



To: Hon David Parker, Minister for the Environment
 Hon Damien O'Connor, Minister of Agriculture

From: Hayden Johnston, Director Water and Land Use Policy (MfE)
 Charlotte Denny, Director Natural Resources Policy Directorate (MPI)

National Policy Statement for Highly Productive Land post-exposure draft testing process update

Date	10 December 2021	Reference	B21-0710
			BRF -1002 (MfE)

Decision required	Date decision required by
YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	10 January 2022

Purpose
To seek your approval to amend the National Policy Statement for Highly Productive Land (NPS-HPL) following scenario testing and stakeholder feedback of the exposure draft.
An update is also provided on: next steps for final Cabinet approval in March 2022, and a meeting with Pukekohe Vegetable Growers Association in early 2022.

Contacts for telephone discussion (if required)			
Name	Position	Contact number	First contact
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Key messages
<p>The National Policy Statement for Highly Productive Land (NPS-HPL) exposure draft testing workshops concluded on 5 November 2021.</p>
<p>Workshop attendees were generally supportive, and most of the suggested changes were minor and technical to improve the workability of the NPS-HPL.</p>
<p>Key recommended changes include:</p> <ul style="list-style-type: none"> • removal of water quality and quantity constraints clause in the mapping of HPL; • clarifying involvement of mana whenua in mapping of HPL and preparing provisions; • clarifying the types of subdivision, use and development of HPL provided for including in relation to Māori lands, specified infrastructure and existing uses; and • strengthen the policy intent to avoid rural lifestyle zoning on HPL.
<p>We will be meeting with the Pukekohe Vegetable Growers Association (PVGA) in February 2022, to provide an update on the policy development since public consultation in 2019.</p>
<p>Should you agree to the proposed changes to the exposure draft, officials will work with drafters to produce a final version of the NPS-HPL for Cabinet approval in March 2022. Should Cabinet approve the NPS-HPL, it will take effect in April 2022.</p>
<p>The following documents will be prepared as part of the implementation plan:</p> <ol style="list-style-type: none"> a fact sheet on what the NPS-HPL would mean for landowners; and a transition guidance document for local government organisations. <p>Following commencement of the NPS-HPL (April 2022), officials intend to develop technical guidance through local government workshops to assist local authorities on the implementation of the policy.</p>

Purpose

This joint briefing by the Ministry for Primary Industries (MPI) and Ministry for the Environment (MfE) seeks your approval to progress recommended changes to the NPS-HPL exposure draft following testing and feedback. An update is also provided on the next steps of for the NPS-HPL's development.

Context

1. In March, we provided a draft recommendations report for the NPS-HPL that was informed by public consultation in 2019, and targeted workshops with local government and other organisations in 2020 and early 2021 to work through issues raised through submissions. You directed officials to develop an exposure draft of the NPS-HPL based on the recommendations in the draft report [MPI B21-0168 / MfE 2021-B-07753 refers].
2. In September, Cabinet agreed to release the exposure draft for targeted consultation [DEV-21-SUB-0194 refers]. The targeted consultation was undertaken through online workshops with the purpose of testing the workability of the exposure draft. Officials did not seek feedback on policy intent.
3. Six workshop sessions with local government, non-government organisations (NGOs) and Treaty partners were held between 26 October and 5 November. Attendees were generally supportive, and most of the suggested changes to the NPS-HPL were minor and technical to improve workability. A list of attendees and a summary of feedback is provided at **Appendix Three**.
4. In addition to the exposure draft workshops, MfE commissioned planning consultants Barker Associates to carry out scenario testing. This testing provided some useful points for improving workability. Overall, the identified outcome and risks determined that the NPS-HPL will not impede the capability for local government to provide for sufficient development capacity.

Outcome of the exposure draft testing and scenario testing

5. Key recommended changes resulting from exposure draft testing include:
 - a) removal of water quality and quantity constraints clause in the mapping of HPL and preparing District Plan provisions;
 - b) clarifying involvement of mana whenua in mapping of HPL and preparing provisions;
 - c) clarifying the types of subdivision, use and development of HPL provided for including in relation to Māori lands, specified infrastructure and existing uses; and
 - d) strengthen the policy intent to avoid rural lifestyle zoning on HPL.
6. Details of the proposed changes to the exposure draft are provided in **Appendix Two**. These changes are reflective of the comments gathered from the workshops.

