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National Policy Statement – Highly Productive Land

Local Government New Zealand's submission on NPS - HPL

10 October 2019

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Dave Cull, President, Local Government New Zealand (LGNZ).

Summary

- Support the intention, but further work needed. LGNZ's members recognise the aim of this policy guidance, but it is unclear why it is necessary given that many regional policy statements and district plans already have a policy framework that identifies and protects land that has high value for primary production. In addition, insufficient work has been done to assess the costs and benefits of the proposal.
- Detail needs to be sorted. There are a number of matters that need attention and working through, including whether section 55 of the RMA can be used to directly insert aspects of the National Policy Statement into subordinate RMA instruments. The policy statement needs to be coherent and internal inconsistencies removed. We have identified some inconsistencies between the proposed objectives and policies that will create problems in implementation. For instance, direction is given to "avoid" or "maintain" but sometimes to "mitigate." Consistency is needed within the policy framework.
- Alignment with national direction. The Government is currently proposing national direction for urban development, freshwater and biodiversity. It is essential these national instruments are aligned and do not conflict for the efficient and effective functioning of the regulatory system, particularly resource planning. As it stands it is unclear that there is any alignment between the NPS-HPL and the urban growth agenda.
- Exemptions need attention. The exemptions for urban growth are supported, however they need to include any future urban development strategies that are prepared to meet the requirements of the NPS-UD.

Introduction

Thank you for the opportunity to submit on the discussion document for the National Policy Statement – Highly Productive Land (NPS-HPL).

In assessing the proposal, LGNZ has applied a localism lens in answer the questions and issues posed. Generally we are supportive of national direction on this matter, especially the approach that makes highly productive land a consideration in the planning process, as opposed to establishing a prescriptive set of rules. We would note that councils already factor the productive capacity of land into their decision-making. Many regional policy statements and district plans already have a policy framework that aligns with the intent of the proposed NPS. This is particularly so where primary production and the support services are significant contributors to some regional economies and to the national economy.

There are many examples where regional and territorial authorities (TA) have collaborated in a region and undertaken strategic planning work to manage urban growth and protect versatile land. Where a plan classifies land as having high productive value, policy frameworks typically prioritise activities involving primary production above opportunities for other activities unrelated to this. Likewise, rules for subdivision and land use are designed to prevent fragmentation of the productive rural land resource and to give priority to a wide range of plant and animal production activities.

It is important to stress that these plans have been developed in consultation with communities. The strength of this arrangement, where different districts and regions develop their own set of plans with their communities, is that it captures and responds to the diversity of views on this issue and the heterogeneous opportunity set.

This is distinct from the NPS-HPL, which tends to view a parcel of agricultural land in Gisborne the same as one in Pukekohe. The risk here is that in seeking to protect one parcel from development the Government may in effect be constraining or even preventing the desirable development of land elsewhere in the country.

Where councils have already assessed the productive capacity of land, it typically includes ground slope, soil depth, drainage, fertility, climate factors of soil temperature, available soil moisture and sunshine and availability of water. We note the proposal to use the New Zealand Land Use Classification system (LUC) as the default framework for identifying land for its productive potential. We note the LUC historically did not adequately identify the most productive land, as it was originally developed for classifying land for soil erosion potential.

We note the need for alignment with other national direction. Throughout New Zealand there are cities and towns experiencing high rates of growth and some of these are located on and surrounded by productive land. If a NPS for HPL is to be pursued it, is essential the national policy statements for urban development and for highly productive land are aligned. Ideally these instruments will be considered together so the policies do not conflict.

Key recommendations

Problem Definition

The problem statement should reflect that the problem this national instrument is seeking to address is the ongoing and incremental loss of highly productive land. The lack of clarity in the RMA about how HPL should be managed is not the problem per se. If the ongoing and incremental loss of highly productive land is accepted as the problem statement, then the policy framework should flow from this. The specific issues that this NPS seeks to address, as outlined in the proposed policies, can all be dealt with under the RMA framework through appropriate policies and rules.

Recommendation: Redefine the problem statement to the ongoing and incremental loss of highly productive land.

Preferred option – NPS or NES

LGNZ considers should the Government deem national guidance as necessary, a NPS is the appropriate tool to address the ongoing and incremental loss of highly productive land, as it allows for flexibility and local context to be considered. A NES is overly prescriptive and, while suitable to prescribe a methodology or a standard, it is difficult to see how it might be appropriate in the current context.

Recommendation: Support the NPS option rather than the NES option as it allows flexibility to respond to local pressures and priorities when giving effect to the NPS.

Scope of NPS

Future urban areas

In addition, recognition should be given to non-statutory strategies that have followed a robust process such as the Future Development Strategy, which the National Policy Statement on Urban Development/Capacity (NPS UDC/UD) requires for the major urban centres, and encourages for some urban environments.

Such a process should include use of a multi criteria assessment process, including criteria that avoid the use of HPL for urban development, public consultation and formal adoption.

LGNZ recommends to:

- Support the exclusion of future urban areas identified in district plans from the NPS-HPL; and
- Provide some recognition for future urban areas identified in non-statutory strategies, including those encouraged by other national planning instruments where a robust process and set of assessment criteria have been followed.

