



**Ministry for Primary Industries**  
Manatū Ahu Matua



13 December 2019

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**MfE Number:** 2019-B-06320

## National Policy Statement for Highly Productive Land: Update on submissions and next steps

### Purpose:

To provide an overview of the key themes raised during consultation, our preliminary potential policy responses, and a high-level timeline to the National Policy Statement for Highly Productive Land being finalised in 2020.

Minister	Action Required:	Minister's Deadline
Minister for the Environment	Note and agree to the recommendations contained in the briefing.	When practicable.
Minister of Agriculture		

### MPI contact for telephone discussion (if required)

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## Key messages

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- Feedback on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) has been broadly positive and supportive of the intent and objectives of the proposal. Approximately 90 percent of submissions indicated full or partial support for the proposed NPS-HPL.
- Submitters raised a number of issues and requested a number of changes to the NPS-HPL, ranging from technical policy refinements through to more substantive changes.
- This paper provides an overview of key themes raised during the consultation, and potential policy responses to:
  - The criteria and process to identify highly productive land
  - Interactions with other government policy, including proposed national direction; and
  - Other issues.
- The policy responses outlined in this briefing are preliminary only, and further policy analysis is required to develop recommended amendments to the NPS-HPL. In particular, we need to work closely on the interactions with the proposed National Policy Statement on Urban Development (NPS-UD) and *Essential Freshwater* package to ensure this proposed national direction is aligned and supports quality decision-making. This was a strong theme in submissions across all national direction.
- More detailed analysis of submissions and recommended amendments to the NPS-HPL will be provided in February 2020 with the NPS-HPL likely to take effect by mid-2020.

## Background

1. Public consultation on the proposed National Policy Statement for Highly Productive Land (NPS-HPL) was held from 14 August to 10 October 2019. Public engagement on the NPS-HPL was run as part of the Government roadshow on proposals for highly productive land, freshwater, urban development, and product stewardship and hazardous substances.
2. The roadshow included over 60 meetings in all regions across New Zealand, with over 7,500 people in attendance. This engagement included public and primary sector-focused meetings, sessions with local government, and hui with local iwi/Māori.

## General feedback in submissions

3. A total of 250 submissions were received on the NPS-HPL over the eight-week consultation period. Submissions were received from a range of stakeholders including councils, industry organisations, businesses, and individuals. Submitters can be broadly categorised into the following groups:
  - Individuals (66)
  - Councils (48)
  - Primary producers (47)
  - General businesses (36)
  - Industry bodies (25)
  - NGOs (11)
  - Government agencies (9)
  - Māori/iwi organisations (8)
4. Feedback from submitters on the NPS-HPL has been broadly positive and supportive, with approximately 224 submissions (90 percent) indicating full or partial support. Generally, there was a high level of support for the purpose and objectives of the NPS-HPL and the overall intent to better protect and manage highly productive land. Submitters also generally agreed that a national policy statement is the best option to achieve the objectives.
5. Submitters were broadly supportive for the scope of the NPS-HPL to apply nationally, although there were suggestions to focus on particular areas with greatest pressures on the highly productive land resource. Some submitters also recommended that the focus should be on the most productive soils (e.g. LUC class 1 or 1-2 rather than classes 1-3).
6. While there was general support for the intent of the NPS-HPL, submitters raised a number of issues and requested a number of changes to the NPS-HPL, ranging from technical policy refinements through to more substantive changes.
7. The sections below provide a high-level summary of the key issues raised in submissions and our preliminary policy response, which are outlined in more detail in Appendix One. Most of the policy changes to the NPS-HPL we are considering are relatively minor with the exception of one more substantial change to the identification of highly productive land to be more focused on versatile soils.

## Summary of key issues and preliminary policy responses

### Identification of highly productive land

8. The identification of highly productive land received the most focus and commentary in submissions. It is the most fundamental aspect of the NPS-HPL that will influence all other policy responses. The identification of highly productive land also has strong linkages to the NPS-UD, particularly the proposed requirements to identify where future urban areas shall be located and avoided through Future Development Strategies (FDSs).

*Interim definition (LUC 1-3)*

9. Submitters were generally supportive of using an interim definition for highly productive land to ensure some level of protection until a more detailed mapping exercise has been undertaken. There was also support for the use of land use capability (LUC) classes 1-3 as the basis for the interim definition, with some submitters noting this provides a pragmatic approach to provide immediate protection and is aligned with some existing definitions/approaches.
10. A small group of submitters opposed the use of LUC as an interim measure due to concerns that the LUC system is outdated, too broad-scale, and does not consider other factors that make land highly productive. There was also another small group (primarily developers and growers) that were opposed to any interim definition of highly productive land due to concerns that this would unnecessarily restrict the use of land and constrain growth in advance of more detailed assessment. Submitters on the NPS-UD also raised similar concerns.
11. Our current advice is to retain the interim definition in the NPS-HPL, based on LUC classes 1-3. This will ensure a degree of immediate protection of highly productive land and an initial nationally consistent interpretation until more detailed regional assessments are undertaken. While the LUC system has some limitations, it is the best system available to classify the capability or versatility of land types for productive uses.

*Process to identify highly productive land*

12. Submitters were generally supportive of the requirement to spatially map highly productive land on the basis it will enable accurate identification of highly productive land, provide certainty on where the NPS-HPL provisions apply, and have flow on benefits in terms of managing the resource and providing investment certainty.
13. Notwithstanding the high level of support for mapping, submitters raised concerns about the time, costs and expertise required to accurately map highly productive land. There was strong feedback that central government needs to assist with the mapping process, with some submitters of the view that mapping should be led by central government. This was generally seen as the most cost-effective way to get consistent mapping across the country.
14. However, there was also a similar level of support for the proposed approach to undertake mapping at the regional level. Benefits of the regional approach identified by submitters include ensuring consistency and cohesiveness across multiple districts while allowing councils the ability to take into account regional issues and constraints.