Recommendation to remove the water quality and quantity provision

7. In June, we sought your agreement on whether to include water quality and quantity as criteria for excluding land as being highly productive land [MPI B21-0371 / MfE BRF-153 refers].

8. We provided a split recommendation in the briefing, whereby:
 - a) MPI officials recommended to exclude water quality and quantity constraints on primary production as a criteria when identifying highly productive land; and
 - b) MfE officials recommended to include the provision for the purposes of exposure draft testing.
9. The released exposure draft included the water quality and quantity provision as Policy 3.2(1)(d)(i), and Policy 3.2(5). At the exposure draft testing workshops, officials sought feedback on the value of these provisions, as well as the workability and implementation risks.
10. Hort NZ supported the inclusion of the provision, as it provides a framework for better decision making. However, no specific examples of where the provision would be applied were provided. Local government organisations, Treaty partners, and 9(2)(ba)(i), 9(2)(g)(i) strongly opposed this provision, citing difficulties with implementation (that is, determining whether water quality and quantity issues were long term constraints particularly in terms of water allocation rights and renewals), and litigation risks.
11. Most attendees agreed that both water quantity shortages and water quality impacts can be addressed through the advancement of technology, and the ability to change land use or management in the future. There was a consensus that this provision contradicts the NPS-HPL's objective to protect land for primary production use by current and future generations.
12. Officials recommend removing this provision from the final NPS-HPL.

Recommendation to clarify the involvement of mana whenua in mapping of HPL and preparing provisions

13. The Exposure Draft was based on the understanding that the existing provisions under the RMA provide iwi and hapū with the ability to participate in the implementation of the NPS-HPL at a local (regional) level, and that the inclusion of further provisions to this effect under the NPS-HPL is not needed. Feedback received during exposure draft testing was that this assumption needed to be revisited.
14. Treaty Partners and some councils queried the basis for why the NPS-HPL would not specifically direct mana whenua involvement in the mapping of HPL and in preparing objectives, policies and rules for its protection in the same way that the National Policy Statement for Freshwater Management 2020 (NPS-FM) does.
15. Officials recommend directing councils to involve mana whenua in the mapping of HPL.

Recommendation to clarify the types of subdivision, use and development of HPL provided for, including in relation to Māori lands, specified infrastructure and existing uses.

16. The NPS-HPL uses the definition of 'Māori lands' that has been developed through the proposed National Policy Statement for Indigenous Biodiversity (NPS-IB). Officials recommend that the definition of Māori lands be updated to be consistent with recent amendments to that proposed definition. Refer to **Appendix Four** for the full definition that is currently in development.

Consideration of permanent carbon forestry on HPL

17. Some attendees discussed the appropriateness to permit afforestation on highly productive land. Officials have considered whether providing direction on afforestation on HPL aligns with the original intent of NPS-HPL which primarily was intended to manage urban expansion and land fragmentation.
18. Officials note that permanent carbon forestry may be an inappropriate use and development of HPL resulting in irreversible land use change consistent with the 2019 Discussion Document. However, we do not consider that the NPS-HPL is an appropriate regulatory tool for managing afforestation as it will only apply to LUC one to three land while concerns about afforestation of 'productive land' are centred around LUC six and seven land.
19. It is also noted that excluding permanent carbon forestry from the definition of land-based primary production at this stage of the NPS-HPL development would require Ministers to change the policy intent and would need additional engagement and delay implementation. Advice on options to control afforestation has been provided to Ministers Nash, Parker and Shaw on 9 December [B21-0688].

Hort NZ has passed on concerns from some vegetable growers

20. MPI officials met with Hort NZ on 26 November. At the meeting, Hort NZ highlighted concerns from some vegetable growers that the NPS-HPL will take away subdivision opportunities for land where NPS-FM regulations may in future restrict vegetable growing¹.
21. Hort NZ noted that this view is not shared among all growers (or by Hort NZ) and many remain supportive of the NPS-HPL's objective to protect highly productive land for future generations.
22. The concern from some growers is that the NPS-FM will remove the ability for their property to be used for intensive vegetable production and that the NPS-HPL will further reduce the potential value/financial return from this land by restricting subdivision opportunities.