Direct insertion of policies (RMA section 55)

Recommendation: Clarification is needed as to whether section 55 of the RMA can be used to directly insert aspects of the National Policy Statement into subordinate RMA instruments. If section 55 can be used in this way then consideration should be given to using the provision to direct the insertion of policies until plans catch up. This can provide clear direction and avoid re-interpretation or dilution of policies and litigation risk to councils. LGNZ is happy to work with MPI to obtain agreement with local government on what appropriate policies would be.

Objectives of the NPS-HPL

Focus of NPS

Recommendation: Support that the focus of the NPS is on HPL, rather than high quality soil.

Inappropriate subdivision

If the NPS is to use terms such as “inappropriate subdivision” then it needs to provide clear national direction on what inappropriate subdivision is, and its use and development.

Recommendation: NPS should include assessment criteria to determine what “inappropriate” means in practice.

Policy 1 – Identification of highly productive land

Policies 1.1 and 1.2 assume regional councils (RC) and territorial authorities have not already identified HPL and directs regional councils to amend Regional Policy Statements and TAs to amend district plans, however many have already done so. The policy should be amended to state that an RPS and a district plan must ensure HPL is identified.

LGNZ also holds the view that the LUC is a poor default because the LUC system, originally devised for classifying land for soil erosion potential, consistently undervalues some types of soils and climatic areas. Care is needed as to whether the default should be LUC 1-3 or LUC 1-2. Given the property rights issues involved, it may be more appropriate to have the default as LUC 1-2 and a council can do further work to expand the land protected, rather than the opposite approach. A regional council could choose, through its RPS, to set the default as LUC 1-3, depending on the particular local characteristics. LUC 3 will capture significantly more land in the default.

TAs will require information to be fine grained in order to identify HPL at property scale to reflect this in the

district plan. The mapping scale of the LUC is likely to be a problem for district planning because it is not finely grained enough.

It is likely to take considerable time for this policy to be given effect to, given the amount of assessment required.

With respect to integrating with other national direction, the proposed factors that may be considered provide an opportunity to provide this integration. Such criteria could include, for example, the availability of water.

LGNZ recommends to:

- Restrict the criteria to focus on the productive potential of the land;
- Amend policies 1.1 and 1.2 to require a RPS and a District Plan to ensure HPL is identified;
- Support the need for a default definition of HPL until councils identify this, as proposed in the NPS HPL;
- Recommend the default is LUC 1-2, but enable RCs to set the default as LUC 1-3;
- Clarify whether there is flexibility to use existing assessments of HPL, provided they are consistent with the criteria in the NPS. This is to avoid the need to re-do the assessment where it has already been done and to prevent challenges when a local authority assessment result differs from LUC 1, 2 and 3; and
- Limit the criteria and factors to those that focus on the fixed attributes of the land - like soil, topography and to a lesser extent climate.

Policy 2 – Maintaining highly productive land for primary production

Overall the wording of Policy 2 lacks connection with the proposed objectives. An advantage is that we retain our most productive land for “high value, site sensitive” primary production to meet society’s economic and nutritional needs into the future.

A disadvantage is that it may restrict land available for housing and other economic needs, create barriers to the development of Māori land, or encourage intensive land use in sensitive catchments.

The policy assumes that RPSs and DPs do not already maintain highly productive land for primary production, and the amendments we recommend in relation to Policy 1 are also required for Policy 2. If the policy is already given effect to then, as worded, the policy require unnecessary work.

LGNZ recommends to:

- Support prioritisation of the use of HPL for primary production;
- Amend Policies 2.1 and 2.2 to require a RPS and a district Plan to ensure HPL is maintained for primary production; and
- Include criteria for determining what is inappropriate, ie codify some of the considerations in the NPS.

Policy 3 - New urban development

Urban Growth Agenda

It is very important the NPS-HPL is aligned with the NPS-UD and more work is needed on their alignment. Specifically, the national instruments should be clear about the hierarchy and which objectives take precedence; urban growth or protecting HPL.

LGNZ recommends to:

- Support alignment of this NPS-HPL with the Urban Growth Agenda;
- Strengthen the protections in the policy if the purpose is to reverse the loss of HPL; and
- Amend the NPS-UD to include a requirement to consider HPL as a constraint.

Interpretation

Alignment with National Planning Standards

The Planning Standards do not currently address 'rural environment/area effects' and they could usefully do this to promote alignment with national instruments. Likewise, the Planning Standards do not provide specific zones for the full range of activities that typically occur in rural areas (eg rural industry, tourism). Instead, a broad range of activities are provided for in the definitions of the General Rural and Rural Production zones; this may not protect HPL in these zones for plant and animal production that require such land.

Recommendation: Amend the National Planning Standards to include a policy chapter that manages rural environment effects, in addition to the chapter for urban environment effects.

Implementation and time frames

Councils will advise whether three years is sufficient to allow councils to identify highly productive land and amend their policy statements and plans to identify this land. Given the litigious nature of plan change processes, three years may be optimistic to undertake this work, particularly with the competing priorities giving effect to other national direction.

If the criteria for classifying HPL is tightened, the assessment work may take less time.

Finally, the use of section 55 of the RMA should also be considered to enable the direct insertion of policies into plans; this could enable the insertion of land that meets the default criteria that is agreed, preferably LUC 1-2.