15. We propose to retain the proposal for mapping to be led by regional councils in collaboration with territorial authorities in the region. This will ensure mapping only needs to be undertaken once with no scope to change or challenge the area of highly productive land at the district plan stage. It will also enable councils to integrate this with other spatial planning exercises, such as the development of FDSs under the NPS-UD. We also propose central government support to assist with the mapping process. Further consideration and confirmation of the most appropriate implementation support programme for mapping of highly productive land will be completed as a part of the further stakeholder engagement and policy finalisation process.

*Criteria to identify highly productive land*

16. 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 issue relates to whether the criteria should be mandatory or optional (or a mix of both) for local authorities to consider, and what those criteria should be. While submitters views were mixed on this issue, they broadly fall into two broad groups – those that think a wide range of factors should be considered (e.g. water availability and access to markets) and those that consider the focus should be on the physical properties of the soil resource. In many respects, this relates to whether the focus of the NPS should be on *land productivity* or *versatile soils*.
17. While policy work is ongoing, our preferred policy response at this stage is to refine criteria in the NPS-HPL to primarily focus on soil versatility, i.e. the ability of the soil to be used for a wide range of productive purposes. This would give councils some discretion to map large, cohesive areas dominated by LUC 1-3 as highly productive land within each region. Further, this would allow councils to take a pragmatic approach to identify highly productive land within their region based on logical geographic boundaries, rather than set an expectation that all LUC 1-3 land in the region shall be mapped as highly productive land.
18. The benefits of this approach are that it:
- a. Would enable simplified, less contestable approach to mapping based on physical parameters;
  - b. Reduces scope for landowners to argue their land is not highly productive due to one or more criteria and thereby reducing the risk that the area of land mapped is progressively decreased through landowner opposition and litigation;
  - c. Focuses on the physical, finite soil resource rather than factors that are variable and temporal in nature (eg water availability, access to markets); and
  - d. Is consistent with existing council approaches that focus on the soil resource rather than a broader assessment of the productivity of land.

19. The main disadvantage of this approach is that it may be seen as overly conservative and potentially capture versatile soils with constraints that limit its productive use (i.e. it 'locks-up' unproductive land for primary production). This is a particular issue in terms of the interactions with the *Essential Freshwater* package (discussed further below). However, we consider that this can be addressed through the policies allowing some flexibility to consider constraints on the use of land for primary production and the net benefits and costs from an alternative use (e.g. urban expansion).
20. Another option is to retain the mandatory and optional criteria similar to that outlined in the NPS-HPL discussion document (with some refinements) and reframe the optional criteria to only allow for these factors to be considered when evidence demonstrates that they are permanent factors constraining the use of land. This will enable a more strategic approach to consider where versatile soils are clearly (and permanently) better suited to other uses than primary production, such as urban development, and enable councils to *not* map these as highly productive land.
21. We will be exploring these options in more detail and will provide you with recommendations as part of the full report on submissions and recommended amendments in February 2020.

#### **Interactions with other national direction**

22. There was strong feedback in submissions that the NPS-HPL needs to be aligned with other national direction, particularly the NPS-UD and the *Essential Freshwater*<sup>1</sup> package. Submitters highlighted potential risks that the proposed extent of national direction will make it difficult for decision-makers to weigh competing objectives and the potential for certain policies to directly conflict. Such conflict would likely lead to a reduction in the efficiency and effectiveness of the NPS-HPL.
23. National direction needs to provide a clear framework to support local decision-making. We retain the view that the NPS-HPL can and should work together with other national direction to achieve the Government's objectives and support local decision-making. Key interactions between the NPS-HPL and the NPS-UD and *Essential Freshwater* package are outlined below. Officials across the relevant work programs, including plantation forestry, will continue to work together to ensure that the instruments are aligned, and the interactions are clear and coherent for decision-makers.

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<sup>1</sup> Essential Freshwater

- Proposed National Policy Statement for Freshwater Management
- Proposed National Environment Standards for Freshwater
- Draft stock exclusion section 360 regulations



### *Urban development*

24. There was strong feedback in submissions on the NPS-HPL and NPS-UD that these instruments need to be better aligned. There were consistent requests in submissions for:
- Greater clarity on which policy prevails in the event of conflict;
  - More explicit reference or connections to be made between the relevant policies, including specific reference to highly productive land as a constraint to new urban areas/greenfield development in certain NPS-UD policies; and
  - Consistent definitions and terminology.
25. Some submitters requested that the NPS-HPL and NPS-UD are combined to help reduce the potential conflict, promote a more consistent approach to urban planning, and reduce potential duplication.
26. Policy work on the interactions is ongoing and there are a number of inter-dependencies between these instruments that need to be worked through. Potential options we considering to ensure the NPS-HPL and NPS-UD are aligned and complementary is to:
- Make more explicit reference of highly productive land or the NPS-HPL in the NPS-UD policies, particularly those policies relating to Future Development Strategies (FDS) and providing for further greenfield development;
  - Clarify that the NPS-HPL will not prevent councils from providing feasible development capacity on highly productive land provided the relevant tests in the urban expansion policy of the NPS-HPL are met<sup>2</sup>;
  - Use consistent terminology and definitions; and
  - Provide guidance on interactions between the two instruments.
27. It is not recommended that the two instruments are combined for the reasons set out in the NPS-HPL discussion document. Specifically, this would not address lifestyle development which is the key threat to highly productive land. Further, the majority of submitters were broadly supportive of a stand-alone NPS as the preferred option.