¹ NPS-FM established two specified vegetable growing areas (Pukekohe and Horowhenua) that are of importance to the domestic supply of fresh vegetables and maintaining food security for the country. This provision enables the regional councils to set a water quality target below a national bottom line for these specified areas, however, they must be set to still improve water quality. After 10 years, or if a relevant NES or equivalent comes into effect prior, this exception ceases.

23. The NPS-HPL does provide a pathway to enable subdivision and development on highly productive land where productive capacity is maintained or enhanced. This will be supported by guidance which is expected to include advice on what to consider when there are water quality and quantity constraints on the land, particularly for properties that are too small to be considered highly productive for non-intensive uses.
24. PVGA has recently been in touch with MPI officials to request a copy of the exposure draft. Releasing the exposure draft at this late stage carries risk and could delay implementation. MPI officials will organise a meeting with PVGA and other growers in February 2022 to provide an update on the policy development since public consultation.

Highly productive land and resource management reform

25. The new resource management reform process is considering the provision for HPL. HPL is included in the Natural and Built Environments Bill Exposure Draft as an environmental outcome. This means that there will need to be direction on HPL included in the new national planning framework (combined national direction) and in council plans.
26. MPI is also working with MfE on how reverse sensitivity considerations, identified through the draft NPS-HPL, can be incorporated into the new system.

Next Steps

27. Should you agree to the proposed changes in **Appendix Two**, officials will work with a drafter to produce a final version of the NPS-HPL for Cabinet approval.
28. Officials will provide final advice, including the Section 32 report and Regulatory Impact Statement to Cabinet in March 2022.
29. The following table sets out the next steps for developing the NPS-HPL with indicative dates to implement the policy in the first quarter of 2022. Should Cabinet approve the NPS-HPL, it will take effect in April 2022.
30. The Objective and Policies will have immediate effect and LUC one to three will be the default spatial definition of HPL until more detailed maps are made operative in a relevant Regional Policy Statement (RPS). Within two years of these plans being operative in an RPS councils are required to notify changes in a proposed district plan to give effect to this National Policy Statement.

Step	Indicative date
Testing amendments with Treaty partners and targeted stakeholders.	January - February 2022
Section 32 report and Regulatory Impact Statement	Mid-February 2022
Cabinet package for Ministerial consultation	Early-March 2022
Cabinet consideration	Late-March 2022
Gazettal	Late-March 2022
Implementation	28 days following gazettal

31. Ahead of its official implementation, MPI and MfE officials will publish the following documents as part of the implementation plan:
 - a) a fact sheet on what the NPS-HPL would mean for landowners; and
 - b) a transition guidance document for local government organisations.
32. Following commencement of the NPS-HPL, officials intend to develop technical guidance through local government workshops to assist local authorities on the implementation of the policy.

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Recommendations

33. It is recommended that you:

a)	Note the general support and positive feedback received through exposure draft testing and engagement for the NPS-HPL NOTED
b)	Note that there was strong support in feedback to remove the consideration of water quality and quantity as a permanent constraint on highly productive land NOTED
c)	Agree to the proposed changes to the National Policy Statement for Highly Productive Land (NPS-HPL) exposure draft in Appendix Two YES / NO
d)	Agree to any further minor or technical amendments identified through the drafting process to improve the workability of the NPS-HPL YES / NO
e)	Note the further planned engagement in February 2022 with Pukekohe vegetable growers to provide an update on policy development NOTED
f)	Note that the final NPS-HPL and supporting analysis are intended to be provided to you in March 2022 NOTED
g)	Agree to forward a copy of this briefing to: i. Hon Phil Twyford, Associate Minister for the Environment ii. Hon Kiritapu Allan, Minister for Conservation, Associate Minister for the Environment YES / NO

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**Appendix One: The National Policy Statement for Highly Productive Land exposure
draft**

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Appendix Two: Table of proposed changes to the NPS-HPL exposure draft

