



Te whakahaere i te whakamahinga me te whanaketanga o ngā whenua whai hua

Managing the use and development of highly productive land

Potential amendments to the NPS-HPL: Report on submissions and
recommendations



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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Abbreviations

Abbreviation	Term
NPS-HPL	National Policy Statement for Highly Productive Land 2022
RMA	Resource Management Act 1991
HPL	Highly productive land
the Minister	Minister for the Environment
the Ministry	Ministry for the Environment
MPI	Ministry for Primary Industries
NBE Act	Natural and Built Environment Act
ESEG	Electricity Sector Environment Group
NZSSS	New Zealand Society of Soil Science
EDS	Environmental Defence Society
NPS-REG	National Policy Statement for Renewable Energy Generation 2011
REG	Renewable energy generation
LUC	Land-use capability
NES-ET	National Environmental Standards for Electricity Transmission Activities 2009

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Introduction

The National Policy Statement for Highly Productive Land 2022

The National Policy Statement for Highly Productive Land (NPS-HPL) was developed under the Resource Management Act 1991 (RMA) and came into effect on 17 October 2022. The objective of the NPS-HPL is to ensure the availability of Aotearoa New Zealand's most favourable land and soils for food and fibre production, now and for future generations. The policy provides direction to improve the way highly productive land (HPL) is managed under the RMA. It seeks to address the incremental loss of HPL that results from urban rezoning, fragmentation of rural land for lifestyle purposes, development, and from uses that are not reliant on the soil resource.

Policy problem and opportunities

After the NPS-HPL came into effect, some renewable electricity operators and representatives from the food production sector shared concerns that the NPS-HPL has placed undue restrictions on the development of activities that may have a need to locate on HPL. They identified two key issues:

- the lack of clarity in the consent pathway for new specified infrastructure HPL under clause 3.9(2)(j)(i)¹
- the absence of a clear consent pathway for developing and relocating intensive indoor primary production and greenhouses on HPL.

Process for amending a national policy statement

The RMA sets out the statutory process for amending national direction under [section 46A](#). The process must include:

- public consultation
- written submissions
- a report and recommendations to the Minister for the Environment (the Minister) on the written submissions and subject matter of the consultation.

¹ [National Policy Statement for Highly Productive Land 2022](#), clause 3.9:

...

- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

...

- (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.

The Minister is required to consider the report and may then make any changes as they see fit, or may withdraw all or part of the proposed amendments.

This report fulfils the requirements set out in section 46A and section 51(1) of the RMA.

The decisions made on the basis of this report are made in principle, to allow drafting changes. Before making final decisions on the amendments and deciding whether to recommend these under [section 52](#) of the RMA, the Minister will be provided with, and have particular regard to, an evaluation under [section 32](#) of the Act.

Structure of this report

This report provides a summary of key issues in submissions on potential amendments to the NPS-HPL and our recommendations in response to those issues. [Section 1](#) provides the context to the amendments, with an outline of engagement and consultation undertaken, as well as the submission and analysis process. [Section 2](#) and [section 3](#) present consultation feedback, analysis and recommendations on Issue 1 and Issue 2, respectively. [Section 4](#) deals with out-of-scope topics raised in submissions.

Limitations and constraints

This report is not intended to provide a detailed summary of all issues raised in submissions. We have grouped and summarised submissions in relation to the issues and options proposed in the consultation document, rather than addressing individual submissions. In summarising submissions, we have made some necessary generalisations for brevity.

Section 1: Developing proposals and overview of consultation

Since the NPS-HPL came into effect, some stakeholders from the electricity generation sector and the primary sector raised concerns that the national direction was placing undue restrictions on development on HPL. They identified two key issues:

- the lack of clarity in the consent pathway² for construction of new specified infrastructure on HPL under clause 3.9(2)(j)(i)³
- the absence of a clear consent pathway for developing and relocating intensive indoor primary production and greenhouses on HPL.

Pre-engagement

The Government undertook several targeted pre-engagement workshops in May 2023 to explore the issues and gather further information from affected groups. Officials from the Ministry for the Environment and the Ministry for Primary Industries held three separate workshops with representative groups from the renewable electricity sector, from indoor primary production and greenhouse growers, and from councils. The workshops gauged the extent of the issues and tested potential resolutions with participants.

Industry stakeholders supported amendments to the NPS-HPL. Feedback from different regional and district councils was mixed. In general, councils with larger concentrations of urban development did not think any amendments were necessary. By contrast, councils with larger areas of HPL within their territories were more supportive of potential amendments (eg, revising the wording of the clause 3.9 exceptions to enable more non-land-based activities).

Cabinet decided that the concerns raised by different sector groups warranted further engagement with a wider range of stakeholders (including iwi partners, interested organisations and the members of the public), as provided for in section 46A of the RMA.⁴ The information gathered through this consultation process has informed the analysis that underlines officials' recommendations for any changes to the NPS-HPL.⁵

² It is noted that the NPS-HPL provides guiding provisions on activities in other regulation (such as district and regional plans), rather than consent pathways themselves. The use of the term 'consent pathway' in this document refers to the consenting implications of the provisions (and the amendments) relating to these activities.

³ See note 1 above.

⁴ New Zealand Cabinet. 2023. *National Policy Statement for Highly Productive Land: Release of Discussion Document on Potential Amendments*. Cabinet Economic Development Committee Minute of Decision DEVELOP-23-MIN-0192. Wellington: Cabinet Office, Department of the Prime Minister and Cabinet.

⁵ See the Regulatory Impact Statement and the [evaluation report under section 32 of the Resource Management Act 1991](#).

Consultation and engagement

On 5 September 2023, the Government published a discussion document outlining potential amendments to the NPS-HPL,⁶ fulfilling the requirements of [section 46A\(4\)](#) of the RMA. Any member of the public could make a submission. Submitters were invited to submit their views to the Ministry for the Environment (the Ministry), using its online public engagement and survey platform [Citizen Space | Whakawhiti kōrero – Have your say](#), or by email to its consultation inbox.

Alongside the publication of the discussion document, officials ran webinars with councils, renewable energy industry members, primary sector representatives and the public. Details of the consultation and invitations to hui were also sent to iwi/Māori (including post-settlement government entities) via email and in the Ministry's *Te kōmiromiro pānui* (newsletter). The consultation, which ran from 5 September to 31 October 2023, overlapped with the General Election. This may have affected the level of participation.

The discussion document provided information about the issues and set out potential amendment options to the NPS-HPL to address them. The status quo was presented as an option for submitters to select, if they considered the current drafting and consent pathways to be fit for purpose. The discussion document invited members of the public to respond to nine questions (see [appendix 1](#)).

Summary of proposals

A summary of the two issues and the proposals provided in the discussion document is provided below.

Specified infrastructure

As written, clause 3.9(2)(j)(i) of the NPS-HPL provides for the maintenance, operation, upgrade or expansion of specified infrastructure on HPL.⁷ However, some stakeholders have found the wording of this clause to be unclear about whether it includes the construction of new specified infrastructure on HPL. Such a restriction could be problematic – particularly for new solar farms and when infrastructure needs to be developed at pace. This issue became apparent when installing new infrastructure that was needed to support the clean-up and repairs in the aftermath of Cyclone Gabrielle.

We consulted on two options to address issues relating to specified infrastructure.

Option 1 – maintain status quo

Option 1 would retain the status quo – that is, clause 3.9(2)(j)(i) would remain as currently drafted. This would provide more time for the NPS-HPL to be fully implemented and tested through council policy development and decision-making. This option would also allow for more data to be collected on the potential impacts of new specified infrastructure on HPL. However, the application of clause 3.9(2)(j)(i) to new specified infrastructure would remain unclear for stakeholders and councils, and potentially prevent new specified infrastructure in the interim.

⁶ Ministry for the Environment. 2023. *Managing the use and development of highly productive land: Potential amendments to the NPS-HPL – Discussion document*. Wellington: Ministry for the Environment.

⁷ See footnote 1.

Option 2 – amend NPS-HPL clause 3.9 to include ‘construction’

Option 2 would amend clause 3.9(2)(j)(i) to include the word ‘construction’, effectively clarifying that ‘new’ specified infrastructure could be located on HPL. This amendment would provide clearer consent pathways for solar farms and infrastructure needed at pace (such as for cyclone recovery), and such an approach would be consistent with other national guidance. During the consultation process, Option 2 was proposed as the preferred option.⁸

Intensive indoor primary production and greenhouses

The development of new intensive indoor primary production and greenhouses on HPL does not have a clear consent pathway in the NPS-HPL, even if they may have a functional or operational need to be located on HPL.

Some primary industry stakeholders noted that clause 3.9 of the NPS-HPL provides a consent pathway for other non-soil-reliant activities (for example, small-scale activities, defence facilities and infrastructure), but does not provide a pathway for intensive indoor primary production and greenhouses. This is despite these activities being included in the definition of ‘primary production’ in the National Planning Standards⁹ and being identified as activities that ought to occur in the rural environment.

The following options were presented for consultation, to address issues relating to intensive indoor primary production and greenhouses on HPL.

Option 1 – status quo

The status quo would exclude many or most intensive indoor primary production and greenhouse developments from occurring on HPL, where the operation does not support a wider farming system or meet the provisions of ‘supporting activity’ in clause 3.9(2)(a) of the NPS-HPL. Maintaining the status quo would reinforce the policy objective of the NPS-HPL. Councils would retain the flexibility to prepare bespoke provisions in local plans that reflect local context, in line with plan-change processes to implement the NPS-HPL. Option 1 would also allow for more data to be collected on the potential impacts of intensive indoor primary production and greenhouses on HPL.

Option 2 – amend clause 3.9 to provide a consent pathway for intensive indoor primary production and greenhouses

Option 2 would provide a clear pathway in the NPS-HPL for the development and relocation of intensive indoor primary production and greenhouses on HPL, subject to specific tests being met. These tests (ie, functional or operational tests) are similar to those for other non-land-based primary production activities provided in the NPS-HPL. Option 2 is not aligned with the intention of the NPS-HPL as it was developed – that is, exclusion of intensive indoor primary production and greenhouses (primary production that is not reliant on soil) as appropriate use and development of HPL. While this potential discrepancy has been taken into

⁸ See Ministry for the Environment. 2023. *Interim Regulatory Impact Statement: Potential amendments to the National Policy Statement for Highly Productive Land*. Wellington: Ministry for the Environment. Pp 25–26 and 29–30.

⁹ Ministry for the Environment. 2019. *National Planning Standards*. Wellington: Ministry for the Environment. p 62.

account, it is also noted that the NPS-HPL in its current form provides for activities that are not reliant on the soil in clause 3.9.

During the consultation process, no preferred option was proposed for intensive indoor primary production.

For the full suite of options considered, please see the interim regulatory impact assessment.¹⁰

Approach to analysis

The consultation garnered a total of 83 submissions, of which four were entirely 'out of scope' (not related to the issues presented in the discussion document¹¹). A separate overview of 'out-of-scope' submissions is provided in [section 4](#) of this report.

