



Proposed National Policy Statement for Highly Productive Land

Submission Template

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.

Contact details

Name:

KiwiRail Holdings Ltd

Postal address:

PO Box 593
Wellington 6140

Phone number:

[REDACTED]

Email address:

[REDACTED]

Are you submitting on behalf of an organisation? Yes [X] No []

If yes, which organisation are you submitting on behalf of?

KiwiRail Holdings Ltd

Submissions are public information

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Under the Privacy Act 1993, people have access to information held by agencies about them. Any personal information you send with your submission will only be used in relation to matters covered by this document. In your submission, indicate if you prefer that we do not include your name in the published summary of submissions.

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.

Section 2.3: Defining highly productive land [page 19]

What are the values and benefits associated with highly productive land?

KiwiRail support that the NPS-HPL looks at land, rather than soil, and includes aspects such as proximity to transport infrastructure within the factors that influence productive capacity.

Section 3.4: Reverse sensitivity [page 26]

How should the tensions between primary production activities and potentially incompatible activities best be managed?

Reverse sensitivity is an issue that KiwiRail is also confronted with in relation to train movements and rail related activities. Clear policy direction that reverse sensitivity effects exist and that mitigation of these is required can manage the potential for these. This should extend to recognition of the conflict between land uses and infrastructure. For these reasons KiwiRail's preference is for mitigation in order to address these effects, rather than "avoid" as the policy direction adopts.

As currently drafted it may be argued that the rail network is an "incompatible activity" on highly productive land and should be restricted on the basis it compromises the efficient operation of primary production. Nationally significant infrastructure should be



excluded from the scope of the NPS-HPL as it is not efficient or cost-effective for KiwiRail to address these directions in all 67 territorial authority planning documents when the issues are the same. The opportunity to resolve these tensions at a national level is submitted as being far more efficient and results in a consistent outcome.

How can reverse sensitivity issues at the rural-urban interface best be managed?

KiwiRail support the use of standards associated with permitted activities to address reverse sensitivity effects as this provides clear guidance for developers on what the effects are and how they can be mitigated. Further, linking the mitigation with permitted activity standards removes any requirement for resource consent simply due to the reverse sensitivity effect. KiwiRail would support that such an approach was adopted by the NPS-HPL at the interface of land transport networks and land uses.

Section 4.5 Preferred option – a National Policy Statement [page 31]

Are there other pros and cons of a National Policy Statement that should be considered?

National Policy Statements provide the potential to set clear national direction on trade-offs between competing land uses such as highly productive land and urban expansion. This benefits affected stakeholders and local government by making it clear what land use should be afforded priority, and/or what the tests are for assessing and managing the competing use of such land. However, National Policy Statements also have the potential to add a layer of confusion and complexity to the planning process if they do not resolve the tensions between two competing nationally significant land uses, such as highly productive land and nationally significant infrastructure.

While we acknowledge that the value of this land for primary production may historically have been given inadequate consideration with more weight generally given to other matters and priorities, it is important that in high level planning documents such as the National Policy Statement, specific consideration is given to, and provision made for, a weighting of factors and for the consideration of other priorities such as the provision of nationally significant infrastructure (which is recognised as a vital enabler of productive land use). Particularly following the line of reasoning in *King Salmon* and the application of that decision in *Environmental Defence Society v Otago Regional Council* [2019] NZHC 227 which held that “Avoidance Policies” (for example proposed Objective 3 of this NPS) are prescriptive and must result in the creation of prohibited activities, failure to allow for such a balancing could have unintended and significant consequences for the provision of transport infrastructure.



Section 5.2 Purpose of the proposed National Policy Statement [page 34]

Should the focus of the National Policy Statement be on versatile soils or highly productive land more broadly? Why/why not?

KiwiRail support a broader approach in considering highly productive land rather than soils, in particular to recognise the inter-relationships between land use and transport infrastructure.

Section 5.3 The scope of the proposal [page 35]

Do you support the scope of the proposal to focus on land use planning issues affecting highly productive land? Why/why not?

National direction on plan making processes and consent processing in relation to highly productive land is supported. KiwiRail support a nationally consistent approach in managing national environmental issues, as well as addressing implications for infrastructure with certainty and consistency at a national level.

However, and as discussed above, although the NPS-HPL appears to be primarily aimed at avoiding rural lifestyle development and urban expansion from occurring on highly productive land, some of the objectives and policies have been drafted in a much broader manner that will apply to all land use, irrespective of the current use and zoning of the land. This has the potential to unnecessarily and inadvertently restrict activities.

What matters, if any, should be added to or excluded from the scope of the National Policy Statement? Why?