Exposure Draft reference	Suggested amendment	Reasoning
Part 1: Preliminary Provisions		
1.2 Commencement	Replace 'complying with' with 'giving effect to'	Better reflects council role, which is to give effect to, rather than comply with, national policy statements.
1.3 Interpretation		
LUC 1,2, or 3 land	Remove 'site' from the interpretation	Word is unnecessary and has the potential to cause confusion about the level of detail required.
Māori lands	Consider changing 'Māori lands' to 'Whenua Māori'	Preferred terminology as requested by some Treaty partners – others were ambivalent.
Māori lands	Update definition of Māori lands to latest definition in draft NPS IB.	Clarify how Right of First Refusal land relates to definition and application of Clause 3.7(3)(e)
Productive capacity	Remove 'covenants' from the interpretation under (a)(iii) OR Specify that these are 'local authority covenants'	<p>Risk that private covenants could be used for the purpose of excluding land from being identified as highly productive land.</p> <p>Local authority covenants to control land use are uncommon so may not be necessary to capture.</p> <p>We will provide guidance on productive capacity and what evidence would need to support application to demonstrate productive capacity is maintained or enhanced.</p>
Rural zoned	Remove '(c) rural lifestyle zone' from the interpretation	Unnecessary to include in the interpretation as rural lifestyle zone is excluded from being identified as highly productive land under 3.2(2)
Specified infrastructure	Include 'for' in (c)(i) as follows: "...including works carried out <u>for</u> the purposes..."	Amending a typo.
Specified infrastructure	Clarify that 'nationally' significant infrastructure is captured	Clarify specified infrastructure also encompasses nationally significant infrastructure (in addition to regionally significant).
Strategic planning document	Replace local authority 'deed' from the interpretation with local authority 'resolution'	Unnecessary to include in the interpretation and it is not terminology that is used by local authorities. 'Resolution' is more appropriate and better understood by local authorities.

Exposure Draft reference	Suggested amendment	Reasoning
Part 2: Objective and Policies		
2.1 Objective		
2.2 Policies	Remove reference to 3.7 to be consistent to proposed changes to 3.6.	If changes to Clause 3.6 and 3.7 are accepted, there will also be a consequential amendment to remove words "or the subdivision is considered to be not inappropriate under clause 3.7" from Policy 6.
Policy 6	Remove 'considered to be '	Wording is unnecessary and could cause confusion
Policy 8	Amend policy to remove the wording "to the greatest extent practicable"	Not necessary to include on top of the requirement to minimise the loss of highly productive land. The additional words increase the risk of debate/litigation without adding any real benefit. It also risks opening the scope for further highly productive land to be lost where this is considered 'practicable'
Part 3: Implementation		
3.2 Mapping HPL		
3.2(1)	Remove (d)	Strong consensus in feedback was that providing for these permanent constraints goes against objective to protect this land for use by future generations. Also creates litigation risk and complexity and would make the mapping task more complex for regional councils with no benefit.
3.2(2)(b) and 3.2(2)(c)	Amend so 3.2(2)(b) and 3.2(2)(c) are discretionary	While it is important to direct councils to not map areas that are zoned rural lifestyle as highly productive land, some councils may wish to revisit rural lifestyle areas in strategic plans.
3.2(3)	Remove (b)	Strong consensus in feedback was that providing for these permanent constraints goes against objective to protect this land for use by future generations. Also creates litigation risk and complexity and would make the mapping task more complex for regional councils with no benefit.
3.4(4) or guidance	Clarify intent that mana whenua are involved in the process to identify highly productive land and in preparing district plan provisions	Requested by Treaty partners. There are existing RMA requirements for councils to consult with iwi authorities prior to notification of any policy plan and demonstrate how iwi advice has been considered in section 32 evaluation. However, this is inconsistent with the approach taken in NPS-FM.
3.2(5)	Remove subclause 3.2(5)	Strong consensus in feedback was that providing for these permanent constraints goes against objective to protect this land