Submissions have not been addressed individually but have been grouped together based on submitter category and associated question in the discussion document. When grouping submissions, officials combined similar views together, although they acknowledge this does not represent an absolute view and it may not be fully reflective of individual views.

The submitter categories used are:

- **energy sector** (electricity producers and those involved in transmission and network infrastructure, businesses involved in renewable energy generation and other businesses related to energy generation and sale)
- **infrastructure industry** (businesses involved in telecommunications, infrastructure development, transport, quarrying and mining)
- **primary sector** (businesses and industry bodies related to primary production, inclusive of horticulture, farming and aquaculture)
- **NGOs and professional bodies**
- **iwi/Māori**
- **local government**
- **other** (individuals and businesses not related to the categories above).

In some instances, direct or paraphrased quotes have been used to illustrate key themes raised. Where a specific submitter viewpoint has been paraphrased or directly quoted, the individual submission is referenced by 'SR' (submitter reference), followed by the submission number. When the individual submissions are published on the Ministry website, they can be found using this submitter reference number.

In the cases where submitters did not explicitly state their support, officials assessed the level of support evident in their submissions. Submitters often requested changes to the NPS-HPL, while still supporting a proposal in part, so the interpretation of 'support' is somewhat subjective. For the purpose of this document, responses were classified as outlined in table 1.

¹⁰ See footnote 8.

¹¹ See footnote 6.

Table 1: Qualification of support levels in submissions

Classification	Definition
Option 1 (status quo) or Option 2 (amendment)	The submitter explicitly preferred Option 1 or 2, but may have included some minor further amendments (eg, for Issue 1 a preference for Option 2 but only limited to enabling renewable electricity infrastructure, not all 'specified infrastructure').
No comment	The submission related only to Issue 1 or Issue 2 (eg, no comment on Issue 1 but comments provided on Issue 2, or vice versa).
Other options	The submission touched on the issue/s but disagreed with Option 1 and Option 2 and instead provided an alternative option/s.
Out of scope	The submission proposed solutions or amendments beyond Issue 1 and Issue 2. ¹²

When referring to submitters, the report quantifies support for positions based on the classifications in table 2. These classifications are relative to the number of responses received. That is, the report uses the same terms, relative to the proportion of responses to that question, regardless of how many submissions responded to that question.

Table 2: Quantification of submitters

Classification	Definition
Few	Fewer than 5% of submitters on this topic
Some	5% to 25% of submitters on this topic
Many	26% to 50% of submitters on this topic
Most	More than 50% of submitters on this topic
All	All submitters on this topic

Submissions in reference to the Natural and Built Environment Act and Spatial Planning Act have been disregarded

At the time of public consultation, the Natural and Built Environment Act 2023 (NBE Act) and Spatial Planning Act 2023 (SPA) were being discussed as part of the previous Government's RMA reform package. The new Government repealed these Acts in December 2023. Accordingly, this analysis does not consider any references to the NBE Act and SPA in submissions. The section 32 report on the amendments covered by the consultation provides a high-level outline of the interaction of the amendments with the NBE Act and the SPA.¹³

¹² These are summarised separately in [section 4](#) and do not affect the statistics of support for Option 1 or Option 2.

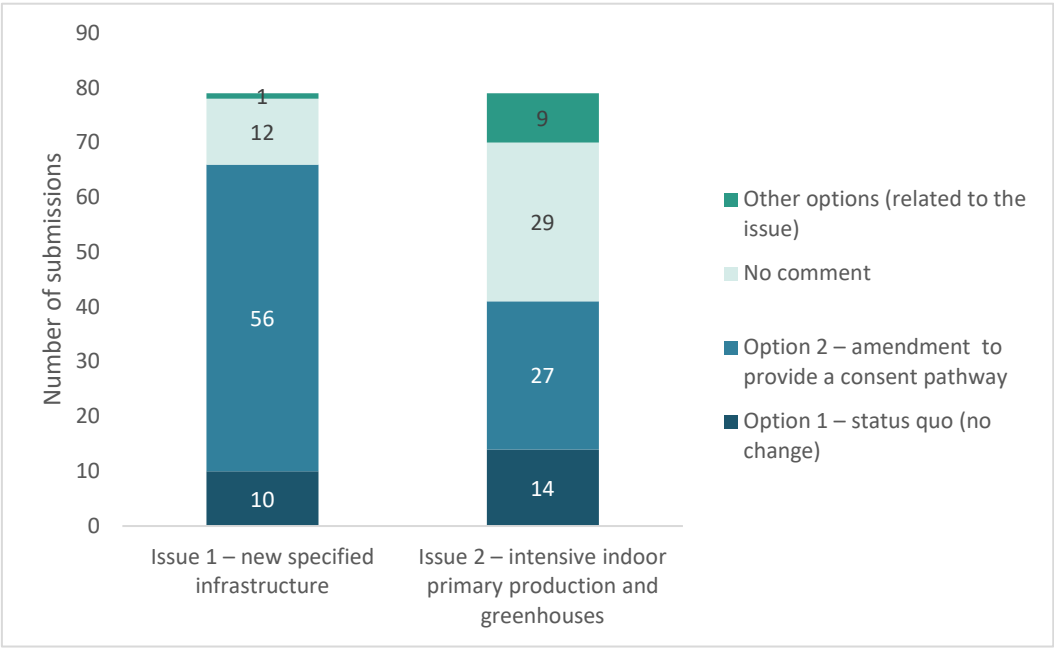
¹³ See the [evaluation report under section 32 of the Resource Management Act 1991](#).

Overall level of support for the potential amendments

Overall, most submissions supported amending the NPS-HPL to confirm a clear consent pathway for new specified infrastructure, intensive indoor primary production and greenhouses. The submissions contained nuances in the issues, opportunities and concerns they raised.

Figure 1 provides a breakdown of the number of responses received in relation to the two policy matters covered in the discussion document, and [section 2](#) explores the key themes submitters raised.

Figure 1: Number of responses for each issue (values represent number of submissions)



Section 2: Issue 1 – Specified infrastructure

This section summarises submitters' responses to the discussion document questions about Issue 1 – that is, how to clarify a consent pathway for new specified infrastructure to locate on HPL.

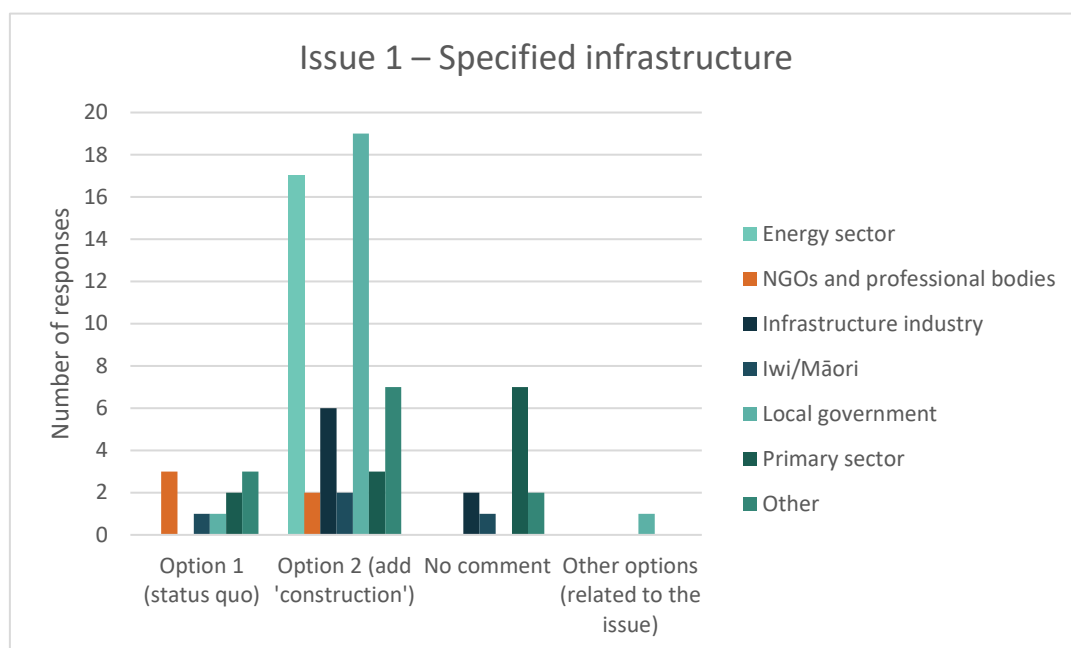
Key themes from submissions

Most submissions supported amending clause 3.9(2)(j)(i) of the NPS-HPL to clearly allow for new specified infrastructure on HPL (see figure 2). Of the 66 submitters that commented on this issue and weren't out of scope, 56 preferred Option 2 (add 'construction' to the clause) compared to 10 submitters who preferred Option 1 (maintain the status quo). Out of the 21 local authorities that responded, Auckland Council was the only one in favour of Option 1, and all other councils supported Option 2. All responses from electricity sector and infrastructure providers were in support of amending clause 3.9(2)(j)(i).

The Electricity Sector Environment Group (ESEG) made a joint submission, signed by Aotearoa New Zealand's principal electricity generators, which presented an alternative option to providing for new specified infrastructure on HPL.¹⁴ Other submitters also presented alternative options in relation to Issue 1, which are reported and considered below.

¹⁴ Electricity Sector Environment Group members: Meridian Energy, Mercury NZ, Contact Energy, Manawa Energy, Genesis Energy, and the NZ Wind Energy Association. The ESEG submission was considered as a separate submission. Most of those undersigning it also submitted their own submission (Meridian Energy, Mercury NZ, Contact Energy, Manawa Energy and Genesis Energy), and points raised in their submissions that supported ESEG's submission have been reported as ESEG's view.

Figure 2: Consultation outcomes for Issue 1 (specified infrastructure), split within submitter categories



Submissions in favour of Option 1: status quo

Of the 66 respondents that commented on Issue 1, 10 preferred Option 1 (status quo – no change) over Option 2 (the proposed amendment to the NPS-HPL). The main themes raised by these 10 submitters are outlined below.

Existing provisions are adequate

Some submitters considered existing provisions in the NPS-HPL under clause 3.9(2)(j)(i) to be sufficient, providing an adequate consent pathway for specified infrastructure.¹⁵ Auckland Council stated in its submission that, in the case of infrastructure needed ‘at pace’, emergency powers can be given to infrastructure providers to undertake immediate repair or replacement of damaged infrastructure following extreme weather events, without the need to amend clause 3.9(2)(j)(i). It is noted that the development of new specified infrastructure would unlikely to be covered under provisions of emergency powers.

Loss of HPL to non-land-based primary production activities

Some submitters, including one from the primary sector, raised concerns over the loss of HPL to infrastructure development, which they considered would affect the availability of HPL for future generations and contribute to the cumulative loss of HPL nationwide.¹⁶ The Environmental Defence Society (EDS) raised that the proposed amendments would overreach the initial problem definition of the NPS-HPL, and that there aren’t adequate safeguards in place to manage potential cumulative loss of HPL. The New Zealand Society of Soil Science (NZSSS) also raised concerns over the management of cumulative loss of HPL.

