

## Submission

**To:** Ministry for Primary Industries  
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**By:** Northland Regional Council

**On:** Proposed National Policy Statement for Highly Productive Land (October 2019)

### Introduction

The Northland Regional Council (council) is grateful for the opportunity to comment on the proposed National Policy Statement for Highly Productive Land (NPS-HPL). This submission is made in the interests of promoting a sustainable environment and economy in Northland and with council's statutory functions and roles under the Resource Management Act 1991, Local Government Act 2002 and other relevant legislation in mind.

### Background

Northland has a comparatively small proportion of high quality productive soils (about 10% by area is classed as 1, 2 or 3 under the Land Resource Inventory), which in several cases has been the historical focus of settlements (e.g. Kerikeri and parts of Whangārei). This association is logical in that such settlements were established in proximity to good soils for primary production purposes. However, there are instances where these settlements have since expanded onto highly productive land (HPL) and resulted in both loss of primary production capacity and reverse sensitivity effects. For example, in Northland only 7% of lifestyle blocks are on high-class land (LUC 1, 2 and free-draining and/or flood-free Class 3 land), but this amounts to 28% of all such land in the region (based on 2011 data). If this rate of subdivision was to continue (1.67% per year), all of Northland's LUC 1-3 land will be subdivided in 60 years<sup>1</sup>. In response, the Regional Policy Statement for Northland 2016 included provisions to manage these concerns (extract below):

#### ***Policy 5.1.1 Planned and coordinated development***

*Subdivision, use and development should be located, designed and built in a planned and coordinate manner which:*

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<sup>1</sup> Hart, G; Rutledge, D; Price R. (2013). Guidelines for monitoring land fragmentation: Review of knowledge, issues, policies, and monitoring. Landcare Research  
[https://www.landcareresearch.co.nz/data/assets/pdf\\_file/0010/71938/Guidelines\\_monitoring\\_land\\_fragmentati\\_on\\_Oct\\_2013.pdf](https://www.landcareresearch.co.nz/data/assets/pdf_file/0010/71938/Guidelines_monitoring_land_fragmentati_on_Oct_2013.pdf)

...

*e) should not result in incompatible land uses in close proximity and avoids the potential for reverse sensitivity;*

*f) Ensures that plan changes and subdivision to / in a primary production zone do not materially reduce the potential for soil-based primary production on land with highly versatile soils [as defined], or if they do, the net public benefit exceeds the reduced potential for soil based primary production activities.*

Council has therefore previously recognised and responded to this issue, however we consider a national instrument in the form of a specific national policy statement would be beneficial given ongoing pressure for further lifestyle development and urban expansion. It has been our experience that the short term benefits of lifestyle development / urban expansion can be over-valued compared to longer term / ongoing socio-economic benefits of local primary production (which include food production, employment and social cohesion). Council also supports a strategic approach to identification and management of HPL that is likely to be driven by the NPS-HPL.

Council therefore supports the development of a National Policy Statement to manage the resource that is highly productive land. We do not consider amendment to the NPS Urban Development Capacity (NPS-UDC) will effectively address the problem given it is not always driven by urban expansion and noting that many of the current and recently proposed NPS-UD provisions only apply in specified areas. Nor do we see a new national environmental standard as appropriate given the need for some flexibility as to how to identify and protect highly productive land in each region.

## **Submission**

### **Scope of the NPS-HPL**

1. We consider there should be some flexibility for councils to consider a broader view and take into account regional circumstances when identifying highly productive land. For these reasons we consider the NPS-HPL should focus on the productive potential of land rather than purely on 'elite soils' / specified soil types (E.g. class 1-3 soils). This is because in Northland some soils are not considered 'elite' but are highly productive for a range of primary production activities – an example is class 4 soils which are 'stony' but in many cases valuable for horticultural purposes. Another example is high producing grasslands which are not necessarily located on 'elite' soils, but can be highly productive for pastoral purposes and subject to potential effects of fragmentation, urban expansion and reverse sensitivity.
2. We do not think the NPS-HPL should refer to particular food production activities but should instead focus on land use planning (i.e. urban expansion, lifestyle development and reverse sensitivity) in relation to primary production in a broad sense. This would

ensure the policy direction is future proofed, provides for future productive capacity and is not unnecessarily restricted in scope to specific soils or types of food production. This is important given the likely innovation and potential change in production systems / products in the medium term (e.g. potential for new food / fibre crops such as hemp that may not rely on high quality soils or water availability but where contour / slope and parcel size will be important). In other words, it is the protection of the inherent versatility / productive capacity and viability of the land for production that is important.