Exposure Draft reference	Suggested amendment	Reasoning
		for use by future generations. Also creates litigation risk and complexity and would make the mapping task more complex for regional councils with no benefit.
3.4 Restricting HPL from urban rezoning		
3.4(1)	In clause 3.4, change reference from territorial authorities to local authorities to be consistent with how NPS-UD defines Tier 1,2,3 local authorities.	To be consistent with the rest of the subclause and NPS-UD.
3.4(1)	Amend wording “for the purpose of <u>complying with</u> the National Policy Statement on Urban Development” to “to give effect to”	Better reflects council role, which is to give effect to, rather than comply with, national policy statements
3.4(1)	Remove ‘tier 3’ territorial authorities from this subclause, and include tier 3 territorial authorities under 3.4(6)	The less-onerous test in 3.4(6) is more appropriate for tier 3 councils. Tier 3 local authorities are not required to undertake HBAs under NPS-UD.
3.4(1)	Change ‘because’ to ‘and’ at the end of subclause.	Subclauses are intended to be ‘and’ statements. Clarity is needed due to the use of ‘because’ at the end of the clauses
3.4(2)	Remove ‘to the greatest extent practicable’ in 3.4(2)(b)	Not necessary to include on top of the requirement to minimise the loss of highly productive land. It also risks opening the scope for further highly productive land to be lost where this is considered ‘practicable’
3.4(4)	Remove ‘tier 3’ territorial authorities 3.4(4)b), and include tier 3 territorial authorities under 3.4(6)	The less-onerous test in 3.4(6) is more appropriate for tier 3 councils. Tier 3 local authorities are not required to undertake HBAs under NPS-UD.
3.4(5)	Remove ‘to the greatest extent practicable’	Not necessary to include on top of the requirement to minimise the loss of highly productive land. It also risks opening the scope for further highly productive land to be lost where this is considered ‘practicable’
3.4(5)	Amend to apply to 3.4(6). Consider shifting to be at the end of 3.4 to reflect the wider scope	This should apply to all territorial authorities, not just tier 1-3
3.4(6)	Remove reference to tier 3 local authorities	To ensure that this clause applies to tier 3 authorities and ensure alignment with changes to 3.4(1) and (4).
3.5 Avoiding zoning HPL for rural lifestyle		
3.5(1)	Remove the exceptions (a) (b) and (c) and consider just relying on Policy 5. The policy intent is to avoid rural lifestyle zoning on HPL with no exception.	Feedback indicated that the exception was not necessary and went against the intent to avoid rural lifestyle subdivision of highly productive land

Exposure Draft reference	Suggested amendment	Reasoning
3.6 Avoiding subdivision of HPL		
3.6(1)	Capture all subdivision from 3.7 intended to be provided for under 3.6, specifically: <ul style="list-style-type: none"> a. Where the overall productive capacity of the land is maintained or enhanced; or b. it is on Māori lands c. it is for specified infrastructure that meets tests in 3.7(4) and any loss of highly productive land is minimised. 	Feedback indicated that it would be clearer to capture all subdivision under a single clause, rather than across 3.6 and 3.7. There were also limited activities in 3.7 that would require subdivision with the exception of specified infrastructure and Maori land. Note guidance to be provided on maintaining or enhancing productive capacity would include avoiding reverse sensitivity effects.
3.6(1)	Remove 1(c)	This is already captured under 1(a) and the word 'minor' could create confusion. Guidance will clarify how boundary adjustments are captured under 1(a)
3.6(2)	Amend wording in 2(a) to include direction that councils must include provisions in their plan controlling subdivision to maintain and enhance land-based primary production on highly productive land consistent with the direction in 3.6(1).	Enables some flexibility for councils to develop rules for subdivision that maintain or improve productive capacity of the land. Ensure this is still captured following the removal of 3.6(2)(b).
3.6(2)	Amend 3.6(2)(a) to require consideration of ' <u>actual and potential cumulative effect</u> '	Clarifies the intent to have a wide definition of cumulative effects
3.6(2)	Remove the exception under 3.6(2)(b) from "except" onwards	Feedback indicated that the exception was not necessary and went against the intent to avoid rural lifestyle subdivision of highly productive land. Providing a pathway for one off rural lifestyle subdivision could have significant cumulative effects on HPL considering the extent of land fragmentation of HPL that has already occurred.
3.7 Protecting HPL from inappropriate subdivision, use and development		
3.7(1)	Remove 'subdivision'	This is now wholly captured under 3.6
3.7(2)	(2)(b) Remove "to the greatest extent practicable".	Not necessary as it is difficult to apply.
3.7(2)	For consideration (2)(b) Add "and avoids reverse sensitive effects"	Note clause 3.10 only applies once TA amend their plans. Can rely on Policy 9 in the interim as most/all plans already address reverse sensitivity effects to some degree.