¹⁵ Environmental Defence Society, Anonymous (SR ANON-3CY6-2RT9-P), New Zealand Society of Soil Science.

¹⁶ New Zealand Frost Fans, Peter Askey, New Zealand Society of Soil Science.

A few submitters also expressed preference for consideration of alternative locations (rather than on HPL) for solar farm developments, specifically prioritising locations where primary production cannot be established, such as on hilly terrain, contaminated land, suburban/urban areas and on existing infrastructure (eg, rooftops, car parking areas, former landfills).¹⁷

Three out of five primary sector submitters who submitted on Issue 1 supported an amendment.¹⁸ Notably, though, all primary sector submitters raised concerns over the establishment of infrastructure preventing the use of HPL for primary production, especially regarding the establishment of solar farms.

Auckland Council raised the risk that the development of new specified infrastructure, such as solar farms, will target areas with existing supporting infrastructure. It expressed concerns this could disproportionately affect certain regions (such as Auckland) that have already experienced a reduction in the amount of HPL available for land-based primary production.

Reduced primary production on HPL

Auckland Council expressed concerns that, while land-based primary production can occur alongside some renewable electricity development (particularly solar farms such as agrivoltaics), the range, intensity and yield of land-based primary production on HPL will be overall reduced. The NZSSS also cited the importance of HPL in sustaining the primary sector towards the domestic and export economy as an important aspect to consider when allowing versatile soils, such as HPL, to be used for non-land-based primary production.

Lack of evidence and precautionary approach

The Save Waipara Valley group considered the evidence provided in the discussion document to be insufficient to justify the necessity for a clearer pathway for new specified infrastructure on HPL. The group submitted that this was not part of the original intent of the NPS-HPL.

Applying the precautionary principle was also highlighted as an approach for protecting HPL and avoiding its cumulative loss. The NZSSS recommended a precautionary approach, before undertaking a more comprehensive, evidence-informed policy evaluation to determine the efficacy of the NPS-HPL in achieving its primary objective. One submitter¹⁹ also considered that Issue 1 could be dealt with in a later review of NPS-HPL.

Other options raised by submitters to limit new specified infrastructure on HPL

The NZSSS proposed an option to further limit new specified infrastructure on HPL – strengthening the tests in clause 3.9(2)(j), such that any development application has to demonstrate both a functional *and* an operational need to be on HPL. The NZSSS considered that this would provide a better level of protection from cumulative loss of HPL than only needing to demonstrate a functional *or* operational need.

¹⁷ Andrea Davis, Auckland Council, New Zealand Society of Soil Science.

¹⁸ Horticulture New Zealand, Federated Farmers of New Zealand, Anonymous (SR E-7).

¹⁹ Anonymous (SR ANON-3CY6-2RKJ-X).

Submissions in favour of Option 2: add the word ‘construction’

Of the 66 responses on the issue of new specified infrastructure, most (56 submitters) preferred Option 2 – clarifying the consent pathway for new specified infrastructure on HPL. The main reasons these submitters provided for their support of Option 2 (adding the word ‘construction’ to clause 3.9(2)(j)(i) of the NPS-HPL) are outlined below.

More consistent application and improved outcomes of NPS-HPL

Some submitters supported the amendment on the grounds that it clarifies and simplifies interpretation of the clause, while allowing better alignment with the original intent of the NPS-HPL.²⁰

The ESEG also supported an amendment to clarify the consent pathway for electricity generators who don’t hold requiring authority status and are not able to access the designation pathway under clause 3.9(2)(h) of the NPS-HPL.²¹ The ESEG also submitted that clarifying this pathway would provide more consistency with the wider resource management system and the [National Policy Statement for Renewable Electricity Generation 2011](#) (NPS-REG).

Some local authorities²² consider existing checks and balances required under clause 3.9 (especially the functional or operational need test) to be sufficient in protecting HPL from inappropriate use and development. Matamata-Piako District Council submitted that Option 2 would allow for more consistent application of clause 3.9(2)(j)(i) in district plans and resource consent applications. Otago Regional Council also considered that Option 2 would lead to reduced consenting time and costs, by avoiding the need to refer to the courts for interpretation of the clause.

Some submitters also considered that an amendment will help to facilitate the building of better infrastructure in Aotearoa.²³

²⁰ Anonymous (SR ANON-3CY6-2RK8-C), Hamilton District Council, Helios Energy Ltd, Horowhenua District Council, IGP New Zealand Ltd, Infrastructure New Zealand, Selwyn District Council, Rangitikei District Council, Energy providers joint submission (Spark, One NZ, Connexa, FortySouth Ltd, Chorus), Tasman District Council, Anonymous (SR E-35), Maven BOP Ltd.

²¹ [National Policy Statement for Highly Productive Land 2022](#), cl 3.9:

...

- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:

...

- (h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:

...

²² Manawatū District Council, Queenstown Lakes District Council, Waikato Regional Council.

²³ Horticulture New Zealand, Infratec New Zealand, Kāpiti Coast District Council, Anonymous (SR ANON-3CY6-2RKT-8), Taupō District Council, The Surveying Company.

Support Aotearoa New Zealand's renewable energy transition

Some submitters considered that an amendment will likely facilitate easier transition to renewable energy and assist in meeting Aotearoa New Zealand's emissions reduction targets.

Some local authorities (Ashburton District Council, Otago Regional Council) stated that the uncertainty surrounding HPL has been a factor for some applicants in deciding not to go ahead with certain renewable electricity projects. Some submitters considered that an amendment could facilitate easier transition to renewable energy, sustainability and resilience (for example, through reducing the complexity in consenting solar farms).²⁴

From an electricity industry perspective, the ESEG noted a time pressure to achieve decarbonisation goals. The submission highlighted the need for renewable electricity generation (REG) to develop on HPL, and the possible delays for REG development due to the process of HPL mapping. The ESEG supports Option 2 and considers it would strike a balance between the need to provide for substantially increased REG capacity in order to decarbonise and the need to protect HPL. The ESEG opposed Option 1 (status quo) on the basis that it would not allow Aotearoa to meet decarbonisation imperatives through electrification of the economy.

Although the ESEG expressed support for Option 2, it noted that this option would not provide a sufficiently clear pathway or unambiguous policy direction to cover all necessary aspects of REG activities. The ESEG proposed alternative wording, which is outlined in the [Other options raised by submitters](#) section below.

Facilitate the building of infrastructure in response to natural hazards

West Coast Regional Council submitted that an amendment is important to ensure that regionally significant flood or coastal inundation protection works are enabled on HPL. The Council highlighted this as being a significant issue for the West Coast in areas of major safety concern for flooding risk on land-use capability class 3 (LUC 3) soils.

Fulton Hogan submitted that an amendment would be helpful for cyclone recovery infrastructure (with reference to Cyclone Gabrielle) and could help with progress toward decarbonisation goals. Fulton Hogan noted other benefits, such as co-locating REG with high users, proximity to transmission infrastructure, and secure sites that future-proof infrastructure from natural hazards.

Other options raised by submitters to provide for new specified infrastructure on HPL

Submitters presented a number of other options to address Issue 1, which are summarised below.

Additional clause under 3.9

The EDS proposed adding a new clause (clause 3.9(2)(k)), rather than amending clause 3.9(2)(j), with the following wording:

²⁴ Brett Rogers, Horowhenua District Council, IGP New Zealand Ltd, Infrastructure New Zealand, Infratec New Zealand, Selwyn District Council, Gisborne District Council, Lightsource bp, Otago Regional Council, Anonymous (SR E-38).

- (k) it is associated with one of the following and there is a functional need for the use or development to be on the highly productive land:
 - (i) solar renewable electricity generation where the activity is not currently used for horticulture:
 - (ii) the development of infrastructure that delivers a service operated by a lifeline utility.

Being more enabling on LUC 3 soils compared to LUC 1 and LUC 2

Rangitikei District Council supported Option 2 but also suggested that specified infrastructure restrictions could be limited to LUC 1 and LUC 2 soils, while being more enabling of new REG activities (and other non-soil-reliant activities) on LUC 3 soils.

Guidance clarifications

Three submitters sought clarification of supporting guidance for clause 3.9(2)(j) to support the amendment.²⁵ Although supportive of amending the NPS-HPL to clarify a consent pathway for developing new specified infrastructure on HPL, Kāpiti Coast District Council proposed clarifying the NPS-HPL guidance for clause 3.9(2)(j)(i), “to support discretionary planning judgements for each district’s determination on the scale and extension of new infrastructure on HPL according to the needs and characteristics of districts”. MainPower New Zealand Limited also supported amendments to guidance documents, to “further promote this pathway (Option 2) and exempt such activities”.

Alternative wording of clause 3.9(2)(j)(i) and removal of functional or operational need test

The ESEG proposed that clause 3.9(2)(j)(i) of the NPS-HPL be amended as follows (additions in bold):

- ...
- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:
 - ...
 - (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 **development, construction** maintenance, operation, upgrade or expansion of specified infrastructure **activities**.
 - ...
- (3) **For the purpose of clause 3.9(2)(j)(i), an assessment of functional and operational need for specified infrastructure activities does not require any consideration of alternative sites to the highly productive land.**²⁶

²⁵ Kāpiti Coast District Council, MainPower New Zealand Limited, Anonymous (SR E-41).

²⁶ The amendment suggested in the ESEG submission has been reported verbatim, although we note that there is an existing clause 3.9(3), as such the numbering of clauses in this proposal would not reflect final drafting.

The ESEG submitted that adding the word ‘development’ instead of, or in addition to, ‘construction’ would better meet the needs of new specified infrastructure development (including REG). The reason given was that a broader range of activities than construction are usually involved in establishing specified infrastructure, such as preparatory investigation, monitoring and earthworks. As such, the ESEG proposed that the clause should have the word ‘activities’ added to ensure the consenting pathway covers all relevant pre-establishment, establishment and ongoing operation phases of the specified infrastructure lifecycle.

Other infrastructure providers also proposed clarifying the range of other activities involved in specified infrastructure, such as removal, replacement and decommissioning.²⁷ Transpower New Zealand Limited recognised that adding all of these activities would result in the clause becoming lengthy and suggested including these in a separate definition of ‘construction’ in the NPS-HPL.

Submitters expressed concern that, for new REG projects, some local authorities may interpret the revised policy as requiring extensive assessment of alternative sites to demonstrate functional or operational need for the project to be located on HPL. The concern was based on the belief that the principal focus of the NPS-HPL should be the cumulative impact of new specified infrastructure on the remaining available productive soils, not its precise location in any district or region. The ESEG stated that functional or operational need should instead be determined through the application of the NPS-REG itself. As such, the ESEG joint submission proposed an additional clause to address this (see above).

Other submitters also mentioned the removal or reconsideration of the functional or operational need test,²⁸ claiming the tests have been interpreted differently by consenting authorities. In its submission, Lightsource bp noted concern that the consideration of alternative sites (observed in some resource consent applications) puts undue pressure on applicants (such as solar developers) who do not have requiring authority status. It further noted that consideration of alternative sites is limited by the availability of commercial land that can be purchased (given developers may not hold the compulsory acquisition powers of requiring authorities).

