

# Recommendations and decisions report on the National Policy Statement for Highly Productive Land



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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# Executive summary

## Purpose

The proposed National Policy Statement for Highly Productive Land (NPS-HPL) will provide national direction under the Resource Management Act 1991 (RMA) on how to manage Aotearoa New Zealand's most productive land. The NPS-HPL will require local authorities (councils) to map highly productive land (HPL) within their region and protect that finite resource for use in land-based primary production, both now and for future generations. This document has been co-authored by the Ministry for the Environment and Ministry for Primary Industries; references in this report to 'we', 'our' and 'officials' mean both organisations and officials thereof.

## Background

The Ministry for Primary Industries and Ministry for the Environment undertook public consultation on a draft NPS-HPL from 14 August until 10 October 2019, as part of the discussion document, *Valuing Highly Productive Land*. The NPS-HPL discussion document outlined the problems the NPS-HPL seeks to address, detailed the outcomes sought, provided an overview of the proposal and sought specific feedback in a number of areas.

A total of 250 submissions were received on the draft NPS-HPL discussion document from Māori and a range of stakeholders, including councils, industry organisations, businesses and individuals. Submitters were broadly supportive of the intent of the draft NPS-HPL, with approximately 224 submissions (90 per cent) indicating full or partial support. Notwithstanding this general support, submitters raised a range of substantive and technical issues, and requested a number of changes to the draft NPS-HPL. Following public consultation, further policy analysis has been undertaken and there has been targeted engagement with stakeholders and agencies, to discuss and test proposed policy approaches.

## Officials' recommendations

This report outlines the key issues raised in submissions and our recommended amendments to the draft NPS-HPL. Our recommendations address both substantive and technical issues raised in submissions, to ensure the proposed NPS-HPL achieves its objective in the most effective and efficient way.

In addition, we recommend amendments to address potential issues, improve clarity and implementation certainty, and better achieve the policy intent. Some more substantive drafting and structural changes to the proposed NPS-HPL are also recommended, as a result of the recently established new drafting structure and approach for national policy statements.

## Final decisions from Ministers

The Ministers have agreed to all the recommendations presented in this report. A table of consolidated recommendations is provided in [appendix 1](#).

A separate evaluation report has been prepared under section 32A of the RMA. This discusses the policy options and rationale in more detail. The evaluation report can be found on our website.

# Introduction

This report provides an overview of submissions and recommendations to the Minister for the Environment on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) in accordance with sections 46A(4)(c) and 52(3)(b) of the Resource Management Act 1991. This report is split in two parts.

Part A provides:

- context and background to the proposed NPS-HPL
- a summary of the process for developing the proposed NPS-HPL
- an overview of the public consultation and submission process.

Part B outlines the policy analysis and rationale for proposed changes to each aspect of the draft NPS-HPL that was included in the 2019 discussion document, *Valuing Highly Productive Land*. For each aspect, it provides:

- an overview of the proposal as consulted on
- a summary of key issues raised in submissions
- analysis of key issues raised in submissions and reasoning for recommendations
- recommendations to the Minister for the Environment.

# Part A

## 1 Context for the National Policy Statement for Highly Productive Land

Our productive land is a precious taonga – a finite and irreplaceable resource that Aotearoa New Zealand’s people and economy rely on. Highly productive land (HPL) provides significant economic benefits, including employment to surrounding communities, and collectively adds significant value to New Zealand’s primary sector.

The Ministry for the Environment’s *Our land 2018*, *Our land 2021* and *Environment Aotearoa 2022* reports highlighted that many of our productive areas have already been lost, and that there are two key pressures facing highly productive land:

- urban rezoning and development
- an increase in rural lifestyle developments, particularly on the fringes of urban areas.

Rural lifestyle development is a particularly significant driver of the loss of HPL. This development often causes the fragmentation of productive land, resulting in irreversible land use change, and the loss or underutilisation of land for primary production purposes. This type of development is also more sensitive to primary production effects (ie, noise, odour and dust) and leads to reverse sensitivity effects.

Development of HPL may be justified, provided the trade-offs are well understood by decision makers. However, there is evidence that there is a lack of clarity and consistency as to how this resource should be managed under the Resource Management Act 1991 (RMA). For example, different councils may map different land use classes as highly productive, or provide for different activities on HPL. This lack of clarity means New Zealand’s most productive land continues to be lost to urban rezoning/development, or be fragmented into rural lifestyle developments, often without due consideration of the long-term value this finite resource provides to Aotearoa. While there are examples of good management practices nationwide, we need to better manage this resource across the country, to ensure it is available for land-based primary production both now and for future generations.

Based on submissions, a National Policy Statement for Highly Productive Land (NPS-HPL) continues to be our preferred option to protect New Zealand’s most productive land. The proposed NPS-HPL requires councils to identify HPL within their regions and protect this resource for land-based primary production; there is a particular focus on protecting HPL from lifestyle development and ‘other’ inappropriate subdivision, use and development, and restricting urban rezoning on HPL. The proposed NPS-HPL does not seek to provide absolute protection of HPL and recognises that other (non-primary production) uses are appropriate on HPL in certain circumstances, particularly for housing where this is needed to provide sufficient development capacity. However, the NPS-HPL will require councils to better manage and protect this resource to ensure its long-term availability for land-based primary production.

Following the 2019 NPS-HPL discussion document consultation, and before the preparation of this report, the Minister for the Environment announced that the RMA will be repealed and replaced with three new acts: the Natural and Built Environments Act, the Strategic Planning Act and the Climate Change Adaptation Act.

Work is already underway on the replacement acts, but the NPS-HPL is proceeding under the current RMA system; this will enable the ongoing loss of HPL to be managed prior to the transition to the new system. The proposed Natural and Built Environments Act (NBA) is the main replacement act for the RMA. It will require that a national planning framework (NPF) be prepared to promote specified environmental outcomes. The NPF will fulfil the role of current national direction under the RMA, but as a single, more integrated, coherent and effective framework, with specific functions for conflict resolution and setting strategic direction. The proposed NBA has specified “environmental outcomes” – including (subject to final drafting) outcomes such as “(k) urban areas that are well-functioning and responsive to growth and other changes”, and “(m)(iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development” – alongside protection outcomes.

It is anticipated that the ‘policy intent’ of emerging and existing RMA national direction will be carried through to the NPF, with some redrafting and repurposing. The policy intent in the NPS-HPL will provide direction and requirements for the development of regional spatial strategies (RSSs) and Natural and Built Environment Act plans. Development of the NPS-HPL – including clauses governing how the NPS-HPL interacts with other key pieces of existing and emerging national direction (particularly national direction on urban development) – will set the groundwork for balancing the need to provide for urban growth with protecting Aotearoa’s most highly productive land under the RMA. This national policy statement can then be translated into the NPF to ensure continuity of this policy direction through the resource management reform process. Similarly, the HPL mapping work that local authorities undertake under the NPS-HPL will carry through to spatial planning under RSSs.

## 2 Process for developing the NPS-HPL

The statutory requirements for developing a national policy statement are set out in [sections 45 to 55 of the RMA](#). To develop the NPS-HPL, the Minister for the Environment chose to establish an officials-led process, in accordance with section 46A(3)(b) of the RMA. The steps required under this process include:

- notifying the public and iwi authorities of the NPS-HPL discussion document and why the Minister for the Environment considers that the proposed national direction is consistent with the purpose of the RMA
- providing an opportunity for written submissions on the NPS-HPL discussion document, and undertaking targeted further consultation on an exposure draft and issues raised in submissions
- preparing a report and recommendations to the Minister for the Environment on submissions and on the subject matter of the proposed NPS-HPL (this report).

The analysis and recommendations in this report have been informed by:

- an [evaluation report of the proposed NPS-HPL prepared under section 32 of the RMA](#),<sup>1</sup> which is required under section 52(1)(c) of the RMA
- the results of an [independent cost-benefit analysis of an earlier version of the proposed NPS-HPL](#).<sup>2</sup>

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<sup>1</sup> Ministry for the Environment. 2022. National Policy Statement for Highly Productive Land: Evaluation report under section 32 of the Resource Management Act. Wellington: Ministry for the Environment.

<sup>2</sup> Hampson et al. 2020. *National Policy Statement – Highly Productive Land: Cost-Benefit Analysis*. Prepared for the Ministry for Primary Industries by Market Economics. Wellington: Ministry for Primary Industries.

The Minister for the Environment must consider this report before making changes to the NPS-HPL, making no changes, or withdrawing all or part of the proposed NPS-HPL.

The Minister for the Environment must then have particular regard to the section 32 evaluation report (per s52(1)(c)) when deciding whether to recommend that the Governor-General approve the NPS-HPL be under section 52(2).

### 3 Overview of submissions

The Ministry for Primary Industries and the Ministry for the Environment consulted publicly on a draft NPS-HPL as part of a discussion document, *Valuing Highly Productive Land*, from 14 August until 10 October 2019. Public engagement was run as part of a wider Government roadshow, seeking feedback on proposals for national direction on HPL, freshwater and urban development. The roadshow included more than 60 meetings across Aotearoa, with over 7,500 people in attendance. This engagement included 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 NPS-HPL discussion document over the eight-week consultation period. Submissions were received from Māori and a range of stakeholders including councils, primary producers, industry organisations, businesses, iwi/Māori organisations and individuals. Submitters can be broadly categorised into the following groups:

- iwi/Māori organisations (8)
- individuals (66)
- councils (48)
- primary producers (47)
- general businesses (36)
- industry bodies (25)
- NGOs (11)
- government agencies (9).

Submissions were broadly supportive of the intent of the draft NPS-HPL in the discussion document, although submitters raised a wide range of potential issues and improvements to policy content. Submissions were generally supportive of policies, indicating that:

- it makes sense to better protect and manage HPL nationally
- a national policy statement is an appropriate tool to help protect and manage HPL.

In March 2021, further workshops and stakeholder engagement occurred, with local authority representatives and primary sector experts testing several key areas of the proposed NPS-HPL.

In October 2021, an 'exposure draft' process took place 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 Te Tiriti o Waitangi 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.

In March and April 2022, targeted engagement on possible amendments to the NPS-HPL – in light of the exposure-draft testing – was also carried out with councils, primary sector representatives, the Waikato River Authority, Te Rūnanga o Ngāi Tahu and Muaūpoko Tribal Authority.

A number of common themes have been identified across both supporting and opposing submissions, and subsequent stakeholder feedback. More detail can be found in the full [set of submissions on the proposed NPS-HPL](#).

# Part B

The following sections outline:

- a summary of policy intent and scope (problem statement)
- options considered
- a summary of key issues raised in submissions
- any recommended changes to the proposed NPS-HPL in response to those submissions.

For each issue, this report provides an overview of:

- what was consulted on
- key policy issues from submissions
- analysis
- recommendations.

## 4 Problem statement

### What was consulted on and policy intent

The [NPS-HPL discussion document](#), in Chapter 3: The Problem we want to solve, outlined three key pressures on HPL.

- Urban areas were disproportionately expanding onto HPL.
- Fragmentation of HPL for rural lifestyle development was resulting in HPL no longer being suitable for primary production.
- Newly located activities in close proximity to HPL were reducing the productive capacity of HPL due to reverse sensitivity effects.

The NPS-HPL discussion document asked whether the RMA framework provided sufficient clarity and direction on how HPL should be managed and considered alongside competing uses. It sought specific feedback on:

- how HPL was being considered when providing for future urban rezoning/development, and for fragmentation for rural lifestyle development
- how the tensions between primary production activities and incompatible activities should be managed (ie, managing reverse sensitivities).

In addition, the NPS-HPL discussion document asked whether submitters agreed that there was a problem facing HPL, and whether it had been accurately reflected in the discussion document.

### Key issues from submissions

The key issues identified from the submissions and subsequent analysis are:

- whether the RMA provides sufficient clarity for how HPL should be managed
- whether the loss of HPL is a primary production issue, a food production and food security issue, or an ecosystem services issue
- whether there is sufficient evidence to justify the problem definition.

Each of these key issues are discussed in turn below.

## Analysis

### Clarity under the RMA

Submitter feedback confirmed the problem statement as set out in the NPS-HPL discussion document, ie, that there is a lack of clarity under the RMA as to how HPL should be managed. As a result, HPL is given inconsistent consideration across council boundaries. Feedback suggested that many councils were giving a low priority to HPL in decision making (including decision making on plans and resource consents), and as a result had weak or low protections in place for HPL. Feedback also suggested that some councils were giving thorough consideration to HPL; some suggested this meant there was, in fact, enough clarity and certainty under the RMA for councils to prioritise HPL in decision making.

While some councils have been able to prioritise the protection of HPL, we do not recommend a change to the problem definition, because:

- many submitters noted that, where councils do have protections for HPL in place, those protections were often subject to legal challenge as a result of the lack of clarity under the RMA
- protections for HPL were also found to be inconsistent across the country, therefore national direction would support best practice being adhered to in every region.

## **Nature of the problem (primary production, food security, ecosystem services)**

### *Protect HPL for primary production*

The term ‘highly productive land’ has been closely tied to the land use capability (LUC) classification system, specifically LUC classes 1, 2 and 3. The LUC system rates the versatility of land based on the limitations for use in primary production, with LUC class 1 having the fewest limitations and LUC class 8 having the most. LUC has been used because:

- it is the best system available to classify the productivity of land and soil resources at a national scale
- many councils currently use LUC to assess the productivity of land in their regions or districts
- the Ministry for the Environment’s environmental monitoring reports [Our land 2018](#), [Our land 2021](#) and [Environment Aotearoa 2022](#) found that LUC class 1 and 2 land was used for urban rezoning/development and rural lifestyle development at a greater rate than other LUC classes.

While the production of food in Aotearoa is often dependant on the availability of HPL, there are 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. Therefore, it is difficult to provide evidence of a food production issue in Aotearoa to justify the problem statement. In addition, primary production on HPL is not limited to food production. In future, shifting markets could see an increase in demand for non-food production uses of HPL, such as, for growing fibres, building materials, medicines or fuel.

### *Protect HPL for food production and food security*

There are similar issues when food security is considered as an issue to justify the problem statement. While the availability of HPL could have an influence on food security, there are many other factors at play that can also influence food security, most noticeably, family incomes (including housing costs).

### *Ecosystem services as focus for managing HPL*

A focus on the ecosystem services provided by HPL raises a number of issues. Soil is known to provide essential ecosystem services, for example: carbon and nutrient cycling; water cycling and quality; air quality and composition; temperature regulation; decomposition and recycling of organic materials; and habitat for living things. In addition to the ecosystem services provided by soils, there are other factors that can determine whether land is identified as HPL.

The focus on LUC means climate, slope, rock type and wetness are also taken into account. It is difficult to differentiate which of these ecosystem services are most prevalent in HPL, as opposed to land that is less sought after by primary producers.

The discussion document for the proposed NPS-HPL noted that the Government will initiate a work programme that considers options to improve the health or quality of our soils, following implementation of the NPS-HPL. This work programme will provide a better opportunity to consider the ecosystem services of HPL, as well as other land types.

## Recommendation and decisions

### Recommendation

- A. The problem statement, as set out in the discussion document for the proposed NPS-HPL, is retained.

### Ministers' decision

Agree

## 5 Options considered

### What was consulted on and policy intent

The [NPS-HPL discussion document](#), in Chapter 4: Options for solving the problem, outlined three options to address the identified problems:

- a national policy statement (NPS) for HPL
- national environmental standards (NESs)
- Amendments to the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC 2016).<sup>3</sup>

### Key issues from submissions

From the submissions and subsequent analysis a fourth option was identified:

- whether section 6 of the RMA should be amended to include the protection of HPL as a matter of national importance.

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<sup>3</sup> Note that the NPS-UDC 2016 has, since the release of the discussion document, been replaced by the National Policy Statement on Urban Development 2020 (NPS-UD), which means this option has effectively been replaced by considering HPL through the NPS-UD. The consultation on the proposed NPS-UD closed at the same time as that of the proposed NPS-HPL and it came into force in 2020. The NPS-HPL discussion document indicated that if there was significant support for addressing the loss of HPL through the NPS-UDC, the scope of the NPS-UD would need to be increased.

## Analysis

### An NPS for HPL

The preferred option to identify and protect HPL, and to address [the identified problems](#), is through an NPS. An NPS can provide clear policy direction to councils that HPL is a nationally significant, finite resource, and also set out clear implementation requirements as to how it should be considered, identified and protected within the RMA planning and consenting framework. We consider that an NPS has the potential to provide considerable improvements in the way HPL is considered and managed by councils. An NPS can also provide a higher degree of flexibility when compared to an NES. It will allow councils to consider and respond to local circumstances when giving effect to the NPS, while still providing clear directions on the outcomes to be achieved and on the implementation requirements to achieve those outcomes.

A key benefit of the NPS approach is that it strikes an important balance between providing a nationally consistent policy framework, while still allowing for an appropriate level of local flexibility. It is important to provide for council, landowner and community input, and to allow a level of customisation at the local level to account for regional and district variation.

An NPS also requires councils to consider appropriate issues at suitable levels of the planning hierarchy. As proposed, mapping of HPL occurs at a regional level, which is appropriate because of the regional nature of the resource, while many of the actions to manage HPL will be undertaken by district councils, given their responsibilities for subdivision and managing urban development. Regional and district councils will therefore develop appropriate policies and rules as appropriate to their function and role in the planning hierarchy.