KiwiRail's concern with the NPS-HPL is that it does not expressly address the relationship between highly productive land and infrastructure. While the discussion document recognises the integration of highly productive land uses with the transport network, there is no specific reflection of infrastructure through the provisions identified. Ultimately it is the Objectives and Policies that will have effect, rather than the consultation or discussion documents, and therefore these intentions need to be reflected in the provisions themselves.

KiwiRail submits that nationally significant infrastructure should be excluded from the scope of the NPS-HPL as it is not efficient or cost-effective to reconcile these higher order national directions in 67 districts when the issues are the same and the policy tensions can be resolved at a national level. This contrasts with other issues where a varied approach is warranted because the issues do differ between regions and districts.

The rail network is critical national infrastructure and plays a vital role in the wellbeing of New Zealand and its people as well as in moving freight, including primary produce generated from the appropriate utilisation of highly productive land. Inadvertently



constraining this by an overly broad application of the NPS has the potential to inadvertently undermine the objectives the NPS is intended to give effect to.

Should future urban zones and future urban areas be excluded from the scope of the National Policy Statement? What are the potential benefits and costs?

In addition to excluding future urban zones and areas, the NPS-HPL should exclude nationally significant infrastructure as discussed above.

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

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

KiwiRail support that in identifying highly productive land, access to transport routes is identified as a matter that may also be considered by the Council. The process for identifying highly productive land however should exclude existing infrastructure as this is often located in rural environments (in addition to urban areas and future urban zones which are proposed to be excluded). The location of the rail network can be identified by KiwiRail as the infrastructure provider.

Policy 2: Maintaining highly productive land for primary production [page 42]

What are the pros and cons associated with prioritising highly productive land for primary production?

KiwiRail support the intention of the policy in relation to maintaining highly productive land for primary production, however have a concern that the policy provides no recognition of existing land uses that may not be primary production. The rail network is an existing corridor, and over time will be required to be maintained and upgraded. The rail network also passes through rural and urban environments. The ability to continue to safely and efficiently operate the network, irrespective of being located on highly productive land, should be recognised through the policy. There are limited practical options for relocation of the network away from existing locations, and no certainty that an attempt to do so would remove the rail from highly productive land locations given the operational constraints for rail. Recognition that nationally significant infrastructure passes through these areas, and the ongoing ability to operate, maintain and upgrade this infrastructure, should also be provided.



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

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

Policy 3 seeks to align the NPS on Urban Development with the NPS-HPL. It sets out some useful matters for decision makers to consider in deciding whether urban expansion can occur on highly productive land. The commentary makes it clear that the policy intent is to “generally avoid” highly productive land when other feasible options exist. There is no similar policy pathway for infrastructure in the NPS-HPL, the inclusion of which would be supported by KiwiRail.

Policy 4: Rural subdivision and fragmentation [page 46]

How should the National Policy Statement direct the management of rural subdivision and fragmentation on highly productive land?

“Fragmentation” is not defined in the NPS-HPL. The proposal appears to be primarily aimed at avoiding rural lifestyle development and urban expansion from occurring on highly productive land. However, some of the provisions in the NPS-HPL have been drafted in a much broader manner and will apply to all subdivision, use, and development.

KiwiRail’s concern with this Policy is it does not expressly address the relationship between highly productive land and infrastructure. If clarification is not included in Policy 4 that it excludes infrastructure, there is a concern that the continued operation, along with any maintenance or upgrades to infrastructure, particularly where it has an operational need to pass over highly productive land, will be impeded by the NPS-HPL.

Policy 5: Reverse sensitivity [page 47]

How should the National Policy Statement direct the management of reverse sensitivity effects on and adjacent to highly productive land?

Policy 5 addresses reverse sensitivity effects as well as incompatible activities. There is a large degree of subjectivity around these determinations. Clarity that infrastructure, particularly nationally significant infrastructure, is neither incompatible nor an activity that creates a reverse sensitivity effect on highly productive land uses, would be supported.

Clauses (c) and (d) under Policy 5 also contain a direction to avoid, or mitigate effects. At a practical level, the ability to rely on mitigation when the policy includes the specific direction to avoid, is questioned. As outlined above, the line of reasoning applied in *King*



Salmon and subsequent case law appears to be leading to a direction that “avoid” policies are prescriptive and must result in the creation of prohibited activities, and therefore KiwiRail would support that the policy wording focus on mitigation rather than avoidance.

Specific / technical questions

The questions below are included in the outline of the proposed NPS-HPL (Chapter Five of the discussion document) and may assist technical experts when providing a submission.

Specific questions

Section 5.3: The scope of the proposal [page 35]

Should the National Policy Statement include policies that must be inserted into policy statements and plans without going through the Schedule 1 process? What are the potential benefits and risks?