Other submitters considered the current checks and balances (especially the functional or operational need test) in clause 3.9 to be sufficient to protect HPL from inappropriate use and development.²⁹

Additional requirements for resource consent applications for specified infrastructure on HPL

Federated Farmers of New Zealand supported Option 2, but added the caveat that applicants should conduct a cost-benefit analysis (including consideration of alternative locations, compatibility with primary production, and ability of land to be returned back to primary production).

²⁷ Te Waihangā, Transpower New Zealand Limited, Anonymous (SR E-9).

²⁸ NZ Clean Energy, Lightsource bp, Anonymous (SR E-25).

²⁹ Manawātū District Council, Queenstown Lakes District Council.

Additional amendments to definitions in the NPS-HPL

Along with their support for Option 2, some submitters proposed amendment of definitions in the NPS-HPL, including to:

- amend the definition of ‘specified infrastructure’ to include a category for ‘water storage infrastructure’³⁰
- improve the clarity of the definition of ‘productive capacity’ in clause 3.9(3),³¹ or explicitly state that the intention of the NPS-HPL has no requirement for HPL to be used to its maximum productive capacity³²
- provide a definition of ‘construction’ that includes deconstruction activities (such as the replacement, removal, demolition or decommissioning of specified infrastructure).³³

Additional planning requirements

The New Zealand Planning Institute, while supporting Option 2, also proposed two alternatives.

1. Require clause 3.9 of the NPS-HPL to be included directly within district plans without the need for a Schedule 1 process and to use the NPS or a national environment standard to impose rules that give effect to the policy approach in clause 3.9, including the considerations required by the existing subclause 3.9(3).
2. Improve consistent application of the NPS-HPL by including more explanation and examples for the important terms and directions in the provisions within the NPS itself, and not leave this for the guidance document.³⁴ For example, the list of criteria to consider in the assessment of minimising or mitigating under sub-clause (3) on page 32 of the guidance could be included within the NPS itself.

Analysis and recommendations

Analysis

The following analysis of the main points raised through submissions informs the recommendations provided in the [Recommendations and decisions](#) section below.

Lack of evidence, environmental effects and precautionary approach

A few submissions supporting Option 1 (status quo) raised concerns about a lack of evidence to support the amendments, as well as concerns about the environmental effects of renewable electricity projects and the application of a precautionary approach.³⁵

³⁰ Anonymous (SR E-7).

³¹ MainPower New Zealand Limited, NZ Clean Energy, Anonymous (SR E-8).

³² Environment Canterbury.

³³ Anonymous (SR E-9).

³⁴ Ministry for the Environment. 2023. [National Policy Statement for Highly Productive Land: Guide to implementation](#). Wellington: Ministry for the Environment.

³⁵ Save Waipara Valley, New Zealand Society of Soil Science, Fish & Game New Zealand.

One of the objectives of the public consultation was to verify issues raised by stakeholders during pre-consultation engagement and gather further evidence. Submitters from the energy and infrastructure sector, as well as most local authorities, confirmed that the current wording of clause 3.9(2)(j)(i) is not sufficiently clear as to the development of 'new' specified infrastructure on HPL, which risks resulting in inconsistent application of the clause nationwide. The effect of the lack of clarity and resulting inconsistency is that some new specified infrastructure may be precluded (in plans). Most submissions (56 out of 66 submissions on Issue 1) agreed that clause 3.9(2)(j)(i) lacks clarity and either supported the recommended amendment in Option 2 (to add 'construction') or suggested other amendments to address the issue.

Potential adverse environmental effects of renewable electricity projects are managed through the RMA (for example, under [section 6](#) and [section 7](#)), via the resource consent process and other national policy (such as the [National Policy Statement for Freshwater Management 2020](#) and the [National Policy Statement for Indigenous Biodiversity 2023](#)). Resource management decisions must be made with regard to a suite of national direction that includes the NPS-HPL.

The application of a precautionary approach is an important part of the management of potential adverse environmental effects, especially in terms of cumulative effects and in situations that lack a robust evidence base. When it comes to the proposed amendment and the NPS-HPL, it is noted that this national policy is fundamentally a trade-off between land use and the retention of HPL over generations. As such, the NPS-HPL attempts to manage losses of HPL and the necessity of establishing other uses on HPL.

It is not possible to quantify the exact extent of potential loss of HPL to new specified infrastructure, but available evidence suggests this is relatively small in comparison to the whole HPL resource (less than 22,800 hectares³⁶ of the total estimate of 3,830,000 hectares for HPL by 2050).³⁷ However, new specified infrastructure will contribute to cumulative loss of HPL. Although more information was sought via public consultation, no further data was obtained on the potential extent of HPL loss to solar farms or other types of infrastructure development that may be approved on HPL as a result of this amendment. A degree of uncertainty is acknowledged within these estimates, but overall they suggest that the possible 'worst-case scenario' impacts may be relatively small compared to the total HPL resource.

Not providing a clear pathway for specified infrastructure, including REG, may result in the opportunity cost of limiting the availability of land suitable for REG projects, which may slow down the transition to low-emissions electricity generation. For a national direction instrument such as the NPS-HPL, amendment of clause 3.9(2)(j)(i) – to clearly enable new specified infrastructure on HPL where specific tests are met – would strike an adequate balance between competing uses of HPL.

³⁶ For comparison, 22,800 ha was equivalent to over 60 per cent of the area used for outdoor vegetable production, a rural land-use activity that is limited to HPL (Fresh Facts 2023, <https://unitedfresh.co.nz/assets/site/images/images/Fresh-Facts-%E2%80%93-December-2023.pdf>).

³⁷ Estimate from page 43 of the Regulatory Impact Statement.

Loss of HPL and reduced primary production on HPL

Some primary sector submitters raised concerns over the loss of HPL and the reduction in primary production on HPL.³⁸ As mentioned above, most local authorities consider existing provisions robust enough to ensure that HPL is not lost to inappropriate development or use. Officials have estimated the area required to meet 2050 REG energy targets to be approximately 22,800 hectares.³⁹ Officials note that the NPS-HPL is not intended to stop all loss of HPL, but to minimise this loss while ensuring sufficient amounts of HPL, as a finite resource, are available for land-based primary production now and in the future.

Historically, contributors to an accelerated loss of HPL for use in land-based primary production include urban rezoning, fragmentation of rural land for lifestyle purposes, development, and other uses that do not rely on the soil resource. The cumulative effects of these must be considered as per [section 3](#) of the RMA. Most submissions and most local authorities have confirmed they consider existing regulatory provisions are appropriate to address the effects of any loss of HPL for use in land-based primary production.

Adequacy of existing provisions

Submitters who support maintaining the status quo considered the existing pathway under clause 3.9(2)(j)(i) to be sufficient to enable specified infrastructure on HPL. However, most submissions received from the infrastructure industry and local government supported amending the clause to improve its workability. These submitters considered that such an amendment would ensure more consistent application and outcomes of the NPS-HPL across Aotearoa. Most local authorities supported Option 2, stating that it will help resolve ambiguity in interpretation, shorten consenting timeframes, and reduce the risk of litigation, while aligning with the original intent of the NPS-HPL.

Local authorities and officials also deem the existing tests required for the development of specified infrastructure (such as the functional or operational need test in clause 3.9(2)(j)) sufficient to ensure that HPL is safeguarded from inappropriate use and development. The joint submission from ESEG, alongside submissions from other energy sector submitters, proposed an alternative amendment with reduced requirements (ie, alternatives elimination is not required to prove operational or functional need) for specified infrastructure. However, they considered the existing tests to be necessary to strike a balance of enabling new specified infrastructure on HPL and ensuring unnecessary loss of HPL is prevented. In demonstrating a functional or operational need to locate on HPL, consenting authorities may consider it appropriate to describe why non-HPL sites within the region do not meet functional or operational needs. This would be consistent with the requirement of territorial authorities in clause 3.9(3). It is considered that existing case law on functional or operational need can assist with the application of this clause, which would make it unnecessary to provide specific definitions in the NPS-HPL.

[Section 6\(1\)\(a\)](#) of Schedule 4 of the RMA requires consideration of alternative locations only if the activity will, or is likely to, result in significant adverse effects on the environment. As this test is required under the RMA and not related solely to the NPS-HPL, changes to these provisions are out of scope for this consultation.

³⁸ New Zealand Frost Fans, New Zealand Society of Soil Science, Federated Farmers of New Zealand, Horticulture New Zealand.

³⁹ Estimate from page 43 of the Regulatory Impact Statement.

Support Aotearoa New Zealand’s renewable energy transition and response to natural hazards

Most submissions regarded the amendments (Option 2) as being conducive to Aotearoa New Zealand’s renewable energy transition and emission reduction targets. It is acknowledged that REG can be developed on land that is not HPL, and that the NPS-HPL is not intended to specifically deal with REG. Nonetheless, providing more clarity for the development of new specified infrastructure on HPL will assist with reaching national targets and align with other national direction, such as the NPS-REG and the [National Environmental Standards for Electricity Transmission Activities 2009](#) (NES-ET).

Broadening the application of clause 3.9(2)(j)(i) to include all activities associated with the lifetime of specified infrastructure is also consistent with the NES-ET, which contains provisions relating to the ‘alteration, relocation and replacement’ of transmission line support structures ([regulations 14, 15 and 16](#)), and to the ‘removal’ of transmission lines ([regulations 19 and 20](#)). The preferred recommendation is to amend the NPS-HPL to broaden the applicability of clause 3.9(2)(j)(i) for specified infrastructure by clarifying specific activities in the wording of the clause (such as the current wording of ‘maintenance, operation, upgrade, or expansion of specified infrastructure’). However, the proposed amendment still provides sufficient alignment with other national direction, while recognising that specified infrastructure under the NPS-HPL includes a variety of activities not solely related to REG.

Submissions provided different perspectives on the ability to build infrastructure at pace in response to natural hazards, which highlighted regional differences. Fulton Hogan and West Coast Regional Council considered the amendments necessary to support the ability of infrastructure to be built or rebuilt in response to natural disasters (for example, post Cyclone Gabrielle). By contrast, Auckland Council deemed existing pathways sufficient (that is, granting emergency powers). Concerns over loss of HPL to infrastructure have been taken into account, but officials agree that an amendment via Option 2 will balance the needs of different regions, while allowing new specified infrastructure to have a clear consent pathway under clause 3.9(2)(j)(i) – especially if needed in response to natural hazards.

Alternative options for providing for new specified infrastructure

Although the aim of the public consultation was to receive feedback on the proposed amendments, it also sought to gather evidence on the issue for specified infrastructure (Issue 1) and on the adequacy of the presented options to resolve that issue. Submitters presented a number of other options in that regard, which officials have taken into account (refer to the high-level analysis in table 3).

