



Ministry for Primary Industries
Manatū Ahu Matua



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

CC: Hon Phil Twyford, Associate Minister for the Environment

From: Charlotte Denny, Director Land, Water and Climate, Ministry for Primary Industries
Hayden Johnston, Director, Water and Land Use Policy, Ministry for the Environment

Update on National Policy Statement for Highly Productive Land and next steps for implementation this year

Date	15 February 2021	MPI Reference	B21-0033
		MfE Reference	2021-B-07504

Decision required	Date decision required by
YES <input type="checkbox"/> / NO <input checked="" type="checkbox"/>	N/A

Recommendations
Note that we have amended the draft National Policy Statement for Highly Productive Land (NPS-HPL) to better provide for urban expansion and the identification of highly productive land
Note that the Resource Management Reform is ongoing, and the NPS-HPL will need to be transitioned into the proposed national planning framework, or integrated into the national planning framework as it develops
Note that as further decisions about the national planning framework are made we will provide advice on how these decisions affect the proposed NPS-HPL (including the timeframes and content of the NPS-HPL)
Note that we will provide a draft recommendations report for the NPS-HPL in late March

Contacts for telephone discussion (if required)			
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Key messages
The work to further develop the National Policy Statement for Highly Productive Land (NPS-HPL) was affected by the government's need to focus on the response to COVID-19 and ongoing recovery. Officials are now working towards gazettal of the NPS-HPL in the 3 rd quarter of 2021, subject to Cabinet approval.
The increased loss of highly productive land to urban expansion and rural lifestyle development necessitates the need to continue to progress the NPS-HPL alongside the Resource Management Reform. This will provide direction on how consenting authorities should consider the impacts of new urban and lifestyle development on highly productive land (LUC 1-3).
Last year, Ministers directed officials to reshape how urban expansion on highly productive land is considered under the NPS-HPL. We have undertaken policy development and will test our preferred option with targeted stakeholders (councils and primary sector). We have also amended the proposed policy for identifying highly productive land.
Following stakeholder engagement, we will provide you with a recommendations report and analysis, seeking your approval of the policy decisions for the NPS-HPL.

Background

1. In April 2018, in response to the Environment Aotearoa Our Land 2018 report, the Minister for the Environment announced that the Government would develop a National Policy Statement to improve the way highly productive land is managed under the Resource Management Act 1991.
2. Public consultation on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) was held from August to October 2019, with 250 submissions received. Feedback on the proposed NPS-HPL has been generally positive, with approximately 90 percent of submitters indicating support. There was a high level of support for the overall intent to better protect and manage highly productive land, and for a National Policy Statement as the most appropriate tool to do so.
3. On 29 April last year, Ministers asked officials to revise the protections from urban expansion in the NPS-HPL. The work to further develop the policy was affected by the government's need to focus on the response to COVID-19 and ongoing recovery. Officials are now working towards gazettal of the NPS-HPL in the 3rd quarter of 2021, subject to Cabinet approval.

A National Policy Statement is needed as the loss of highly productive land is accelerating

4. The *Our Land 2018* and *Environment Aotearoa 2019* 'state of the environment' reports highlighted the national loss of 'versatile land' and 'high class land'¹. These reports showed the national loss of versatile land and high class land has been accelerating over recent decades due to urban expansion and, in particular, fragmentation for rural-lifestyle development.

While rural lifestyle development is the main driver, urban expansion under the National Policy Statement on Urban Development 2020 may result in further loss

5. The intent of the proposed NPS-HPL is not to constrain urban growth but provide greater clarity on where urban growth should go (and not go) and how it is to be managed. This will help councils to protect our most productive land and ensure there is sufficient land for urban growth.
6. Officials have received feedback from councils who are encountering difficulties giving effect to the NPS-UD with Regional Policy Statements and District Plan requirements for the protection of highly productive land.
7. If the NPS-HPL is not progressed, decision makers (mostly councils) would be required to give effect to the NPS-UD when considering plan changes and resource consents for urban development on rural land identified as LUC 1 – 3². The NPS-UD

¹ 'Versatile land' has many potential agricultural uses and is highly productive. The 2018 Our Land Report usually refers to this land as 'versatile', but also uses 'high-class land'. This is because reporting studies use that terminology within the context of the Land Use capability (LUC) system.

² Land Use Capability classification (LUC) rates the versatility of land based on the limitations (e.g. slope or climate) for use in primary production, with LUC class 1 having the fewest limitations and LUC class 8 having the most.

contains strong objectives and policies in favour of development, especially in relation to housing. While decision-makers would still generally be able to consider the impacts of new development on the loss of highly productive land, if the NPS-HPL is not in effect those considerations will not have the same statutory weight or influence as the pro-development provisions in the NPS-UD.

8. While rural lifestyle development has been the main driver of the loss of highly productive land, the NPS-UD requires a significantly greater amount of urban development capacity to be provided by councils with urban environments for over the short, medium and long term. Officials consider that the NPS-HPL is required to be progressed to enable the efficient management of highly productive land.