Exposure Draft reference	Suggested amendment	Reasoning
3.7(3)	Remove 3(d)	This is already captured under 3(a) or the definition of land-based primary production.
3.7(3)	Remove the word 'very' from 3(b)	Not necessary as intent is to capture 'high risk to public health and safety'. Creates unnecessary uncertainty and potential debate.
3.7(3)	Consider removing 3.7(3)(g)	May not be necessary as land retired for water quality purposes is highly erodible land (i.e. hill country) so not applicable to highly productive land. Officials to confirm.
3.7(4)	Remove <i>'that provides significant national or regional public benefit'</i> from clause 3.7(4)(a)(i) ie rely on amended definition of specified infrastructure only.	Removes debate about how significance of benefits is defined in lower order documents. Also - currently drafted this clause risks not enabling local essential lifeline utilities
3.7(4)	Remove 'that could otherwise be achieved domestically' under 3.7(4)(a)(ii) and (iii) and use alternative wording	Feedback indicated that the word 'domestically' adds confusion about what it captures as it is not terminology used by local authorities
3.7	Potentially make what is left of 3.8 (existing activities) as a subclause of 3.7	Feedback on 3.8 was that most of it was not appropriate as interferes with existing RMA process for designations and creates duplication/confusion with established caselaw on existing use rights.
3.7	Consider adding a new subclause to 3.7 to capture appropriate forestry activities	Test alternatives and consult within and across agencies.
3.8 Continuation of existing activities		
3.8(1)	Remove the wording 'must include objectives, policies, and rules in their district plans to' so it instead reads 'Territorial authorities must provide for...'	Not necessary for councils to amend their plans to provide for existing activities.
3.8(1)(a)	Remove 3.8(1)(a) and consider adding Draft NPS IB definition of 'new subdivision, use, or development' means a subdivision, use, or development that is not an existing activity nor an activity captured by section 10 of the Act	Does not add anything additional to existing use rights and created a lot of confusion through feedback. Existing activities can continue under existing use rights under section 10 as a land-use activity or their existing land-use consent.
3.8(1)(b)	Amend 3.8(1)(b) to state territorial authorities must provide for the maintenance, operation , upgrading and expansion of	Intent is to better capture the intention (i.e. allowing important infrastructure to continue to operate and expand as necessary provided loss of HPL is

Exposure Draft reference	Suggested amendment	Reasoning
	existing activities undertaken by requiring authorities and 'network utility operators on highly productive land provided the loss of highly productive land is minimised. Alternatively consider whether Clause 3.7 should be expanded to cover existing specified infrastructure on HPL and providing for that specified infrastructure to continue to operate, upgrade and expand provided the loss of HPL is minimised. '	minimise). Also better aligns with NPS-ET and existing plan provisions relating to regionally significant infrastructure.
3.8(2)	Delete depending on the response to the above.	
3.9 Supporting productive uses		
3.9(1)	Amend (c) to require consideration of ' <u>actual and potential cumulative effect</u> '	Clarifies the intent to have a wide definition of cumulative effects
3.10(1)	Amend 3.10(1)(a) to apply to highly productive land specifically	Will clarify that councils only need to consider activities and effects that are associated with highly productive land
Part 4: Transitional and timing		
4.2(1)	Remove (c)(i)	Aligns with approach under 3.2, and reflects removal of 'rural lifestyle' zone under the interpretation of 'rural zone' under 1.3 Clause a) already limits it to general rural and rural production so this unnecessary.
4.3	Confirm which clauses have immediate effect upon Gazettal and which don't.	To be explicit without need for guidance or legal interpretation.
4.3(1)	Clarify with drafter that Part 3 in it's entirety (including clauses directing plan changes) should be given regard to in assessing planning applications and private plan changes.	Currently not clear how 4.3(1) works when some of the clauses in Part 3 direct councils to implement plan changes.
4.3(3)	Consider combining 4.3(2) with 4.3(3).	Would simplify the clause

Appendix Three: Summary of feedback from exposure draft workshops

Exposure Draft Workshop Attendees:

Treaty partners

Te Whakakitenga o Waikato Incorporated
CNI Iwi Land Management Ltd
Te Rūnanga o Ngāi Tahu
Muaūpoko Tribal Authority
Te Akitai Waiohua Waka Taua
Whenua Rangitira and Iwi technician for Iwi Te Uri
Taniwha te Hapu, Ngapuhi me Ngati Awa te Iwi, Taia mai ki te Takutai Moana te Iwi

Local government

Auckland Council
Waikato Regional Council
Waikato District Council
Horowhenua District Council
Christchurch City Council
Otago Regional Council
Western Bay of Plenty District Council
Tauranga City Council
Hawke's Bay Regional Council
Napier City Council
Tasman District Council
Canterbury Regional Council
Queenstown Lakes District Council