However, NPSs can result in greater costs for councils to implement compared to other national direction instruments, as they require councils to use the process under Schedule 1 of the RMA. Conversely, national environmental standards and regulations under section 360 of the RMA can be implemented without going through the process under Schedule 1 of the RMA. Schedule 1 costs are not trivial, and depend on the scope of policy work needed to develop provisions and implement an NPS.

Implementation clauses in the NPS-HPL will require councils to identify and map HPL in accordance with the criteria discussed below. Including objectives, policies and rules in plans will require plan changes, including the associated time and cost to undertake these (although these can be minimised by aligning with other plan changes).

### National environmental standards

Officials agree with submitter feedback, which confirmed that an NES is not the most appropriate option to protect HPL.

The main limitation of the NES option for HPL is that it provides limited flexibility to respond to different priorities and pressures locally. Unlike an NPS, an NES would not allow councils the flexibility to tailor their approach to identify and protect HPL in a way that is responsive to the nature of the resource and pressures on the HPL resource within their regional and local context.

In order to provide flexibility, an NES for HPL would likely require the NES to allow plan rules to be more stringent or lenient, which may likely undermine the national consistency benefits typically associated with this instrument, depending on how these provisions were used. At a minimum, an NES would provide a standard that councils would be required to adhere to. Alternatively, an NES with no or limited flexibility is unlikely to be appropriate in all regions

across Aotearoa. If not carefully designed, such an NES may result in unintended consequences like 'locking-in' certain land uses on HPL.

The immediate impacts on landowners would also likely be greater under an NES, as it sets rules and standards that a council must enforce. Whilst the NPS-HPL will have immediate effect through the way HPL is defined (ie, transitional definition), in comparison to an NES, an NPS will generally have less effect until councils have included its objectives and policies in changes to their policy statements and plans. In contrast to an NES, the process of giving effect to an NPS provides affected landowners and stakeholders with an opportunity to have input into the process for setting rules, which can provide an important level of community scrutiny.

An NES is also limited in that it does not require a council to introduce policy support (in a regional or district plan) to determine how to manage HPL. Unless an NES prohibits an activity, a person can still apply for a resource consent or plan change; relevant policies in a regional policy statement or district plan guide the likely outcome of one of those processes. An NES, therefore, does not require RMA decision makers to give adequate consideration to the problem; it only sets a threshold that limits development. Given that the problem statement informing the scope of this national direction recognises that there is an inadequate consideration of HPL at a policy level, a NES does not fully address the problem.

## **Amendments to the National Policy Statement on Urban Development 2020**

There was some submitter support for the integration of the NPS-UD<sup>4</sup> and the proposed NPS-HPL into a single, comprehensive NPS (compared to a standalone NPS). Officials consider that a combined NPS option has significant limitations. The most significant limitation is that it only addresses one aspect of the problem (urban rezoning/development) and would not address other key issues – in particular, rural lifestyle development – which are contributing to the rapid loss of HPL. There would also be challenges in expanding the NPS-UD to sufficiently address the issues the proposed NPS-HPL seeks to manage. While the NPS-UD could be expanded in scope to address some of the other core problems relating to HPL, this is likely to require substantive changes to the scope and focus of the NPS-UD and proposed NPS-HPL. Officials consider that this may increase (rather than decrease) policy complexity and confusion in terms of the overall purpose of the combined NPS and the matter(s) of national significance it relates to.

While we do not recommend that the two NPSs be combined, we do recognise the need for the two instruments to be aligned so that the interactions are clear and workable for all parties. Officials consider that this can be effectively achieved through: aligning the key policies (in particular the NPS-HPL urban rezoning provisions), definitions as appropriate and supporting guidance. This will give councils, landowners and developers clarity and direction as to how these instruments need to work together and how tensions should be managed. The interactions between the proposed NPS-HPL and NPS-UD are discussed further in [section C12](#) urban rezoning/development.

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<sup>4</sup> When the NPS-HPL was open for consultation, the relevant policy statement was the National Policy Statement on Urban Development Capacity 2016. This has since been replaced by the National Policy Statement for Urban Development 2020.

## Make HPL a matter of national importance under the RMA

Feedback on the NPS-HPL discussion document identified the option of amending section 6 of the RMA to include the protection of HPL as a matter of national importance (similar to the Town and Country Planning Act 1977) It was noted that this option could work on its own or in conjunction with a national direction instrument.

Officials retain the view that amendments to section 6 of the RMA is not the preferred option, as these would need to be considered over a longer timeframe, as part of the wider review of the resource management system currently underway; further, as these resource management reforms will replace the RMA, this option is now somewhat redundant. In any event, there would also be a significant time lag before such amendments could begin to achieve the desired outcomes through RMA plan provisions and resource consent decisions.

As such, adding the protection of HPL as a section 6 matter of national importance is not a viable option and will not effectively address the current pressures facing HPL. However, as noted above, the inclusion of highly productive land as an environmental outcome to be promoted under the Natural and Built Environments Act is being progressed as part of the review of the resource management system.

## Recommendations

### Recommendations

- A. A national policy statement is developed as the preferred option.
- B. Ensure that key interactions between the NPS-HPL and proposed NPS-UD are clear and aligned.

### Ministers' decision:

Agree

## 6 Scope of NPS-HPL

### What was consulted on and policy intent

The [NPS-HPL discussion document](#), in Chapter 3: The problem we want to solve and Chapter 5: How a National Policy Statement would work, referred to three key land-use planning issues affecting highly productive land these are:

1. Urban Expansion on to highly productive land
2. Rural Lifestyle development on highly productive land
3. Reverse sensitivity effects limiting the use of highly productive land

The proposal was to focus on managing risks to a limited HPL resource, primarily managing the irreversible loss of this resource, rather than explicitly the management of the characteristics of the land itself eg, soil quality and availability of water.

The policy intent of the NPS-HPL is to focus on the key land-use planning issues affecting HPL, which include urban rezoning/development, rural lifestyle development and reverse sensitivity

effects. The scope of the NPS-HPL does not extend to wider soil health issues that were also highlighted in *Our land 2018* and *Our land 2021* – these issues are to be considered as part of a second phase of work. This work may also need to be undertaken to implement any soil quality or health limits in the proposed Natural and Built Environments Act.

The proposal was also to maintain the availability of high-quality land for a diverse range of land-based primary production uses, rather than prioritising particular, land-based primary production activities.

The intent of the proposed NPS-HPL, as consulted on, was to maintain the availability of HPL for ‘land-based primary production’<sup>5</sup> generally, to ensure that the NPS-HPL does not favour a particular primary sector at the expense of another. The focus of the proposed NPS-HPL is on managing the types of development that typically result in the irreversible loss of HPL for land-based primary production, ie, urban rezoning/development and rural lifestyle development.<sup>6</sup>

The scope of the NPS-HPL would exclude existing urban zoned land. This recognises that the NPS-HPL should not retrospectively apply to these areas, as it is highly unlikely that these will revert to land-based primary production. The NPS-HPL would also not apply to future urban zones in district plans, as these areas have already been identified as suitable for urban use through a Schedule 1 process under the RMA and provide a clear signal to developers and landowners as to where future urban development can occur. Investment decisions are made on the basis of future urban zoning (for example, the Future Urban Zone in the Auckland Unitary Plan) and the NPS-HPL should not undermine this. The proposed NPS-HPL prepared for public consultation also proposed that the NPS-HPL would not apply to future urban areas identified in some plans developed under other acts, including plans (eg, future development strategies prepared under NPS-UD) to allow councils to reconsider the suitability of these areas for urban development in light of the proposed NPS-HPL. Specific feedback on how the NPS-HPL should apply to future urban areas was sought through public consultation.

The proposed NPS-HPL used LUC classes 1 to 3 as the basis for the definition of ‘HPL’. LUC classes 1 to 3 are used as the transitional definition of HPL, and as a starting point for the council mapping process.

The proposed NPS-HPL did not prioritise particular uses of HPL, although the discussion document did ask if specific areas (eg, food growing hubs) should be subject to specific additional protections.

## Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether the focus of the NPS-HPL should be on primary production generally
- how the NPS-HPL will apply to future urban areas in statutory and non-statutory plans
- whether specific activities should be excluded from the NPS-HPL
- what LUC classes should be used as the basis for identifying HPL.

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<sup>5</sup> The draft definition of primary production in the NPS-HPL was based on the National Planning Standards definition but limited to agricultural, pastoral, horticultural and forestry activities (ie, excluding mineral extraction and aquaculture). See the definitions section for further discussion.

<sup>6</sup> While rural lifestyle development is not strictly irreversible from a physical perspective, the higher land prices and smaller economic units means a return to primary production is generally very unlikely.

## **Analysis**

We recommend that the overall scope and focus of the NPS-HPL, including its national application and general focus on prioritising land-based primary production on HPL, is largely retained as consulted on. The protection of HPL is a nationally significant issue that warrants clear national direction throughout Aotearoa.

### **Definition of land-based primary production**

The primary focus of the submitter feedback on the definition of 'land-based primary production' was on whether forestry should be included in this definition. Submitters were concerned that including forestry in this definition would result in loss of HPL, or that it was an inefficient use of the soil resource.

As discussed above, the scope of the 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, officials do agree that the definition of primary production in the NPS-HPL should be more directly related to land use activities that are reliant on the soil resource of the land. This definition is differentiated from the National Planning Standards definition of primary production. Officials therefore recommend that the final NPS-HPL include a definition of 'land-based primary production' that includes production from agricultural, pastoral, horticultural and forestry activities that are reliant on the soil resource of the land. 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 that are reliant on the soil resource – not other forms of primary production with no reliance on soil resource (eg, intensive indoor primary production). Officials also recommend the inclusion of a 'supporting activities' definition to cover activities and structures that are necessary to support land-based primary production on HPL, but which are not covered by the land-based primary production definition. This would include, for example, on-site processing of materials produced on site, packing sheds, equipment storage and buildings to house animals.

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 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.

### **Definition of land-based primary production – forestry**

We recommend that forestry is retained in the definition of land-based primary production in the NPS-HPL, as it is a primary production activity that does make use of the soil resource. However, we note that councils may choose to manage specific areas of HPL for specific primary production activities.

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 rural lifestyle lots. Therefore, plantation forestry on HPL can be converted to other more productive primary sector uses over time.

The Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF) permit 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 that 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.

## Future urban areas

We recommend that the NPS-HPL does not apply to future urban zones in district plans and that this is also extended to exclude future urban areas in regional policy statements, such as those identified in the Bay of Plenty Regional Policy Statement.

We also recommend that the NPS-HPL gives greater recognition of future urban areas that have been identified in a future development strategy prepared under the NPS-UD and in other 'strategic planning documents'. This recognises that councils have undertaken considerable work with developers and their communities to identify suitable future urban areas through non-statutory processes. An analysis of future urban rezoning/development in major urban centres also indicates that requiring councils to revisit future growth areas in light of the NPS-HPL is unlikely to yield any viable alternatives or significantly redirect urban growth away from HPL in the short to medium term in most cases.<sup>7</sup> Officials propose that 'strategic planning document' is defined in the NPS-HPL as follows: "**strategic planning document** means any non-statutory growth plan or strategy adopted by local authority resolution".

We therefore recommend that the definition of HPL in the NPS-HPL is refined so it does not apply to council-planned future urban growth areas in the short to medium term through two means:

- **Interim definition of HPL (commencement date)** – this definition would exclude future urban areas identified for future urban development or- subject to a council initiated, or adopted, notified plan change-to rezone it from general rural or rural production to urban or rural lifestyle.
- **Regional HPL mapping (three years after commencement date)** – allow councils to not map areas identified for future urban development (located on LUC classes 1 to 3) as HPL when mapping HPL. As discussed above, 'identified for future urban development' is proposed to be defined in the NPS-HPL.

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<sup>7</sup> Market Economics. 2019. *Urban Expansion: Assessment of Potential Policy Impacts Proposed NPS on Highly Productive Land*, Prepared for Ministry for Primary Industries.

These changes will help ensure that councils can consider and balance the protection of HPL with the need to provide for urban rezoning. It also ensures that the NPS-HPL does not unduly constrain urban growth that is already planned to occur. Providing for urban rezoning under the NPS-HPL and the interactions with the NPS-UD are discussed further in [section C12](#) of this report – urban rezoning.

Officials propose that ‘identified for future urban development’ is defined in the NPS-HPL as follows:

“identified for future urban development means:

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

## Exclusions

We do not recommend that specific activities (eg, nationally significant infrastructure, designations) are excluded from the NPS-HPL mapping process. This would provide no onus for these activities to avoid HPL where practicable or mitigate adverse effects on the productive capacity of HPL. However, we do recognise the need to allow for certain activities to be located on HPL in certain circumstances and provide a consenting pathway for this to occur. This is discussed further in [section C15](#) – Exemptions for highly productive land subject to permanent or long-term constraints.

## LUC classes 1 to 3 as the basis for the definition of HPL

We propose to retain the use of LUC classes 1 to 3 as the basis for the definition HPL. These classes are generally consistent with the land that is used most productively in Aotearoa, with classes 1 to 3 containing a mix of horticulture, intensive pastoral uses, and arable uses. The range of land-use activities able to be carried out on the land declines significantly with increasing classes.

LUC classes 1 to 3 land (approximately 14 per cent of New Zealand’s land) is also preferred as the basis for the NPS HPL over LUC 1 to 2 land (approximately 5 per cent of New Zealand’s land). It is consistent with the intent of the NPS-HPL to take a more conservative approach during the transitional period to help avoid (or reduce) the loss of land to irreversible development in advance of it being identified as HPL. Choosing LUC classes 1 to 3 also aligns with a number of existing regional approaches, although it is recognised that some councils recognise LUC classes 1 to 2 as versatile soils (or similar).<sup>8</sup>

However, we recognise that there may be situations where other classes of LUC land are worthy of protection – with some higher-class (ie, LUC 4 and above) land also able to be used

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<sup>8</sup> Councils have taken variable approaches to defining HPL, versatile soils (or similar). A number of regions have based this on LUC classes 1 to 3 (or certain classes of LUC 3), including Northland, Auckland, Waikato and Bay of Plenty. There are other regions that have based this on LUC classes 1 to 2, including Wellington, Canterbury and Southland.

in a highly productive way, including for cherry crops or viticulture. As such, the NPS-HPL will allow these other classes of LUC land to be mapped as HPL as discussed further below.

## Recommendations and decisions

### Recommendations

- A. Change definition of primary production to 'land-based primary production' and include production from agricultural, pastoral, horticultural and forestry activities that are reliant on the soil resource of the land.
- B. Include a new definition of supporting activities that are necessary to support land-based primary production but are not in of themselves production activities, eg, on-site processing, packing sheds, equipment storage and animal housing.
- C. Exclude areas identified for future urban development from the transitional definition of HPL.
- D. Require that areas identified for future urban development must not be mapped as HPL.
- E. Confirm the use of LUC classes 1 to 3 as the basis for identifying HPL, while allowing higher classes to be included, if this land is or has the potential to be highly productive.

### Ministers' decisions:

Agree

## 7 NPS-HPL objectives and consistency with Part 2 of the RMA

### What was consulted on and policy intent

The Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included three overlapping objectives that are intended to work together to achieve the outcomes sought through the proposal – improving the way HPL is managed under the RMA.

- Objective 1: Recognising the benefits of highly productive land
- Objective 2: Maintaining the availability of highly productive land
- Objective 3: Protection from inappropriate subdivision, use and development.

The first objective intended to ensure that the long-term values and benefits associated with using HPL for land-based primary production are better recognised in RMA planning and decision making. This responds to concerns that the long-term benefits of protecting HPL for land-based primary production are often undervalued compared to the short-term and site-specific benefits associated with urban rezoning/development and conversion to rural lifestyle. The intent is that councils would then articulate the key benefits and values associated with HPL within their local context to ensure these benefits and values are better considered in RMA planning and decision making.

The second objective was included to ensure that the availability of HPL for land-based primary production is maintained for future generations. This does not imply a no-net-loss requirement

– rather, it would require councils to proactively consider and manage the HPL resource to ensure this can be used for land-based primary production now and into the future.

The third objective was intended to provide direction to all decision makers to protect HPL from ‘inappropriate’ subdivision, use and development. The draft wording of the objective provided some indication of how ‘inappropriate’ subdivision, use and development should be interpreted, while allowing councils some flexibility to define this within their local context.

## **Key issues from submissions**

The key issues identified through submissions and subsequent analysis are:

- considering whether the three objectives should be rationalised
- ensuring the objectives and policies are drafted as clear outcomes statements
- removing uncertain and inconsistent terms
- ensuring actions to achieve the objectives are clear in the policies.

## **Analysis**

### **Rationalising the objectives**

Officials recommend consolidating the three objectives for the NPS-HPL into one. Feedback from submitters and further analysis has confirmed that the objectives in the proposed NPS-HPL can be rationalised and refined to be more focused on the outcome sought, rather than on the means to achieve it (the role of policies). This approach is consistent with the new drafting approach for national policy statements taken by the Ministry for the Environment, where the more detailed implementation requirements are set out in a separate part of the statement (Part 3) to the objectives and policies (Part 2). Some of the terms in the proposed NPS-HPL objectives (eg, ‘maintain’, ‘uncoordinated’) also needed to be removed to avoid potential interpretation and implementation issues.