3. Plantation forestry should not be included in the definition of primary production for the purposes of the NPS-HPL. We note the definition of primary production includes forestry while the 'default' definition of HPL includes land defined as Land Use Capability 1, 2 and 3 as mapped in the NZ Land Resource Inventory. This issue suggests some clarification of the scope is needed – for example is it solely about the capacity of land for cropping (as indicated by the emphasis on class 1, 2 and 3 soils) or is the intent broader and intended to also protect the potential for plantation forestry and / or pastoral use as well?
4. In our experience, forestry tends to be less at risk from encroachment by lifestyle development, urban expansion or fragmentation and has far more flexibility as to where it is located in terms of land type / quality / contour. We accept forestry has historically tended to target cheaper and steeper land and typically avoided high quality soils / flat contour to date, however there is some potential for this to change if rewards for carbon sequestration increase significantly (e.g. the price of carbon increases dramatically with consequently higher returns for forestry under the Emissions Trading Scheme - ETS). This may incentivise land use change from food production (especially sheep and beef) to forestry on 'rolling country' and / or some areas of high producing grasslands. Given the ongoing obligations and the costs associated with 'buying-out' of forestry under the ETS, plantation forestry could effectively be 'locked-in' as a land use for the foreseeable future. To us it would confuse the issue if councils were expected to identify land that is highly productive for forestry purposes and it would also be perverse if forestry was enabled by the NPS to locate on HPL.
5. It would also be prudent in our view to provide scope in the NPS to control land use change from cropping / food production to forestry on HPL. We acknowledge this is likely to require an amendment to the NES for Plantation Forestry to provide discretion to councils to control afforestation on HPL. Plantation forestry should be removed from the definition of primary production for the purposes of the NPS-HPL (or otherwise amending the scope) on the grounds that forestry is less 'at risk' from the issues sought to be addressed by the NPS-HPL and has a far greater range of options in terms of land suitability / location.

6. We agree that water availability should not be included as a mandatory factor in the identification of highly productive land for the purposes of the NPS-HPL given this can change over time as a result of investment in water storage and / or as freshwater is allocated – it is also inherently complex. For similar reasons water quality constraints should not be a factor in the identification of HPL or within scope of the NPS as this can also change as land uses change. We do however, support being able to *consider* these two factors (among others).
7. While we recognise the issues the NPS-HPL is seeking to address may be more pressing in some areas, we do not consider the NPS-HPL should be targeted at specific regions – this is because it is difficult to predict future land use changes / future growth pressures and in principle, highly productive land should be protected from urban/lifestyle development for future generations regardless of location (unless strategic assessment demonstrates another use is appropriate). Some may argue that a number of regions have such small quantum of ‘versatile / elite’ soils that the NPS-HPL is of limited value, however, this suggests to us that limiting further loss becomes even more crucial. There is also a possibility for pressures to cross jurisdictional boundaries – for example restrictions on lifestyle development in one jurisdiction may lead to urban / lifestyle development pressure on HPL in another adjacent jurisdiction. We therefore consider the NPS-HPL should apply nation-wide.
8. We agree that current and future urban areas identified (either in district plans or strategic planning documents) should be excluded from the NPS-HPL – this is on the basis that it would undermine previous strategic assessments and potentially investment in infrastructure. We would also recommend existing designations also be excluded on the same rationale.

### **Objectives**

9. The objectives appear to relate well to both the outcome sought and problem statement expressed in the discussion document. We note that Objective 1 uses the same directive terminology as Section 6 of the Resource Management Act 1991 for matters of national importance, which we support. In relation to Objective 2, we suggest replacing the term ‘availability’ with ‘viability’ on the basis that the land may be ‘available’ but due to fragmentation / lot size or potential for reverse sensitivity it is not ‘*viable*’ for primary production. The term ‘viable’ if used (or a similar alternative) would also benefit from a specific definition in the NPS-HPL as this will likely be the focus of much of the debate with communities / stakeholders.

