and clause 3.12 in achieving the NPS-HPL objective.

Table 12: Assessment of efficiency – Policy 4 and clause 3.12

Criteria	Assessment	
Administrative efficiency	The provisions are administratively efficient as: <ul style="list-style-type: none"> • the provisions direct territorial authorities to introduce objectives, policies and rules into their district plans to prioritise HPL for land-based primary production. In practice, this will result in district plan provisions that are enabling of land-based primary production activities and restrictive of non-productive uses through rules and supporting objectives and policies. This is standard planning practice and expected to be relatively straightforward and efficient as district plans generally already contain provisions that prioritise (or enable) land-based primary production in productive rural areas to some degree • requiring these uses be consistent with environmental outcomes identified in accordance with the NPS-FM ensures uses are appropriate and not at any cost. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • Prioritising HPL for land-based primary production is an effective way of protecting a finite resource and ensuring it is used for activities that rely on the soil resource of the land. This will enable 	<ul style="list-style-type: none"> • May encourage more intensive land-based primary production in sensitive catchments (noting these issues are addressed through other planning instruments, including the NPS-FM).

Criteria	Assessment	
	<p>the HPL resource to continue to provide indirect economic benefits and ecosystem services and functions.</p> <ul style="list-style-type: none"> Land-based primary production is often more compatible with remaining natural ecosystems on HPL compared to other activities such as urban rezoning, rural lifestyle development and intensive indoor primary production. The provisions help ensure commercial and industrial activities are located in areas zoned for that purpose, reducing the adverse environmental effects of these activities in rural areas. 	
Economic	<ul style="list-style-type: none"> Prioritising HPL for land-based primary production ensures the primary sector can continue to operate efficiently, with New Zealand's primary sector earnings sustained and potentially increased. Greater certainty on how HPL should be utilised will lead to efficiency gains over time through subordinate planning instruments and consenting processes. 	<ul style="list-style-type: none"> Costs for district councils to develop objectives, policies and rules to give effect to the provisions (council implementation costs are discussed on page 37). Restricts land available for other non-primary production activities on HPL other than where exceptions are provided elsewhere in the NPS-HPL. In particular, it will limit options for other non-land-based primary production activities that typically rely on a rural location to operate (eg, indoor intensive farming and glasshouses). Potential increased costs for these activities to be located elsewhere. Prioritising HPL for land-based primary production may preclude non-productive uses that could be otherwise located on HPL. These alternative uses may potentially provide more economic benefits than land-based primary production.
Social	<ul style="list-style-type: none"> Will protect the ability of HPL to produce food for current and future generations. This will ensure local food supply and security is sustained with associated benefits to people and communities. Will help ensure land-based primary production job opportunities are maintained with benefits to rural and urban communities. 	<ul style="list-style-type: none"> Restricts the land available in rural areas for community facilities, such as places of assembly and recreational facilities. Potential increase in adverse effects on rural communities from land-based primary activities (eg, noise, dust, odour), noting that in most cases rural communities will be familiar with these types of effects.
Cultural	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A

Assessment of effectiveness – Policy 4 and clause 3.12

Policy 4 and clause 3.12 are assessed as being effective in achieving the NPS-HPL objective as:

- they require territorial authorities to include objectives, policies and rules that prioritise the use of HPL for land-based primary production over other uses in most circumstances.

This will help ensure HPL is protected for land-based primary production through provisions that both enable these activities and actively discourage and restrict other inappropriate uses and activities

- these provisions align well with clauses 3.6 to 3.10, which expressly set out that rezoning, subdivision, use or development of HPL in any circumstance other than those set out specifically in those clauses, should be avoided. Clause 3.12 provides the counterbalance to that, by making it clear what activities (land-based primary production) territorial authorities should be enabling on HPL.

Other reasonably practicable options

There was broad support for the overall intent of the proposed NPS-HPL to prioritise HPL for land-based primary production due the wide range of environmental, economic and social benefits. As such, no other reasonably practicable options have been identified and the general policy intent has been retained. However, the NPS-HPL is now more specific on other alternative (non-productive) uses of HPL that may be appropriate in certain circumstances and when such uses should be provided for on HPL (through clauses 3.6 to 3.10).

Managing reverse sensitivity and cumulative effects (Policy 9 and clause 3.13)

Provisions being assessed

The provisions in the NPS-HPL relating to managing reverse sensitivity effects are Policy 9 and clause 3.13 as outlined below.

