



Proposed National Policy Statement for Highly Productive Land Submission

We would like to hear your views on the proposed National Policy Statement for Highly Productive Land (NPS-HPL).

Please feel free to use this template to prepare your submission. Once complete please email to soils@mpi.govt.nz.

You can also make a submission using the online submission tool. A link to the online submission tool is available at www.mpi.govt.nz/HighlyProductiveLand.

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Questions for submitters

The questions for submitters that are included throughout the discussion document are provided below. We encourage you to provide comments to support your answers to the questions below. You do not have to answer all questions for your submission to be considered.

The page numbers mentioned below indicate where further information about the question is located in the discussion document.

Policy 1: Identification of highly productive land [page 41]

If highly productive land is to be identified, how should this be done and by whom?

1. WPD's primary concern is the application of this NPS during the period between the date the NPS becomes operative and the actual implementation by local authorities of proposed Policies 1 and 2 identifying highly productive land (Interim Period).

2. The Executive Summary of the Discussion Document states (page 6, left hand column):

"This proposal focuses on land that is highly productive for primary production, which can be identified using the Land Use Capability (LUC) classification system and considering a number of other factors ..." [underlining added]

3. The Introduction (on page 8) contains the following statements:

"The reference to "highly productive land" recognises there are other factors in addition to soil that determine the productive capacity of land for primary production ..." [underlining added]

"This proposal would require Councils to identify highly productive land in regional policy statements and district plans using the LUC classification system, and consider a number of other factors ..." [underlining added]

4. Page 17, right hand column, contains the following statement:



“The definition of highly productive land in the proposed NPS is based on the LUC classification system, but it will provide flexibility for councils to identify highly productive land based on a range of considerations.” [underlining added]

5. Proposed Policies 1 and 2, and the related Appendix A, establish a process which contains some flexibility as to ultimate outcomes. The implementation process will enable landowners to debate (with the relevant local authorities) whether or not any particular area of land should be identified as highly productive land even if that area of land contains Class 1, 2 or 3 soils. That element of flexibility is appropriate and is supported by WPD.
6. There will undoubtedly be small pockets of land containing Class 1, 2 or 3 soils which may or may not be ultimately identified as highly productive land for one or more of a number of reasons. By way of example:
 - a. If such a small pocket of land could possibly be amalgamated with adjoining land in order to create an economically viable primary production unit, that land may appropriately be identified as highly productive land. However if that area of land is surrounded by non-productive uses (such as residential or rural living) then there may be no practical likelihood of that area of land ever being used for primary production.
 - b. Reverse sensitivity considerations may come into play. Use of an area of land adjoining or adjacent to residential or rural living areas for certain kinds of primary production may be inappropriate because such use may introduce reverse sensitivity problems which otherwise would not arise.
 - c. There are bound to be other combinations of factors which would reasonably lead to a conclusion that a particular area of land containing Class 1, 2 or 3 soils is unlikely to be used for primary production, and therefore should not be identified as highly productive land.
7. If any of the above circumstances arise, Policies 1 and 2 plus Appendix A provide some flexibility as to the ultimate outcome. This is appropriate, as stated above. However that flexibility is currently not available to local authorities during the Interim Period because of the combination of:
 - a. the intention that the majority of NPS objectives and policies are operative from the outset;
 - b. the signalled intention that all land containing Class 1, 2 and 3 soils (as defined) will be deemed to be highly productive land during the Interim Period;



- c. the fact that Appendix A does not apply during the Interim Period.
8. It must be appreciated that the Interim Period will not just comprise the three year period within which local authorities must implement Policies 1 and 2. Local authorities will almost certainly interpret their obligation as being to notify the requisite variations to planning instruments (regional instruments and district plans) within the required three year period. Such notification will then lead to an inevitably contentious submission and appeal process likely to take up to a further five years before the requisite variations become operative. The Interim Period could therefore be a period of up to about eight years.
9. WPD L suggests that it would be entirely inappropriate for land which may ultimately not be identified as highly productive land to be ‘locked up’, and not available for other potential uses, during the Interim Period. WPD L further suggests that, while the current draft NPS achieves the objectives and intentions summarised in the quotations in paragraphs 2-4 above, those objectives and intentions are not achieved during the Interim Period.
10. There will presumably be a number of ways that the above issue could be addressed. To assist this process, WPD L suggests that one option would be to insert a new Policy 1.3. WPD L sets out below a possible wording for such a policy, followed by a summarised ‘Reason’ for inserting that policy into the NPS.