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<sup>2</sup> The current tests for urban expansion onto highly productive land relate to whether there is a shortage of short-term feasible development capacity to meet demand, no feasible alternative locations or options to meet demand, and there are net benefits to the community. This policy has strong linkages with the NPS-UD and we will continue to work with officials on the final policy details.

## Essential freshwater

28. Some submitters, particularly from the horticulture sector, raised significant concerns about the combined impact of the *Essential Freshwater* proposals and the NPS-HPL. The main concern was that freshwater proposals may necessitate or incentivise land-use change away from intensive land uses such as horticulture. However, the NPS-HPL may limit land use change options by preventing or restricting the ability of landowners to subdivide highly productive land. Submitters see a risk the NPS-HPL may 'lock up' the land in primary production that may no longer be economically or environmentally viable.
29. Policy work in both these areas is ongoing. The final policy direction on how the NPS-HPL will need to reflect the final policy direction on commercial vegetable production through the *Essential Freshwater* package and vice versa. A key focus of this further policy work is on ensuring neither instrument inappropriately locks up land or constrains economic opportunities, while also achieving the necessary improvements freshwater quality and quantity.

## Other issues

30. Table 1 below outlines feedback received on five other topics and officials preliminary policy responses.

**Table 1: other issues raised in submissions**

Topic	Key themes in submissions	Preliminary policy responses
Scope	<ul style="list-style-type: none"> <li>- <b>Forestry</b> - concern about the inclusion of forestry in the definition of primary production, as less reliant on the soil resource and a less productive use of highly productive land.</li> <li>- <b>Whenua Māori</b> – concerns that the NPS-HPL could constrain the utilisation of whenua Māori for land uses such as papakainga development.</li> <li>- <b>Future urban areas</b> - NPS-HPL should not apply to future urban areas that have been through a rigorous process, including non-statutory plans such as Future Development Strategies (FDS).</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Forestry</b> – Remove forestry from the definition of primary production in the NPS-HPL. This would mean that highly productive land would not be protected for the purposes of forestry.</li> <li>- <b>Whenua Māori:</b> <ul style="list-style-type: none"> <li>o Exclude whenua Māori from the interim definition of highly productive land; and</li> <li>o Recognise papakainga, marae etc. as appropriate use of highly productive land.</li> </ul> </li> <li>- <b>Future urban areas</b> –further consider whether future urban areas identified in an FDS at the time NPS-HPL is gazetted should be excluded from scope, subject to further research and analysis.</li> </ul>



Topic	Key themes in submissions	Preliminary policy responses
<b>Urban expansion policy</b>	<ul style="list-style-type: none"> <li>General recognition that there needs to be some flexibility for urban expansion onto highly productive land in certain circumstances.</li> <li>Submitters requested strengthened tests and assessments to ensure policy objectives are achieved.</li> </ul>	<ul style="list-style-type: none"> <li>Strengthen and clarify tests (e.g. assessment of alternatives).</li> <li>Ensure the assessment of benefits and costs consider the full range of values over the long-term.</li> </ul>
<b>Rural lifestyle development policy</b>	<ul style="list-style-type: none"> <li>Lifestyle development needs to be avoided or strongly regulated through NPS-HPL.</li> <li>Need for greater guidance on methods and incentives to manage subdivision on highly productive land.</li> </ul>	<ul style="list-style-type: none"> <li>Provide stronger direction to avoid new rural lifestyle developments and rural lifestyle zones on highly productive land.</li> <li>Detailed non-statutory guidance on methods to manage subdivisions to retain productive capacity of highly productive land.</li> </ul>
<b>Inappropriate subdivision, use and development</b>	<ul style="list-style-type: none"> <li>Provide greater clarify and guidance on what is 'inappropriate' subdivision, use and development on highly productive land.</li> </ul>	<ul style="list-style-type: none"> <li>Greater direction and guidance on how to identify and manage other 'inappropriate' subdivision, use and development (e.g. the criteria that must be considered).</li> <li>Specific consideration of functional and operational needs of infrastructure.</li> </ul>
<b>Implementation</b>	<ul style="list-style-type: none"> <li>Strong requests for guidance and support to assist with the implementation of NPS-HPL, particularly mapping.</li> <li>Concerns from councils about their capacity to implement the NPS-HPL in addition to resourcing requirements imposed by other national direction.</li> </ul>	<ul style="list-style-type: none"> <li>Central government to provide comprehensive implementation programme for NPS-HPL, including guidance and technical assistance for mapping.</li> </ul>

## Engagement

### *Limited early engagement with Māori*

31. 9(2)(ba)(i), 9(2)(g)(i) and Waikato-Tainui both raised concerns about the lack of engagement with Māori throughout the development of the proposed NPS-HPL and other national direction prior to public consultation. Both iwi expressed concerns that this lack of engagement is inconsistent with their status as Treaty partners.

32. Officials acknowledge that there has been limited engagement with iwi throughout the development of the NPS-HPL. A number of iwi and Māori organisations were invited to provide input into the development of the proposed NPS-HPL, however only a small number of responses were received. Officials did speak with two iwi trusts in the pre-engagement phase from the Auckland and Waikato regions, as well as a Māori horticulture trust based in Te Puke.
33. Officials will continue to ensure that the NPS-HPL meets the requirements of the RMA with respect to Māori interests, and the requirements of any relevant Treaty settlements. This may require further targeted engagement and collaboration with iwi/Māori.