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

3.13 Managing reverse sensitivity and cumulative effects

- (1) Territorial authorities must include objectives, policies and rules in their district plans that:
 - (a) identify typical activities and effects associated with land-based primary production on highly productive land that should be anticipated and tolerated in a productive rural environment; and
 - (b) require the avoidance if possible, or otherwise the mitigation, of any potential reverse sensitivity effects from urban rezoning or rural lifestyle development that could affect land-based primary production on highly productive land (where mitigation might involve, for instance, the use of setbacks and buffers); and
 - (c) require consideration of the cumulative effects of any subdivision, use, or development on the availability and productive capacity of highly productive land in their district.

Intent of the provisions

‘Reverse sensitivity’ is not defined in the NPS-HPL but is a concept that is well-established through planning practice and case law. The concept refers to the vulnerability of existing activities to impacts from other sensitive activities, particularly when the new sensitive activities lead to complaints and constraints on those existing activities. Reverse sensitivity is

not unique to HPL or land-based primary production, but it can be a particular issue when urban and rural lifestyle uses encroach onto HPL. For example, some primary sector stakeholders have identified reverse sensitivity as the key issue affecting the operation of their activities on HPL.

The reverse sensitivity provisions in the NPS-HPL are intended to build on current best practice and ensure district plans include provisions to manage reverse sensitivity effects that can constrain and conflict with land-based primary production activities using HPL.

Cumulative effects are included in the definition of effects under s3 of the RMA as effects “which arises over time or in combination with other effects”. Cumulative effects resulting from incremental changes over time can be difficult to monitor.

Councils are directed to avoid where possible or otherwise mitigate actual and potential reverse sensitivity and cumulative effects in relation to subdivision, use and development on HPL under clauses 3.8, 3.9 and 3.10.

Clause 3.13 of the NPS-HPL requires territorial authorities to have a full suite of provisions (objectives through to rules) to manage reverse sensitivity and cumulative effects on HPL as follows.

- **Clause 3.13 (a)** – requires that district plan provisions articulate the typical activities and effects associated with land-based primary production that should be tolerated in a productive rural environment. This provides a shared understanding of acceptable activities and effects on areas of HPL and helps assess whether complaints about land-based primary production activities are justified or whether they are an indicator of reverse sensitivity effects.
- **Clause 3.13 (b)** – requires that district plan provisions avoid if possible, or otherwise mitigate, any potential reverse sensitivity effects from urban rezoning or rural lifestyle development that could affect land-based primary production on HPL (where mitigation might involve, for instance, the use of setbacks and buffers)
- **Clause 3.13 (c)** – requires that district plan provisions ensure the consideration of the cumulative effects of any subdivision, use or development on the availability and productive capacity of highly productive land in their district.

Assessment of efficiency – Policy 9 and clause 3.13

Table 13 below provides an assessment of the efficiency of Policy 9 and clause 3.13 in achieving the NPS-HPL objective.