Accordingly, we recommend that the NPS-HPL includes one overarching objective, which would require that HPL is protected for use in land-based primary production, both now and for future generations. This will ensure that the NPS-HPL meets the purpose of sustainable management of natural and physical resources under the RMA.

### **Clarifying objectives and policies**

Officials also recommend refining the policies and implementation requirements to provide greater clarity on how this objective is to be achieved. In particular, officials recommend the NPS-HPL include:

- policy direction on integrated management, to ensure that the identification and management of HPL is undertaken in an integrated way that considers the interactions with freshwater management and urban development
- policy direction to recognise HPL as a resource with finite characteristics and long-term value for primary production
- policy direction and guiding criteria on inappropriate and appropriate uses of HPL (as discussed further in sections C14 and C15 of this report).

The NPS-HPL has been assessed as being the most appropriate option for achieving the purpose of the RMA. This is detailed in the [section 32 evaluation report for the NPS-HPL](#) and is not repeated here.

## Recommendations

### Recommendations

- A. Rationalise and refine the three objectives in the NPS-HPL into one overarching objective focused on the protection of HPL for use in land-based primary production for current and future generations.
- B. Note that the objective of the NPS-HPL is consistent with Part 2 of the RMA which is assessed in the NPS-HPL section 32 evaluation report.

### Ministers' decision:

Agree

## 8 Māori land and Te Tiriti of Waitangi

### What was consulted on and policy intent

The NPS-HPL presents an opportunity to preserve HPL for primary production purposes, while enabling the use and development of Māori land (Māori land) consistent with sections 6(e) and 8 of the RMA.

Through consultation, officials asked Māori/iwi the following:

- What are the values and benefits associated with HPL for whānau, hapū and iwi?
- Do you think the proposed NPS-HPL is an appropriate way to ensure the protection of HPL occurs in a way that takes into account Māori land values?
- What impacts do you think the proposed NPS-HPL will have on hapū and iwi/Māori?

### Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- the need to ensure that Te Tiriti o Waitangi (the Treaty of Waitangi) commitments are recognised and provided for
- the need to consider Māori land separately from general title land, due to the number of constraints on its utilisation
- the need to avoid placing further restrictions on the utilisation of whenua Māori, which has historically been underutilised
- the development of papakāinga, in particular, should be provided for on Māori land
- the need for iwi and hapū involvement in the implementation of the NPS-HPL.

## Analysis

Additionally, a separate Treaty Analysis (Appendix 4) and briefing papers were provided as part of advice to ministers and the package to Cabinet to inform final decisions on the NPS-HPL. This Treaty Analysis included discussion on changes to the definition of specified Māori land since the exposure draft of the NPS-HPL. See also specific analysis related to Te Tiriti on page 74 of this report.

### What is Māori land?

Māori land generally falls into two broad categories: land identified and defined in the Te Ture Whenua Māori Act 1993 (the Act), and general title land owned by Māori.

The purpose of the Act is to recognise that land is he taonga tuku iho to Māori, a treasure that has been passed down across generations. In recognition of this, the Act was designed to promote the retention of land in Māori ownership, and to facilitate the utilisation of land for the benefit of owners, whānau and hapū. Under the Act, Māori land is defined to include the following:

**Māori customary land** – land that has not been acquired by the Crown and continues to be held in accordance with tikanga Māori. Māori customary land typically has not had its ownership investigated and determined by the Māori Land Court. Only a small number of customary land blocks remain in Aotearoa today, totalling approximately 1,200 hectares<sup>9</sup>

**Māori freehold land** – land that has been investigated by the Māori Land Court and issued a freehold order, or that was set aside by the Crown as Māori freehold land and awarded by Crown grants to specific individuals. Māori freehold land is typically held by individuals who retain shares together as tenants in common. Today, almost all Māori land is Māori freehold land. There is approximately 1.4 million hectares of Māori freehold land in Aotearoa – roughly five per cent of total land.

The definition of ‘specified Māori land’ in the final NPS-HPL is, as follows:

- (a) Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) land vested in the Māori Trustee that –
  - (i) is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and
  - (ii) remains subject to that Act:
- (c) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:
- (d) land that forms part of a natural feature that 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):
- (e) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:

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<sup>9</sup> Ministry of Justice. 2019. [Māori Land Update – Ngā Āhuatanga o te whenua](#). Wellington: Ministry of Justice.

- (f) land held by or on behalf of an iwi or 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 the mana whenua over the land”

This revised definition is considered to capture the types of Māori land that should be subject to the more flexible subdivision, use and development settings in the NPS HPL Refer to the Treaty Analysis and advice to ministers for more discussion on this definition

The types of Māori land (included in the final definition of specified Māori land) warrant a specific policy approach because of a number of factors or constraints that distinguish it from general (fee simple) title land. These constraints relate to both the physical characteristics and the distribution and ownership of whenua Māori, as well as governance and statutory barriers to its use, as well as the history of ownership.

### *Collective ownership*

Māori customary and freehold land is almost exclusively owned by the descendants of the original owners, having been passed down successive generations to the current landowners.<sup>10</sup> This process has led to increasingly fragmented Māori land titles, as additional owners inherit land and receive a diminished interest in the land. The fragmented nature of these land titles presents a number of challenges to the utilisation of Māori customary and freehold land, including: the need to balance competing views, lack of governance, high administration costs, restrictions on the alienation of land, and access to capital. In addition, the utilisation of this land must take place in a manner that is consistent with tikanga Māori and in recognition of the kaitiaki role of Māori in regard to the Māori estate.

There are approximately 2.3 million ownership interests across 27,490 blocks of whenua Māori. A significant number of these interests is held by owners who either live far from the land or are unaware that they are owners. There is also anecdotal evidence of interests being held by deceased persons or owned by the same person under different names.<sup>11</sup> Given the nature of these ownership interests, reaching consensus on how Māori land should be utilised and managed is often a difficult process, as land managers balance these challenges with competing views on land use and the idea of a quadruple bottom line (social, cultural, environmental and economic outcomes).

The Te Ture Whenua Māori Act 1993 attempts to manage the issue of title fragmentation by establishing collective ownership structures, where representatives are elected to administer land interests on behalf of owners.<sup>12</sup> The most common among these structures are Ahu Whenua trusts and Māori incorporations. Ahu Whenua trusts are governed by a number of elected trustees and are designed to promote the use and administration of the land in the interest of landowners. Ahu Whenua trusts make up 68 per cent of all Māori land management structures and administer the majority of Māori customary and freehold land. Māori incorporations operate in a similar manner to a limited liability company, where landowners are shareholders who own shares in the incorporation, rather than individual land blocks. There are a much smaller number of Māori incorporations compared with Ahu Whenua trusts,

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<sup>10</sup> Kingi T. 2013. [Cultural bastions, farm optimisation and tribal agriculture in Aotearoa \(New Zealand\)](#). Palmerston North. AgResearch Ltd.

<sup>11</sup> Isaac WW (Chief Judge). 2011. [Māori Land Today. Judge's Corner](#). Māori Land Court.

<sup>12</sup> Kingi T. 2013. [Cultural bastions, farm optimisation and tribal agriculture in Aotearoa \(New Zealand\)](#). Palmerston North. AgResearch Ltd.

with about 160 incorporations managing approximately 280,000 hectares of whenua Māori. A significant number of Māori reservations also exist.

Māori land management structures face high administration costs, not only in a purely economic sense, but also regarding the time and volunteer effort often required, particularly in the case of Ahu Whenua trusts where it is common for trustees to donate their time or work for minimal compensation.<sup>13</sup>

There is also a significant amount of Māori customary and freehold land (246,000 hectares) with no management structure in place – approximately 18 per cent of whenua Māori. While some of this land is managed by Te Tumu Paeroa, the Office of the Māori Trustee, on behalf of landowners, a lot of this land is unproductive.

Another issue related to the collective ownership of Māori customary and freehold land, is that under Te Ture Whenua Māori Act 1993, Māori freehold land can only be sold with the agreement of 75 per cent of the beneficial interests in the land (or shares, in the case of a Māori incorporation), while Māori customary land cannot be sold. This makes it difficult for iwi and hapū to realise economic gains from the sale of this land, as well as making it more likely for this land to remain in Māori possession. A flow-on effect of collective ownership is that often it becomes difficult for owners to raise capital, as banks are less willing to hold Māori customary and freehold land as debt security. This further restricts the ability of iwi and hapū to increase the productivity of this land.

### *Land quality*

The majority of Māori customary and freehold land is constrained by a range of topographic, soil and climatic factors that restrict what forms of primary production the land can be used for. Multiple-use land (LUC classes 1 to 4), which is suitable for a range of horticultural and cropping activities as well as pastoral and forestry uses, makes up only 18 per cent of Māori customary and freehold land. Land suitable only for pastoral or forestry activities comprises 65 per cent of this land, with the remaining 17 per cent of being either suitable only for conservation or biodiversity purposes or unavailable for use (ie, water bodies, existing infrastructure and settlements).

Compared to the distribution of LUC classes nationally, a higher proportion of Māori customary and freehold land is vested in less productive/versatile land (ie, LUC classes 5 to 7) and a lower proportion vested in our best growing land (ie, LUC classes 1 to 4). At a national level, a very small amount of Māori customary and freehold land is likely to be identified as HPL (114,000 hectares or 3 per cent of total LUC classes 1 to 3 land), which constitutes around 9 per cent of Māori customary and freehold land. This implies that, at the surface level, the NPS-HPL may have a lesser impact on Māori customary and freehold land compared to general title land, as a lower proportion of this land will be captured by the policy. However, conversely, this also highlights the potential impact of further impeding the utilisation of Māori customary and freehold land, given the relatively small amount of to begin with.

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<sup>13</sup> Kingi T. 2013. [Cultural bastions, farm optimisation and tribal agriculture in Aotearoa \(New Zealand\)](#). Palmerston North. AgResearch Ltd.

## **Deciding what types of activities should be provided for on Māori land**

The original policy that was consulted on did not provide for specific development to occur on specified Māori land that was different to what could occur on general land. A number of submissions requested that provision be made in the NPS-HPL for papakāinga developments.

Provision for papakāinga and associated activities on specified Māori land was made in the exposure draft of the NPS-HPL. Feedback from Te Tiriti partners engaged in targeted engagement on the exposure draft considered that this was still too restrictive, given the historic and existing constraints on developing specified Māori land and also given that Māori customary and freehold land represents around 3 per cent of the LUC classes 1 to 3 land in Aotearoa. It was suggested that the activities provided for should align with the activities in the Māori Purpose Zone, as defined in the [National Planning Standards](#), which enables “: a range of activities that specifically meet Māori cultural needs, including (but not limited to) residential and commercial activities”.

However, this approach could potentially prevent some appropriate use and development on specified Māori land. The preferred approach is therefore not to specify what activities and development is appropriate on HPL that is specified Māori land and enable tangata whenua to determine this without being constrained by the NPS-HPL.

## **The need for iwi and hapū involvement in the implementation of the NPS-HPL**

Taking into account the principles of Te Tiriti (in accordance with [section 8 of the RMA](#) and more generally) means providing Māori with meaningful opportunities to participate and work in partnership with central and local government, as far as possible. A key part of this, which was raised in submissions, is ensuring that local iwi and hapū retain the ability to participate in local government decision making throughout the implementation of the NPS-HPL, and in the development of regional and district plans and policy statements.

The NPS-HPL is an instrument under the RMA, which provides for iwi and hapū participation in local government decision making in a number of ways. When giving effect to the NPS-HPL through their plans, local authorities will need to consider Part 2 of the RMA, which states that persons exercising powers under the RMA must take into account the principles of Te Tiriti. One of the core principles is often described as the principle of partnership. All persons exercising functions and powers under the RMA must recognise and provide for the following as matters of national importance:

- [section 6\(e\) of the RMA](#) – the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga
- [section 6\(f\) of the RMA](#) – the protection of historic heritage from inappropriate subdivision, use and development.

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. Practically, this means that local authorities will need to work with iwi and hapū to appropriately map, manage and protect HPL throughout the planning process.

[Schedule 1 of the RMA](#) requires local authorities to consult mana whenua, through local iwi authorities, and take into account any relevant planning documents recognised by an iwi authority when preparing a policy statement or plan. Local authorities must also provide iwi authorities with a draft of the proposed policy statement or plan, allow iwi authorities adequate time and opportunity to consider the draft document and provide any advice, and have particular regard to any advice received from those iwi authorities on the draft document.

Councils must also consider any relevant iwi participation arrangements, which detail agreed ways in which mana whenua may participate in resource management and decision-making processes under the RMA. Existing joint management agreements will also inform local decision making.

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'. There also remains discretion as to how the LGA provisions regarding tangata whenua engagement 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 different priorities of the different iwi, hapū and whānau – in terms of land being rezoned urban, land being protected for freshwater values, as well as opportunities for the development of whenua Māori. Therefore, it is considered beneficial to ensure there are specific requirements to engage with tangata whenua in giving effect to the NPS- HPL. These requirements provide greater clarity regarding tangata whenua involvement in light of the general obligations in Schedule 1 of the RMA, and Parts 2 and 6 of the LGA. This is consistent with approaches taken in the National Policy Statement for Freshwater Management 2020 and National Policy Statement on Urban Development 2020.

In particular, under the final NPS-HPL, regional councils are expected to undertake the mapping in collaboration with all relevant territorial authorities, and in consultation with tangata whenua, to the extent they wish to be involved, as follows:

### **“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 involve 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 perspective 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.”

## Recommendations

### Recommendations

- A. Agree to the definition of specified Māori land
- B. Enable use and development on specified Māori land without being unduly constrained by the NPS-HPL.
- C. Avoid further restrictions on the subdivision, use and development of specified Māori lands that are mapped as HPL including partitioning orders made under Te Ture Whenua Māori Act 1993.
- D. Direct councils to involve tangata whenua (to the extent they wish to be involved) in giving effect to this NPS-HPL in a manner consistent with the existing provisions of the RMA and LGA.

### Ministers' decisions:

Agree

## 9 Identification of HPL – transitional definition

### What was consulted on and policy intent

The [proposed NPS-HPL consulted on](#) included an interim (transitional) definition of HPL based on LUC classes 1 to 3. This transitional definition identifies the land to which the provisions of the NPS-HPL apply to provide some protection of HPL until councils have had sufficient time to undertake the necessary work to map HPL within their region and promulgate plan changes. See below for further discussion on mapping HPL.

The transitional definition of HPL proposed in the discussion document:

- comprised LUC classes 1 to 3 land
- included a minimum threshold for LUC classes 1 to 3 within a site of 50 per cent or 4 hectares (whichever is the lesser)
- applied to General Rural and Rural Production zones and other existing rural zones with a similar purpose, but not Rural Lifestyle Zones
- applies from the commencement date until regional councils have mapped HPL within their region.

### Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether there should be a transitional definition of HPL prior to mapping being completed
- whether the transitional definition should be based on LUC classes 1 to 3 or LUC classes 1 to 2
- whether the transitional definition should prevail over existing definitions of HPL (however described)
- whether the threshold of LUC classes 1 to 3 within a site to be defined as HPL.

## Analysis

### Retain a transitional definition prior to mapping

Officials recommend that a transitional definition of HPL based on LUC classes 1 to 3 is retained. The primary benefit of the transitional definition of HPL is that it ensures some immediate protection of HPL and nationally consistent interpretation until the regional assessments are undertaken. In the absence of a transitional definition of HPL, there will be some areas where current protection of HPL is inadequate and a degree of uncertainty and inconsistency in what is deemed to be HPL nationally. While the LUC system has some recognised limitations, it remains the primary classification system used by councils to define HPL (or similar) throughout Aotearoa and, is supported by a number of soil scientists. It is also the best tool available in Aotearoa to classify land as this point of time.

LUC classes 1 to 3 land (which comprises approximately 14 per cent of New Zealand's land) is also preferred as the basis for the transitional definition of HPL over LUC classes 1 to 2 land (which only comprises approximately 5 per cent of New Zealand's land). For these reasons officials recommend LUC 1 to 3 is used as the basis of the policy statement as a whole (see [section C11](#) of this report for further discussion).<sup>14</sup>

Further, the transitional period is relatively short – three years – and the transitional definition of HPL does not apply to land that is already zoned for non-rural land uses (for example urban or rural lifestyle) nor land that is identified for future urban development in RMA documents, future development strategies or other strategic planning documents. It is anticipated that once regional councils have completed the HPL mapping, district councils would need to use the HPL maps in their regional policy statements until such time as the district plan has been updated to incorporate the same maps.

Given the proposed NPS-HPL was consulted on before it was announced that the RMA would be repealed and replaced, no submissions requested that the timeframes be aligned with the proposed Natural and Built Environments Act. However, we are aware that submitters requested longer periods to implement some directions and are ensuring that timeframes align.

We recommend providing implementation guidance on the transitional definition to provide clarity on what rural zones it does and doesn't apply to, recognising that some councils apply different zones and zoning frameworks, particularly those councils who have yet to align their plans with the National Planning Standards.

We also recommend removing the minimum threshold of LUC classes 1 to 3 within a site for the transitional definition to apply. Rather, the transitional definition will apply to the portion of LUC classes 1 to 3 within any given site located in General Rural and Rural Production zones. This avoids the potential risk of:

- smaller parcels of LUC classes 1 to 3 land being excluded from the transitional definition
- the transitional definition inappropriately applying to entire sites that contain four hectares of LUC classes 1 to 3, land where this land may only be a small portion of the overall site.