#### *Further stakeholder engagement*

34. We will be testing our revised policy proposals through targeted engagement with key stakeholders early next year, which will include a selection of councils, industry representatives and soil scientists. This will help to inform and refine our policy responses to submissions. We will then provide you with full report on submissions and recommended amendments to the NPS-HPL in accordance with section 46A of the RMA in February 2020.

#### **Next steps**

35. Alongside the full submissions report, we will also be undertaking further cost-benefit analysis to support a regulatory impact assessment and an evaluation of the NPS-HPL in accordance with section 32 of the RMA. These documents, alongside the report on submissions and recommended amendments, will inform our final advice and recommendations to you.
36. Once you have considered our draft report on submissions and recommended amendments to the NPS-HPL, we will provide you with a Cabinet paper, section 32 evaluation, and final report on submissions and recommended amendments in April 2020. This will enable the NPS-HPL to take effect in June 2020. High level timeframes are provided below:

<b>High level timeline</b>	
Testing with stakeholders	January - February 2020
Draft summary of submissions report and recommended amendments	February 2020
Finalisation of policy	March 2020
Cabinet paper and Ministerial consultation	April 2020
Cabinet consideration	May 2020
Gazettal	May 2020
NPS takes effect	June 2020
Implementation support and guidance	June 2020 onwards

## Recommendations

37. The Ministry for Primary Industries and Ministry for the Environment recommend that you:

- a) **Note** the initial overview of key themes from submissions on the NPS-HPL;

**Noted**

- b) **Note** our preliminary policy responses to the key issues raised in submissions;

**Noted**

- c) **Note** that officials will keep working across the national direction work programme to align the NPS-HPL with other national direction, in particular the NPS-UD and *Essential Freshwater* package;

**Noted**

- d) **Note** that officials intend to undertake further targeted engagement with key stakeholders and iwi on our policy responses to submissions before providing you with final recommendations to the NPS-HPL; and

**Noted**

- e) **Agree** to high level timeframes, including finalisation of the policy in March 2020 and the NPS-HPL taking effect in June 2020.

**Agreed/Not Agreed**

- f) **Agree** to forward a copy of this briefing to the Minister of Urban Development

**Agreed/Not Agreed**

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Director  
Natural and Built System  
Ministry for the Environment

Hon David Parker  
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Hon Damien O'Connor  
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## **Appendix One: Key issues in submissions and potential policy responses**

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### *Overview of submissions*

1. There were 250 submissions on the proposed National Policy Statement for Highly Productive Land (NPS-HPL), of which 56 used the on-line submission tool. Submitters can be broadly categorised into the following groups:
  - Individuals (66)
  - Councils (48)
  - Primary producers (47)
  - General businesses (36)
  - Industry bodies (25)
  - NGOs (11)
  - Government agencies (9)
  - Māori/iwi organisations (8)
2. Submitters were largely supportive of the NPS-HPL or supportive of the overall intent to better protect and manage highly productive land. Submitters generally agreed that a National Policy Statement (NPS) is the best option to address the identified issues and achieve the policy objectives. The primary reasons an NPS was preferred related to the ability to provide for a degree of flexibility to respond to local circumstances, while still providing clear requirements and direction to achieve the desired outcomes.
3. Submitters were broadly supportive of the three objectives outlined in the NPS-HPL discussion document aimed at:
  - Recognising the benefits of highly productive land;
  - Maintaining the availability of highly productive land for primary production; and
  - Protecting highly productive land from inappropriate subdivision, use and development.
4. Feedback on the objectives focused on refining the wording (e.g. to be reframed more as outcomes statements) and providing further guidance and clarity on certain terms. For example, some submitters sought further clarify on what 'maintaining' means in practice and what is 'inappropriate' subdivision, use and development on highly productive land.

### *Preliminary policy response*

5. We propose refining the wording of the objectives to be framed as outcome statements while retaining the overall focus and intent. We also propose amendments to the policies to provide further clarity and direction on how the objectives are to be achieved in practice (e.g. how to protect highly productive land from inappropriate subdivision, use and development).

## Scope of NPS-HPL

### *Overview of submissions*

6. Submitters were broadly supportive of the scope of the NPS-HPL to apply nationally, although there were suggestions to focus on particular areas with greatest pressures on the highly productive land resource. Some submitters also recommended that the focus should be on the most productive soils (i.e. LUC class 1 or 1-2 rather than classes 1-3).
7. Submitters were generally supportive of the focus on the NPS-HPL on primary production, although there were suggestions that the scope should be refined to focus solely on food production. Some submitters raised concerns about the inclusion of plantation forestry in the definition of primary production<sup>3</sup>, on the basis it is not reliant on high quality soils, is not a sustainable or productive use of high-quality soils, and can have other adverse effects (e.g. amenity, biosecurity).
8. There was strong support for proposed approach for the NPS-HPL to not apply to urban areas and future urban zones in district plans on the basis these have been through a full Schedule 1 process, with extensive community involvement, submissions, and hearings etc. Submitters noted that investment decisions have already been made around future urban zones and the NPS-HPL should not undermine this.
9. There was also strong feedback from some submitters that the NPS-HPL should not apply to future urban areas in non-statutory plans, particularly Future Development Strategies (FDS) prepared under the NPS-UDC. Submitters noted that FDS must be prepared through a community consultation process that complies with Part 6 of the Local Government Act 2002 or Schedule 1 of the RMA and have only recently be prepared, therefore the NPS-HPL should not undermine this work.
10. Some submitters sought clarification on how the NPS-HPL would apply to Māori land (whenua Māori). Submitters expressed concerns that the NPS-HPL could potentially add a further constraint to the utilisation of whenua Māori, and papakainga in particular, and seek to ensure this does not occur. There were also specific requests for certain areas of land (e.g. designations) and activities (e.g. nationally significant infrastructure) to be excluded from the NPS-HPL or provided for in some other way.