Table 136: Assessment of efficiency – Policy 9 and clause 3.13

Criteria	Assessment	
Administrative efficiency	<p>The provisions are administratively efficient as:</p> <ul style="list-style-type: none"> • district plans already address reverse sensitivity effects to some degree. Giving effect to clause 3.13 will therefore require most territorial authorities to refine and/strengthen their existing provisions rather than develop a full suite of new provisions. This will make the exercise relatively efficient • territorial authorities will not be required to amend their existing reverse sensitivity provisions where they meet the requirements of clause 3.13 (although some degree of refinement is likely to be necessary) • the provisions relate to a relatively well understood area of resource management practice and there are extensive examples of reverse sensitivity provisions to refer to. This will ensure giving effect to Policy 9 and clause 3.13 will be relatively efficient for territorial authorities and there is no need to ‘reinvent the wheel’ • references in clause 3.8, 3.9 and 3.10 to reverse sensitivity and cumulative effects make it clear the onus is on the new activity to avoid, or otherwise mitigate, reverse sensitivity effects, which will help to clarify expectations and reduce debate through subordinate plan change and consenting processes. 	
	Benefits	Costs
Environmental	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A
Economic	<ul style="list-style-type: none"> • Land-based primary production activities are less likely to experience complaints from surrounding sensitive and incompatible activities that could otherwise constrain their operations. • Greater certainty that land-based primary production activities are able to operate efficiently and effectively on HPL with associated increases in productivity and economic outputs. • Will maintain the option for a new subdivision, use or development to be located on or adjacent to HPL when it can demonstrate it will not constrain surrounding land-based primary production. Ensures compatible activities can still occur on and adjacent to HPL. • Requires new non-productive activities to accommodate any required separation distances (such as buffers or setbacks) on their land, as opposed to placing the burden on the land-based primary production activity. This ensures the full extent of HPL on a property is in productive use and not effectively being sterilised to provide for a separation distance, which maintains the amount of land generating an economic return. 	<ul style="list-style-type: none"> • Costs for district councils to develop objectives, policies and rules to give effect to the provisions (council implementation costs are discussed on page 37). • Some opportunities for urban growth and lifestyle development will not be realised due to the potential reverse sensitivity effects on existing land-based primary production activities on HPL. • A policy approach that does not require complete avoidance of reverse sensitivity effects means there is still a risk inappropriate development will occur that threatens the economic operation of land-based primary production activities utilising HPL.
Social	<ul style="list-style-type: none"> • The provisions will help to avoid conflict between land-based primary production activities and incompatible activities, resulting in less conflict within rural communities. 	<ul style="list-style-type: none"> • Potential restrictions on the location of community activities, such as places of assembly, on and adjacent to HPL due to potential reverse sensitivity effects (unless it can be demonstrated these

Criteria	Assessment	
	<ul style="list-style-type: none"> Incompatible and sensitive activities are likely to be further away from the adverse effects of land-based primary production activities, such as odour and noise. Adverse effects on amenity from these activities will be managed by this physical separation. Provides greater certainty to communities about the typical activities and effects associated with land-based primary production on HPL. 	activities will not constrain land-based primary production activities).
Cultural	<ul style="list-style-type: none"> Land-based primary production on HPL that is also Māori land is able to operate efficiently without constraints from incompatible activities. 	<ul style="list-style-type: none"> N/A

Assessment of effectiveness of provisions

Policy 9 and clause 3.13 are assessed as being effective in achieving the NPS-HPL objective as:

- the requirement to avoid reverse sensitivity effects in the first instance is more likely to be effective compared to a policy approach that relies on mitigation. The provisions also empower territorial authorities to require applicants to demonstrate how they will avoid reverse sensitivity effects, which is more likely to achieve the desired outcomes compared to a policy that focuses on mitigation
- the provisions provide direction as to the sorts of methods that are appropriate to avoid reverse sensitivity effects (eg, buffers and setbacks on the non-HPL side). This is helpful to territorial authorities, applicants and communities, particularly if this policy is also supported with implementation guidance with examples of reverse sensitivity provisions and successful methods
- it makes it clear that the onus is on the new, more sensitive activity to avoid or otherwise mitigate reverse sensitivity effects. This will help ensure that existing land-based primary production activities can continue to operate without having to change the way they undertake their activity (while recognising that the general principle to internalise adverse effects as practicable still applies), which is an effective way to achieve the NPS-HPL objective.

Other reasonably practicable options

Reverse sensitivity is an issue relatively well understood by territorial authorities and there are already extensive district plan provisions around the country that manage reverse sensitivity in a rural context. Cumulative effects could benefit from further national direction in relation to HPL given the loss of HPL that has occurred through incremental changes. The identification of other reasonably practicable options therefore focused on the need for specific reverse sensitivity provisions in the NPS-HPL and, if so, the relative strength and scope of those provisions. Other reasonably options identified to clause 3.13 follow.

- Do nothing.
- Mitigation focused policy.

Option 1: Do nothing

This option would rely on existing district plan provisions to manage reverse sensitivity and cumulative effects with no specific provisions in the NPS-HPL to manage these. This option would be administratively efficient as it will not require any amendments to districts plans. However, it would be less effective to achieve the NPS-HPL objective in districts where existing reverse sensitivity or provisions to address cumulative effects do not adequately protect land-based primary production activities on HPL. It will also result in the continuation of inconsistent approaches to managing reverse sensitivity and cumulative effects on HPL, compromising the effective and efficient operation of land-based primary production activities on HPL.