KiwiRail support the use of the Schedule 1 process by authorities when making changes to their plans that relate to interpretation and application of the NPS-HPL. Simply inserting policies from an NPS can occur without the Schedule 1 process, however removal of existing policies where there is a perceived duplication, and then implementation of the policies for example involving the identification of highly productive land and the rules around the use of that, need to follow the Schedule 1 process to enable a broad consideration of the impact of the changes.

Specific questions

Section 5.4: The proposed National Policy Statement [page 37]

What level of direction versus flexibility should the objectives provide to maintain the availability of highly productive land for primary production?

Objective 2 which seeks to maintain the availability of highly productive land could be applied as an avoidance objective. The commentary under Section 5.4 of the discussion document states “*In practice, this means development that leads to the irreversible loss of highly productive land for primary production should be avoided where other feasible options exist.*” Any improvements to the rail network could be seen as resulting in a loss of highly productive land, and KiwiRail are concerned this could be interpreted as an action to be avoided.

It is also not clear what constitutes a “feasible” option. While there are usually other



technical options, the rail network has operational requirements and engineering constraints that both dictate and constrain the way it is established, maintained and operated. Feasible options may have been determined by other parties to exist, however the financial implications of these along with consideration of effects on other highly productive land given the rail network passes through many districts and regions, could lead to inefficient outcomes for infrastructure. KiwiRail seek that nationally significant infrastructure be excluded from the scope of the NPS-HPL.

Should the objectives provide more or less guidance on what is “inappropriate subdivision, use and development” on highly productive land? Why/why not?

The objectives should provide guidance on what is “inappropriate”. This is particularly the case where coupled with “protect” and “avoiding” directives in Objective 3. These are very strong policy directives.

The reference to “subdivision, use and development” in this objective is very broad, and captures not just urban expansion/rural lifestyle activities, but all activities including infrastructure. While there is text in the discussion document which suggests the NPS-HPL is intended to confirm infrastructure is appropriate, e.g. the para below, there is no reflection of this in the Objectives or Policies themselves.

“For example, providing for nationally significant infrastructure on highly productive land may be appropriate where this can largely co-exist with using highly productive land for primary production, there are significant public benefits from that infrastructure, and there is a functional need to be located in that environment”.

KiwiRail note that Objective 3 includes ‘avoid’ terminology, along with ‘avoiding and mitigating’ under the third bullet point. KiwiRail have a concern at the practical ability to enable land uses associated with nationally significant infrastructure, including maintenance, operation and improvements to existing infrastructure, in light of an objective seeking to avoid certain effects. Specific consideration of the wording to remove ‘avoid’ would be supported. Alternatively, an exemption in relation to nationally significant infrastructure would also be supported.

Specific questions

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

What are the pros and cons of requiring highly productive land to be spatially identified?

Mapping of highly productive land will provide clarity as to where the provisions in the NPS-HPL apply.



Specific questions

Appendix A: Criteria to identify highly productive land [page 41]

What are the key considerations to consider when identifying highly productive land? What factors should be mandatory or optional to consider?

In addition to those factors listed in the proposal, it should be mandatory to exclude existing nationally significant infrastructure.

Specific questions

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

How can the proposed National Policy Statement for Highly Productive Land best align and complement the requirements of the proposed National Policy Statement on Urban Development?

See comments above on Policy 3.

Specific questions

Policy 4: Rural subdivision and fragmentation [page 46]

Should the National Policy Statement provide greater direction on how to manage subdivision on highly productive land (e.g. setting minimum lot size standards for subdivisions)? If so, how can this best be done?

See comments above on Policy 4.

Specific questions

Policy 5: Reverse sensitivity [page 47]

How can the National Policy Statement best manage reverse sensitivity effects within and adjacent to highly productive land?

See comments above on Policy 5.



Specific questions

Policy 6 and Policy 7: Consideration of private plan changes and resource consent applications on highly productive land [page 49]

Should these policies be directly inserted into plans without going through the Schedule 1 process (i.e. as a transitional policy until each council gives effect to the National Policy Statement)? What are the potential benefits and risks?

See comments above on the use of the Schedule 1 process.

How can these policies best assist decision-makers consider trade-offs, benefits, costs and alternatives when urban development and subdivision is proposed on highly productive land?

Without the recognition of nationally significant infrastructure, there is no support for Council's when considering a balanced approach to application of the provisions in the NPS-HPL, particularly given the broad focus of the NPS.

Should the policies extend beyond rural lifestyle subdivision and urban development to large scale rural industries operations on highly productive land? Why/why not?

KiwiRail would support that Policy 7 and other policies, be restricted to the relevant aspects so as to not result in unintended consequences. The rail network is fundamental to the movement of goods and people around NZ, the unintended consequence of the NPS-HPL without changes, may be future restrictions on the ability to continue to serve this function safely and efficiently.