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<sup>3</sup> The definition of primary production in the NES-HPL consultation is based largely on the National Planning Standards definition of primary production, excluding mineral extraction and aquaculture.

### *Preliminary policy response*

11. We propose that the scope of the NPS-HPL is largely retained, including its national application and general focus on prioritising primary production on highly productive land. However, we propose that forestry activities are excluded from the definition of primary production. This will ensure the NPS-HPL does not encourage plantation forestry on highly productive land.
12. We propose to retain the approach for NPS-HPL not to apply to urban areas and future urban zones identified in RMA plans and policy statements at the time the NPS-HPL is gazetted. We are also considering whether the NPS-HPL should not apply to future urban areas identified in an FDS at the time the NPS-HPL is gazetted, subject to further research and analysis to fully understand implications and how this aligns with the new requirements for FDSs in the NPS-UD.
13. It is important that the NPS-HPL does not add further restrictions to the utilisation of whenua Māori. To achieve this, we propose that whenua Māori is excluded from the interim definition of highly productive land. We also propose to amend the policies to recognise papakainga, marae and ancillary community facilities as an appropriate form of development on whenua Māori that is also highly productive.
14. Our preferred approach is to generally avoid specific exclusions from the NPS-HPL (e.g. infrastructure) and address these through the policy framework. This is discussed further below in paragraphs 46-49.

### **Identification of highly productive land**

15. The identification of highly productive land received the most focus and commentary from submissions. It is fundamental to the NPS-HPL and influences all other policy responses. The submission points relating to the identification of highly productive land fall into three broad categories (interim definition, process, criteria) as outlined below.

#### 1: Interim definition of highly productive land

##### *Overview of submissions*

16. Submitters were generally supportive of the interim definition of highly productive land to ensure some protection of this land until a more detailed assessment and mapping exercise has been undertaken in accordance with the NPS-HPL. The interim definition will also help to provide a degree of national consistency until more detailed mapping is undertaken.



17. There was some support for the use of LUC classes 1-3 as the basis for the interim definition, with submitters noting this provides a pragmatic approach to provide immediate protection and is aligned with some existing definitions/approaches. Some submitters expressed a view that the interim definition should be based on LUC classes 1 and 2 noting that councils can expand on this through their mapping work. Clarification was also sought on how the interim definition would apply (or potentially override) existing definitions of highly productive land in RMA plans and policy statements that are both wider and narrower than LUC classes 1-3.
18. Conversely, some submitters oppose the use and suitability of LUC as an interim measure on the basis this system is outdated, broad scale, and does not consider all the factors that make land highly productive. There was also some opposition to any interim definition of highly productive land. These submitters, including developers, some industry group and individuals, were primarily concerned that the interim definition would unnecessarily restrict the use of land and constrain growth in advance of more detailed assessment that considers a wider range of factors that contribute to productivity.
19. Some submitters also expressed concern that the interim definition would create unnecessary assessment and debate that would become redundant once mapping work is complete. This reinforces the need for mapping of highly productive land and associated plan changes in accordance with the NPS-HPL to be undertaken as quickly and efficiently as possible.

#### *Preliminary policy response*

20. We propose to retain the interim definition in the NPS-HPL, based on LUC classes 1-3. The key benefit of the interim definition is that it ensures some immediate protection of highly productive land and an initial nationally consistent interpretation until more detailed regional assessments are undertaken. While the LUC system has some limitations, there is no workable alternative at this point of time and it remains the primary classification system used by councils to define highly productive soils (or similar) throughout New Zealand. A number of soil scientists (including Landcare Research) also noted their support for LUC as a basis to define highly productive land.
21. LUC 1-3 (approx. 14% of New Zealand's land) is also preferred over LUC 1-2 (approx. 5% of New Zealand's land). It is logical and consistent with the intent of the NPS-HPL to take a more conservative approach to avoid the loss of land to irreversible development in advance of it being identified as highly productive. LUC classes 1-3 also aligns with a number of regional approaches<sup>4</sup>. Where current plans already identify and protect highly productive land (or soils), we propose to allow definitions wider than LUC 1-3 to apply (but not definitions that are narrower).

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<sup>4</sup> Councils have taken variable approaches to define highly productive land, versatile soils (or similar). A number of regions have based this on LUC 1-3 (or certain classes of LUC 3), including Northland, Auckland, Waikato, and Bay of Plenty. There are other regions that have based this on LUC 1-2, including Wellington, Canterbury and Southland.