1.3 When considering alternative uses of land deemed to be classified as highly productive land pending the implementation by local authorities of policies 1.1 and 1.2, local authorities shall have regard to the likelihood of that land being identified as highly productive land when policies 1.1 and 1.2 are implemented, using the criteria set out in Appendix A.

[Reason: Appendix A creates scope for a determination that an area of land is not highly productive land despite it containing Class 1, 2 or 3 soils. That scope should be available to local authorities during the interim period between this NPS becoming operative and proposed policies 1.1 and 1.2 being implemented.]



Are the proposed criteria all relevant and important considerations for identifying highly productive land? Why/why not?

1. Appendix A is currently somewhat confusing because it has a sequence of un-numerated paragraphs each followed by a, b, c, etc. The primary paragraphs should be numerated (by number or capital letter) to avoid that confusion. Numeration is included in the amendments suggested below.
2. **WPDL believes that the NPS, as currently drafted, does not properly acknowledge or take into account the virtual certainty that there will be numerous small pockets of land containing Class 1, 2 or 3 soils which are never likely to be used for primary production because of a range of factors.**
3. The Discussion Document states, on page 33 right hand column:

"... What is appropriate and inappropriate will depend on context and actual impacts of development on highly productive land ..."
4. Further on, on page 38 right hand column, can be found the following statement:

" the size and cohesiveness of the area to support primary production. This is important to ensure the NPS does not require existing small pockets of highly productive land to be protected for primary sector use ..."
5. While Appendix A does refer to *"The size and cohesiveness of the area of land"* (relating to the land in question), it does not take any account of the surrounding context. In some areas smaller existing landholdings may be able to be amalgamated to create larger productive properties, in which case it may be appropriate for the relevant adjoining or adjacent properties to all be identified as highly productive land. In other cases there may be a small pocket of land containing Class 1, 2 or 3 soils which is highly unlikely ever to be used for primary production because it is surrounded by urban and/or rural living development and is therefore not suitable for primary production. WPDL considers that the assessment of whether land should be identified as highly productive land should take into account the surrounding context of that land and the related likelihood of the land ever being used for primary production.
6. **WPDL considers that the issue of potential improvement of water quality (resulting from not using land for primary production) has not been properly taken into account in the NPS.**
7. Appendix A does contain reference to *"water quality issues or constraints that may limit the use of the land for primary production"*, but that reference appears to be constrained just to water quality and appears to be intended to relate to potential



minimum or maximum limits relating to contamination (ie: technical limits). WPDL considers that this is not broad enough.

8. The interrelationship between water and primary production is complex. It goes beyond technical issues such as whether (for example) nitrate discharges into water results in the receiving water exceeding a specified level of contamination. It extends to matters such as the impact of sedimentation on aquatic environments, and other factors which may impact upon, or improve the quality of, aquatic environments. All considerations relating to physical water quality and broader water environments should be relevant considerations.
9. WPDL has some other minor suggestions to make in relation to Appendix A.
10. To assist this process, WPDL sets out below all of Appendix A with:
 - a. suggested amendments identified by track change additions/deletion;
 - b. summarised 'Reasons' for the suggested amendments.

Appendix A: Criteria to identify highly productive land

- A. In accordance with Policy 1, regional councils must use the following criteria to assess and identify areas of highly productive land:

[Reason: The paragraph identification (A, B, C) is inserted to enable cross-referencing proposed below.]

 - a. the capability and versatility of the land to support primary production based on the Land Use Capability classification system;
 - b. the suitability of the climate for primary production, particularly crop production; and
 - c. the size and cohesiveness of the area of land to support primary production, taking into account the nature of, and the existing and potential use of, land in the surrounding neighbourhood.

[Reason: It is not just the size and cohesiveness of the area of land in question that is important. There will undoubtedly be isolated pockets of highly productive land which are unlikely to be used for primary production because of either, or a combination of, the size and cohesiveness of the land in question and the existing uses in the surrounding neighbourhood. Factors such as reverse sensitivity are potentially relevant considerations. If there is no reasonable likelihood of a small pocket of land being used for primary production because it is surrounded by non-productive uses, that should be a factor which is taken into account.]