Reforming the Resource Management System

9. It is important to consider the progression of the NPS-HPL in light of the Resource Management System Reform. Cabinet has agreed to proceed with resource management reform [CAB -20-SUB-0522 refers]. This includes the RMA being repealed and replaced with three new pieces of legislation including the Natural and Built Environments Act (NBA) and the Strategic Planning Act. An exposure draft of the NBA is intended to be introduced by May 2021 and the Minister for the Environment is aiming to have the NBA passed in late 2022.
10. The NBA will require the development of a National Planning Framework (NPF)³, to perform an equivalent role to national direction under the current system.
11. The illustrative drafting of the NBA purpose and supporting provisions propose that the NPF prescribes a biophysical limit for the quality of soil. The Resource Management Review Panel recommended the 'protection of highly productive soil' as a distinct outcome, separate from an environmental limit for 'the quality of soil'. This is part of the Panels approach which differentiated between providing for positive outcomes and environmental bottom lines.
12. In November 2018 you agreed that the NPS-HPL would not include a biophysical limit for soil quality, as this would be part of a separate workstream to be progressed once the NPS-HPL has been implemented. A biophysical limit for soil quality will now be considered through the Resource Management System Reform work programme.

Progressing the NPS-HPL alongside the Resource Management System Reform

13. The NPS-HPL can either continue to be progressed under the RMA or work can begin to progress this under the NBA for inclusion in the NPF. There is a timing issue if the NPS-HPL is progressed under the RMA when the RMA is going to be repealed and replaced with the NBA.
14. There is a strong likelihood that it would not be possible for councils to complete the necessary statutory steps to complete plan changes to give effect to the NPS-HPL before the RMA is due to be repealed. However, the main advantage to progressing

³ The National Planning Framework (NPF) is the integrated single regulatory instrument that is proposed to replace the existing national direction instruments – National Policy Statements, National Environmental Standards, National Planning Standards and section 360 Regulations.

the NPS-HPL under the current system (the RMA) is to provide direction for consent authorities when considering plan changes or resource consent applications for development on land identified as LUC 1-3.

15. Officials consider that the increased loss of highly productive land to urban expansion and rural lifestyle development necessitates the need to continue to progress the NPS-HPL alongside the Resource Management System Reform. This will better enable consenting authorities to consider the impacts of new development on the loss of highly productive land.
16. We will provide advice on the NPS-HPL as further decisions are made on the timeframes for the NPF and the methods and timeframes to transition existing national direction into the new system. This will include if changes are needed to either the timeframes or content of the NPS-HPL to manage the transitional period.
17. We are conscious that we need to ensure that the implementation timeframes for councils giving effect to the NPS-HPL are workable alongside system reform, and that implementation steps may need to be stopped or repeated once the new legislation is in place. We also need to be aware of the risks of not managing highly productive land through a transition period of unknown length. The central challenge is how to maintain policy momentum during a reform process in a way that does not result in poor implementation outcomes, create uncertainty, and increase compliance costs, or limit stakeholder resources to engage or implement resource management reform.

Update on policy development

18. Last year we provided you with the Summary of Submissions report, which was released publicly on 30 July 2020 at www.mpi.govt.nz/HighlyProductiveLand.
19. We intend to undertake further targeted stakeholder engagement with local government and primary sector groups in developing the urban expansion and mapping identification policies (outlined below).
20. Following this engagement, we will provide you with a recommendations report seeking your approval of all policy changes made following public consultation.

Urban development

21. On 29 April 2020 the Minister for Urban Development, the Minister for the Environment and the Minister of Agriculture met to discuss the interactions between the proposed NPS-HPL and the NPS-UD. At the meeting, Ministers raised concerns that the direction to manage urban expansion under the NPS-HPL conflicts with the objectives under the NPS-UD to support competitive land and development markets.
22. Ministers directed officials to consider reducing the amount of highly productive land that would be subject to urban expansion tests in the NPS-HPL by reducing this to LUC 1 land, with a surrounding buffer of some LUC 2 land. Following further discussions, Ministers Parker and O'Connor instructed officials to look at further options to manage the interactions between the two National Policy Statements to ensure they are complementary⁴.
23. MPI and MfE have consulted with the Ministry for Housing and Urban Development on the urban expansion policy. MPI and MfE will continue to work with the MHUD on this policy to ensure that the NPS-UD objectives to provide sufficient development capacity and support competitive land markets can be achieved while highly productive land is managed efficiently.
24. Subject to stakeholder feedback, our preferred option is to amend the urban expansion policy to provide three sequential tests that must be met before urban expansion can occur on highly productive land:
 - a) urban expansion is required to provide sufficient development capacity to meet demand for housing or business land;
 - b) there are no reasonably practicable and feasible options for providing for the required development capacity in the same locality or market, while achieving a well-functioning urban environment; and
 - c) there are net benefits from the urban expansion compared to maintaining and protecting the land in land-based primary production.
25. This option has been discussed with officials from the Ministry for Housing and Urban Development, MfE and MPI. The approach would help ensure that there is a reasonable level of certainty that urban expansion on highly productive land is needed to meet demand, and other locations are not practical, before it is zoned for urban use (and no longer protected as highly productive land).