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<sup>14</sup> Councils have taken variable approaches to defining highly productive land, versatile soils (or similar). A number of regions have based this on LUC classes 1 to 3 (or certain classes of LUC 3), including Northland, Auckland, Waikato and Bay of Plenty. There are other regions that have based this on LUC classes 1 to 2, including Wellington, Canterbury and Southland.

We do not recommend any amendments to the transitional definition of HPL to recognise existing definitions of HPL (however defined), regardless of whether these are broader<sup>15</sup> or narrower.<sup>16</sup> The transitional definition of HPL will not override existing definitions of HPL – it simply becomes a relevant consideration when plan changes and resource consent applications<sup>17</sup> are considered on LUC classes 1 to 3 during the transitional period. Where existing definitions of HPL are broader than the transitional definition of HPL, these would continue to apply and the NPS-HPL would also apply to LUC classes 1 to 3 land. Additionally, the transitional definition will not weaken protection of existing non-LUC classes 1 to 3 land in plans, as the NPS-HPL explicitly provides for councils to incorporate additional areas of non-LUC classes 1 to 3 land, where this land is or has the potential to be used for high-value primary production.

Conversely, where existing definitions are narrower (eg, LUC classes 1 to 2), the NPS-HPL will introduce protection for LUC 3 land during the transitional period, and the relevant NPS-HPL provisions will need to be considered when plan changes and resource consent applications are proposed on LUC class 3.

### **Alignment of zone descriptions in the NPS-HPL to zone descriptions in the National Planning Standards**

The National Planning Standards, [8. Zone Framework Standard, direction 1](#), requires that councils must use the zones consistent with the description of a zone described in table 13 of the National Planning Standards.

The chapters that come under ‘Rural zones’ are General Rural Zone, Rural Production Zone, Rural Lifestyle Zone and Settlement Zone (See National Planning Standards, 4. District Plan Structure Standard).

The transitional definition is intended to exclude rural lifestyle and settlement zones. To ensure this occurs and to be consistent with the National Planning Standards we recommend that the transitional definition only apply to General Rural and Rural Production zones (or equivalent zones where councils have not yet implemented the National Planning Standards).

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<sup>15</sup> For example, the Hastings District Plan includes a definition of versatile land that includes LUC classes 1 to 3 and LUC 7 soils that have high value for viticultural production.

<sup>16</sup> For example, the Canterbury Regional Policy Statement includes a definition of versatile soils based on LUC classes 1 to 2 land and the district plans in the region generally adopt the same definition.

<sup>17</sup> Provided that, for controlled and restricted discretionary activity, the matters of control or discretion allow HPL to be considered.

## Future urban areas

As discussed under Part B – [Scope of NPS-HPL](#), officials recommend that the NPS-HPL does not apply to Future Urban Zones and areas identified for future urban development. We recommend that this is achieved through amendments to the transitional definition of HPL so that it does not apply to:

- Future Urban Zones
- areas identified for future urban development<sup>18</sup>
- areas subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle.

## Recommendations

### Recommendations

- Retain transitional definition of HPL based on LUC classes 1 to 3.
- Remove the minimum threshold of LUC classes 1 to 3 within a site from the transitional definition, and clarify that this only applies to areas of LUC classes 1 to 3 within a site.
- Clarify that the transitional definition of HPL only applies to General Rural and Rural Production zones (or equivalent zone where councils have not yet implemented the National Planning Standards).
- Exclude areas from the transitional definition of HPL which are:
  - identified for future urban development in RMA plan or policy statement, future development strategy, or other strategic planning document published prior to the NPS-HPL taking effect.
  - subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle at the commencement date.

### Ministers' decisions:

Agree

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<sup>18</sup> We propose that 'identified for future urban development' is defined in the NPs-HPL as follows:  
"identified for future urban development means:

- identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- 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 of the area identifiable in practice."

## 10 Identification of HPL – process

### What was consulted on and policy intent

Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included a draft policy (Policy 1: Identification of highly productive land) that would require regional councils to identify and map HPL in their regional policy statements (RPSs) in accordance with a set of criteria. The criteria to identify HPL are discussed below in [Section C11](#). Specifically, the proposed NPS-HPL included:

- a requirement for regional councils to spatially map HPL in their region and include these maps in their RPSs within three years of the NPS-HPL coming into force
- a requirement for territorial authorities to amend their district plans to include maps of HPL identified in their RPS no later than two years after these are mapped in the RPS, or five years after the NPS-HPL is gazetted.

The intent of identifying and mapping HPL at the regional level through the RPS is to provide certainty on the location and extent of this finite resource (to enable it to be protected), to encourage a strategic spatial mapping approach that allows for wider consideration of HPL alongside other regional priorities and pressures, as well as cross-boundary issues between districts in the region. Undertaking this work at a regional level also ensures that this process can occur alongside complementary work to identify areas for urban growth and constraints to urban development through future development strategies prepared under the [National Policy Statement on Urban Development 2020](#) (NPS-UD).

### Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether mapping should be led by regional councils or central government
- what the role of territorial authorities should be in the HPL mapping process
- how RPS maps of HPL should be incorporated into the relevant district plans
- the scale of mapping
- what guidance, technical assistance and support from central government is needed to assist with HPL mapping process.

### Analysis

Mapping HPL will help to manage the resource and to provide certainty to all parties on the location of that resource. While this will require up-front resourcing and time, most mapping will only need to be undertaken once, with limited need for reassessment and updating (mainly to reflect changes in zoning).

### Who undertakes mapping?

We consider a region-wide mapping process is more efficient and effective than debating the location and extent of HPL on an ad hoc basis through individual plan-change and consenting processes. It also enables a more strategic approach to identifying areas for land-based primary production, future growth and land use change. We consider that regional councils are better placed to identify areas of HPL within their regional context. National mapping led by

central government would result in greater risk of a more generic process that doesn't account for local circumstances.

Undertaking the mapping work at a regional level also ensures that this process can occur alongside complementary work to identify areas for urban growth and constraints to urban development through future development strategies prepared under the NPS-UD. In addition, a requirement to map HPL at the regional level through RPSs:

- facilitates collaborative planning between councils within regions and associated consistency
- enables more efficient use of resources
- generally, ensures areas of mapped HPL in the RPS cannot be altered through a private plan change<sup>19</sup> unless this is through the NPS-HPL provisions that allow for rezoning on HPL (discussed further below).

Mapping at a regional level also has other advantages over national mapping. Regional councils will be able to sequence mapping alongside other changes to the RPS, or alongside transitioning to the new resource management system. The regional council process is also more participatory with affected landowners and stakeholders than a national process, and regional councils have stronger connections to the district councils and rural communities.

Accordingly, we recommend that the requirement for regional councils to map HPL within their RPS is retained.

## **Role of district councils in mapping process**

Officials recommend that the NPS-HPL makes it clear that the identification of HPL must be done in collaboration with territorial authorities and in consultation with tangata whenua in the region and that mapping of HPL must be done through a process agreed to by both the regional and territorial authorities, involving tangata whenua. This will ensure regional councils territorial authorities and tangata whenua work together to identify HPL and develop corresponding provisions to give effect to the proposed NPS-HPL, and protect HPL within their regions and districts. This collaborative approach will also help ensure the HPL mapping process is robust and only needs to be undertaken once, with any further changes (at a plan or RPS review stage) limited to updating maps to take into account minor changes, for example, urban rezoning of HPL as discussed further in [Urban rezoning](#).

## **Incorporation of mapping into district plans**

Officials also recommend that the NPS-HPL make it clear that:

- RPS maps can be incorporated into district plans without going through the Schedule 1 process so there is no scope to change or challenge the area of HPL at this stage.
- The time for RPS maps to be incorporated into district plans be shortened from two years to six months given that the Schedule 1 process does not have to be followed and the RPS maps are not able to be relitigated at the district plan stage.
- Allowing the mapping of HPL to be sequenced to enable councils to focus on areas under greatest pressure, if this is deemed to be the best approach for their regions.

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<sup>19</sup> Private plan change requests under [Part 2, Schedule 1 of the RMA](#) are limited to district plans and regional plans (including regional coastal plans).

Officials recommend that central government support is provided to assist councils with the HPL identification and mapping process as this is likely to provide significant efficiencies and national consistency.

## **Scale of mapping**

Submitters have indicated that there is a need to ensure that mapping is undertaken in sufficient detail to ensure it is clear whether a parcel of land is HPL.

We propose to retain the clause which states that mapping should be undertaken at a scale that identifies individual parcels of land. This is intended to ensure that individual areas are mapped at a level of detail that enables HPL to be clearly delineated, while allowing council flexibility to determine where lines are drawn depending on the circumstances of a particular area.

For example, in areas with generally smaller parcels, mapping may identify entire parcels as HPL even if there are small areas of a parcel that is not HPL, in recognition of the fact that the parcel as a whole is HPL, and that small areas of non-LUC classes 1-3 do not affect the overall capacity of that land parcel for land-based primary production.

Conversely if a parcel is very large, the HPL identification process can identify part of the parcel as HPL, recognising that a parcel is comprised of a mix of soils and only HPL needs to be protected. This will have the effect of encouraging subdivision of some parcels away from HPL.

We also recommend that, while the HPL mapping process should be at a level of detail to individual parcels, it is clear this can be based on the LUC maps in the New Zealand Land Resource Inventory and site-specific LUC assessments are not required. This is important to ensure the HPL mapping process does not impose significant costs on regional councils.

## **Guidance, technical assistance and support**

The Ministry for the Environment and the Ministry for Primary Industries will support the NPS-HPL through guidance and implementation support. The exact nature of a support programme will depend on the needs of regional councils to implement the policy but will focus on how to undertake a pragmatic, future focused approach to HPL mapping consistent with the NPS-HPL objective.

### *Spatial planning and the identification of HPL*

The process of identification of HPL is currently intended to be an enduring and robust process that will see HPL correctly identified at a regional level to ensure that future spatial plans, to be developed under the proposed Spatial Planning Act, can incorporate the land identified as HPL.

## Recommendations

### Recommendations

- A. Retain the requirement to map HPL in RPS.
- B. Allow regional councils to sequence the mapping of HPL in their region within three years following the commencement date.
- C. Require regional councils to collaborate with relevant territorial authorities when mapping HPL and consult with tangata whenua.
- D. Require RPS maps of HPL in operative regional policy statements to be included into district plans without going through the RMA Schedule 1 process and shorten the timeframe for this process from two years to six months from when the RPS maps become operative.
- E. Require mapping to be undertaken to a land-parcel scale, or sub-parcel scale if this is appropriate for larger sites. while clarifying HPL mapping can be based on the scale of LUC mapping in the New Zealand Land Resource Inventory.

### Ministers' decisions:

Agree

## 11 Identification of HPL – criteria

### Proposal consulted on

The intent of the [proposed NPS-HPL in the discussion document](#) was for regional councils to identify HPL based on the key factors that make land versatile and productive for land-based primary production. In addition to soil versatility, the process to identify HPL in the proposed NPS-HPL also enabled councils to consider other factors that either contribute to the productivity of land or act as a constraint on the use of the land for primary production, or consider whether the land has other values that should be managed. To achieve this, the proposed NPS-HPL contained a combination of mandatory and optional criteria for regional councils to consider when identifying HPL. The mandatory criteria in the proposed NPS-HPL (Policy 1, page 38) that councils **must** consider was as follows:

- the capability and versatility of the land to support land-based primary production (based on the LUC classification system)
- the suitability of the climate to support land-based primary production, particularly crop production (eg, a frost-free climate)
- the size and cohesiveness of the area to support land-based primary production.

The optional criteria in the proposed NPS-HPL that councils **may** consider when identifying HPL included six factors that have the potential to contribute to the productivity of land but that are not always relevant or critical factors in all circumstances. Those factors were:

- (a) current or future availability of water
- (b) access to transport routes
- (c) access to appropriate labour markets
- (d) supporting infrastructure and rural processing facilities

- (e) the current land cover and use and the environmental, economic, social and cultural benefits it provides, and
- (f) water quality issues or constraints that may limit the use of the land for primary production.

## Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether the criteria to identify HPL should be focused on the versatility of the land or on land productivity more broadly
- whether the criteria to identify HPL should all be mandatory or a combination of mandatory criteria and optional considerations
- how LUC classes should be incorporated into the HPL identification process
- whether regional councils can choose to not map areas of versatile soils as HPL based on certain factors and, if so, what those factors should be.

## Analysis

### Focus on land versatility or on land productivity

The criteria used to identify HPL is a critical aspect of the NPS-HPL that determines its focus and coverage and was understandably a key focus of submissions. While a broad range of issues were raised with the criteria to identify HPL, the fundamental policy issue is whether the focus of the NPS-HPL should be on the versatility of land or on land productivity more broadly.

Officials recommend that the identification and mapping of HPL primarily focuses on land versatility, ie, the ability and/or potential of the land to be used productively for land-based primary production. We recommend that this is based on the LUC classification system – specifically LUC classes 1–3 (discussed further below). However, we also recommend that regional councils have some discretion to identify **large, geographically cohesive** areas of land that comprise **predominately of LUC classes 1 to 3 land**. This would allow councils to take a pragmatic approach to identify HPL within their region based on logical geographic boundaries, rather than set an expectation that all LUC classes 1 to 3 land in the region shall be identified and mapped as HPL. Overall, this would provide direction for regional councils to identify and map land as HPL where the land:

- is predominately LUC classes 1, 2 or 3
- forms a large and geographically cohesive area
- is located in a rural zone (either General Rural or Rural Production or equivalent zone if the National Planning Standards have not yet been given effect to).

Officials recommend that the NPS-HPL requires that the mapping of HPL above:

- is based on the New Zealand Land Resource Inventory to determine LUC status, unless a regional council accepts any more detailed mapping that uses the LUC classification in the New Zealand Land Resource Inventory
- where possible, define the boundaries of large and geographically cohesive areas 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)

- may include small, discrete areas of land that are not LUC classes 1, 2 or 3 land, but are within a large and geographically cohesive area of LUC 1, 2 or 3 land
- may exclude small, discrete areas of LUC classes 1, 2 or 3 land if they are separated from any large and geographically cohesive area of LUC classes 1, 2 or 3 land.

The benefits of this approach include that it:

- focuses on the physical, finite soil resource, rather than factors that are variable and temporal in nature (eg, access to transport, water availability) reflecting both the current and future potential of this resource
- enables a simplified, less contestable approach to mapping based on physical parameters
- does not reduce existing protection of HPL in areas where LUC classes 1 to 3 are already subject to protection
- increases certainty, particularly for landowners, about whether their land is likely to be considered HPL, particularly if their land is constrained in only a minor or resolvable way
- is consistent with most existing council approaches that focus on the soil resource based on the LUC classification system, rather than on a broader assessment that includes other factors that relate to the use of the land for primary production.

It is accepted that there will be circumstances where some identified land (of any class) may be subject to permanent or long-term constraints, meaning that identified HPL may no longer be economically viable for land-based primary production. Rather than such constraints being considered at the mapping stage (which would lead to a more complex and potentially litigious mapping process), we recommend that these are considered on a more case-by-case basis, where the onus is on the applicant (rather than regional council) to establish these constraints. This is discussed under [section C15 – Exemptions for highly productive land subject to permanent or long-term constraints](#).

Officials recommend that the direction to identify “large and geographically cohesive” areas of “predominately LUC classes 1, 2 or 3 land” is supported by guidance and targeted workshops with regional councils to provide greater clarity on policy intent and implementation requirements.

## **Mandatory or optional criteria**

Officials do not recommend including optional mapping criteria as this would not provide national consistency and would likely be more litigious as landowners would advocate either that optional criteria should or should apply.

## **Identifying and mapping HPL on the basis of LUC classes**

The proposed NPS-HPL in the discussion document stated that the HPL identification process should be based on the LUC classification system, but did not specify how different classes should be incorporated into that assessment.

There were some requests to provide councils with flexibility in how they incorporate LUC classes into the assessment, noting that there is regional variation in how LUC classes are distributed throughout Aotearoa. There was also a broad level of support for using LUC classes 1 to 3 as the primary basis for HPL identification, to provide a greater degree of national consistency in how the HPL resource is identified and protected. While some parties opposed the use of the LUC system, no viable and practicable alternatives were identified.

We consider that there is a need for the NPS-HPL to provide clear direction on how LUC classes should be incorporated into the HPL identification process, rather than having them be determined on a region-by-region basis. Not providing clarity on how LUC classes should be incorporated into the HPL identification process mapping is likely to lead to inconsistencies, debate and uncertainty through this process. These regional inconsistencies are then likely to result in a disproportionate impact on the national HPL resource.

Consistent with the transitional definition of HPL, we also recommend that HPL mapping is based on areas of predominately LUC classes 1 to 3 land, rather than LUC classes 1 to 2 land. It is recognised that land categorised as LUC classes 1 to 3 is a lot more extensive in its geographic coverage than LUC classes 1 to 2 land (approximately 14 per cent and 5 per cent of New Zealand's land respectively<sup>20</sup>) and that LUC class 3 land is defined as having “moderate physical limitations to arable use”. However, the reasons LUC classes 1 to 3 land is preferred as a basis for identifying HPL are that:

- it is consistent with a number of regional approaches – using a smaller range of soil classes will reduce existing protection given to HPL or highly versatile soils in some regions or districts
- mapping LUC classes 1 to 3 land was broadly supported by stakeholders, including a number of soil-science experts

There are practical challenges in providing a different management and protection framework between LUC classes 1 to 2 land and LUC class 3 land.