Table 3: Analysis of alternative options raised for amendments related to specified infrastructure

Alternative option	Submitter/s	Analysis
Limiting the amendment to solar REG activities only	Environmental Defence Society	This amendment would not sufficiently address the issues raised for all specified infrastructure.
Adding the requirement of a cost-benefit analysis to resource consent application for specified infrastructure	Federated Farmers of New Zealand	Existing provisions and requirements (such as the functional or operational need test) are considered sufficient in ensuring that HPL is safeguarded from inappropriate use and development.
Being more enabling for specified infrastructure on LUC 3 soils, compared to LUC 1 and 2 soils	Rangitikei District Council	This is beyond the scope of amendments as it would potentially affect other activities outlined in clause 3.9(2).
Changes to implementation guidance	Kāpiti Coast District Council, MainPower New Zealand Limited	Although these changes could support the amendments to clause 3.9(2)(j)(i), they would not directly address the issue, as the guidance document does not have legal weight. Notwithstanding this, implementation guidance will be updated to reflect final decisions on amendments.
Alternative wording of clause 3.9(2)(j)(i)	Electricity Sector Environment Group, Te Waihanga, Transpower New Zealand Limited	The evidence presented in submissions suggests that simply adding the word 'construction' to clause 3.9(2)(j)(i) would not be sufficient to encompass activities associated with specified infrastructure (for example, removal, replacement and decommissioning activities). Alternative wording of clause 3.9(2)(j)(i) has been proposed below to address these concerns.
Constraints on requirements for functional or operational need tests for specified infrastructure	Electricity Sector Environment Group, Te Waihanga, NZ Clean Energy, Lightsource bp, Anonymous (SR E-25)	Existing provisions and requirements are considered to be adequate and necessary to balance the use of HPL, as outlined in submissions by local authorities.
Requiring clause 3.9 of the NPS-HPL to be included directly within district plans without the need for a Schedule 1 process, and including more explanation and examples for important terms in the NPS itself	New Zealand Planning Institute	This is not considered a viable alternative to the proposed Option 2, as uncertainty around the wording of clause 3.9(2)(j)(i) would remain. The addition of examples and explanations in the NPS-HPL itself is not a preferred alternative option, as this would require more complex drafting and would likely require more testing of wording with key stakeholders, lengthening the amendment process.
Amending or adding definitions in the NPS-HPL for 'specified infrastructure', 'productive capacity' and 'construction'	MainPower New Zealand Limited, NZ Clean Energy, Transpower New Zealand Limited, Te Waihanga, Anonymous (SR E-7), Anonymous (SR E-8), Anonymous (SR E-9)	Amendments to existing definitions and additional definitions were not considered, as they would require more complex drafting and would likely require more testing of wording with key stakeholders, lengthening the amendment process.

The scope of the amendments is to clarify that the use, development or any activity associated with new and existing specified infrastructure is not considered inappropriate on HPL, subject to meeting the definition of specified infrastructure and the relevant tests in clause 3.9(2)(j). This pathway is especially necessary for infrastructure developers who do not hold designation powers under the RMA. As such, providing for a workable amendment is also an important consideration.

Several infrastructure and electricity industry group submitters raised matters regarding the wording of clause 3.9(2)(j)(i) and its application to the activities associated with specified infrastructure.⁴⁰ These groups expressed concerns that the simple addition of the word ‘construction’ would not go far enough to address issues relating to the ambiguity of consent pathways for specified infrastructure on HPL. In particular, electricity providers (ESEG) and Te Waihangā have expressed concerns that not all activities associated with specified infrastructure will be included. Table 4 outlines alternative options considered by officials.

Table 4: Alternative amendment options to resolve issues relating to specified infrastructure

Alternative amendment options	Consideration	Analysis
Add the word ‘construction’ to clause 3.9(2)(j)(i) (preferred Option 2 from public consultation)	Not preferred	Although this is the preferred option from consultation, it may not be sufficiently comprehensive. Electricity providers (ESEG) and Te Waihangā have expressed concerns that not all activities that capture the full lifecycle associated with specified infrastructure will be included.
Extend the clause to include ‘development, construction, removal, replacement, decommissioning’ (alongside the already present ‘maintenance, operation, upgrade, or expansion’)	Not preferred	While adding specificity, this option makes the clause very lengthy and it may inadvertently exclude other activities associated with specified infrastructure (eg, the construction of paper roads, stormwater ponds for substations).
Add the word ‘construction’ to clause 3.9(2)(j)(i) and define ‘construction’ in the NPS-HPL to include activities that relate to removal, replacement and decommissioning	Not preferred	The term ‘construction’ is not defined in the RMA or the National Planning Standards. Adding a definition runs the risk of creating further incongruities with other national direction down the line.
Broaden the clause without specifying exact activity types: ‘any activity associated with new or existing specified infrastructure’	Preferred	This option would include any activity related to specified infrastructure, without the need to define exactly what these are, and it would make the clause shorter while broadening the scope. While the lack of specificity risks leading to incongruent applications across different councils and increased litigation risk, these could be addressed in further updates to the implementation guidance.

Conclusion

Officials consider a modification to the approach proposed to amend the NPS-HPL will better enable provision for some matters of national importance (such as infrastructure development). Although the modified approach may contribute to cumulative loss of HPL, it will align with the original intent of the NPS-HPL. As such, officials recommend amending clause 3.9(2)(j)(i) of the NPS-HPL to enable any activity associated with new or existing specified infrastructure ([Recommendation 2a](#)).

⁴⁰ As submitted by: Electricity Sector Environment Group, Te Waihangā, Transpower New Zealand Limited.

Recommendations and decisions

Recommendation 1

- 1 **Agree** to amend the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) to enable specified infrastructure and associated activities on highly productive land (HPL).

agree/disagree

Recommendation 2

- 2 **Agree** to deliver Recommendation 1 by:
 - a. **amending** clause 3.9(2)(j) to enable any activity associated with specified infrastructure on HPL, provided it has a functional or operational need to locate on HPL.

agree/disagree

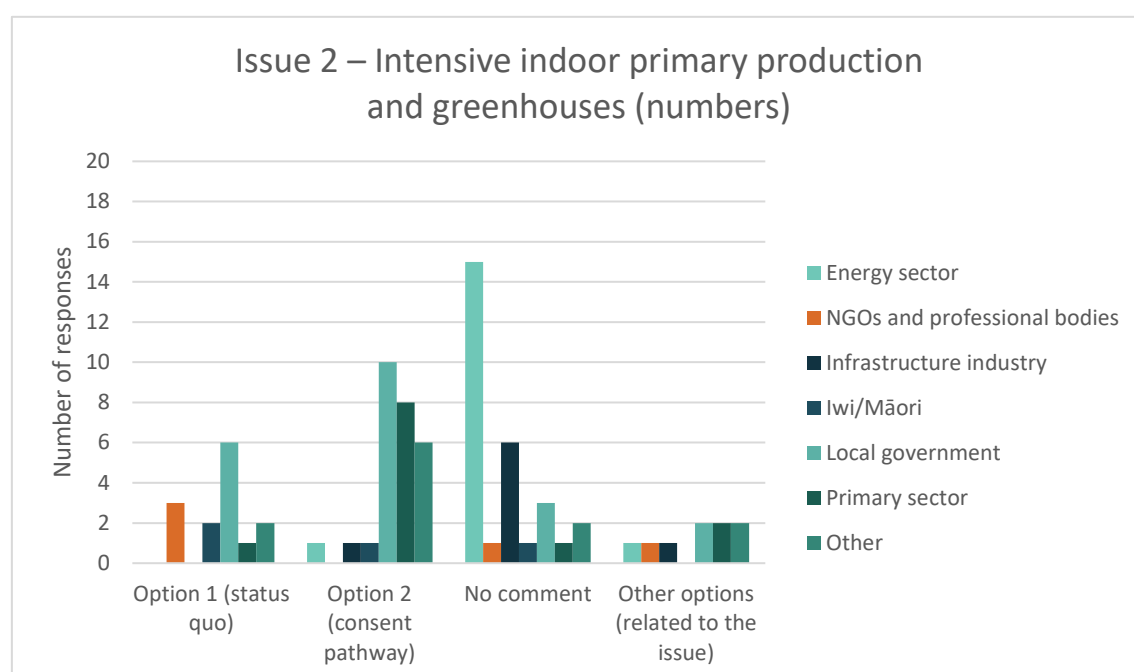
Section 3: Issue 2 – Intensive indoor primary production and greenhouses

This section summarises responses to Issue 2 in the discussion document – that is, providing a consent pathway for new intensive indoor primary production and greenhouses to develop and relocate on HPL.

Key themes from submissions

Most submissions on this issue showed support for an amendment to provide a consent pathway for new intensive indoor primary production and greenhouses to establish on HPL (see figure 3). Of 50 respondents that commented on this issue and weren't out of scope, 27 preferred Option 2 (to provide a consent pathway). The remainder comprised 14 respondents that preferred Option 1 (status quo) and 9 that proposed alternative options. Local authorities gave mixed views on this issue: of the 18 who made a submission on this issue, 6 were in favour of retaining the status quo (Option 1), 10 supported Option 2 and 2 presented other options. Out of the 12 submitters from the primary sector, only 1 preferred the status quo, while 8 supported an amendment to provide a consent pathway and 2 submitters presented other options.

Figure 3: Consultation outcomes for Issue 2 (intensive indoor primary production and greenhouses) split within submitter categories



Submissions in favour of Option 1: status quo

Overall, 14 of 50 respondents that commented on Issue 2 preferred Option 1 (status quo – no change). The main themes raised by these submitters are outlined below.

Limited evidence base for an amendment

The most common concern among submitters who supported maintaining the status quo was that limited evidence exists to determine the scale of the issue for intensive indoor primary production and greenhouses.⁴¹ A few submitters noted that the NPS-HPL came into effect in October 2022, which is a short timeframe in which to understand the extent of the problem (if any) and whether it requires regulatory intervention. Submitters suggested that further information needed to be gathered on potential adverse effects on environment and wildlife (such as glare, habitat fragmentation, water use and allocation), and the impact on amenity values needs to be considered.⁴²

Some other submitters said that more work is needed to understand the amount of HPL required within different regions for future development of intensive indoor primary production and greenhouses.⁴³ Further analysis is needed to be able to conclusively identify the effect of a consent pathway for intensive indoor primary production and greenhouses on Aotearoa New Zealand's HPL.

Inconsistent with the objective of the NPS-HPL

Some submitters stated that an amendment contradicts the original intent of the NPS-HPL, which is to protect the soil resource of HPL.⁴⁴ Some submitters also noted the further potential losses of HPL and the inconsistency of these amendments with the objective of the policy. One submitter raised concerns that providing a pathway for intensive indoor primary production and greenhouses would risk providing a 'back door' for inappropriate development of HPL.⁴⁵ The submission from the EDS expressed concern that, with limited supporting evidence, changes to the NPS-HPL to allow for intensive indoor primary production and greenhouses would be misaligned with the objective of the policy statement.