## 2: Process to identify highly productive land

### *Overview of submissions*

22. Submitters were generally supportive of the requirement to spatially map highly productive lands on the basis it will enable accurate identification of highly productive land and therefore provide certainty on where the NPS-HPL applies. Submitters also emphasised that good spatial mapping will also have flow on benefits in managing the resource and providing investment certainty. It was also noted that, while mapping will require up-front effort and costs, the benefits will be ongoing, there should be limited need for reassessments, and less scope for debate on case by case basis.
23. Notwithstanding the high level of support for mapping, submitters raised concerns about the time, costs and expertise required to accurately map highly productive land. There was strong feedback that central government needs to provide assistance with the mapping process, and a large number of submitters consider that mapping should be led by central government. This is generally on the basis that highly productive land is a 'national issue' and a national mapping exercise is the most cost-effective way to get consistent mapping across the country.
24. However, there was also a similar level of support for the proposed approach to undertake mapping at the regional level, subject to a suitable national methodology and implementation support. Benefits of the regional approach identified by submitters include ensuring consistency and cohesiveness across multiple districts while allowing councils the ability to take into account regional issues, constraints and other land used for highly productive uses (e.g. viticulture). A number of submitters emphasised the importance of mapping being a collaborative exercise between councils within each region to make it as robust as possible and avoid multiple iterations of mapping.

### *Preliminary policy response*

25. We propose to retain the requirement to map highly productive land at the regional scale with mapping led by regional councils in collaboration with territorial authorities in the region. This will ensure mapping only needs to be undertaken once with no scope to change or challenge the area of highly productive land at the district plan stage. It will also enable councils to integrate this with other spatial planning exercises, such as the development of FDSs under the NPS-UD. We also propose central government support to assist with the mapping process, as outlined further in paragraphs 34-36.

### 3: Criteria to identify highly productive land

#### *Overview of submissions*

26. The criteria used to identify highly productive land is a critical component of the NPS-HPL. A number of issues were raised through submissions with the key focus on whether the criteria should be mandatory or optional (or both) and what those criteria should be. While submitters' views were mixed on this issue, they broadly fall into two broad groups. In many respects, this relates to whether the focus of the NPS should be on *land productivity* or *versatile soils*.
27. The first group are generally of the view that all criteria should be mandatory, and those criteria shall include all relevant factors that contribute to the productivity of land. These submitters usually emphasised that it is a combination of natural, physical and social factors that make land highly productive, not just the physical properties of soils. Some submitters also expressed a view that a mandatory set of criteria to consider will lead to a more consistent approach across councils, although others considered additional criteria would have the opposite effect.
28. The second group are generally of the view that the mandatory criteria should be focused on physical properties of the soils – other factors should be secondary considerations (if utilised at all). These submitters usually emphasised that these secondary considerations (e.g. access to markets, water availability, nutrient capacity) are often variable, not essential, and temporal factors that can change over time, whereas the focus of the NPS-HPL should be on the actual physical, finite soil resource. Submitters also highlighted the potential risk in landowners using one or more secondary criteria to argue that their land is not highly productive should be excluded during the regional mapping exercise.
29. In terms criteria outlined in Appendix A of the NPS-HPL, most submitters were generally supportive of using LUC as the starting point to identify highly productive land (although some are opposed to the use of LUC). There was a reasonable level of support for the other criteria (both mandatory and optional), although some submitters raised concerns that certain criteria are unclear, subjective and will be open to debate and litigation. Submitters also identified a wide range of other criteria considered that could be utilised to identify highly productive land.

*Preliminary policy response*

30. While policy work is ongoing, our preferred policy response at this stage is to refine criteria in the NPS-HPL to primarily focus on soil versatility. It would give councils some discretion to map large, cohesive areas dominated by LUC 1-3 as highly productive land. This would allow councils to take a pragmatic approach to identify highly productive land within their region based on logical geographic boundaries, rather than set an expectation that all LUC 1-3 land in the region shall be mapped as highly productive land. The approach would also allow councils to identify lower classes of soil where they have characteristics or uses that make them highly productive (e.g. areas suitable for viticulture).
31. The benefits of this approach are:
- It would enable simplified, less contestable approach to mapping based on physical parameters;
  - Reduced scope for landowners to argue their land is not highly productive due to one or more criteria and thereby reducing the risk that the area of land mapped is progressively decreased through landowner opposition and litigation;
  - It focuses on the physical, finite soil resource rather than factors that are variable and temporal in nature; and
  - Consistent with existing council approaches that focus on the soil resource rather than a broader assessment of the productivity of land.
32. The main disadvantage of this approach is that it may be overly conservative in that it captures versatile soils with constraints that limit its productive use (i.e. 'locks-up' unproductive land for primary production). This is a particular issue in terms of the interactions with the *Essential Freshwater* package. However, we consider that this can be addressed through the policies allowing some flexibility to consider constraints on the use of land for primary production and the overall benefits and costs from an alternative use (e.g. urban expansion).
33. Another option is to retain the mandatory and optional criteria similar to that outlined in the NPS-HPL discussion document (with some refinements) but reframe the optional criteria in a way that only allows for these factors to be considered when evidence demonstrates that they are permanent factors constraining the use of land. This will enable a more strategic spatial planning approach to not map versatile soils as highly productive land when they better suited to other uses than primary production, such as urban development.
34. We will be exploring these options in more detail with stakeholders and will provide recommendations as part of the full report on submissions and recommended amendments in February 2020.