Requiring authorities

New Zealand Transport Agency
Transpower NZ

Other organisations

Horticulture NZ
Beef and Lamb NZ
Manaaki Whenua Landcare Research
Dairy NZ
Federated Farmers
Property Council
Foodstuffs
Environmental Defence Society
Environmental Institute of Australia and NZ
Resource Management Law Association

Workshop Material

After signing a non-disclosure agreement, attendees were provided with a copy of the exposure draft (Appendix One) and background material two weeks ahead of the workshops to gather pre-workshop feedback. Written feedback was also accepted up to a week following the workshop.

Feedback from workshop attendees

- Local government organisations sought to ensure that implementation complexity is minimised, mainly at the highly productive land identification and mapping processes, but also in relation to subdivision, use and development. They have requested further clarity and guidance to reduce litigation risks from landowners.
- Infrastructure requiring authorities indicated the need for the exposure draft to capture other infrastructure that are not managed by requiring authorities, and that the NPS-HPL should not conflict with the NPS on Electricity Transmission.
- Treaty partners requested to be explicitly involved in the (pre-notification) decision-making when identifying and mapping highly productive land, as well as preparing district plan provisions for highly productive land. There was wide consensus on the definition of Māori land, although some indicated that the definition has not taken 'Right of First Refusal' into account.
- Primary sector organisations sought to ensure that the NPS-HPL directs local government organisations to avoid decisions that reduce the productive capacity of highly productive land. Other NGOs suggested to include natural hazards such as flooding and biodiversity as a criteria when identifying highly productive land.

Feedback on urban expansion onto highly productive land (clause 3.4)

- Feedback from workshop attendees indicated overall support for how the NPS-HPL balances the protection of highly productive land while providing for urban expansion under some circumstances. There were minor/technical suggestions to improve the workability of the clause which are set out in Appendix 2.
- In addition to the exposure draft workshops, MfE commissioned planning consultants Barker Associates to carry out scenario testing of the urban expansion provisions (clause 3.4). This testing provided some useful points for improving workability. Overall, the identified outcome and risks determined that the NPS-HPL will not impede the capability for local government to provide for sufficient development capacity.
- We worked alongside officials from the Ministry of Housing and Urban Development (HUD) throughout the drafting process. HUD officials also attended some of the exposure draft testing workshops. HUD is comfortable that the NPS-HPL will enable councils to continue to deliver the objectives of the National Policy Statement on Urban Development by providing sufficient development capacity to meet demand.

Appendix Four: Definition of Māori lands

Draft NPS Indigenous Biodiversity

Māori lands means land that is any of the following:

- (a) Māori customary land and Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) any Māori reservation established under Te Ture Whenua Māori Act 1993 or its predecessors:
- (c) Treaty settlement land²:
- (d) former Māori land or general land (as defined in Te Ture Whenua Māori Act 1993) owned by Māori that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Māori owners or their successors and remains in their ownership:
- (e) general land (as defined in Te Ture Whenua Māori Act 1993) owned by Māori that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967, but remains in the ownership of the same whānau or hapū:
- (f) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of mana whenua over the land

² **Treaty settlement land** means land held by a post-settlement governance entity where the land was transferred or vested and held (including land held in the name of a person such as a tipuna of the claimant group, rather than the entity itself):

NPS Highly Productive Land (Exposure Draft)

Māori lands means land that is any of the following:

- (a) Māori customary land and Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) any Māori reservation established under Te Ture Whenua Māori Act 1993 or its predecessors:
- (c) Treaty settlement land, being land held by a post-settlement governance entity where the land was transferred or vested and held (including land held in the name of a person such as a tipuna of the claimant group, rather than the entity itself):
 - (i) as part of redress for the settlement of Treaty of Waitangi claims; or
 - (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement:
- (d) former Māori land or general land (as defined in Te Ture Whenua Māori Act 1993) owned by Māori that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Māori owners or their successors and remains in their ownership:
- (e) general land (as defined in Te Ture Whenua Māori Act 1993) owned by Māori that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967, but remains in the ownership of the same whānau or hapū

- (a) as part of redress for the settlement of Treaty of Waitangi claims; or

- (b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed