



# Proposed National Policy Statement for Highly Productive Land Pre-Exposure Draft Process update

Date Submitted:	22 June 2021	Tracking #: BRF-153	Ministry for Primary Industries: B21-0371
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Urgent

	Actions sought:	Response by:
<p>To: Hon David PARKER, Minister for the Environment</p> <p>To: Hon Damien O'CONNOR, Minister of Agriculture</p>	<p><b>Note</b> the revised timeframes for the gazettal of NPS-HPL this year.</p> <p><b>Agree</b> that the Cabinet paper will cover: the plan to undertake exposure draft testing; the interaction with the National Policy Statement on Urban Development 2020; and the timeframes for implementation of the NPS-HPL later this year.</p> <p><b>Agree</b> for Cabinet to authorise the release of the exposure draft.</p> <p><b>Note</b> the exposure draft consultation process for the NPS-HPL.</p> <p>Either</p> <p><b>Agree</b> that the exposure draft of the NPS-HPL will not provide for water quality and quantity constraints on primary production as a consideration when identifying highly productive land [MPI preference].</p> <p>Or</p> <p><b>Agree</b> that the exposure draft of the NPS-HPL will provide for water quality and quantity constraints on primary production in specific circumstances [MfE preference].</p>	7 July 2021



Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE and MPI.
Number of appendices and attachments - 1	Appendix A - NPS-HPL Timeframes

### Key contacts

Position	Name	Cell phone	1st contact
Director	Hayden Johnston (MfE)	9(2)(a)	✓
Responsible Manager	Jo Burton (MfE)	9(2)(a)	
Director	Charlotte Denny (MPI)	9(2)(a)	✓
Responsible Manager	Kay Baxter (MPI)	9(2)(a)	



# Proposed NPS-HPL Pre-Exposure Draft Process update

## Key messages

1. The purpose of this briefing is to provide an update on:
  - a. A revised work programme for the proposed National Policy Statement on Highly Productive Land (NPS-HPL) (Appendix A);
  - b. Our approach for exposure draft consultation; and
  - c. A revised recommendation on water quality and quantity as a criteria of exclusion when identifying highly productive land (HPL).

## Work programme timeframes

2. On 20 May 2021 at the Cabinet Environment, Energy and Climate Committee (ENV) the Minister for the Environment took an oral item outlining an approach to undertake targeted consultation on the NPS-HPL exposure draft [2021-2-08014 refers]. As a result of that, you have determined that the exposure draft be provided to Cabinet prior to being released for targeted consultation. We have revised our timeframes to reflect this.
3. In the revised timeframe, we will have the exposure draft and accompanying Cabinet paper ready for the Cabinet Economic Development Committee (DEV)<sup>1</sup> on 4 August. These timeframes are set out in Appendix A.

## Content of the Cabinet paper for the exposure draft

4. The purpose of the Cabinet paper is not to seek Cabinet's feedback and revisit your 'in principle' decisions on the recommendations report, rather it is to seek Cabinet's authorisation to release the exposure draft. The paper will focus on process and timeframes and will provide an overview of the interaction the NPS-HPL will have with the National Policy Statement on Urban Development 2020 with the aim of providing Ministers with visibility of the exposure draft testing process for the NPS-HPL.
5. Once exposure draft testing has been undertaken, officials will provide you with a final recommendations report, as well as a RIS and section 32 evaluation report. This will go to Cabinet Legislative Committee (LEG) in October or November this year.

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<sup>1</sup> We recommend that you take the exposure draft to DEV, rather than ENV, given the relationship the NPS-HPL will have with the National Policy Statement on Urban Development 2020. The DEV committee considered and approved public consultation for the NPS-HPL in 2019.



### Exposure draft consultation approach

6. The targeted exposure draft consultation will occur over a two to three week period. The purpose of the exposure draft consultation process is to test the workability of the drafting to ensure it achieves the policy intent.
7. Officials will be consulting with a range of stakeholders including high and low growth councils, primary sector organisations, non-government organisations (including Environmental Defence Society, Forest and Bird, and the Resource Management Law Association) to seek feedback on the exposure draft. Officials will also undertake targeted engagement with a range of iwi and iwi organisations that submitted on the NPS-HPL.
8. We expect moderate interest from stakeholders as some time has passed since the 2019 draft proposed NPS-HPL was publicly consulted on, and the exposure draft includes significant changes. There has also been recent media and sector interest in the progress of the proposed NPS-HPL.

### Variation to the draft recommendations report

9. Recommendation c(i) on page 52 of the draft recommendations report states that regional councils must not map land that is subject to a permanent or long-term constraint, including land impacted by water quality and quantity issues in specific circumstances that affect its ability to be used for primary production (see below).

The NPS-HPL provides regional councils with direction that they must not map land as HPL if they are incompatible with supporting primary production. Land is incompatible with supporting primary production if any of the mandatory exhaustive criteria of permanent or long-term constraints apply:

- i. Water quality and quantity in specific circumstances
- ii. Contamination
- iii. Existing environment
- iv. Natural hazard management

10. The intent of this recommendation was to ensure that councils do not map land as highly productive land (with the purpose of supporting land-based primary production) where:
  - a. the water restrictions, in combination with other factors prevent the land from being used for a 'diverse range of land based primary production activities' (i.e. they prevent that land from being used for the diverse range of activities anticipated by LUC1-3); and
  - b. the restrictions are long term in nature – i.e. reasonably foreseeable reallocation or mitigation will not remove the limitation.
11. Officials consider that this policy is unlikely to apply to large areas of HPL. Instead, it would provide councils with the ability to not map certain areas of land as HPL that are





so sensitive to changes in water quality or quantity that it would be inappropriate to identify them as HPL.