## Urban expansion

### *Overview of submissions*

35. Submitters were generally supportive of the intent of the NPS-HPL urban expansion policy (Policy 3) to redirect urban expansion away from highly productive land where other feasible options exist.
36. Submitters' views on the overall strength of the policy were mixed; ranging from those seeking absolute protection of highly productive land from urban expansion to those seeking greater flexibility. However, most submitters generally agreed that there needs to be some degree of flexibility in the NPS-HPL to allow for urban expansion onto highly productive land in certain circumstances. This reflects the reality that many cities and towns are highly constrained in terms of where contiguous urban growth can occur due to the presence of highly productive land and/or other constraints (e.g. natural hazards).
37. Notwithstanding the general support for the urban expansion policy, concerns were raised that it will likely lead to a continuation of the status quo where the short-term benefits of urban expansion continue to outweigh the benefits of protecting highly productive land for primary production. Submitters also highlighted the challenges and shortcomings of typical cost-benefit analysis (CBA) in terms of how long-term benefits and finite resources such as highly productive land are considered and valued. As such, submitters recommended a number of changes to strengthen and clarify the requirements and assessments in the NPS-HPL urban expansion policy.

### *Preliminary policy response*

38. There are strong linkages between this policy and the NPS-UD and we will continue to work with officials on the policy detail. At this stage, our preferred policy response is to retain some flexibility in the NPS-HPL for urban expansion to occur on highly productive land but strengthen the requirements in the policy to ensure this only occurs in tightly defined circumstances as follows:
  - a) There is a shortage of feasible development capacity to meet demand; and
  - b) There are no alternative feasible locations and options to provide for the shortage of development capacity; and
  - c) There are net benefits to the community (based on a full assessment of environmental, economic, social and cultural benefits and costs).
39. Refinements to the policies are also proposed to:
  - Require a more specific and robust assessment of alternative locations and options before urban expansion on highly productive land can be considered; and
  - Ensure the assessment of benefits and costs considers the full range of tangible and intangible values over the longer-term.

40. We also recommend that detailed guidance is developed to assist with these assessments and the implementation of the policy generally.

## **Rural lifestyle development**

### *Overview of submissions*

41. Submitters were broadly supportive of the intent of the NPS-HPL to provide stronger protection of highly productive land from lifestyle development. Submitters identified a number of issues with lifestyle development on highly productive land that warrant a stringent management approach, including that rural lifestyle development:
- Poses a greater threat to highly productive land than urban expansion;
  - Is an inefficient growth pattern;
  - Acts as a barrier to future urban development through land fragmentation;
  - Takes highly productive land out of commercial production; and
  - Leads to reverse sensitivity issues.
42. As such, there was strong feedback from some submitters that lifestyle development needs to be regulated more tightly through the NPS-HPL than urban expansion, which can be justified in certain circumstances. Some submitters recommended that this should be through strong 'avoidance' policies which would effectively result in plan rules that prevent (prohibit) new rural lifestyle zones and developments on highly productive land.
43. Other feedback on rural lifestyle development focused on the methods used to protect the productive capacity of highly productive land (e.g. minimum subdivision lot size), and incentives to increase the productive capacity of highly productive land (e.g. transferable development rights).
44. Feedback from submitters on these issues was mixed. However, there was a general preference for the subdivision methods and incentives to be promoted through non-statutory guidance rather than specified in the NPS-HPL. For example, submitters highlighted the challenges and potential risks in developing nationally applicable minimum lot size standards given that the area of land needed to be productive ranges significantly for different primary production activities (e.g. horticulture compared to pastoral farming).

### *Preliminary policy response*

45. We propose to refine the lifestyle development policy to avoid (i.e. effectively prevent) new lifestyle zones and developments on highly productive land and manage rural subdivision to maintain the productive capacity of highly productive land. We also propose to develop guidance on subdivision methods, standards and incentives to assist in the implementation of the policy.



## **Other subdivision, use and development on highly productive land**

### *Overview of submissions*

46. While the NPS-HPL is focused on urban expansion and lifestyle development, it also requires the protection of highly productive land from other 'inappropriate' subdivision, use and development. While submitters generally recognised the need for flexibility in how council approach this, they also sought more clarity and direction to assist in the identification of inappropriate (and appropriate) development on highly productive land, either through the NPS-HPL policies, guidance, or both.
47. Feedback generally focused on the relevant considerations and tests to determine whether subdivision, use and development is an appropriate use of highly productive land. Some submitters also sought clarification and changes in how the NPS-HPL applies to specific activities. For example, there were requests to exclude nationally significant infrastructure from the NPS-HPL or, alternatively, amend the policies to provide a clear consenting pathway for this infrastructure to be considered.

### *Preliminary policy response*

48. We propose to provide more direction and guidance on how to identify and manage other 'inappropriate' subdivision, use and development on highly productive land through amendments to the policies and non-statutory guidance. The key matters to consider in undertaking this exercise will focus on the functional need of the subdivision, use or development to be located on highly productive land, its reliance on soil resource, and the extent to which is ancillary to, and supports, primary production.
49. We also propose amendments to the policies to provide specific consideration of the functional and operational needs and constraints of nationally and regionally significant infrastructure. This recognises that nationally significant infrastructure (e.g. new highways, the National Grid) may need to be located on highly productive land in certain circumstances and this infrastructure often has significant economic and social benefits.

## **Policies relating to private applications – plan change and resource consents**

### *Overview of submissions*

50. Submitters were broadly supportive of the intent of the NPS-HPL policies that would apply to private plan change and resource consent applications to provide some immediate consideration/protection of highly productive land before councils fully give effect to the NPS-HPL. Some also noted the importance of these policies to manage the potential risk of a 'gold-rush' of applications for subdivision on highly productive land before councils fully give effect to the NPS-HPL.