Permanent loss of HPL

Some submitters raised concerns over the permanent loss of HPL that could result from the development of intensive indoor primary production and greenhouses on HPL. A few submitters noted that the potential for permanent HPL loss was central to the rationale behind the initial exclusion of a consent pathway for such activities during the development of the NPS-HPL. They considered that inclusion of such a pathway would jeopardise the availability of the resource for future generations.⁴⁶ Kāpiti Coast District Council also submitted that

⁴¹ Environmental Defence Society, Otago Regional Council, Anonymous (SR ANON-3CY6-2RT9-P), Selwyn District Council.

⁴² New Zealand Fish and Game Council.

⁴³ Rangitikei District Council.

⁴⁴ Anonymous (SR E-17), Anonymous (SR ANON-3CY6-2RKT-8), Anonymous (SR E-35), Kāpiti Coast District Council, New Zealand Fish and Game Council, New Zealand Society of Soil Science.

⁴⁵ Māori submitter (SR E-35).

⁴⁶ Anonymous (SR E-17), Anonymous (SR ANON-3CY6-2RKT-8).

permanent and irreversible loss of HPL and soil quality would be inconsistent with the objective of the NPS-HPL and with policy 8.⁴⁷

Another submitter proposed that intensive indoor primary production and greenhouses that do not use the soil resource should be treated as buildings, as they both remove the productive capacity of HPL.⁴⁸ Auckland Council made the same point, stating its view that the requirement to demonstrate a functional or operational need to operate on HPL should revolve around the activities that need to use the soil resource of HPL, and around proximity to supporting activities. Auckland Council suggested that, if the activity does not rely on the soil resource (such as for intensive indoor primary production and greenhouses), it should not be located on HPL.

The NZSSS noted in its submission that indoor non-soil-reliant primary production is associated with the irreversible loss of soil capital and services once sealed. The NZSSS raised concerns that:

... in contrast to the occupancy of solar farms on land in general, indoor primary production construction that involves the sealing of the soil is effectively irreversible, both technically and practically, especially noting that earthworks associated with the preparation of a building platform can involve scrapping away a large volume of soil (eg, the top 30–40 cm and its disposal elsewhere).

Potential negative environmental impacts

The NZSSS also raised the issue of risks to environmental health from allowing intensive indoor primary production and greenhouses to locate on HPL. Non-soil-reliant primary production has been associated with sealing of soil resource that permanently impacts the productivity of the affected soil. The NZSSS raised concerns that this is not the best use of HPL and that it contradicts the intent of the NPS-HPL to preserve the soil resource.

The New Zealand Fish and Game Council submitted concerns that locating intensive indoor primary production and greenhouses on HPL would have adverse effects on the environment and wildlife. The Council noted the potential for habitat fragmentation, adverse effects from glare, and greater strain on freshwater due to water requirements and allocation. A few submitters also raised concerns about adverse effects that could arise from intensive indoor primary production and greenhouses developing on HPL – namely, negative impacts on the environment, wildlife, reduction on existing amenity value, and the effects that an amendment could have on the loss of HPL.⁴⁹

⁴⁷ [National Policy Statement for Highly Productive Land 2022](#), clauses 2.1 and 2.2:

2.1 Objective

Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.

...

2.2 Policies

...

Policy 8: Highly productive land is protected from inappropriate use and development.

⁴⁸ Anonymous (SR ANON-3CY6-2RKJ-X).

⁴⁹ New Zealand Fish and Game Council, New Zealand Society of Soil Science.

Submissions in favour of Option 2: provide a consent pathway for intensive indoor primary production and greenhouses in clause 3.9(2)

Out of the 50 respondents on this issue, 27 preferred Option 2 (providing a consent pathway for new intensive indoor primary production and greenhouses on HPL). The main themes raised in these submissions are outlined below.

Allows for greater flexibility in production option on HPL

One submitter noted that allowing intensive indoor primary production and greenhouses to be located on HPL would provide primary producers with greater opportunity to diversify, adapt and innovate on their land – both in what they are producing and in the intensification of production.⁵⁰ Two submitters expressed that intensive indoor primary production and greenhouses would provide an opportunity for greater intensification of food and fibre production over a smaller area in a controlled environment – increasing production while allowing more diverse use of land.⁵¹ One submitter suggested that intensive indoor primary production can be complementary to existing primary production that occurs on HPL (eg, chicken effluent from intensive indoor primary production being provided as fertiliser).⁵²

A few submitters noted that the use of intensive indoor primary production and greenhouses would provide greater security in the face of a changing climate and severe weather events.⁵³ A few other submitters suggested that a consent pathway under clause 3.9 would provide greater clarity on potential activities that can occur on HPL.⁵⁴

Provides greater flexibility for regions and districts with large areas of HPL

Some regions of the country have disproportionately large areas of HPL (eg, Matamata-Piako, Manawatū and Waitaki). In these areas, the NPS-HPL can be a limiting factor for some activities to occur on HPL. A few local authorities noted this as a concern within their area, specifically as provisions in the NPS-HPL would unduly affect regions that wanted to establish intensive indoor primary production and/or greenhouses.⁵⁵ These authorities, along with other submitters, noted that the large areas of HPL in these districts would make it difficult for the relevant industries to locate in other zones. They therefore considered that Option 2 provides an opportunity for regions with limited areas of non-HPL to diversify land-use activities.⁵⁶ South Waikato District Council further noted that providing for these industries could also allow for greater control over environmental effects of production on surrounding land.

⁵⁰ Anonymous (SR E-7).

⁵¹ Anonymous (SR ANON-3CY6-2RK8-C), Kea Energy Limited.

⁵² Agright New Zealand, HoldCo Limited.

⁵³ Anonymous (SR ANON-3CY6-2RBM-R), Manawatū District Council, Anonymous (SR ANON-3CY6-2RK7-B).

⁵⁴ Inghams Enterprises Pty Ltd, Taupō District Council.

⁵⁵ Manawatū District Council, Matamata-Piako District Council, Waitaki District Council.

⁵⁶ Maven BOP Limited, Manawatū District Council, Matamata-Piako District Council, Waitaki District Council.

Retains the objective of the NPS-HPL

A few submitters pointed out that adding a consent pathway to allow for intensive indoor primary production and greenhouses to occur on HPL would still align with the objective of the NPS-HPL. They noted that a key focus of the NPS-HPL is protecting the land resource for food and fibre production, so this change would support the overall intent of the NPS-HPL.⁵⁷ Queenstown Lakes District Council stated in its submission that the potential amendments acknowledge that buildings are a component of land-based primary production, and the area would continue to be used for food and fibre production.

Establishing intensive indoor primary production and/or greenhouses is not cost effective outside of HPL

Two submitters noted that trying to locate intensive indoor primary production and greenhouses on non-highly productive land is not cost effective.⁵⁸ One submitter pointed out that non-HPL (which is often not flat) requires more extensive earthworks to create a flat foundation to build on, and noted the increased costs associated with managing any effluent.⁵⁹ One submission highlighted that being further away from supporting infrastructure would result in higher transport costs and larger amounts of greenhouse gas emissions produced.⁶⁰ Overall, these perspectives suggest that providing a consent pathway for intensive indoor primary production and greenhouses would allow for more cost-effective establishment of intensive indoor primary production and greenhouses, promoting investment into the sector.

Other options for intensive indoor primary production and greenhouses raised by submitters

Nine submissions presented other options to address Issue 2, which are summarised below.

Pathway for land-based primary production

The most common theme among submitters was a suggestion to change the definition of 'land-based primary production'.

In its submission, the New Zealand Pork Industry Board requested clarity on the definition of land-based primary production to address ambiguity around "reliance on the soil resource of the land". In its submission, the Board considered that, as neither option addressed this ambiguity, neither proposed option would provide enough clarity (although it expressed an overall preference for Option 2).

The New Zealand Planning Institute proposed an amendment to the definition of land-based primary production that included intensive indoor primary production and greenhouses. It considered this would allow for intensive indoor primary production and greenhouses to be treated the same as other activities currently included in land-based primary production. The Institute suggested this could be done via a very specific amendment (eg, by adding "as well as indoor primary production and greenhouses"). It considered that such a definition would better align with the intent that HPL be tied to rural zoning and land-use capability, rather than

⁵⁷ Horowhenua District Council, Ngāti Tahu – Ngāti Whaoa Rūnanga Trust.

⁵⁸ Ngāti Tahu – Ngāti Whaoa Rūnanga Trust, Waitaki District Council.

⁵⁹ Poultry Industry Association New Zealand / Egg Producers Federation of New Zealand.

⁶⁰ Fulton Hogan.

soil alone. This amendment would allow for an enabling consent pathway under clause 3.12 of the NPS-HPL.⁶¹

Two submitters proposed substituting the definition of land-based primary production in the NPS-HPL for the definition of primary production as outlined in the National Planning Standards.⁶² They considered this would allow for a greater number of activities to occur on HPL, as the National Planning Standards definition includes activities that are not included in the 'land-based primary production' definition.⁶³

Amendments to other clauses of the NPS-HPL and definitions

The New Zealand Pork Industry Board suggested additions to clauses 3.9 and 3.11,⁶⁴ to:

- explicitly provide for primary production that may not meet the definition of land-based primary production in clause 3.9(2)
- provide for the expansion of existing intensive primary production on HPL under clause 3.11
- provide for the maintenance, operation and upgrade of these activities under clause 3.11(1)(a).

Selwyn District Council suggested that, alongside the word 'upgrade' in clause 3.11, the word 'expansion' should be added, which would allow existing activities to develop and expand. Inghams Enterprises also raised this as an issue for the poultry industry, where expansion isn't always inherently provided for under 'upgrade'.

Southern Parallel Campus Ltd proposed that clauses 3.9 and 3.10 be amended to include rural activities that are non-land-based primary production, and that the language should be softened to make it more permissive.

⁶¹ [National Policy Statement for Highly Productive Land 2022](#), clause 3.12:

3.12 Supporting appropriate productive use of highly productive land

- (1) Territorial authorities must include objectives, policies, and rules in their district plans that:
- (a) prioritise the use of highly productive land for land-based primary production over other uses; and
 - (b) encourage opportunities that maintain or increase the productive capacity of highly productive land, but only where those opportunities are not inconsistent with:
 - (iv) any matter of national importance under section 6 of the Act;
 - (v) or any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020.

⁶² Federated Farmers of New Zealand, Aquaculture NZ.

⁶³ See footnote 9.

⁶⁴ [National Policy Statement for Highly Productive Land 2022](#), clause 3.11:

3.11 Continuation of existing activities

- (1) Territorial authorities must include objectives, policies, and rules in their district plans to:
- (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and
 - (b) ensure that any loss of highly productive land from those activities is minimised.
- (2) In this clause, existing activity means an activity that, at the commencement date:
- (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or
 - (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act.

Federated Farmers of New Zealand submitted that an enabling pathway would be possible under clause 3.12 of the NPS-HPL (supporting appropriate productive use of HPL).⁶⁵ It preferred this option for any amendments to the NPS-HPL to address Issue 2.