- B. When identifying areas of highly productive land, local authorities may also consider the following factors:
- ~~the current or potential availability of water—see question below;~~
[Reason: This factor should be retained, as the current or potential availability of water is clearly a critical consideration.]
 - access to transport routes;
 - access to appropriate labour markets;
 - availability of supporting rural processing facilities and infrastructure;
[Reason: The current wording is ambiguous because it could refer to either the availability of [supporting ...] or the possibility that use of the land in question for productive purposes might in future [support ...]. The proposed addition clarifies what is presumed to be the intended meaning.]
 - the current land cover and use and the environmental, economic, social, and cultural benefits it provides; ~~and~~
 - when criterium A.c. is a relevant consideration, future potential alternative use(s) of the land and the environmental, economic, social and cultural benefits such future alternative use(s) would provide; and
[Reason: If an area of land may not be suitable for primary production because of criterium A.c. above, the relevant local authority should be able to consider, and assess the potential benefits of, potential alternative uses of that land.]
 - water quality issues or constraints that may limit the use of the land for primary production or result in adverse water quality or environmental outcomes arising from use of the land for primary production.
[Reason: The current wording, and particularly the use of the word “limit”, implies some form of technical constraint (such as, for example, a requirement to achieve or not exceed a certain chemical discharge limit) and potentially limits consideration just to physical water quality. This potentially does not take into account future improvement of water quality above minimum or maximum compliance limits. The issue of water values is very broad and includes issues such as sedimentation and aquatic environments which go beyond mere water quality. The suggested amended wording is intended to allow any form of water quality or water environment improvement to be taken into account (as an optional consideration) regardless of specified technical minimum or maximum limits.]
- C. Highly productive land excludes:
- urban areas; and
 - areas that have been identified as future urban zones in district plans.



Policy 3: New urban development on highly productive land [page 45]

How should highly productive land be considered when identifying areas for urban expansion?

1. WPDL is concerned that the first factor detailed in this policy (relating to development capacity) is effectively a 'trigger' which must apply before the other three listed factors can be applied. Those concerns are that:
 - a. past experience has shown that Council assessments of development capacity are not necessarily accurate, particularly the more distant (in time) future projections;
 - b. there are inevitable debates about the extent to which Council assessments of development capacity are or are not correct and are or are not based upon an appropriate degree of accurate and detailed evidence;
 - c. while the current draft NPS – Urban Development is proposing to address some of those issues, it will take some considerable time for implementation of the proposed NPS-UD to flow through the system into individual Council development capacity assessments;
 - d. it is unlikely that any future assessments of development capacity will have a sufficient degree of certainty to be able to be relied upon for the purposes of a completely separate document, as is proposed in the current draft NPS – Highly Productive Land;
 - e. it is undesirable for the applicability of an important aspect of one NPS to rely on the accuracy of outcomes from a separate NPS as is currently proposed in this situation.
2. WPDL has no difficulty with assessment of development capacity being one of a number of factors to be taken into account under proposed Policy 3. However that factor should be one of a number of factors, and should not be a pre-eminent 'trigger' factor as is currently proposed.
3. Set out below is proposed Policy 3 with amendments suggested by WPDL highlighted by track change to address the concerns expressed above, with a summarised Reason for the proposed amendments.



Proposed Policy 3: New urban development and growth on highly productive land

Urban expansion must not be located on highly productive land unless

~~a. there is a shortage of development capacity to meet demand (in accordance with the NPS-UDC methodologies and definitions); and~~

it is demonstrated that this is the most appropriate option based on a consideration of:

- whether there is a shortage of development capacity to meet demand (in accordance with the NPS-UDC methodologies and definitions);
- a cost-benefit analysis that explicitly considers the long-term costs associated with the irreversible loss of highly productive land for primary production;
- whether the benefits (environmental, economic, social and cultural) from allowing urban expansion on highly productive land outweigh the benefits of the continued use of that land for primary production; and
- the feasibility of alternative locations and options to provide for ~~the required~~ demand, including intensification of existing urban areas.

[Reason: *There are a number of difficulties with establishing a ‘development capacity’ trigger as currently drafted. That does not take into account potential uncertainty or debate about available development capacity or whether theoretical development capacity is actually available for development, nor does it take into account the desirability of competing excess development capacity and related considerations of market competition enhancing affordability. Available development capacity should reasonably be one of the factors for consideration under this policy, but should not be a trigger threshold which must be met before other factors can be taken into account.* **]**