51. However, there were also submitters that questioned the effectiveness of these policies in the absence of a strong rule framework in the underlying district plan. Submitters also raised concerns that the policies would impose onerous requirements and compliance costs on applicants, and place undue restrictions on the land most suitable for urbanisation.
52. The NPS-HPL sought feedback on whether the policies should be directly inserted into plans<sup>5</sup>. Submitters identified a number of benefits and risks associated with this with the overarching message that the policies need to be clear, directive and fit-for-purpose if this is to occur. Key benefits of direct insertion identified by submitters include greater efficiencies, less demands on councils, greater consistency, and reduced litigation. Key risks identified by submitters include undermining public confidence, less robust provisions, and no flexibility to allow for local context.
53. Other key areas of feedback in submissions relate to whether the policies should apply to other subdivision, use and development in addition to urban expansion and lifestyle development, and the requirements in the policies to assess alternatives, benefits and costs. There was general support for the policies to apply to other 'non-primary production' subdivision, use and development on highly productive land, and apply similar tests to those outlined above in paragraph 39. Similar concerns were also raised with the requirements to assess benefits, costs and alternatives as those outlined under the urban expansion policy (paragraphs 37-39 above), with submitters emphasising the need. Some submitters also sought clarity on the relationship between these two policies and other policies in the NPS-HPL and suggested these could be streamlined or combined.

#### *Preliminary policy response*

54. We proposed to combine Policy 6 and 7 so that the policy applies to all applications and extends to other subdivision, use and development on highly productive land. We also propose to strengthen the assessments similar to that proposed for the urban expansion policy to ensure assessments of benefits and costs consider the full range of values over the longer-term in order to give highly productive land more weight in decision-making. We also propose that the combined policy is directly inserted into plans, subject to further testing with council stakeholders.

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<sup>5</sup> This is enabled through section 55(2) and (2A) of the RMA which enables a NPS to include specific objectives and policies that must be included in policy statements and plans without going through the Schedule 1 RMA process.

## Interaction with urban

### Overview of submissions

55. There was strong feedback in submissions that the NPS-HPL and NPS-UD policies need to be better aligned as they contain potentially conflicting objectives. Submitters, particularly from councils, seek:
- Greater clarity on what policy prevails in the event of conflict;
  - Clearer interactions between the relevant policies; and
  - Consistent definitions and terminology.
56. A number of submitters also sought more specific references to HPL within the NPS-UD policies relating to:
- Future Development Strategies (FDS) to make it explicit that HPL is a key consideration/constraint when identifying areas where “*evidence demonstrates future urban areas should be avoided*”<sup>6</sup>; and
  - The proposed greenfield development policy to ensure HPL is a “protected area” that greenfield development must not adversely affect.
57. Submitters also raised specific concerns that the NPS-UD greenfield policy directly conflicts with the NPS-HPL, particularly in Policy 6 which states that councils should consider the alignment of private plan changes with council urban growth plans and strategies. Some submitters request that the NPS-HPL and NPS-UD are combined to help reduce the potential conflict, promote a more consistent approach to urban planning, and reduce potential duplication.
58. A small number of submitters raised concerns about the impact of the NPS-HPL on housing supply and affordability, however this was not a strong theme.

### Potential policy response

59. We retain the view that the NPS-HPL and NPS-UD can work together to achieve the Government’s objectives for urban development and the protection of HPL. We are working with the NPS-UD team to respond to submissions relating to interactions between the two instruments and to ensure these are aligned.
60. Policy work on the interactions is ongoing and there are a number of inter-dependencies between these instruments that need to be worked through. Potential options we are considering to ensure these policies are aligned and complementary is:
- More explicit reference of highly productive land in the NPS-UD policies relating to FDS and providing for further greenfield development as a constraint that new urban areas shall generally avoid;

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<sup>6</sup> Policy P1D of the proposed NPS-UD.

- Making it clear that Policy 3 of the NPS-HPL will not prevent councils from providing development capacity on highly productive land provided the relevant tests in the policy are met<sup>7</sup>;
  - Consistent terminology and definitions between the relevant policies; and
  - Guidance on interactions between the two instruments, including practical examples of where urban development should be avoided on highly productive land and when it may be appropriate.
61. It is not recommended that the two instruments are combined for the reasons set out in the NPS-HPL discussion document. Specifically, this would not address lifestyle development, which is the key threat to highly productive land, or other 'inappropriate' activities on highly productive land. It would result in inconsistent protection of highly productive land, HPL (as NPS-UD policies apply to certain areas). Further, submitters were broadly supportive of a stand-alone NPS as the preferred option.

## Implementation support

### *Overview of submissions*

62. Councils have raised concerns regarding their capacity to implement the NPS-HPL amongst additional resourcing requirements imposed by national direction, particularly those related to the NPS-UD and freshwater. Though some councils acknowledge potential synergies and efficiencies across the proposed national direction, some councils have expressed strong concerns that the national direction work programme is in excess of existing council resources, particularly for smaller councils.

### *Preliminary policy response*

63. We recognise that implementing the NPS-HPL will require considerable work, particularly the up-front work for councils to work together to map highly productive land. As outlined in the discussion document, the intent is that government support the implementation of the NPS-HPL through a programme that will include technical assistance and guidance, which will help to reduce implementation costs for councils.
64. In response to the strong request for technical assistance, we will undertake further analysis of how current databases could be used to support the identification of highly productive land. This will include working with the Overseer programme to understand if planned investment of Overseer funding for the S-Map database could have co-benefits for the implementation of the NPS-HPL.

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<sup>7</sup> The current tests for urban expansion onto highly productive land relate to whether there is a shortage of short-term feasible development capacity to meet demand, no feasible alternative locations or options to meet demand, and there are net benefits to the community. This policy has strong linkages with the NPS-UD and we will continue to work with officials on the final policy details.