AgResearch Ltd proposed an addition to the list of exemptions in clause 3.9(2)(j), allowing for intensive indoor primary production and greenhouses associated with primary production research to occur on HPL. It suggested potential wording: “Research activity associated with primary production that provides significant national or regional benefit”.

Gisborne District Council also suggested adding a definition of ‘greenhouses’ (which may include a maximum size) to support the amendments, to prevent undue loss of HPL to large operations.

Removal of functional or operational test for activities associated with HPL

Horticulture New Zealand presented evidence considering the removal of the requirement of a functional or operational need test for greenhouses and other activities typically associated with HPL. It argued in its submission that the functional or operational need tests are “not relevant or necessary where the activity is typically associated with HPL and do have the same permanency as other activities contemplated by subclause (j)”. The New Zealand Pork Industry Board also raised this as an issue, outlining that the tests are open to interpretation, and that what constitutes ‘functional or operational’ need is contextual.

Definition of intensive indoor primary production and greenhouses

Te Huata Charitable Trust (THCT) – which is developing activities for economic growth for the people of Te Whanau-ā-Āpanui – supports the inclusion of aquaculture activities in the definition of ‘primary production’ in the National Planning Standards. THCT considers it important that the NPS-HPL references the National Planning Standards definitions of ‘primary production’, ‘intensive indoor primary production’ and ‘building’. In its submission, THCT raised the issue that not all land-based aquaculture might be strictly considered ‘indoor’, and that this requirement should not unduly constrain aquaculture activities. However, THCT stated that if the broad definition of ‘building’ is retained as per the National Planning Standards, this should provide sufficient flexibility to accommodate aquaculture facilities.

Analysis and recommendations

Analysis

During public consultation, Option 2 covered that intensive indoor primary production and greenhouses (if provided for) would be subject to functional or operational tests. Based on the submission by Horticulture New Zealand and officials’ analysis on how the tests have been applied, we recommend removing functional or operational tests for these two industries. Detailed analysis leading to this recommendation can be found below in the section on [Functional or operational need test](#). The Regulatory Impact Statement (RIS) prepared for these amendments also covers this.

The following analysis of the main points raised through submissions informs the recommendations provided in the [Recommendations and decisions](#) section below.

⁶⁵ See footnote 61.

Challenges to the industry

A central focus of public consultation was to gather evidence to contextualise the extent of any problem that intensive indoor primary production and greenhouses face. The proposed amendments garnered mixed support from councils, but primary industry and NGOs were mostly in favour. Some commented that the status quo in the NPS-HPL should be maintained due to lack of evidence for the extent of any problem for the two industries.⁶⁶

Some local authorities, however, support a consent pathway for intensive indoor primary production and greenhouses.⁶⁷ These councils have presented contextual insight into the issues they are facing in their regions and/or districts in providing for intensive indoor primary production and greenhouses. Some industry groups (primary sector and/or energy sector) and one Māori organisation have also noted their preference for an amendment.⁶⁸

A few submitters have noted the status quo offers little investment certainty, with Inghams outlining that its \$215 million investment programme has been put on hold until there is a clearer consenting pathway for the industry to expand and develop new operations.

In its submission, Horticulture New Zealand (in consultation with TomatoesNZ Inc and Vegetables NZ) included the industry criteria for choosing a site for a new greenhouse. Key factors when determining suitability of a site include the type of zone, access to renewable energy and electricity, water access, and distance from point of sale/markets and from ancillary activities. In most circumstances, HPL is most suited for greenhouses.⁶⁹

Some councils with higher proportions of HPL in their region and/or district preferred an amendment to provide for these two industries. For example, district councils such as Manawatū and Matamata-Piako noted they have large areas in their rural environment that are HPL (LUC 1 to 3).⁷⁰ Accordingly, they submitted they have little scope to be able to provide for intensive indoor primary production and greenhouses to establish in the rural environment and in other zones. Locating these activities in zones such as industrial zones may not always be feasible. For example, in some council assessments for activities that may be provided for in industrial zones, rural activities such as intensive indoor primary production and greenhouses are generally not anticipated as industrial activities. As such, if these activities are provided for in an industrial zone, councils would be required to provide more business land for activities typically more extensive in size than urban uses. Matamata-Piako District Council noted in its submission:

⁶⁶ Otago Regional Council, New Zealand Fish and Game Council, Environmental Defence Society.

⁶⁷ Gisborne District Council, Horowhenua District Council, Manawatū District Council, Matamata-Piako District Council, South Waikato District Council, Tasman District Council, Waitaki District Council, Queenstown Lakes District Council, Taranaki Councils.

⁶⁸ AgResearch Ltd, Agright New Zealand, HoldCo Limited, Aquaculture New Zealand, Central Plains Water Ltd and Central Plains Water Trust, Fulton Hogan, Horticulture New Zealand, Inghams Enterprises Pty Ltd, Kea Energy Limited, Ngāti Tahu – Ngāti Whaoa Rūnanga Trust, Poultry Industry Association New Zealand/ Egg Producers Federation of New Zealand.

⁶⁹ Horticulture New Zealand commissioned and attached to its submission a spatial assessment, focused on the Taupō and Bay of Plenty regions, assessing suitable land for greenhouses to develop. Based on the criteria noted, and accounting for area required for effluent waste, around 9 per cent (97,500 ha) in the project area is made up of HPL, and around 3 per cent (32,000 ha) is suitable for locating greenhouses of a representative size of 1 ha. Of the 32,000 ha of suitable land, approximately 11,500 ha (36 per cent) is highly productive.

⁷⁰ Approximately 40 per cent of land in the Manawatū district is LUC 1 to 3 and about 66 per cent of the Matamata-Piako district is HPL.

...all the urban settlements within Matamata-Piako are situated on HPL, so any extension to the existing industrial zones required to accommodate rural industry will result in a loss of HPL anyway. Therefore, no positive benefit would be gained by directing these businesses to an industrial zone, particularly in the Matamata-Piako context.

Some submitters noted that providing for these two industries would provide more security in the face of a changing climate and increasing severe weather events.⁷¹ Some other submitters also considered that existing activities may need to expand to meet animal welfare regulations and/or to increase production. They noted that, under the status quo, it is unclear in some circumstances whether 'upgrade' as provided in clause 3.11(a) allows for expansion.⁷²

Flexibility for regions and districts with large areas of HPL

Submitters who preferred Option 2 (providing a consent pathway for intensive indoor primary production and greenhouses) noted that an amendment would allow for greater flexibility in land use. Some of the regions and/or districts with the highest proportion of HPL have found it difficult to provide for these activities, due to the rural environment being primarily HPL.⁷³ Submissions from councils have noted difficulties in providing for uses and developments beyond those explicitly outlined in the NPS-HPL.

Intensive indoor primary production and greenhouses under the NPS-HPL

Feedback was mixed on whether providing for intensive indoor primary production and greenhouses 'retains' the objective of the NPS-HPL. Some submitters noted that enabling these industries is inconsistent with the intent of the NPS-HPL. Other submitters suggested that these industries align with the policy objective of protecting HPL for food and fibre production.

As the discussion document outlined, a key consideration around the exclusion of intensive indoor primary production and greenhouses from the definition of land-based primary production is that it could potentially result in the permanent loss of HPL. Officials note that there are some circumstances – as provided for by the NPS-HPL – where buildings or structures are a central component of land-based primary production.⁷⁴ Queenstown Lakes District Council noted the same thing in its submission, stating that providing for these two industries acknowledges that buildings are a component of land-based primary production.

The NPS-HPL does acknowledge that buildings can, in some circumstances, be part of a wider land-based primary production system. Therefore, the policy does anticipate some degree of flexibility in relation to buildings. In the development of local plans, some of the activities in clause 3.9(2) could be directed to a consent process, or they may be considered permitted activities. How councils give effect to this clause is likely to differ across Aotearoa. It is noted that any possible adverse environmental effects beyond the loss of HPL are dealt with in the resource consent process under the RMA, not under the NPS-HPL directly.

Based on key themes from submissions, it is unlikely in most circumstances that intensive indoor primary production and greenhouses would have a clear consent pathway under the

⁷¹ It is worth noting that, although these industries offer some greater level of security for production, they are not absolute.

⁷² See footnote 64.

⁷³ Manawātū District Council, Matamata-Piako District Council, Waitaki District Council.

⁷⁴ For example, supporting activities such as equipment storage, provided in clause 3.9(2)(a).

status quo. This would mean that councils that raised this as an issue for their districts would continue to be unable to provide for intensive indoor primary production and greenhouses.

If not provided for by the proposed amendments, the NPS-HPL may be revisited in the future to provide for the relocation and development of new, intensive indoor primary production and greenhouses on HPL. This possibility is driven by two factors: the forecasted growth of both industries to accommodate Aotearoa New Zealand's growing population, as well as and export opportunities, and by the identification of the land-based primary production sector as being particularly vulnerable to climate change. The growth of the industries is not expected to be significant. Both systems are efficient production methods, and as such, expansion on HPL is not expected to result in large areas of HPL being lost.

Should the proposed amendments go ahead, existing provisions will still apply, such as the requirements in clauses 3.9(3) and 3.9(4) which require councils to minimise the loss of HPL and avoid and/or mitigate reverse-sensitivity effects. Existing provisions give decision-making authorities the power to decline applications where a loss of HPL is not justified. Further, a definition of intensive indoor primary production and greenhouses will be supplied to assist with interpretation of the amendment.

On balance, providing a consent pathway for intensive indoor primary production and greenhouses to be developed on HPL is considered to be a trade-off with the overarching objective of the NPS-HPL. However, existing provisions will be enough to ensure the objective is reflected in resource consent processes.

Functional or operational need test

Option 2, as covered in the discussion document, outlined that providing for intensive indoor primary production and greenhouses via clause 3.9(2) would be subject to a functional or operational need test. Horticulture New Zealand submitted that the test is not necessary if the activities are typically associated with HPL. (The same point was made in the submission by the New Zealand Pork Industry Board.) Auckland Council submitted that the industries shouldn't be required to show a functional or operational need, as they are not land-based primary production.

The majority of submitters on Issue 2 support an amendment to enable a consent pathway for intensive indoor primary production and greenhouses on HPL. Removing the requirement for a functional or operational need test for these activities is overall considered the most enabling option for a number of reasons, outlined below.

First, although intensive indoor primary production and greenhouses do not rely on the HPL soil resource itself, they are generally rural activities and do rely on other elements of HPL – such as flat terrain, access to main transport routes, proximity to markets, and existing rural activities (eg, effluent disposal). These other non-soil-reliant elements of HPL provide advantages for intensive indoor primary production and greenhouses to establish on HPL compared to alternative locations. This provides for efficient land use when all the elements of primary production are considered (eg, transport, sale), as noted in some council and industry submissions.