The scale of LUC (1:50,000) makes it difficult to correctly identify the location of LUC classes 1 and 2 land, but it can be used to identify “large and geographically cohesive” areas of predominantly LUC classes 1 to 3 land.

The proposed NPS-HPL also allowed councils to identify areas of land that were not LUC classes 1 to 3, if these were highly productive in their region taking into account soil type, physical characteristics and climate of the area. This recognises that there are other classes of LUC land that can be highly productive. We recommend this approach is retained and that regional councils have some discretion to map other classes of LUC land as HPL when it is, or has the potential to be, highly productive.

## **Areas excluded from the HPL mapping process**

As discussed in relation to the transitional definition of HPL, we recommend the HPL mapping process only applies to General Rural and Rural Production zones, and therefore excludes Rural Lifestyle Zones, Future Urban Zones, and the full range of urban and special purpose zones (as defined in the [National Planning Standards](#)) from being mapped as HPL.

Excludes any area identified for future urban development (in future development strategies or other strategic planning documents).

Consideration was also given to whether certain areas recognised under [section 6 of the RMA](#) should be considered and potentially excluded when undertaking regional HPL mapping. This recognises areas recognised under section 6 of the RMA (eg, significant natural areas, Māori ancestral land, wāhi tapu and other sites of significance to Māori) have significant values and that it would be inappropriate to protect (and prioritise) these areas for land-based primary production under the NPS-HPL provisions. However, the preferred approach is to include

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<sup>20</sup> This excludes conservation land and urban areas.

provision for section 6 RMA matters through the NPS-HPL provisions guiding appropriate uses on HPL to separate out the technical HPL mapping process from value-judgements on how that land should be used. This is discussed further in [section C14](#) – protecting HPL from ‘inappropriate subdivision, use and development.

Following public consultation, extensive consideration was given to whether long-term or permanent constraints on the use of HPL for land-based primary production should be considered at HPL mapping stage. However, despite testing this numerous times, it was found to be unworkable and unnecessary, and presented significant risks to the HPL mapping process. As such, we recommend that this is not considered at the HPL mapping stage, but that instead there is a pathway to consider permanent or long-term constraints on the use of HPL for land-based primary production on a case-by-case basis, with the onus to establish these constraints being on the applicant (rather than the regional council). This is discussed under [section C15](#) – Exemptions for highly productive land subject to permanent and long-term constraints.

## Recommendations

### Recommendations

- A. The NPS-HPL requires regional councils to map land as HPL if the land:
  - is predominately LUC classes 1, 2 or 3 land
  - forms a large and geographically cohesive area
  - is in a General Rural or Rural Production zone (or equivalent zone).
- B. The HPL mapping process excludes areas identified for future urban development and any other zone than General Rural and Rural Production.
- C. The NPS-HPL allows regional councils to map other classes of LUC land as HPL where it is, or has the potential to be, highly productive in that region, having regard to the soil type, physical characteristics and climate of the area.

### Ministers’ decisions:

Agree

## 12 Urban rezoning

### Proposal consulted on

Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included a draft policy (Policy 3: New urban development and growth on highly productive land) ie, when a proposal to rezone rural land to urban should be allowed onto HPL. The intent of the proposed NPS-HPL was not to prevent urban rezoning from occurring on HPL, recognising that this is not practicable for many urban centres across the country which are largely or completely surrounded by HPL. Rather, the intent is to provide clear direction that urban rezoning should avoid HPL when other feasible options exist on non-HPL, or on relatively less productive HPL. It is also intended to ensure there is a robust and transparent assessment of alternatives, benefits and costs when urban rezoning is proposed on HPL.

To realise this, the proposed NPS-HPL included a directive policy to avoid urban rezoning on HPL, unless:

- there is shortage of development capacity to meet demand
- it is demonstrated that HPL is the most appropriate option to provide that development capacity based on:
  - whether the benefits (environmental, economic, social and cultural) from allowing urban expansion on highly productive land outweigh the benefits of the continued use of that land for primary production; and (ie, an assessment of benefits and costs)
  - the feasibility of alternative options and locations to provide for the demand.

The policy intent was that these considerations form a key focus of the section 32 evaluation for proposed plan changes for urban rezoning onto HPL.

## **Key issues from submissions**

The key issues identified through submissions and subsequent analysis are:

- whether the spatial extent of LUC land subject to the urban rezoning test should be reduced
- the relative strength and flexibility of the policy, and how the tests and requirements for urban rezoning onto HPL should be applied
- how to balance the NPS-UD requirements to provide sufficient development capacity with the protection of HPL
- clarifying the requirements to assess alternative locations and options
- clarifying the requirements to assess benefits and costs.

## **Analysis**

### **Reducing the spatial extent of area subject to the urban rezoning tests**

The urban rezoning policy included in the proposed NPS-HPL discussion document applied to LUC classes 1 to 3 land. Submitters questioned whether the spatial extent of LUC land subject to the urban rezoning tests should be reduced. An option put forward was whether the urban rezoning tests could be limited to LUC class 1 only, with a small-scale buffer area. A reduction of LUC land where the urban rezoning test would be applicable was described by submitters as the best approach to ensuring the NPS-HPL and NPS-UD are complementary. We have considered how this would work both in terms of meeting the policy intent and in practice.

Most of our urban areas are located near areas with versatile soils, including our major urban centres of Auckland, Hamilton, Tauranga, Christchurch and Queenstown. Limiting the extent of LUC, subject to the urban rezoning tests to LUC class 1, with a buffer, would be a small-scale area only and problematic to implement (LUC 1 is only 0.7 per cent of land in Aotearoa). This approach would provide a lower level of protection than is currently in force for most major urban centres and other urban areas across Aotearoa. Given the issue of loss of HPL, a reduction of the spatial extent contrasts and conflicts with the original and current policy intent of the NPS-HPL to protect the most productive land in Aotearoa, which generally corresponds with LUC classes 1 to 3. Additionally, in this instance, we do not consider it appropriate to reduce existing protections for HPL in light of the rapid loss of this land.

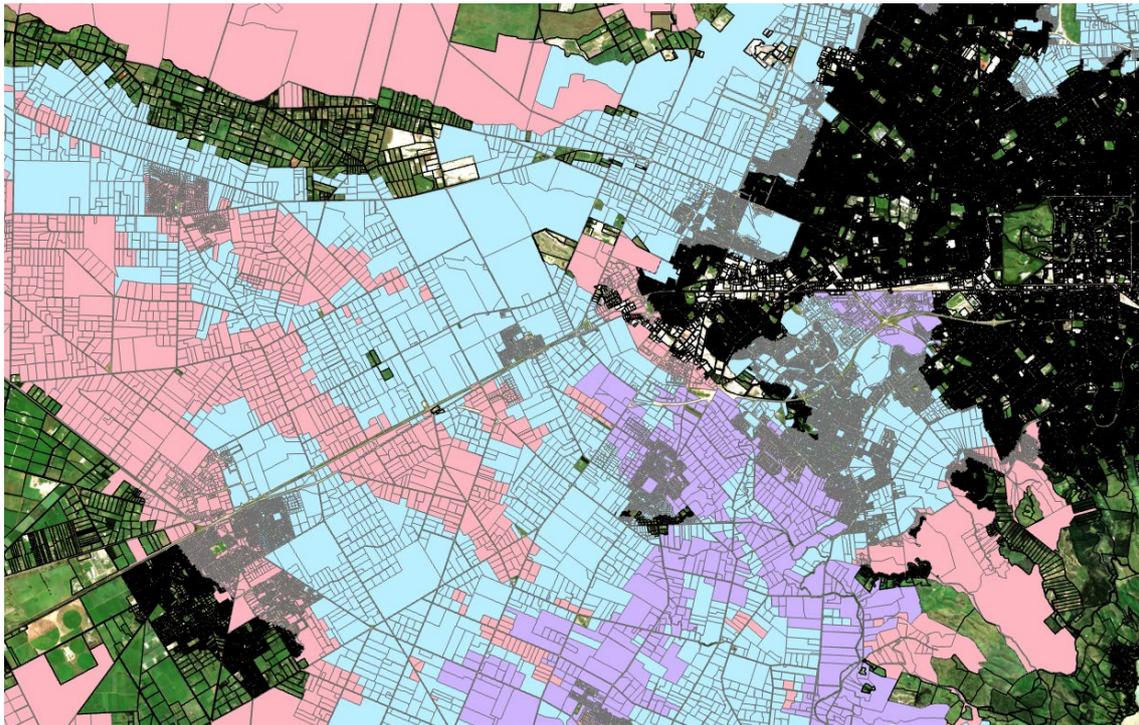
Reducing the spatial extent of area subject to the urban rezoning tests to only the most elite soils (eg, LUC class 1, with a buffer only) also creates other issues, not limited to the those listed below.

- The known locations of LUC class 1 land can change when the scale of LUC mapping is refined, or better-quality data is used in the assessment.
- LUC class 1 land is not always surrounded by land which would make a good buffer if the spatial extent were to be reduced, eg, LUC class 2.
- Some districts have very limited to no LUC class 1 land and in these cases the best HPL might be LUC classes 2, 3, or greater. Reducing the spatial extent for the urban rezoning tests means that there will be areas across Aotearoa where HPL has no protection from urban rezoning, meaning the limited resource can be permanently lost
- A reduced spatial extent would require targeted protection of HPL through a tiered approach to mapping within each region – this would be a more complicated approach that would be less effective in protecting HPL. Targeted mapping may result in small islands of LUC class 1 land that cannot be used productively due to reverse sensitivity issues, for example.

Following submissions, further analysis has been completed that sought to identify urban areas relative to the location of LUC classes 1, 2 and 3. The analysis has shown that reducing the amount of land subject to the urban rezoning tests (eg, LUC class 1 only) will not create better alignment with the NPS-UD and, instead, may result in greater tensions with the NPS-UD and perverse outcomes in practice. The NPS-UD is very directive about enabling well-functioning urban environments, focusing on centres, urban areas, and areas with good accessibility to services and amenities. The risk with reducing the spatial extent of areas subject to the tests, based on the analysis, is that, all other considerations being equal, LUC class 1 and/or classes 1 and 2 would be avoided. For some urban centres, this could encourage development to occur in areas that are less likely to result in well-functioning urban environments or have higher infrastructure costs.

For example, the area to the west of Christchurch is predominantly constrained by LUC class 2, with LUC class 3 occurring further out. Reducing the extent of mapped HPL would encourage development on the areas that are mapped red in Figure 1 below, while still restricting development in the blue and purple areas.

**Figure 1: Parcels affected by different approaches to mapping LUC, Christchurch West and Rolleston**



Officials consider that a reduction of the spatial extent of areas subject to the urban rezoning tests is not required and recommend that the approach of applying the tests to the transitional definition of HPL and mapped HPL is retained. The way the urban rezoning tests are intended to work, and recommended changes to the policy (discussed in the sections below), mean that the class of soil will not be the only factor determining where urban rezoning should go, as other factors will also influence where urban rezoning occurs. The key outcome is to provide sufficient development capacity to meet demand and achieve a well-functioning urban environment. As part of achieving this, the tests will require consideration of different options, with different impacts on HPL, including intensification of urban areas, and development on land that is not-HPL and on HPL with relatively less productive soils (eg, LUC class 3 compared to LUC classes 1 or 2).

### **Strength and flexibility of urban rezoning policy and tests**

In terms of the overall strength and flexibility of the urban rezoning policy in the NPS-HPL, feedback from submitters reinforced the position outlined in the proposed NPS-HPL as part of the discussion document – that there needs to be some flexibility in the NPS-HPL to allow for urban rezoning onto HPL in appropriate circumstances. This recognises that many urban centres are highly constrained in terms of where they can grow in relation to HPL and carefully planned urban rezoning onto HPL is justified in certain circumstances. However, submitter feedback also confirmed the need to strengthen and clarify the tests for urban rezoning to be located on HPL, to ensure the desired outcomes are achieved. These tests also need to be aligned with the NPS-UD, to ensure they do not undermine the ability of councils to meet their obligations under that NPS.

Accordingly, officials recommend that the NPS-HPL is amended to be clear that councils retain flexibility to allow for urban rezoning in certain circumstances, and clarifies the tests and requirements to ensure urban rezoning can occur where needed. The expectation is that if there is no other reasonable option for urban rezoning within the same locality that will provide

the same market product and outcomes, urban rezoning should be able to meet the urban rezoning tests and be supported on HPL. We also recommend some amendments to the policy to ensure it is aligned with the objectives in the NPS-UD requirements to provide sufficient development capacity at all times, achieve competitive land markets and a well-functioning urban environment. Specifically, officials recommend that NPS-HPL urban rezoning policy is refined to allow urban rezoning onto HPL where the following three tests are met:

- Step 1: urban rezoning is required to provide ‘sufficient’ development capacity to meet demand for housing and business land to give effect to the NPS-UD
- Step 2: there are no other reasonably practicable and feasible<sup>21</sup> options for providing at least sufficient development capacity within the same locality and market, while achieving a well-functioning urban environment
- Step 3: 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.

These steps are discussed further below in Providing sufficient development capacity. Steps 1 and 2 are aligned with NPS-UD requirements to provide sufficient development capacity and will ensure the NPS-HPL does not prevent councils from meeting those requirements. Steps 2 and 3 are strongly linked to existing requirements in the RMA for section 32 evaluations to identify reasonably practicable options and assess the benefits and costs (environmental, economic, social and cultural) of proposals, including tangible and intangible values.

## Providing sufficient development capacity

A key objective of the NPS-UD is to ensure councils provide ‘sufficient’ development capacity to meet demand over the short, medium and long term. Sufficient development capacity has a specific meaning set out in [clauses 3.2 and 3.3 of the NPS-UD](#). To be sufficient to meet demand for housing,<sup>22</sup> development capacity must be:

- **plan enabled** – zoned in operative district plan (short term), zoned in operative or proposed district plan (medium term), zoned or identified in future development strategies or other strategic planning document (long term) (clause 3.4)
- **infrastructure ready** – there is existing infrastructure (short term), infrastructure funding is identified (medium term), or infrastructure identified in infrastructure strategy in long-term plan (long term) (clause 3.4)
- **feasible** – it is commercially viable to a developer (clause 3.26)
- **reasonably expected to be realised** – the development capacity must be likely to be developed and taken up based on analysis of past trends, future development intentions and uptake of different housing types. For example, there may be ‘theoretical’ development capacity as intensification that is not being taken up and this may justify some greenfield growth. Therefore, the existence of theoretical development capacity available as intensification will not prevent urban rezoning on HPL if this is not being realised. (clause 3.26)

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<sup>21</sup> ‘Feasible’ would have the same meaning as set out in clauses 3.2 and 3.3 of the NPS-UD.

<sup>22</sup> The NPS-UD includes similar, but slightly different methods, to determine sufficient development capacity for business land.

- **competitiveness margins** – in addition, for tier 1 and tier 2 councils, the development capacity must include additional competitiveness margins over and above the expected demand – an additional 20 per cent for short-to-medium term and 15 per cent for long term (clause 3.22).

Overall, it is expected that these requirements will require councils to provide significantly more development capacity than what was previously required under the National Policy Statement on Urban Development Capacity 2016 – both upwards and outwards. The NPS-UD requirements are clear and directive, and must be given effect to by councils. As such, the NPS-HPL must align with these requirements and accommodate urban rezoning in certain circumstances to ensure the two instruments do not conflict.

## Assessment of alternative locations and options

The second requirement in the NPS-HPL that must be met before urban rezoning can occur onto HPL relates to the assessment of alternative locations and options. Feedback from submitters emphasised the need for this assessment to be more specific and robust, and to also ensure alternatives cannot be discounted on purely financial (feasibility) reasons, particularly as it will generally always be cheaper to build on flat, fertile land.

To better achieve the policy intent, we recommend that the assessment of alternative locations and options for urban rezoning is refined to:

- require plan-change proponents to demonstrate that there are no other **reasonably practicable and feasible options** for providing at least **sufficient development capacity** in the same **locality and market** while achieving a **well-functioning urban environment**.
- require the territorial authority to consider a range of reasonably practicable options for providing the required development capacity, including greater intensification in existing urban areas, rezoning of non-HPL land as urban and rezoning different HPL that has a relatively lower productive capacity (ie, consider if it is possible to rezone LUC class 3 land rather than LUC classes 1 or 2 land while still providing sufficient development capacity and achieving a well-functioning urban environment).

The wording ‘reasonably practicable’ is aligned with the requirement to assess reasonably practicable options in section 32 evaluations. Recent case law on ‘reasonably practicable’ has emphasised that this is not an absolute test. Effectively the test is an objective ie: Can the person reasonably implement the other options?<sup>23</sup> The additional reference to ‘feasible’ options aligns with the NPS-UD definition of feasible. It recognises that being commercially viable is critical for any development to progress; including reference to feasible in the policy will avoid the potential risk of councils requiring developers to assess options that are not commercially viable.

It is considered that the combination of the terms ‘reasonably practicable’ and ‘feasible’ provides a balanced test that will not result in options being discounted purely on financial grounds, but still recognise that the commercial viability of a project is a critical factor to consider when undertaking an overall weighing exercise.