Option 2: Mitigation focused policy

This option would focus on mitigating reverse sensitivity effects rather than avoiding them in the first instance. This option is more closely aligned with the status quo, that is, it accepts incompatible activities will locate near each other in a rural environment and only focuses on mitigating, rather than avoiding, the potential reverse sensitivity effects. This is less efficient than avoiding reverse sensitivity effects in the first instance which can result in a more certain outcome for primary producers, sensitive activities and the wider community.

This option is also likely to be less effective – councils will continue find it hard to decline applications that rely on mitigation of reverse sensitivity effects as it becomes an argument of fact and degree as to whether they have mitigated these effects sufficiently. If applicants are not required to demonstrate why complete avoidance of reverse sensitivity effects is not achievable, councils will have less justification for declining applications for incompatible activities on HPL that threaten the ongoing use of HPL for land-based primary production.

Recognising the use of HPL for any kind of non-land-based primary production (even those provided for under clause 3.9) will result in some cumulative loss of HPL, the emphasis in clause 3.13 on considering cumulative effects rather than avoiding is appropriate.

Conclusion

The purpose of this report is to provide an evaluation of the NPS-HPL. This evaluation has been undertaken in accordance with s32 of the RMA to identify the need for intervention, the benefits and costs and the appropriateness of the proposal having regard to its effectiveness and efficiency relative to other means in achieving the purpose of the RMA.

The NPS-HPL provides high-level direction on what the Government and the Ministers for the Environment and Primary Industries want to achieve with respect to the protection of HPL for land-based primary production. The overarching objective of the NPS-HPL is to protect HPL for use in land-based primary production, both now and for future generations.

This objective does not imply absolute protection of HPL from all non-productive uses. Rather, in recognition of the values and benefits of HPL, the intent of the NPS-HPL objective is to ensure that non-primary productive uses only occur on HPL:

- where it is appropriate and necessary to do so
- when alternative options have been appropriately considered
- where those alternative uses provide wider environmental, economic, social and cultural benefits.

The evaluation demonstrates the NPS-HPL is the most appropriate option for the following reasons.

1. The NPS-HPL recognises the importance of protecting HPL for land-based primary production and the range of benefits and values associated with HPL. It seeks to retain this natural resource to meet the needs of future generations and safeguard the productive capacity of the soil resource, consistent with sections 5(2)(a) and 5(2)(b) of the RMA.
2. The NPS-HPL objective is also consistent with the 'other matters' in sections 7(b) and 7(g) of the RMA as it will promote the efficient use of a natural resource and ensure better recognition of finite characteristics of the HPL resource in RMA planning and decision-making.
3. It is also consistent with sections 7(a) and 8 of the RMA as the implementation provisions will enable opportunities for iwi/Māori to exercise their kaitiaki role over specified Māori land and will enable meaningful partnerships between iwi/Māori and councils when identifying and protecting HPL.
4. The NPS-HPL objective and implementing provisions provide clear and useful direction to regional councils and territorial authorities to identify HPL using a nationally consistent approach.
5. The NPS-HPL provides a national framework for councils to protect HPL from inappropriate subdivision, use and development, while enabling local considerations to be incorporated into planning decision-making and providing for appropriate (non-productive) activities on HPL. This will assist councils to carry out their RMA functions to manage the use and protection of land that is of national and regional significance.
6. The NPS-HPL objective and associated provisions are also achievable within the powers, skills and resources of both regional councils and territorial authorities. Rather than introduce a fundamentally new planning regime, the NPS-HPL objective and provisions are based on existing best practice and will ensure councils address this resource management issue more effectively through a nationally consistent and robust approach. Implementation will involve standard mapping and plan change processes and is therefore well within the capabilities of councils.

Collectively, the NPS-HPL objective and associated provisions will help address ongoing, incremental loss of HPL to irreversible development and fragmentation, and ensure New Zealand's most versatile and productive land can be used for food and fibre production and supply for current and future generations.

Given the evaluation presented in this report, it is concluded that the NPS meets the tests of section 32 of the Act, and furthermore, will promote the sustainable management of natural and physical resources.

Appendix A – NPS HPL

The NPS HPL is available [on the Ministry for the Environment's website](#).