12. At the time, the recommendation was included because it was considered important that the provision be tested with councils through the exposure draft process. We are now asking you to decide on whether this provision is to be included in the exposure draft.

*Ministry for Primary Industries preference*

13. MPI have undertaken further policy analysis in preparing the drafting instructions and now considers that that recommendation c(i) on page 52 of the draft recommendations report provided to you on 23 March [B21-0168 / 2021-B-07753] is not necessary.
14. MPI considers that this recommendation does not take into account current and future innovations that help to improve production while reducing environmental impacts. This is a significant focus of Fit for a Better World through the Productive and Sustainable Land Use package and the research grants for regenerative farming.
15. We have not been able to identify any catchment or sub catchments that cannot support some form of primary production now and in the future, although many catchments do require improvements in management practices and less intensive forms of primary production in some circumstances. For example, the Lake Horowhenua catchment is highly sensitive to nutrient inputs but also supports vegetable production. There is a risk that the recommendation would result in this area not being mapped as highly productive land when wetland construction and other innovations are expected to improve freshwater outcomes in the catchment.
16. In addition, providing for these situations in the policy adds significant complexity to the NPS-HPL and the HPL mapping process for regional councils. This increases the risk of litigation and MPI does not consider the value of such a clause would justify the additional complexity and litigation risk.

*Ministry for the Environment preference*

17. MfE recommends testing recommendation c(i) on page 52 in the recommendations report through the exposure draft for the following reasons:
  - a. We are aware of circumstances where water quality and quantity restrictions may limit the ability of land to be used at its current production rate for land based primary production (i.e. sub catchments within the Waikato and Selwyn regions, which could mean certain properties could not be used as productively as they are now). If the provision is removed, it could lead to some land being classified as HPL, even though it can only support very low-intensity primary production due to significant water quantity and quality restrictions. There is a risk that land use options are restricted, even though the purpose of those restrictions cannot be achieved.
  - b. Given the complexity and technical nature of the water quality and quantity issues, and that councils hold information that would help determine the potential scale of the matter, MfE considers that it is important to test this provision through the



exposure draft process. This will allow councils to assess how the proposed policy will work in conjunction with the policies in the NES and NPS Freshwater.

18. On this basis, MfE considers that the exposure draft should proceed based on the original recommendation in the draft recommendations report.

**Next steps**

19. We will provide you with the exposure draft and accompanying Cabinet paper on 21 July, ahead of the next DEV meeting on 4 August.

Proactively released under the Official Information Act



## Recommendations

We recommend that you:

- a. **Note** the revised timeframes for the gazettal of NPS-HPL this year.
- b. **Agree** that the Cabinet paper will: cover the plan to undertake exposure draft testing; the interaction with the National Policy Statement on Urban Development 2020; and the timeframes for implementation of the NPS-HPL later this year.

Yes/No

- c. **Agree** for Cabinet paper to authorise the release of the exposure draft.

Yes/No

- d. **Note** the exposure draft consultation process for the NPS-HPL.

Either

- e. **Agree** that the exposure draft of the NPS-HPL will not provide for water quality and quantity constraints on primary production as a consideration when identifying highly productive land [MPI preference].



Yes/No

Or

- f. **Agree** that the exposure draft of the NPS-HPL will provide for water quality and quantity constraints on primary production in specific circumstances [MfE preference].

Yes/No

## Signature

Hayden Johnston Director - Water and Land Use Policy	
Charlotte Denny Director – Land, Water & Climate Policy	

Hon David PARKER, Minister for the Environment  Date:	
Hon Damien O'CONNOR, Minister of Agriculture  Date:	



## Appendix A – NPS-HPL Timeframes

**Table 1: NPS-HPL Timeframes for gazettal**

Stage	Step	Timeframe <sup>1</sup>
Deliver NPS-HPL exposure draft to Cabinet	Exposure draft and Cabinet paper developed and circulated to agencies	9 June to-21 July
	Exposure draft Cabinet paper provided to Ministers	21 July
	Lodge exposure draft Cabinet paper	1 August
	DEV meeting	4 August
	Cabinet	9 August
Consultation and analysis	Exposure draft consultation	Mid August to early September (3 weeks)
	Analysis of consultation, finalise RIS, s32 evaluation report and final recommendations report	Early September to early October (4 weeks)
Deliver final NPS-HPL to Cabinet	Agency consultation of Cabinet paper and supporting documents (NPS-HPL, RIS and s32)	Mid October (2 weeks)
	Ministerial consultation of Cabinet paper and supporting documents	Early November (2 weeks)
	Lodge Cabinet paper	Mid November
	LEG – present Cabinet paper	Mid November
	Cabinet	Late November
	Gazettal	Late November

<sup>1</sup> If day of the month is not provided the timeframe is indicative. All times are for 2021