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<sup>23</sup> *Royal Forest and Bird Protection Society of New Zealand Incorporated v Whakātane District Council* [2017] NZEnvC 51. [https://www.whakatane.govt.nz/sites/www.whakatane.govt.nz/files/documents/documents-section/council-plans/operative-district-plan/environment\\_court\\_decision2017nzenvc051\\_0.pdf](https://www.whakatane.govt.nz/sites/www.whakatane.govt.nz/files/documents/documents-section/council-plans/operative-district-plan/environment_court_decision2017nzenvc051_0.pdf)

It is also proposed to limit the requirement to consider other ‘reasonably practicable and feasible options’ to those in the same ‘locality and market’. This is to provide some guidance to councils on the required scope of options assessments, particularly for territorial authorities with large geographic areas. It is intended that these terms will provide greater direction on the type of assessment required and prevent councils requesting that developers undertake an exhaustive analysis of all potential options that ultimately cover different markets and deliver different outcomes than the proposal. If this was to occur, it would undermine the NPS-UD and, in many circumstances, likely stop any urban rezoning occurring altogether.

The requirement to still achieve a ‘well-functioning urban environment’ recognises that this is a key objective in the NPS-UD and confirms the policy intent that the protection of HPL should not create negative urban outcomes. It clarifies that factors like urban form, cohesion and accessibility are all important and relevant considerations when assessing options to provide the required development capacity. For example, while it may be practicable to ‘leap-frog’ HPL on the outskirts of an urban centre, this may not be desirable for a range of reasons (eg, connectivity, infrastructure) and the NPS-HPL would allow such matters to be considered as part of the overall assessment of options.

It should be noted that the reasonably practicable options that must be considered in clause 3.6(2) of the NPS-HPL must still meet the tests of clause 3.6(1) to be a viable urban rezoning alternative. For example, an option to rezoning LUC 3 land instead of LUC 1 or 2 land would not be a reasonably practicable option if it was unable to achieve a well-functioning urban environment – meeting the criteria in clause 3.6(1) and aligning with the NPS-UD are still the key factors of the clause that will determine where urban zoning occurs.

## **Assessment of benefits and costs**

We recommend that the NPS-HPL specifically requires the urban rezoning assessment to consider environmental, social, cultural and economic costs and benefits, including the long-term costs associated with the loss of land-based primary production, as well as tangible and intangible values. This will help ensure that wider benefits of HPL to future generations are considered through these assessments and the application is not limited to an economic argument based purely on a highest land-value approach.

As a final safeguard, we recommend including a clause stating that territorial authorities must take measures to ensure that the spatial extent of any urban zone covering HPL is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment. This ensures that any HPL rezoned for urban purposes is used as efficiently as possible and is consistent with the direction of the NPS-UD.

## Recommendations

### Recommendations

- A. Amend the urban rezoning clause for tier 1 and 2 local authorities to provide three sequential tests that must be met before urban rezoning can occur on HPL:
- the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the NPS-UD; and
  - 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
  - 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
- B. Amend the implementing clause relating to urban rezoning to require the territorial authority to consider a range of reasonably practicable options for providing the required development capacity, including:
- greater intensification in existing urban areas; and
  - rezoning of land that is not HPL as urban; and
  - rezoning different HPL that has a relatively lower productive capacity.
- C. Allow territorial authorities that are not tier 1 or 2 to rezone HPL for urban use if the same tests in clause 3.6(1) of the NPS-HPL are met, except without specific reference to the NPS-UD.

Include clause requiring territorial authorities to 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.

### Ministers' decisions:

Agree

## 13 Subdivision and rural lifestyle development

### What was consulted on and policy intent

Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included a draft policy (Policy 4: Rural subdivision and fragmentation) focused on the management of rural subdivision and fragmentation of HPL. The policy intent of the NPS-HPL is to build on current best practice in the management of rural subdivision; this recognises that many district plans include effective provisions to manage fragmentation of productive rural areas, including specific provisions to manage subdivision on HPL. The proposed NPS-HPL was intended to ensure councils take a more proactive approach to managing fragmentation of HPL across Aotearoa, with a particular

focus on managing rural lifestyle development<sup>24</sup> and controlling subdivision to maintain the productive capacity of HPL, including by:

- setting minimum lot-size standards for subdivision on HPL
- introducing incentives and restrictions to retain and increase the productive capacity of HPL
- directing new rural lifestyle development away from HPL.

Greater national direction on this issue is intended to help alleviate some of the pressures on HPL for rural lifestyle development by providing opportunities for this development on less productive land.

## Key issues from submissions

The key policy issues identified in submissions and through subsequent analysis are:

- how strong should the NPS-HPL provisions be to avoid or manage rural lifestyle development on HPL
- should there be national direction and guidance on minimum lot-size standards for subdivision on HPL
- how to manage cumulative effects of rural lifestyle developments on HPL.

## Analysis

### Strength of NPS-HPL provisions to avoid or manage rural lifestyle development on HPL

There was strong feedback in submissions that the NPS-HPL should provide a more robust framework to manage lifestyle development compared to how it manages urban rezoning, for a range of valid reasons. Key issues raised during consultation associated with rural lifestyle development on HPL include it being an inefficient use of land, taking land out of land-based primary production, providing fewer community benefits, acting as a barrier to future urban rezoning and development, and creating reverse sensitivity effects. Of particular importance, is the fact that rural lifestyle development poses a much greater threat to HPL nationally than urban rezoning or development, as evidenced in the Ministry for the Environment's *Our land 2021*.<sup>25</sup> While the outward growth of urban centres between 1990 and 2008 occurred on 0.5 per cent of New Zealand's LUC classes 1 and 2 land, analysis in the same study shows that rural lifestyle zones occupied 10 per cent of all LUC 1 and 2 land.<sup>26</sup> Strong regulation of rural lifestyle development through the NPS-HPL is therefore warranted.

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<sup>24</sup> The proposed NPS-HPL that was consulted on included a draft definition of 'rural lifestyle development' as follows: "subdivision and development where the primary purpose is rural-residential or rural lifestyle use within a rural environment with a lot smaller than those of the General Rural and Rural Production zones, typically in the range of 0.2-8 hectares."

<sup>25</sup> If fragmentation of all HPL is considered (LUC classes 1 to 3), 5 per cent of HPL had been subdivided into lifestyle blocks (parcels between 2 and 8 hectares in size) in 2019. This is equivalent to 173,800 hectares (a 59 per cent increase) since 2002.

<sup>26</sup> Andrew R & Dymond JR. 2013. Expansion 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.

The key policy issue is whether the NPS-HPL should include a strong ‘avoidance’ approach for rural lifestyle development or whether some degree of flexibility is required. Recent case law<sup>27</sup> building on the earlier King Salmon<sup>28</sup> Supreme Court decision has confirmed that strong ‘avoidance policies’ will inevitably result in prohibited activities, so the use of such wording needs to be carefully considered. Officials recommended approach – informed by strong submitter feedback and evidence that demonstrated the ongoing, incremental loss of HPL to rural lifestyle development – is to provide strong policy direction that subdivision or rural lifestyle development should be avoided in most cases and that the NPS-HPL should set out very specific circumstances where subdivision of HPL could be appropriate.

There are two ways rural lifestyle development could occur on HPL – a territorial authority could rezone HPL as a Rural Lifestyle Zone, as per the National Planning Standards, or a rural lifestyle subdivision could be approved within a General Rural or Rural Production Zone (or equivalent zone).

With respect to rezoning HPL as a Rural Lifestyle Zone, we recommend that the strong ‘avoidance’ approach discussed above is adopted, with a very clear implementation policy that territorial authorities must **avoid** rezoning HPL as rural lifestyle, except in situations where the HPL cannot support economically viable land-based primary production (discussed further in [Section 15](#) of this report). This means that unless a piece of land can meet the tests for land subject to permanent or long-term constraints outlined in clause 3.10 of the NPS-HPL, the rezoning of HPL for rural lifestyle development will not be able to occur. This recognises that encouraging rural lifestyle subdivision of HPL through specific zoning should be avoided unless there are proven permanent or long-term constraints on using the HPL for land-based primary production refer to further discussion on long term and permanent constraints below.

With respect to rural lifestyle subdivisions occurring in General Rural and Rural Production zones, we recommend including a strong ‘avoidance’ policy and associated implementation clause that makes it clear that subdivision of HPL is to be avoided except in the following scenarios:

- the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term
- 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
- the land is not economically viable for land-based primary production (discussed further in [Section 15](#) of this report)

Note that the scope of clause 3.8 has been expanded out, so that it manages all types of subdivision on HPL, not just rural lifestyle subdivision. We have recommended this restructure so that all subdivision matters are considered under one clause, and all land-use matters are considered under a separate clause (clause 3.9 discussed in [Section 14](#) below), which is considered to be easier to interpret from a user perspective. It also recognises the difficulties in defining ‘rural lifestyle’ subdivisions and that subdivision can be a lot larger than a typical rural lifestyle zone size (eg, 1 to 2 hectares) and still compromise the productive capacity of HPL.

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<sup>27</sup> *Environmental Defence Society Incorporated v Otago Regional Council* [2019] NZHC 2278.

<sup>28</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Co Limited* [2014] NZSC 38.

This approach to managing subdivision on HPL is preferred, as it provides clear policy direction that subdivision of HPL should generally be avoided while providing pathways for subdivisions in specific circumstances when this will not undermine the NPS-HPL objective. This avoids the risks associated with an absolute avoidance approach for subdivision and rural lifestyle development on HPL, which could lead to some unintended outcomes. It recognises that not all subdivision creates rural lifestyle development, as subdivision includes activities such as a boundary adjustment or some leases that can still retain the overall productive capacity of the subject land in the long term. As discussed above in [section 8](#), the NPS-HPL also provides for subdivision of 'specified Māori land' including partitioning orders made under Te Ture Whenua Māori Act 1993. Enabling subdivision for 'specified infrastructure' and defence facilities is a pragmatic recognition that these activities often have 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 (see further discussion of these activities from a land-use perspective in [Section 14](#) of this report).

Collectively, these provisions are expected to be effective in addressing the cumulative loss of HPL to rural lifestyle development and fragmentation through subdivision – the key issue the NPS-HPL seeks to address. Officials also recommend that guidance be developed to support the effective implementation of these provisions, including examples of subdivision designs and rules that can maintain the productive capacity of HPL.

Officials acknowledge that this stronger approach for subdivision and rural lifestyle development on HPL will result in opportunity costs for some landowners. However, we consider that these costs are justified to protect a finite resource from an inefficient land use that has been demonstrated to be the biggest threat to this resource nationally. The flexibility to subdivide HPL where productive capacity of HPL is retained or where land-based primary production is not economically viable also helps to reduce the potential opportunity costs associated with the NPS-HPL. Officials also note that there is generally the ability to satisfy demand for rural lifestyle development away from HPL at the district level through rural lifestyle zoning and more enabling subdivision rules on non-HPL, which will be addressed through guidance.

In terms of existing Rural Lifestyle Zones, officials recommend that these are excluded from transitional definition of HPL and the HPL mapping process as discussed above. This recognises that councils have already identified these areas as suitable for rural lifestyle development and there are development rights associated with that land which the NPS-HPL should not undermine.

In terms of the potential for the NPS-HPL provisions to differentiate between rural residential and typical rural lifestyle development, the ability to include rural zones in district plans in accordance with the National Planning Standards is limited to General Rural, Rural Production, and Rural Lifestyle zones. As such, there is no ability through the NPS-HPL to provide a distinct and more flexible policy framework for rural residential zones on HPL compared to typical rural lifestyle development, because it is unable to anticipate how territorial authorities may use special purpose zones, precincts or overlays to customise how their rural environment is managed.

## **Subdivision minimum lot-size standards and other methods**

Submitters generally supported more national direction and guidance on appropriate minimum lot-size standards for subdivision, but there were mixed views on whether this should be through the NPS-HPL or non-statutory guidance. Key benefits of specifying a

nationally applicable minimum lot-size standard in the NPS-HPL include greater consistency and certainty, clearer direction for councils. and reduced implementation costs, time and effort for councils. However, there are also some fundamental key challenges and risks. These include the wide variability in the amount of land needed for different land-based primary production activities to be productive and the varied nature of land-based primary production across Aotearoa. As such, there is a risk that a nationally applicable minimum lot-size standard for subdivision may exclude or restrict certain forms of land-based primary production and not sufficiently allow for local context and variation. It may also have other unintended consequences, including the very likely risk that a compliant subdivision is deemed to be an appropriate use of HPL, regardless of whether it is a productive use of HPL or not.

Accordingly, officials recommend that the NPS-HPL does not include any specific provisions relating to appropriate subdivision minimum lot-size standards on HPL, and non-statutory guidance is developed on how to effectively manage subdivision on HPL. Officials recommend that this guidance is broader than appropriate minimum lot-size standards and also outlines other methods to manage subdivision and minimise the impact on the productive capacity of HPL (eg, zoning, clustering development, setbacks).

## Cumulative effects

The ongoing, cumulative loss of HPL to rural lifestyle development is one of the most significant issues that the NPS-HPL seeks to address. Officials therefore recommend that the NPS-HPL includes clear direction for councils to avoid if possible, or otherwise mitigate, the cumulative effects of rural lifestyle developments on the availability and productive capacity of HPL in their districts. We also recommend that the NPS-HPL provide clear direction to avoid, or otherwise mitigate, reverse sensitivity effects from subdivision and rural lifestyle development on surrounding land-based primary production activities.

## Recommendations

### Recommendations

- A. Include clear policy direction in the NPS-HPL to avoid the rezoning of HPL as Rural Lifestyle Zone unless it is demonstrated that the land is not economically viable for land-based primary production (discussed further in [Section C15](#) of this report).
- B. Include clear policy direction in the NPS-HPL to avoid subdivision of HPL unless the subdivision can meet one of following scenarios:
  - the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term
  - 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
  - the land is not economically viable for land-based primary production (discussed further in [Section 5](#) of this report)
- C. Exclude existing Rural Lifestyle Zones from the transitional definition of HPL and the HPL mapping process.

- D. Provide guidance on appropriate minimum lot-size standards and other methods to manage subdivisions on HPL and maintain the overall productive capacity of HPL, drawing on existing best practice and case studies where appropriate.
- E. Include policy direction in the NPS-HPL to avoid, or otherwise mitigate, the cumulative loss of the availability and productive capacity of HPL and to avoid, or otherwise mitigate, reverse sensitivity effects on land-based primary production.

**Ministers' decisions:**

Agree

## 14 Protecting HPL from inappropriate use and development

### What was consulted on and policy intent

Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included a draft policy (Policy 2: Maintaining highly productive land for primary production) that would require councils to identify other “inappropriate” subdivision, use and development on HPL, and that includes methods to protect HPL from such subdivision, use and development. This recognises that there are other forms of subdivision, use and development in addition to urban rezoning or development and rural lifestyle development that can be inappropriate on HPL, particularly those uses that are not reliant on the soil resource, have no functional or operational need to be located on HPL, and can be located elsewhere. The proposed NPS-HPL did not specifically define ‘inappropriate’ subdivision, use and development of HPL on the basis that there needs to be some flexibility for councils to define what is appropriate and inappropriate within their particular local context.

Subdivision is addressed in [section C13](#) above; this section focuses on protecting HPL from inappropriate use and development.

### Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- there is a need to provide more direction and certainty on other inappropriate use and development on HPL.
- other, non-primary production activities should be allowed on HPL in certain circumstances. Pathways need to be provided for the specific types of activities that are appropriate and clarify under what circumstances they should be allowed on HPL.

### Analysis

Officials recognise the importance of providing councils with some flexibility in how they identify what is considered to be ‘inappropriate’ use and development on HPL, given the variable pressures and specific activities affecting HPL throughout the country. However, submitter feedback confirms that there would be benefit in providing additional direction and guidance to help councils define and manage ‘inappropriate’ use and development on HPL.

This will assist with implementation, provide greater clarity and consistency, and help achieve the desired outcomes. The key policy issue is whether this is best delivered through:

1. non-statutory guidance
2. amendments to the NPS-HPL to include criteria on the types of use and development that may be appropriate on HPL
3. listing specific inappropriate use and development on HPL within the NPS-HPL.

The recommended approach is Option 2 above, supported by non-statutory guidance. Option 2 will provide additional clarity and direction to help councils protect HPL from “inappropriate use and development” while still providing a degree of local flexibility. Rather than set out an exhaustive list of activities, officials recommend that the NPS-HPL provide criteria that must be met for ‘other’ use and development to be classified as ‘not inappropriate’ on HPL, and therefore allowed in certain circumstances. This will help to avoid the risk of unintended outcomes associated with listing specific ‘inappropriate’ activities, which may actually be appropriate within a particular context. It also ensures that councils have some flexibility to consider other (non-productive) uses of HPL and provide for these alternative uses when they deliver wider environmental, economic, social and cultural benefits.

Specifically, officials recommend that the clause 3.9(2) of the NPS-HPL provide clear direction that other use and development should be avoided on HPL unless one of the following applies (noting subdivision is addressed in [section C13](#) above):

- 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.*

This list above includes what we consider to be appropriate use and development on HPL that the NPS-HPL should provide clarity on. We consider this approach will provide greater certainty and consistency in implementation for councils, industry and landowners, and will reduce the risk of inappropriate use and development from occurring on HPL. Councils will also be directed to make changes to their plans to avoid other use and development that does not meet the criteria above. In providing for other use and development on HPL, we also recommend that clause 3.9(3) of the NPS-HPL require territorial authorities to take measures to ensure that use or development of HPL:

- 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.