Appendix B – Existing definitions of highly productive land and policy protections

Region	LUC classes protected	Policy direction to protect in regional policy statement
Auckland	Elite soils LUC 1	<ul style="list-style-type: none"> The relocation of the Rural Urban Boundary to identify land for urbanisation shall avoid elite soils New or expansion of existing rural and coastal towns shall avoid elite soils
	Prime soils LUC 2–3	<ul style="list-style-type: none"> The relocation of the Rural Urban Boundary to identify land for urbanisation shall avoid where practicable prime soils New or expansion of existing rural and coastal towns shall avoid where practicable prime soils
Bay of Plenty	Versatile land LUC 1–3	<ul style="list-style-type: none"> Sustain the productive potential of rural land Protect versatile land to the extent practicable from non-productive purposes Restrict urban activities outside urban limits
Waikato	High class soils LUC 1–2, LUC 3e1 and LUC 3e5, classified as Allophanic Soils	<ul style="list-style-type: none"> High class soils are protected from inappropriate subdivision, use and development Restrict urban development on high class soils Direct urban development onto soils with less versatility where possible
Hawke's Bay	Versatile land LUC 1–3 plus LUC 7 valued for viticulture	<ul style="list-style-type: none"> Avoid unnecessary encroachment of urban activities onto versatile land Prioritise the retention of versatile land for primary production when providing for urban activities in Heretaunga Plains sub-region
Wellington	Highly productive agricultural land LUC 1–2	<ul style="list-style-type: none"> Retain highly productive agricultural land (LUC 1–2) Safeguard the productive capability of LUC 1–2 land
Christchurch	Versatile soils LUC 1–2	<ul style="list-style-type: none"> Avoid development and/or fragmentation that forecloses the ability to make appropriate use of land that is valued for existing or foreseeable future primary production Avoid urban development outside existing urban areas or greenfield priority areas
Queenstown	Significant soils (not defined)	<ul style="list-style-type: none"> Provide for urban growth and rural production activities by minimising adverse effects on significant soils which sustain food production Minimise the loss of significant soils

Appendix C – Summary of the Economic Benefits of highly productive land and policy protections

Societal benefits

Sustaining communities

Primary production activities, particularly in some larger food production hubs such as Pukekohe, contribute significantly to the social fabric of rural communities as support and community services establish around concentrations of land-based primary production activities. Primary producers, such as from the horticultural industry, have contributed to inter-generational employment in some communities, which has resulted in long-term support of social activities in the community, such as fundraising, support for local sports teams and support for local events.⁷² A critical benefit of retaining HPL (particularly in larger concentrations near established rural communities) therefore, is that rural communities stay cohesive, supported and socially stable due to secure employment opportunities in the primary production sector.

Community identity

Both individuals and groups in society can have a deep connection to the land and derive social value from it. HPL can contribute to a sense of belonging and place. This sense of identity is intimately connected with the events and history of the land including its past use. In some cases, HPL has been farmed by multiple generations of the same family – such families have strong ties to that land.⁷³

The produce from HPL can also help shape a community's identity. Anecdotal information suggests communities take pride in living in an area that is well known for particular produce. Some communities have chosen to celebrate this with annual harvest festivals, regular farmers' markets and even erecting large novelty statues including a kiwifruit in Te Puke, various fruits in Cromwell and a carrot in Ohakune.

Social value of landscape

While not all people in a community near HPL directly use the resource, HPL is often valued in the sense that it forms part of the landscape that people live in. Landscape is a combination of the physical environment (eg, the soil, vegetation) and how that environment is perceived. People value the landscape in which they live for what they can do in that landscape (eg, recreation or employment opportunities) and for how that landscape makes them feel (eg, aesthetic appreciation, spiritual connection with the land, inter-generational ties).

⁷² *New Zealand's food story: The Pukekohe Food Hub*. Prepared for Horticulture New Zealand, August 2018, pg 8.

⁷³ CBA, section 5.1.

Research has demonstrated that self-identity and group-identity are intimately connected with the events and history associated with tangible elements of the landscapes in which people live. Culture and identity are therefore not just about social relationships but are also about the spatial areas that people feel like they belong to.⁷⁴ Retaining HPL land for land-based primary production will therefore have a positive benefit for people who gain meaning and identity from living in a rural area used for land-based primary production.

Meeting societal expectations around food

A degree of inter-regional food supply will always be needed in New Zealand due to certain crops performing better in different regions. However, there is a growing desire from consumers for locally grown food. Many vegetables are grown on HPL close to large urban centres, which satisfies the consumer demand for local produce. Retaining HPL in strategic locations near major urban centres has the benefit of providing the consumer with the knowledge that their produce has come from a local source and is therefore in the freshest condition with a small carbon footprint.