⁴ Officials consider that urban expansion tests should apply to land that is LUC 1-3, rather than LUC 1-2 or LUC 1 with a surrounding buffer of LUC 2, as:

- LUC 1-3 is consistent with a number of regional approaches – using a smaller range of LUC classes will reduce existing protections, including some areas of prominent food growing hubs that are LUC 3;
- A more conservative approach is warranted to reduce the ongoing, incremental loss of the highly productive land resource to irreversible development;
- Mapping LUC classes 1-3 was broadly supported by stakeholders, including a number of soil scientists;
- There are practical challenges in providing a different management and protection framework between LUC classes 1-2 and LUC 3; and
- The scale of LUC (1:50,000) makes it difficult to correctly identify LUC 1 and 2, but it can be used to identify 'large and geographically cohesive' areas of LUC 1-3.

Identification of highly productive land

26. The criteria used to identify highly productive land is a critical aspect of the NPS-HPL and was a key focus in submissions. The main issues relate to whether the criteria should be mandatory or optional (or a mix of both) for local authorities to consider, what those criteria should be, and how permanent or long-term constraints on the use of highly productive land should be considered.
27. We have undertaken significant further analysis of the criteria used for identification of highly productive land. Our preferred approach is to include only mandatory criteria in the mapping policy that must be considered by councils. These specified criteria would be 'exhaustive criteria' (i.e. the only criteria that could be considered). Mandatory exhaustive criteria would enable simplified, less contestable approach to mapping based on physical parameters.
28. We propose that mapping is based on land that is predominantly LUC classes 1 – 3, with the following mandatory additional considerations applying to the land:
 - a) it is in a rural zone and has not been identified as a future urban area under a Future Development Strategy or other strategic planning document;
 - b) it forms a large and geographically cohesive area; and
 - c) it is compatible with supporting primary production activities.
29. Also, we propose that councils retain the ability to map other land that is in a rural zone, but is not LUC class 1, 2 or 3 land, as highly productive land if that land is or has the potential to be highly productive in that region. This will allow councils the ability to protect land that is highly productive for particular uses such as growing cherries, avocados or viticulture, but is not LUC class 1 – 3 land.
30. Our current preferred approach is to also direct councils to not map land as highly productive if there are permanent or long-term constraints on its ongoing use in primary production. This could be achieved through mandatory exhaustive criteria that would apply to the mapping process. These mandatory exhaustive criteria will be tested with stakeholders, and could include:
 - a) water quality and quantity;
 - b) fragmentation;
 - c) contamination;
 - d) reverse sensitivity⁵;
 - e) the existing environment; and
 - f) climate change impacts.
31. Ensuring councils do not identify and map highly productive land where there is clear evidence that the land is subject to permanent or long-term constraints will ensure the NPS-HPL does not impose restrictions on land that does not warrant such restrictions.

⁵ Reverse sensitivity refers to the vulnerability of an existing activity to complaints from newly located activities in close proximity that are sensitive or incompatible with the existing activity (e.g. new residential dwellings next to a rural production activity).

Next steps

32. Following further targeted stakeholder engagement on the urban development and identification policies, we will provide you with a recommendations report that seeks your approval of the final changes to the policy. We will also provide a regulatory impact assessment and an evaluation report as required under section 32 of the RMA. We will aim to provide this package of advice in May 2021.
33. Subject to your approval of the recommendations report, we will then issue drafting instructions to have the policy drafted and aligned with MfE's new drafting standards for national direction. The new standards will make it easier for national direction instruments to be interpreted and applied alongside each other. If timing permits, we will test wording with targeted stakeholders through an exposure draft process.
34. The table below sets out the next steps for developing the NPS-HPL with indicative dates to implement in the 3rd quarter of 2021. The Ministry for the Environment is prioritising the Resource Management System Reform and the below timeline provides some flexibility to ensure the NPS-HPL can be delivered alongside that work programme.

Step	Indicative date (2021)
Policy workshops with targeted stakeholders and iwi	Mid March
Draft recommendations report for Ministerial consideration	Late March
Drafting	April to May
Exposure draft testing with targeted stakeholders	3 rd Quarter 2021
Cabinet package for Ministerial consultation	
Cabinet consideration	
Gazettal	
Implementation	28 days following gazettal

Recommendations

35. It is recommended that you:

- a) **Note** that we have amended the draft National Policy Statement for Highly Productive Land (NPS-HPL) to better provide for urban expansion and the identification of highly productive land

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- b) **Note** that the Resource Management Reform is ongoing, and the NPS-HPL will need to be transitioned into the proposed national planning framework, or integrated into the framework as it develops

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- c) **Note** that as further decisions about the proposed national planning framework are made we will provide advice on how these decisions affect the proposed NPS-HPL (including the timeframes and content of the NPS)

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- d) **Note** that we will provide a draft recommendations report for the NPS-HPL in late March

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