## Recommendations

### Recommendations

- A. The NPS-HPL provides clear policy direction to protect HPL from inappropriate use and development.
- B. The NPS-HPL sets out criteria for the types of use and development that may be appropriate on HPL as follows:
  - 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.
- C. The NPS-HPL requires territorial authorities when managing other use and development on HPL to take measures to:
- \* minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of HPL in their district
  - \* avoid if possible, or otherwise mitigate, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

**Ministers' decisions:**

Agree

## 15 Exemption for HPL subject to permanent and long-term constraints

### What was consulted on and policy intent

This proposal relates to the recognition of permanent or long-term constraints on the use of HPL for land-based primary production. The pathways for subdivision, use and development on HPL were central to a number of the policies consulted on in the [proposed NPS-HPL discussion document](#), as discussed in earlier sections of this report. In particular, the consideration of water quality issues or constraints that may limit the use of the land for primary production (particularly for more intensive forms of primary production) at the mapping stage (Policy 1) but also in maintaining highly productive land for primary production (Policy 2).

### Key issues from submissions

Clause 3.10 has been drafted in response to the submissions received on permanent or long-term constraints and how they might influence the HPL identification process. The feedback on permanent and long-term constraints has been covered in [Section C11](#) of this report.

### Analysis

During exposure draft testing and subsequent engagement, it was extensively tested whether councils should be required to exclude LUC classes 1 to 3 land from being mapped as HPL, where this is not suitable for land-based primary production due to permanent or long-term constraints. After detailed consideration and testing this with stakeholders, 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. It would also mean that potential constraints on using HPL for land-based primary production would only be able to be considered during the mapping process, which would be reviewed infrequently (likely only once every ten years). If a constraint arises in the future on HPL, then there will be no pathway to consider alternative land uses on HPL as the constraint did not exist at the time of mapping.

The recommended approach is to allow such constraints to be considered on a case-by-case basis, where the onus is on the landowner (rather than the regional council) to demonstrate that the land is subject to long-term or permanent constraints such that the land is unsuitable

for viable land-based primary production, thereby allowing alternative subdivision, use and development on that land to be considered. This will avoid the potential risk of land being 'locked' into land-based primary production on HPL, where that land is not economically viable to be used for land-based primary production due to constraints on the use of that land (for example, restrictions on nutrient use, water allocation, coastal inundation). It also means that a potential constraint can be considered as and when it arises, which may be years after the mapping process is complete.

Landowners seeking to use their HPL for a use other than land-based primary production through this pathway will be required to demonstrate that they have considered a range of reasonably practicable options for addressing identified constraint(s) and that land-based primary production on the land is not 'economically viable' for at least 30 years because of the permanent or long-term constraint(s). The potential economic benefit of using the HPL for purposes other than land-based primary production will not be able to be taken into account in the assessment of the "economic viability" of the land and the size of the parcel cannot be, of itself, a determinant of a permanent or long-term constraint.

Additionally, under clause 3.10(1)(b) and (c), the subdivision, use and development may only be allowed when the territorial authority is satisfied that:

- 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.

## Recommendations

### Recommendations

- A. The NPS-HPL includes a pathway for subdivision, use and development on HPL, where the applicant can demonstrate that the HPL is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the HPL, and provides that this assessment must:
  - demonstrate that there are permanent or long-term constraints on the productive capacity of the HPL and that the size of a landholding in which the HPL occurs is not of itself a determinant of a permanent or long-term constraint.
  - satisfy the territorial authority that the subdivision, use or development avoids any significant loss of HPL in the district, avoids fragmenting large and cohesive areas of HPL and can avoid if possible, or mitigate, reverse sensitivity effects
  - satisfy the territorial authority that the environmental, social, cultural and economic

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

- consider a range of reasonably practicable options for addressing identified constraints (eg, alternate forms of primary production, improved land management strategies, boundary adjustments etc)
- not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production
- must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs
- must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.

**Ministers' decisions:**

Agree

## 16 Prioritising HPL for land-based primary production

### What was consulted on and policy intent

Once HPL has been identified, the intent of the NPS-HPL is for councils to maintain that land for land-based primary production. To achieve this, chapter 5 of the [proposed NPS-HPL](#) included a draft policy (Policy 2: Maintaining highly productive land for primary production) that would require councils to:

- prioritise the use of HPL for land-based primary production
- consider giving greater protection to areas of HPL that make a greater contribution to the economy and community.
- identify inappropriate subdivision, use and development of highly productive land; and
- protect highly productive land from the identified inappropriate subdivision, use and development.

The proposed NPS-HPL in the discussion document also recognised the potential to increase the productive capacity of HPL through reversing historic fragmentation. The intent was for this to be achieved through incentives such as transferable development rights. As such, the draft policy relating to subdivision (Policy 4) would require territorial authorities to include incentives in their district plans to increase the productive capacity of HPL.

### Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- how to prioritise land-based primary production on HPL
- whether the NPS-HPL should require greater protection of existing food hubs
- whether the NPS-HPL should require or encourage the use of incentives to maintain and increase the productive capacity of HPL.

## Analysis

### **Prioritising HPL for land-based primary production**

The intent of the NPS-HPL is for councils to prioritise areas of HPL for land-based primary production. Submitters were generally supportive of the intent of this policy, included in the proposed NPS-HPL, but some sought clarification on what “prioritise” means in practice and how this should be balanced alongside other competing priorities, eg, the NPS-UD. In practice, this is expected to be achieved through a combination of objectives, policies and rules that are more enabling of land-based primary production on HPL and through introducing greater restrictions on other activities, particularly other “inappropriate” and incompatible subdivision, use and development activities identified in accordance with NPS-HPL criteria.

We note that “prioritise” is not an absolute direction. Some land-based primary production activities may have adverse effects that are appropriate to manage through a resource consent process, even if they are best located on HPL (for example frost fans that are associated with viticulture).

The NPS-HPL does not prioritise any type of land-based primary production that occurs. There may be some situations where a particular form of land-based primary production may be prioritised over another, because of particular local characteristics. Given the NPS-HPL is agnostic of the type of land-based primary production, this prioritisation can still occur between different land-based primary production activities, provided it occurs for a valid resource management reason (and land-based primary production as a whole is still prioritised over other uses). An example could be a territorial authority prioritising a particular area of HPL for horticultural activity, or restricting forestry on areas where viticulture is prioritised.

As such, we recommend that the policy direction to prioritise HPL for land-based primary production is retained in the NPS-HPL, but with supporting guidance to clarify the policy intent and implementation approach.

### **Protecting areas that provide greater contribution to economy and community**

Policy 2 in the proposed NPS-HPL was intended to encourage councils to give greater protection to areas of HPL that make a greater contribution to the economy and community, ie, existing food hubs. This was framed as an optional matter for councils to “consider”, recognising that it may not be appropriate (or even possible) in some contexts. The expectation was that this would be applied to food hubs that are clearly generating numerous economic and social benefits, rather than requiring councils to undertake detailed assessments of the extent to which areas of HPL are contributing to the economy and community.

However, submitters identified a number of potential interpretation and implementation issues with the wording of the draft policy that could have unintended consequences and result in uncertainty and debate. There is also the risk that the implied focus on the current use of HPL may provide an avenue to argue that underutilised areas of HPL need not be protected. Accordingly, we recommend that the NPS-HPL does not include any policy direction to protect areas of HPL with greater economic and community benefits. Instead, this should be left to councils to determine when giving effect to the NPS-HPL based on their particular local context, supported by non-statutory guidance prepared by central government.

## **Incentives to increase the productive capacity of HPL**

Feedback from submitters highlighted the potential benefits of mechanisms such as transferable development rights and supportive amalgamation provisions to increase the productive capacity of HPL and provide for development rights in certain circumstances. However, submitters also highlighted a number of challenges and risks associated with these mechanisms and noted that they will not be suitable in all contexts.

Accordingly, we recommend that the NPS-HPL provide broad policy direction for councils to encourage opportunities to increase the productive capacity of HPL, without specifying how this should be done. However, we recommend that any incentives considered must not be inconsistent with any matter of national importance under section 6 of the RMA or any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020. This makes it clear that matters of national importance are not undermined by incentivising increases in the productive capacity of HPL, particularly with respect to outcomes for water, ie, an overly intensive use of HPL for dairying or horticulture could have adverse impacts on waterbodies. We recommend that non-statutory guidance is developed to encourage the use of these incentives in appropriate circumstances. It is recommended that this provide detailed guidance on different mechanisms, including when and in what context it may be appropriate to implement these, and highlight the potential benefits and risks to manage.

## **Recommendations**

### **Recommendations**

- A. Retain the policy direction to prioritise HPL for land-based primary production in the NPS-HPL, but with supporting guidance to clarify the policy intent and implementation approach.
- B. Do not proceed with the policy direction from the proposed version of the NPS-HPL to consider giving greater protection to areas of HPL with significant economic and community benefits, and instead provide non-statutory guidance on this matter.
- C. Amend the NPS-HPL to clarify that opportunities that maintain or increase the productive capacity of HPL can be encouraged but must not be inconsistent with any matter of national importance under section 6 of the RMA or any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020.

### **Ministers' decisions:**

Agree

## 17 Reverse sensitivity

### Proposal consulted on

Chapter 5 of the proposed [NPS-HPL in the discussion document](#) included a policy (Policy 5: Reverse Sensitivity) focused on managing reverse sensitivity effects on and adjacent to HPL.

The policy required territorial authorities do this by:

- identifying typical activities and effects associated with land-based primary production that should be anticipated and tolerated on HPL
- restricting new sensitive and incompatible activities on HPL
- establishing methods to manage reverse sensitivity such as setbacks and the design of developments
- avoiding or mitigating reverse sensitivity effects at HPL and residential/rural lifestyle zone interfaces.

The proposed NPS-HPL included a definition for “sensitive activities”<sup>29</sup>, based on existing practice. The expectation was that councils would then develop plan provisions to restrict certain sensitive or incompatible activities (eg, schools, retirement villages) on or adjacent to HPL to ensure these activities do not result in reverse sensitivity effects and constrain the operation of land-based primary production activities.

### Key issues from submissions

The key policy issues identified through submissions and subsequent analysis are as follows:

- the extent to which reverse sensitivity effects should be ‘avoided’ or ‘mitigated’.
- ensuring the policy does not require unnecessary plan changes.
- defining sensitive and incompatible activities.
- methods to manage reverse sensitivity effects.

### Analysis

We acknowledge that many councils already have specific plan provisions to manage reverse sensitivity effects within rural areas and some apply the ‘right to farm’ principle. As articulated in the NPS-HPL discussion document, the policy intent was to manage reverse sensitivity effects by building on current best practice and ensuring a more consistent and proactive approach nationwide. The intent was not to require unnecessary plan changes where existing plan provisions are consistent with, and give effect to, the NPS-HPL.

A key policy issue is whether the NPS-HPL should require incompatible subdivision, use or development on HPL to be avoided, or whether some degree of flexibility is required. Strong direction to avoid new incompatible activities on HPL is consistent with the intent of the NPS-HPL and recognises the strong feedback from many growers that reverse sensitivity is

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<sup>29</sup> Clause 5.5, Interpretation of the proposed NPS-HPL in the discussion document provides: “**Sensitive activity means** an education facility, community facility, residential activity, visitor accommodation, retirement village, health facility or hospital, marae.”

one of the key issues affecting their operations, where urban rezoning or development and lifestyle development encroach onto HPL. However, a strong 'avoid' policy could also unduly restrict potentially incompatible activities on HPL in some circumstances. Our recommended approach is for the NPS-HPL to provide clear direction that subdivision, use and development on HPL should avoid, if possible, or otherwise mitigate, potential reverse sensitivity effects on land-based primary production activities. As well as a specific reverse sensitivity implementation clause (clause 3.13), we also recommend the insertion of reverse sensitivity sub-clauses into other implementation clauses that provide pathways for non-productive subdivision, use and development of HPL (clause 3.8, 3.9 and 3.10). Officials recommend that the reference to sensitive activities is removed and guidance is developed on how to manage potentially incompatible subdivision, use and development on HPL, to provide flexibility to councils in how they choose to define these activities.

To manage interface issues, we recommend that the NPS-HPL provides clear direction that reverse sensitivity effects shall be avoided or otherwise mitigated when urban rezoning or development or rural lifestyle development is proposed adjacent to NPS-HPL. This makes it clear that the onus is on the new activity or development establishing adjacent to HPL to avoid or mitigate reverse sensitivity effects on HPL, while recognising that existing activities also have a responsibility to internalise their adverse effects to the extent practicable. Guidance on regulatory and non-regulatory methods to avoid and mitigate reverse sensitivity effects is also proposed to support the implementation of NPS-HPL provisions.

## Recommendations

### Recommendations

- A. Amend the reverse sensitivity clause 3.13 in the NPS-HPL to require territorial authorities to make changes to their district plans (as necessary) to include objectives, policies and rules to:
- B. identify the typical activities and effects associated with land-based primary production that should be anticipated and tolerated on HPL. (clause 3.9)
- C. ensure that subdivision, use and development on HPL avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities (this would be considered as part of clauses 3.8, 3.9 and 3.10).
- D. 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) (clause 3.6 and 3.7).

### Minister's decision:

Agree

# 18 Treaty of Waitangi (Te Tiriti o Waitangi) settlement commitments

## Intent

In addition to its obligations under the Te Tiriti o Waitangi (Treaty of Waitangi), the Crown has made a number of commitments to individual iwi through post-Tiriti settlement redress.

Officials have undertaken a Treaty Analysis which has informed the development of this NPS. When deciding on the proposals in this report, decision makers for this national policy statement will also need to have particular regard to certain claims settlement act matters, as highlighted further in this section.

## Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- the need for the Crown to engage with its Tiriti partners as the proposed NPS-HPL progresses
- expectation that councils will engage with iwi/hapū as implementation of the proposed NPS-HPL progresses.

## Analysis

### Crown obligation to give effect to principles of Te Tiriti

As part of the Crown, there is an obligation for the Ministry for Primary Industries and the Ministry for the Environment to ensure that the NPS-HPL is developed in a way that is consistent with the principles of Te Tiriti. These principles are generally agreed to include:

- Partnership – Both the Crown and Māori have a positive duty to act in good faith, fairly, reasonably and honourably towards each other.
- Active protection – The Crown has a positive duty to protect Māori property interests and taonga.
- Redress – Past wrongs give rise to a right to redress.

The principle of partnership requires Tiriti partners to act reasonably and with the utmost good faith towards each other. Acting in good faith in this context means taking the necessary steps to understand how the NPS-HPL affects Māori interests, and to make decisions informed by this knowledge. The principle of partnership also implies a role for Māori in decision making on issues that directly affect Māori interests. Necessarily, this will involve striking a balance between the rangatiratanga of Māori over the Māori estate and the Crown's right to govern.

The principle of partnership overlaps with that of active protection, which speaks to the Crown's obligation to actively protect Māori interests, including the exercise of rangatiratanga over taonga. As whenua is a key taonga for Māori, we need to be cognisant of not only protecting this resource, but also Māori interests in the resource more generally, ie, the ability for Māori to make decisions about the use of Māori land to meet their needs and aspirations.

The principle of redress is also an important consideration in the context of the NPS-HPL, given the potential of the policy to restrict certain land uses. It is therefore important to recognise and consider the potential impact that the NPS-HPL may have on past redress, for instance by placing further restrictions on the utilisation of land returned through a Treaty settlement process.

## **The need to ensure that Te Tiriti commitments are recognised and provided for**

The Crown has made commitments to individual iwi through Te Tiriti settlement redress (outlined in settlement deeds and claims settlement acts). These commitments require the Crown to “recognise and provide for” and “have particular regard to” certain post-settlement legal frameworks when exercising a function, power or duty under the RMA (including developing policy). Therefore, officials have been mindful that recommendations need to uphold and strengthen Te Tiriti in land-use planning, while allowing local authorities flexibility in managing their local arrangements (including future arrangements) and working with iwi and hapū to determine appropriate implementation.

We have identified the following Treaty claims settlement acts as containing provisions that require an assessment for the purposes of the NPS-HPL to consider whether there is an interaction or matters to be considered and provided for:

- Te Awa Tupua (Whanganui River) River Claims Settlement Act 2017
- Ngāti Rangī Claims Settlement Act 2019
- Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (Schedule 2) and Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (Part 2) – Te Ture Whaimana or Te Awa o Waikato/ Vision and strategy for the Waikato River
- Fiordland (Te Moana o Atawhenua) Marine Management Act 2005
- Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- Ngāti Manawa Claims Settlement Act 2012
- Ngāti Whare Claims Settlement Act 2012

The implications of these claims settlement acts in relation to the NPS-HPL is discussed in more detail in the Treaty analysis that has informed the development of this NPS-HPL. In general, it is acknowledged that in implementing the NPS-HPL councils will continue to recognise and provide for the intrinsic values identified in the relevant claims settlement acts. In deciding what is an appropriate use and development of land, councils would need to enable uses that are consistent with a matter of national importance (eg, section 6(e) of the RMA), activities that meet Māori cultural needs, specifically providing for “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” and “the protection of protected customary rights”.