Second, the impact of these activities on the loss on HPL is considered to be relatively small. The intensive indoor primary production industry captures a wide array of industries, such as indoor mushrooms, chicken and pork (among other primary production uses principally occurring indoors). As such, the total scale of intensive indoor primary production is likely to be more extensive than the footprint of greenhouses. Based on current available data, it is

difficult to distinguish when intensive indoor primary production operations are purely indoor versus when the operation is mixed (indoor, with elements of outdoor system). Mixed-use operations, which use the soil, are anticipated to have a clearer consent pathway under the status quo of the NPS-HPL. Intensive indoor primary production systems are efficient – for example, 8 to 10 million servings of chicken supplied by Inghams come from only 50 hectares of land. Therefore, it is not anticipated that the impact of these activities would lead to significant loss of HPL.⁷⁵ The greenhouse industry captures an array of different types of growing methods and crops grown indoors. The industry also has very efficient production systems. Aotearoa has an estimated 310 hectares of food-producing greenhouses. The sector is made up of three sizes of growers, of which 38 per cent are large (more than 5 hectares), 40 per cent are medium (more than 1 hectare and less than 5 hectares), and 22 are small (less than 1 hectare). These growers supply over 90 per cent of the tomatoes, capsicums and cucumbers consumed fresh in Aotearoa, as well as leafy greens, chillies, courgettes, eggplants, herbs, sprouted beans, witloof, nursery plants, cut flowers and medicinal marijuana. The industry's farm-gate value is approximately \$300 million.⁷⁶

Third, in light of the support for enabling a consent pathway for these activities, requiring the industries to demonstrate a functional or operational need would be a further process barrier that would be challenging to overcome. As such, officials agree that the functional or operational test for intensive indoor primary production and greenhouses would not be enabling for these activities, so the recommendation is that they should not be subject to the test. It is noted that the provisions of clauses 3.9(3) and 3.9(4) in the NPS-HPL will still apply, allowing for consent applications to be approved or declined as local authorities see fit.

Taking into account measures under clause 3.9(3), the overall footprint of the industries, and how the functional or operational tests have been applied, officials consider that the activities should be provided for via clause 3.9(2), without the tests, to ensure that the provisions of the NPS-HPL relevant to intensive indoor primary production and greenhouses are clear.

Alternative options

Although the aim of the public consultation was to gain feedback on the proposed amendments, it also sought to gather evidence about Issue 2 for intensive indoor primary production and greenhouses and on the adequacy of the options presented. Submitters presented a number of other options to address Issue 2, which officials have taken into account. A high-level analysis of the alternative options is presented in table 5.

⁷⁵ Note that, although these industries themselves may not significantly result in large areas of HPL being lost, the loss of HPL occurs cumulatively. In other words, the cumulative loss of HPL to not only intensive indoor primary production and greenhouses but to other non-land-based activities, is likely to be higher depending on the scale of the operations. Presenting these as proportions of HPL, although useful in outlining scale and projected growth of a single industry, should include the caveat that less than 15 per cent of Aotearoa New Zealand's landmass is HPL (LUC 1 to 3). As such, proportionality may seem insignificant but, across the country, the loss of HPL occurs cumulatively. Measures in the NPS-HPL are intended to ensure the cumulative loss of HPL is minimised and mitigated.

⁷⁶ Horticulture New Zealand. 2023. *Submission on managing the use and development of highly productive land*. Wellington: Horticulture New Zealand. https://www.hortnz.co.nz/assets/Environment/National-Env-Policy/Land/23.10.30_HortNZ-FINAL-Submission-on-NPSHPL-Amendments.pdf

Table 5: Alternative amendment options to resolve issues relating to intensive indoor primary production and greenhouses

Alternative amendment options	Consideration	Analysis
Amendment to the definition of 'land-based primary production' to include intensive indoor primary production and greenhouses	Not preferred	The proposed Option 2 pathway (via clause 3.9(2)) is considered more appropriate, as it directly identifies these industries as provided for. This option also aligns with the preference of most submissions – to provide for intensive indoor primary production and greenhouses. Subclause 3.9(2) is also subject to measures outlined in subclause 3.9(3), which ensures local authorities take measures to minimise or mitigate loss of HPL (as well as the impact of uses and developments on productive capacity of HPL). Although this option was initially considered, it was rejected at the outset of the consultation. ⁷⁷
Provide definition of intensive indoor primary production and greenhouses	Considered and provided for in the NPS-HPL	A definition for intensive indoor primary production and greenhouses will be provided in the NPS-HPL as part of the proposed amendments.
Prescribe a maximum lot size for 'greenhouses', to minimise the loss of HPL due to large operations	Not preferred	This option was not considered, as it doesn't allow flexibility for local authorities to make decisions or consent activities based on the needs of their district.
Additions to clause 3.9 and clause 3.11 to explicitly provide for primary production that may not meet the definition of land-based primary production	Not preferred	Amendments to address issues for intensive indoor primary production and greenhouses are considered to be most appropriately dealt with under clause 3.9. This is because amendments to clause 3.11 would affect all existing activities, not just intensive indoor primary production and greenhouses. Clause 3.9(2) is also the pathway that provides for uses and development not directly aligned with the definition of land-based primary production.
Enable a pathway under clause 3.12 (supporting appropriate productive use of HPL)	Not preferred	This option is not considered to sufficiently address Issue 2, as not all intensive indoor primary production and greenhouse activities are supportive activities.
Removal of functional or operational need test	Officials agree to exclude tests	Analysis of this option is discussed in the main analysis above.
Expansion of existing activities via subclause 3.11(1)(a)	Not preferred	Amendments to clause 3.11 would affect all existing activities, not only intensive indoor primary production and greenhouses, which is beyond the scope of consultation. The expansion of existing intensive indoor primary production and greenhouses will be provided for as part of the amendment.

Conclusion

Officials recommend amending the NPS-HPL to provide for intensive indoor primary production and greenhouses via clause 3.9(2), and to include a definition for indoor primary production and greenhouses in clause 1.3 (Interpretation).

⁷⁷ See footnote 9, p 23.

Recommendations and decisions

Recommendation 3

- 3 **Agree** to amend the NPS-HPL to enable intensive indoor primary production and greenhouses on HPL without functional or operational tests, provided their effects are managed and they are appropriately defined.

agree/disagree

Recommendation 4

- 4 **Agree** to amend clause 3.9 of the NPS-HPL by inserting into clause 3.9(2) a new matter which states that new and existing intensive indoor primary production and greenhouse activities are not inappropriate activities on HPL, provided they are managed in accordance with clause 3.9(3).

agree/disagree

Section 4: Other issues

Overview of other issues raised in submissions

The scope of the consultation was limited to considering consent pathways for new specified infrastructure, intensive indoor primary production and greenhouses on HPL. Of the 83 submissions received, 37 raised issues that were outside of this scope.

The issue that attracted the largest number of out-of-scope submissions related to the definition of specified Māori land in the NPS-HPL.⁷⁸ Other issues raised by three or more submitters include:

- removal of LUC 3 soils from the definition of HPL (seven submitters)
- additional exemptions for non-land-based primary production activities on HPL (four submitters)
- consistency with other national direction (four submitters)
- broadening definition of land-based primary production (four submitters)
- changes to implementation guidance (three submitters).

Other issues raised, with support from one or two submitters only, relate to:

- implementation of the NPS-HPL
- a pathway for quarrying/mineral/aggregate extraction
- definition of specified infrastructure
- urban rezoning clause
- mapping of HPL
- landowner rights
- subdivision.

Analysis and recommendations

Of the 37 submissions that included material unrelated to the two issues consulted on, some of these may be regarded as ‘minor and technical’, while others may require more substantive amendments (eg, exclusion of LUC 3 from the definition of HPL). It is noted that public consultation took place during the lead-up to the 2023 General Election, and some of the issues raised can be linked to the National Party manifesto.

Table 6 presents the categorisation of these submissions by:

- whether they would require minor or technical amendments
- whether they were consistent with the National Party manifesto or the new Government’s coalition agreements
- whether the proposed amendments are consistent with Treaty Settlement Acts.

⁷⁸ Bay of Plenty Regional Council, Horowhenua District Council, Anonymous (SR E-22), Te Uru Kahika, Taupō District Council, Ngāti Tahu – Ngāti Whāoa Rūnanga Trust, Anonymous (SR E-35).

Based on this analysis, officials recommend that further advice be provided to ministers on the merits of these potential amendments (as part of advice on potential amendments to the NPS-HPL being progressed over the 2024 to 2027 parliamentary term).

Table 6: Categorisation of other issues raised by submitters

Issue raised (# of submitters)	Minor and technical amendments	Consistent with coalition agreement or National Party manifesto	Consistent with Treaty Settlement Acts
Definition of Māori land (7)			+
Removal of LUC3 from the definition of HPL (7)		+	
Additional exemptions for non-land-based primary production activities on HPL (4)		+	
Consistency with other national direction beyond the issues consulted on (4)	+	+	
Broadening definition of land-based primary production (4)		+	
Changes to implementation guidance (3)	+		
Implementation of NPS-HPL (2)	+		
Clearer pathway for quarrying/mineral/aggregate extraction (2)	+	+	
Definition of specified infrastructure (2)		+	
Urban rezoning clause (2)		+	
Mapping (2)		+	
Landowner rights (2)		+	
Subdivision (2)		+	

Recommendations and decisions

Recommendation 5

- 5 **Note** issues beyond the scope of the consultation that have been raised in submissions and which may be considered in future policy work.

Note

List of recommendations

Recommendation 1

- 1 **Agree** to amend the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) to enable specified infrastructure and associated activities on highly productive land (HPL).

Recommendation 2

- 2 **Agree** to deliver Recommendation 1 by:
 - a. **amending** clause 3.9(2)(j) to enable any activity associated with specified infrastructure on HPL, provided it has a functional or operational need to locate on HPL.

Recommendation 3

- 3 **Agree** to amend the NPS-HPL to enable intensive indoor primary production and greenhouses on HPL without functional or operational tests, provided their effects are managed and they are appropriately defined.

Recommendation 4

- 4 **Agree** to amend clause 3.9 of the NPS-HPL by inserting into clause 3.9(2) a new matter which states that new and existing intensive indoor primary production and greenhouse activities are not inappropriate activities on HPL, provided they are managed in accordance with clause 3.9(3).

Recommendation 5

- 5 **Note** issues beyond the scope of the consultation that have been raised in submissions and which may be considered in future policy work.

Appendix 1 – Consultation questions

Consultation questions: Issue 1 – Specified infrastructure

1	Are you aware of any other issues that could impede the development of new specified infrastructure on HPL?
2	Do you think the NPS-HPL requires an amendment to provide for the construction of new specified infrastructure on HPL?
3	Do you think the proposed amendment to clause 3.9(2)(j)(i) – adding ‘construction’ – will resolve the issues?
4	Which option do you prefer? Why?

Consultation questions: Issue 2 – Intensive indoor primary production and greenhouses

1	Do you think the NPS-HPL requires an amendment to provide a consent pathway for intensive indoor primary production and greenhouses to be developed on HPL? Why?
2	What do you think are the risks with amending the NPS-HPL to provide for intensive indoor primary production and greenhouses on HPL?
3	Do you support option 1 (retaining the status quo)? Why?
4	Do you support option 2 (a pathway under clause 3.9)? Why?
5	Are there any other options we should consider?