Future food security

One of the key benefits of retaining HPL is the knowledge that future generations will be able to grow food to feed themselves and others. The obligation that society feels to preserve finite resources for future generations applies to HPL and aligns with the purpose of the RMA to manage finite resources sustainably for long-term benefits. There are societal benefits to be gained from taking steps to preserve our food-producing ability and gifting a legacy of sustainable food production to the next generation.

Environmental benefits

Direct and indirect ecological services

While the primary purpose of HPL used for land-based primary production is to generate produce and a subsequent income, retaining HPL for productive purposes enables this land to provide a number of direct and indirect ecological functions. This includes water purification/filtration, water storage for plants to use and flood regulation, habitat for many different creatures (supporting biodiversity), nutrient cycling and climate regulation through carbon sequestration.⁷⁵ This contrasts with converting HPL to an urban use where most of these ecological functions are effectively lost.

An efficient use of a finite resource

Utilising HPL to the best of its ability for land-based primary production is an efficient way to use a finite resource. Land classified as LUC 1–2 land has a higher ability to sustain agricultural production, given its enhanced natural attributes such as soil and rock type, climate, and reduced potential for erosion.⁷⁶ This means HPL can produce food more efficiently than other types of land, allowing growers to grow more on less land. This is positive from an environmental perspective as HPL needs less intervention to be used for efficient and effective land-based primary production.

⁷⁴ Ibid,

⁷⁵ CBA, section 5.1.

⁷⁶ *New Zealand's food story: The Pukekohe Food Hub*. Prepared for Horticulture New Zealand, August 2018, pg 7.

Cultural benefits

Māori have had a long history and a close interdependent relationship with the natural environment, particularly soil resources.⁷⁷ Feedback provided by various iwi through consultation on the proposed NPS-HPL confirmed that land and soil resources are a precious taonga for Māori as tangata whenua.

The CBA notes there has been limited research on the cultural functions and perspectives on the natural capital and values associated with soil and land. However, in the New Zealand context, land and soil are recognised as being an important cultural and spiritual resource for Māori. Māori are spiritually connected to the land and soil; land and water are regarded as taonga to Māori.⁷⁸ Māori are the guardians of these taonga, which provide a source of unity and identity for local people. Māori consider that Papatūānuku (the Earth Mother) sustains all life, and that they are spiritually connected to her. This connection is shown when a baby is born and the whenua (after birth) is buried in a sacred site.⁷⁹

As New Zealand's productive land and soil are important cultural and spiritual resources for Māori, the retention of HPL for land-based primary production often aligns with Māori aspirations for whenua. Feedback from iwi submitters on the proposed NPS-HPL supported the protection of highly productive whenua, particularly the focus on restricting lifestyle development, which was recognised as a factor that compromises the productive potential of the land. Iwi submitters on the proposed NPS-HPL also noted the importance of protecting highly productive soils and land from the irreversible effects of uncontrolled urban rezoning.

Aside from having a close relationship with New Zealand's whenua, Māori also have an important role as kaitiaki (guardians) of that whenua – a role that is recognised in section 7(a) of the RMA, and one that should be given particular regard to when making decisions about natural and physical resources. In exercising kaitiakitanga, Māori seek to preserve whenua to ensure it can provide sustenance to future generations. A key cultural benefit of retaining HPL for land-based primary production and involving Māori in the process of identifying and protecting HPL is that it allows them to fulfil their role as kaitiaki of the whenua. All iwi that provided feedback emphasised the importance of being able to play a key partnership role with councils in managing HPL, both during the identification of HPL and the formulation of policies to protect HPL. This will allow Māori to exercise kaitiakitanga under section 7(a) of the RMA and protect the whenua in a partnership role, as required by Te Tiriti o Waitangi (Treaty of Waitangi) under section 8 of the RMA, both positive outcomes from a cultural perspective.

⁷⁷ Churchman G and Landa E (editors). 2014. *The soil underfoot: infinite possibilities for a finite resource*. Taylor and Francis Group.

⁷⁸ CBA section 5.1 and CBA Supporting Analysis and Literature Review report – section 9.2.5.

⁷⁹ See for example, Waikato Regional Council 'Māori and the Land', <https://www.waikatoregion.govt.nz/community/your-community/iwi/a-maori-perspective-te-aomaori/maori-and-the-land/>

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