The decision to exclude Tiriti settlement land and categories of “general land owned by Māori” from the NPS-HPL definition of specified Māori land (as discussed in BRF 2151) has been made to ensure fairness and reasonableness of Government policy and ensure that a different legal framework doesn’t apply to general (fee simple) land based on ownership of land.

## Conclusion

Officials have had particular regard to these Tiriti claims settlement acts. Officials consider the proposals to enable the use and development of specified Māori land, enable uses of HPL that are consistent with section 6(e) and (g), and involve tangata whenua in the implementation of the NPS-HPL are consistent with section 6(e), 6(g) and 7(a) of the RMA. In exercising the Crown's responsibility to balance competing rights and interests, some litigation risk associated with the definition of 'specified 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.

## Recommendation

### Recommendation

- A. When considering the policy recommendations in this report, have particular regard to matters in Te Tiriti o Waitangi (Treaty of Waitangi) claims settlement acts, as assessed above.

### Ministers' decisions:

Agree

## 19 Climate change and interaction between NPS-HPL and other national direction

This section summarises the key interactions between the NPS-HPL and other national direction instruments. More detailed analysis on these interactions can be found in [the section 32 evaluation report](#).

A number of RMA national direction instruments (proposed and existing) are expected to interact with the NPS-HPL. Officials recognise that interactions between these instruments and the NPS-HPL will need to be appropriately managed. In particular, objectives aimed at facilitating urban growth and development or the management of freshwater may compete with the NPS-HPL objective that seeks to ensure that HPL is protected for use in land-based primary production, both now and for future generations.

### What was consulted on and policy intent

The discussion document on the proposed NPS-HPL sought feedback on the following.

- Do you think there are potential areas of tension or confusion between this proposed National Policy Statement and other national direction (either proposed or existing)?
- How can the proposed National Policy Statement for Highly Productive Land and the proposed National Policy Statement on Urban Development best work alongside each other to achieve housing objectives and better management of the Highly Productive Land resource?

## Key issues from submissions

The key issue identified through submissions and subsequent analysis was:

- how the NPS-HPL would interact with other pieces of national direction (ie, National Policy Statement on Urban Development 2020 and National Policy Statement for Freshwater Management 2020, and climate-change obligations).

## Analysis

### Climate change

A key underlying objective of the NPS-HPL is to ensure New Zealanders continue to have access to the physical resources necessary to adapt to increasingly uncertain and hostile growing environments posed by climate change. This includes higher temperatures, rising sea levels, drought and increasing rainfall. Although there is no current national direction relating to climate change, proposals for climate change national direction are being developed and will need to take into account interactions with the NPS-HPL.

The NPS-HPL addresses climate change in the following sections:

- **clause 3.4 – Identification of HPL** – When mapping HPL under clause 3.4, local authorities are able to consider whether other classes of LUC should also be identified as HPL, taking into account the climate of land (amongst other factors). Climate change may impact the climate (and therefore the LUC classification) of land over time, so may influence the HPL mapping process.
- **clause 3.10 – Consideration of permanent or long-term constraints** – The ability for landowners to apply for non-productive uses on HPL 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. For example, the impact of climate change could cause sea level rise, coastal inundation and salination of HPL in the future, which will impact its ability to be used for land-based primary production. Clause 3.10 allows for consideration of alternative, non-productive uses of HPL if landowners can demonstrate that their land has a permanent or long-term constraint caused by climate change (among other factors).

A number of submissions were received in relation to the NPS-HPL and climate change. Submissions focused on two key points:

- that protecting HPL generally has a positive impact on climate change mitigation
- the importance of HPL in adapting to climate change by increasing community resilience to severe and extreme weather.

### Interaction with National Policy Statement on Urban Development 2020

The National Policy Statement on Urban Development 2020 (NPS-UD) seeks to create conditions where the market can respond to growth, bringing down the high costs of urban land by addressing the fundamentals of land supply, development capacity and infrastructure provision.

Officials have noted that there are policy interactions between the NPS-UD and the NPS-HPL. These include:

- future development strategies prepared under the NPS-UD, and growth partnerships occurring under the wider Urban Growth Agenda, that are seeking to enable urban development on HPL.
- the NPS-UD responsiveness policies that seek to release land for urban development.

Officials have discussed the pathway for urban rezoning on HPL in [section C12](#) of this report. This pathway provides the discretion to councils to allow urban growth on to HPL where specific criteria can be met.

## **Interaction with the Essential Freshwater package**

The National Policy Statement for Freshwater Management (NPS-FM) and the National Environmental Standard for Freshwater (NES-F), collectively referred to as the [Essential Freshwater package](#), came into effect in September 2020. The Essential Freshwater package introduces new rules and regulations to:

- stop further degradation of New Zealand’s freshwater resources and improve water quality within five years
- reverse past damage and bring New Zealand’s freshwater resources, waterways and ecosystems to a healthy state within a generation.

Appendix A in the proposed NPS-HPL in the discussion document included the following optional considerations when identifying HPL:

- the current or future potential availability of water
- water quality issues or constraints that may limit the use of the land for primary production.

The intent of the NPS-HPL regarding freshwater is to provide councils with the flexibility to allow for alternative non-productive uses of HPL if there is evidence of long-term or permanent constraints on the ability of that land to be used for land-based primary production. It is not the intention of the NPS-HPL to protect HPL where this land cannot be viably used. However, there is a need to prevent temporary constraints on water availability and, to a lesser extent, water quality from being used as the excuse to convert HPL to non-productive uses. These constraints may be resolved in the short to medium term and should not result in the permanent loss of land for land-based primary production.

We have discussed the effects of the NPS-HPL on water quality and quantity in [section C11](#) and [section C15](#) of this report.

## **Interaction with Proposed National Policy Statement for Indigenous Biodiversity**

The proposed National Policy Statement for Indigenous Biodiversity (NPS-IB) seeks to identify, protect, manage and restore indigenous biodiversity. It is recognised that tension could occur between the proposed NPS-IB and NPS-HPL at a site level, when the priorities of land-based primary production on HPL and indigenous biodiversity on HPL are challenged. We are aware that LUC classes 1 to 3 are often the location of threatened ecosystems, or remnants of larger indigenous ecosystems. The protection, maintenance and enhancement of these ecosystems, which are often limited in extent and threatened by some of the same pressures threatening HPL, needs to be balanced with the policies in the NPS-HPL that enable primary production.

The intent of the NPS-HPL regarding indigenous biodiversity is to provide councils with a mechanism to enable use or development on HPL where the use or development recognises and provides for a matter of national importance under section 6 of the RMA (including indigenous biodiversity). This policy will enable indigenous biodiversity to be protected and managed when it is located on HPL.

## **Interaction with Proposed Natural and Built Environments Act and Strategic Planning Act**

After consultation on the NPS-HPL, and before the preparation of this report, the Minister for the Environment announced that the RMA will be repealed and replaced, with its functions absorbed into three new acts.

While the NPS-HPL is proceeding under the current RMA, work is already underway on the replacement acts, and an exposure draft of the Natural and Built Environments Act (NBA) was released in June 2021. The proposed NBA will require that the proposed national planning framework (NPF) and all plans promote specified environmental outcomes. The NPF will play the role of current national direction under the RMA, but as a single, more integrated, coherent and effective framework with specific functions for conflict resolution and setting strategic direction. The proposed NBA has specified “environmental outcomes”, including (subject to final drafting) outcomes such as “urban areas that are well-functioning and responsive to growth and other changes, s”, and “contributes to the development of adaptable and economically resilient communities”; and “promotes the protection of highly productive land from inappropriate subdivision, use, and development” alongside protection outcomes.

It is also anticipated that the ‘policy intent’ of emerging and existing RMA national direction will be carried through the NPF with some redrafting and repurposing. The NPS will provide direction and requirements for the development of regional spatial strategies (RSSs) and Natural and Built Environment Act plans. Development of the NPS-HPL, including clauses with specific mention of how the NPS-HPL interacts with other key pieces of existing and emerging national direction (particularly national direction on urban development) will set the groundwork for how to balance the need to provide for urban growth but also protect the most highly productive land in the country under the RMA. This national policy direction can then be translated into the NPF, to ensure continuity of direction through the resource management reform process. Similarly, the HPL mapping work that local authorities undertake under the NPS-HPL will carry through to spatial planning under RSSs, albeit at a high level (noting that RSSs will generally not show or identify boundary specific areas).

While changing the NPS-HPL to align with the new resource management system was not in scope of any submission, submitters did request changes to the timeframes taken to implement the NPS-HPL. We recommend that the timeframes included in the NPS-HPL be retained (namely three years to notify HPL maps in regional policy statements, six months from the RPS maps being made operative to adopt the same HPL maps into district plans and two years from the RPS maps being made operative for territorial authorities to notify changes to objectives, policies and rules in their district plans to give effect to the NPS-HPL). It is considered that work undertaken to give effect to the NPS-HPL can be advanced in accordance with the timeframes proposed and can carry through to the NPF, RSSs and NBA plans as they are developed.

## Recommendation

### Recommendation

- A. Ministers have considered the NPS-HPL in light of national direction instruments that exist at the time of gazettal.

### Ministers' decision:

Agree

# Appendix 1: Consolidated recommendations

## 4 Problem statement

- A. The problem statement, as set out in the discussion document for the proposed NPS-HPL, is retained.

## 5 Options considered

- A. A national policy statement is developed as the preferred option.
- B. Ensure that key interactions between the NPS-HPL and proposed NPS-UD are clear and aligned.

## 6 Scope of NPS-HPL

- A. Change definition of primary production to 'land-based primary production' and include production from agricultural, pastoral, horticultural and forestry activities that are reliant on the soil resource of the land.
- B. Include a new definition of supporting activities that are necessary to support land-based primary production but are not in of themselves production activities, eg, on-site processing, packing sheds, equipment storage and animal housing.
- C. Exclude areas identified for future urban development from the transitional definition of HPL.
- D. Require that areas identified for future urban development must not be mapped as HPL.
- E. Confirm the use of LUC classes 1 to 3 as the basis for identifying HPL, while allowing higher classes to be included, if this land is or has the potential to be highly productive.

## 7 NPS-HPL objectives and consistency with Part 2 of the RMA

- A. Rationalise and refine the three objectives in the NPS-HPL into one overarching objective focused on the protection of HPL for use in land-based primary production for current and future generations.
- B. Note that the objective of the NPS-HPL is consistent with Part 2 of the RMA which is assessed in the NPS-HPL section 32 evaluation report.

## 8 Māori land and Te Tiriti of Waitangi

- A. Agree to the definition of specified Māori land
- B. Enable use and development on specified Māori land without being unduly constrained by the NPS-HPL.

- C. Avoid further restrictions on the subdivision, use and development of specified Māori lands that are mapped as HPL including partitioning orders made under Te Ture Whenua Māori Act 1993.
- D. Direct councils to involve tangata whenua (to the extent they wish to be involved) in giving effect to this NPS-HPL in a manner consistent with the existing provisions of the RMA and LGA.

## 9 Identification of HPL – transitional definition

- A. Retain transitional definition of HPL based on LUC classes 1 to 3.
- B. Remove the minimum threshold of LUC classes 1 to 3 within a site from the transitional definition, and clarify that this only applies to areas of LUC classes 1 to 3 within a site.
- C. Clarify that the transitional definition of HPL only applies to General Rural and Rural Production zones (or equivalent zone where councils have not yet implemented the National Planning Standards).
- D. Exclude areas from the transitional definition of HPL which are:
  - identified for future urban development in RMA plan or policy statement, future development strategy, or other strategic planning document published prior to the NPS-HPL taking effect.
  - subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle at the commencement date.

## 10 Identification of HPL – process

- A. Retain the requirement to map HPL in RPS.
- B. Allow regional councils to sequence the mapping of HPL in their region within three years following the commencement date.
- C. Require regional councils to collaborate with relevant territorial authorities when mapping HPL and consult with tangata whenua.
- D. Require RPS maps of HPL in operative regional policy statements to be included into district plans without going through the RMA Schedule 1 process and shorten the timeframe for this process from two years to six months from when the RPS maps become operative.
- E. Require mapping to be undertaken to a land-parcel scale, or sub-parcel scale if this is appropriate for larger sites. while clarifying HPL mapping can be based on the scale of LUC mapping in the New Zealand Land Resource Inventory.

## 11 Identification of HPL – criteria

- A. The NPS-HPL requires regional councils to map land as HPL if the land:
  - is predominately LUC classes 1, 2 or 3 land
  - forms a large and geographically cohesive area
  - is in a General Rural or Rural Production zone (or equivalent zone).
- B. The HPL mapping process excludes areas identified for future urban development and any other zone than General Rural and Rural Production.

- C. The NPS-HPL allows regional councils to map other classes of LUC land as HPL where it is, or has the potential to be, highly productive in that region, having regard to the soil type, physical characteristics and climate of the area.

## 12 Urban rezoning

- A. Amend the urban rezoning clause for tier 1 and 2 local authorities to provide three sequential tests that must be met before urban rezoning can occur on HPL:
- the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the NPS-UD; and
  - 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
  - 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
- B. Amend the implementing clause relating to urban rezoning to require the territorial authority to consider a range of reasonably practicable options for providing the required development capacity, including:
- greater intensification in existing urban areas; and
  - rezoning of land that is not HPL as urban; and
  - rezoning different HPL that has a relatively lower productive capacity.
- C. Allow territorial authorities that are not tier 1 or 2 to rezone HPL for urban use if the same tests in clause 3.6(1) of the NPS-HPL are met, except without specific reference to the NPS-UD.

Include clause requiring territorial authorities to 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.

## 13 Subdivision and rural lifestyle development

- A. Include clear policy direction in the NPS-HPL to avoid the rezoning of HPL as Rural Lifestyle Zone unless it is demonstrated that the land is not economically viable for land-based primary production (discussed further in Section C15 of this report).
- B. Include clear policy direction in the NPS-HPL to avoid subdivision of HPL unless the subdivision can meet one of following scenarios:
- the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term
  - 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

- the land is not economically viable for land-based primary production (discussed further in Section 5 of this report)
- C. Exclude existing Rural Lifestyle Zones from the transitional definition of HPL and the HPL mapping process.
- D. Provide guidance on appropriate minimum lot-size standards and other methods to manage subdivisions on HPL and maintain the overall productive capacity of HPL, drawing on existing best practice and case studies where appropriate.
- E. Include policy direction in the NPS-HPL to avoid, or otherwise mitigate, the cumulative loss of the availability and productive capacity of HPL and to avoid, or otherwise mitigate, reverse sensitivity effects on land-based primary production.

## 14 Protecting HPL from inappropriate use and development

- A. The NPS-HPL provides clear policy direction to protect HPL from inappropriate use and development.
- B. The NPS-HPL sets out criteria for the types of use and development that may be appropriate on HPL as follows:
  - 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.
- C. The NPS-HPL requires territorial authorities when managing other use and development on HPL to take measures to:
- \* minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of HPL in their district
  - \* avoid if possible, or otherwise mitigate, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.

## 15 Exemption for HPL subject to permanent and long-term constraints

- A. The NPS-HPL includes a pathway for subdivision, use and development on HPL, where the applicant can demonstrate that the HPL is not economically viable for land-based primary production because of permanent or long-term constraints on the productive capacity of the HPL, and provides that this assessment must:
- demonstrate that there are permanent or long-term constraints on the productive capacity of the HPL and that the size of a landholding in which the HPL occurs is not of itself a determinant of a permanent or long-term constraint.
  - satisfy the territorial authority that the subdivision, use or development avoids any significant loss of HPL in the district, avoids fragmenting large and cohesive areas of HPL and can avoid if possible, or mitigate, reverse sensitivity effects
  - satisfy the territorial authority that the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values
  - consider a range of reasonably practicable options for addressing identified constraints (eg, alternate forms of primary production, improved land management strategies, boundary adjustments etc)
  - not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production
  - must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs
  - must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.

## 16 Prioritising HPL for land-based primary production

- A. Retain the policy direction to prioritise HPL for land-based primary production in the NPS-HPL, but with supporting guidance to clarify the policy intent and implementation approach.
- B. Do not proceed with the policy direction from the proposed version of the NPS-HPL to consider giving greater protection to areas of HPL with significant economic and community benefits, and instead provide non-statutory guidance on this matter.

- C. Amend the NPS-HPL to clarify that opportunities that maintain or increase the productive capacity of HPL can be encouraged but must not be inconsistent with any matter of national importance under section 6 of the RMA or any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020.

## **17 Reverse sensitivity**

- A. Amend the reverse sensitivity clause 3.13 in the NPS-HPL to require territorial authorities to make changes to their district plans (as necessary) to include objectives, policies and rules to:
- B. identify the typical activities and effects associated with land-based primary production that should be anticipated and tolerated on HPL. (clause 3.9)
- C. ensure that subdivision, use and development on HPL avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities (this would be considered as part of clauses 3.8, 3.9 and 3.10).
- D. 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) (clause 3.6 and 3.7).

## **18 Treaty of Waitangi (Te Tiriti o Waitangi) settlement commitments**

- A. When considering the policy recommendations in this report, have particular regard to matters in Te Tiriti o Waitangi (Treaty of Waitangi) claims settlement acts, as assessed above.

## **19 Climate change and interaction between NPS-HPL and other national direction**

- A. Ministers have considered the NPS-HPL in light of national direction instruments that exist at the time of gazettal.