10. Objective 3 is supported but we suggest deleting the term ‘uncoordinated’ from the second clause (bullet point 2) on the basis that it adds nothing, is unnecessary and lacks certainty, the main point being any urban expansion into HPL has been assessed through a strategic planning process. We also recommend either clarifying what is meant by ‘a strategic planning process’ or deleting and instead requiring urban expansion to meet the tests in Policies 3, 6 and 7 – many private plan changes to district plans may argue a strategic approach has been applied. The second bullet point in Objective 3 could be amended to reference Policy 3(b) or a definition of ‘strategic planning process’ be added that refers to Policy 3(b) to achieve the clarity / certainty required. We also note there may be land uses which compromise the productive capacity of HPL – forestry is the primary example that comes to mind, especially if essentially locked in as a land use under the ETS. We recommend adding additional wording to the first bullet point of Objective 3 as follows: “avoiding subdivision, land use and land fragmentation that compromise the use of highly productive land for primary production.”

#### **Policy 1**

11. We support the requirement in Policy 1.1 for regional councils to identify HPL on maps in regional policy statements on the basis this provides a consistent approach across districts within a region and is more efficient as it avoids procedural duplication by district councils within a region. It will also provide *some* immunity from ad-hoc private plan changes (noting district plan maps can be subject to private plan changes). We also support the directive in Policy 1.2 that requires the maps be incorporated into district plans, however the Ministry should allow some flexibility for changes at district plan level provided the same methodology / criteria are used to justify such changes (e.g. Appendix A criteria and / or Policy 3(b) tests) – this is because in our experience mapping at a regional scale (especially on the basis of Land Use Capability scale of 1:50,000) can lead to resolution issues and inevitably there will be areas erroneously omitted or included despite the quality check provided by the Schedule 1 RMA consultation / submission process. We also note that changing maps in a regional policy statement is a cumbersome process to address minor local mapping errors and it is more efficient to address these at a district level. However, there is some risk that district plan maps will attract private plan changes but the tests in Policies 3, 6 and 7 should ensure the strategic assessment and cost / benefit has been undertaken.

12. For both Policy 1.1 and Policy 1.2 we support use of the Schedule 1 RMA process for amending both Regional Policy Statement and district plan to include maps of HPL given there is likely to be a wide range of interests at stake. We do not consider Section 55 is appropriate for this purpose.

## **Appendix A**

13. We consider including criteria for identification of HPL in an Appendix is essential so there is national consistency in the factors considered. We recommend more clarity / specificity be provided in the mandatory criteria for identifying HPL. The factors we consider should also be mandatory considerations are: The capacity and versatility of the land for primary production in terms of:
- soil type
  - contour/slope
  - current and historical land use(s) including any current lawfully established activities that are incompatible with primary production and likely to result in land use conflicts / reverse sensitivity effects
  - the underlying parcel size and cadastral pattern of land, including any designations or underlying ownership issues that may constrain the viability of primary production (e.g. recreation reserves / Crown land etc)
  - the size of each area of HPL in terms of its viability for primary production; and
  - constraints due to contaminated soils or flood hazards.
14. We support the 'optional' criteria (a-f) and seek that these remain optional given the complexity they bring to the mapping exercise. We also support the exclusion of urban areas and land identified as future urban zones – as noted above we'd suggest adding designations for completeness.
15. We support the concept of a default definition of HPL based on LUC classification until regional councils have mapped it in their Regional Policy Statement – this will ensure subdivision and development proposals in default HPL areas are tested (i.e. policies 3, 6 and 7 should apply to such proposals) and limit further loss in the interim.
16. We do not support a tiered approach to protecting HPL (i.e. a higher level of protection for class 1 and 2 soils compared with class 3 soils) because this adds complexity and makes assumptions about future production requirements. Nor do we support a minimum size criterion for a 'unit' of HPL as this would be problematic if set at a national scale and should be left to the discretion of councils as 'economic viability' will vary with local circumstances / production patterns.

## **Policy 2**

17. As noted above, we recommend replacing 'availability' with 'viability' for primary production'. The prioritisation of HPL land for primary production is supported because this will limit the loss of such land to other land uses that are less well matched with the capacity of the land – while there will likely be some impact on private property rights, subdivision in particular is already constrained to some degree in rural zones. Clause b)

seems to suggest some areas of HPL should have greater protection than others based on current economic / social benefits. This will tend to reflect current land use rather than the versatility or potential of the area of HPL. For example, an under-utilised area of class 1 soils would receive less protection than an intensively cropped area of class 3 soils. We suggest this clause be removed and the discretion left to councils to determine.

18. There is inevitably tension between the urban growth agenda and the intent of the NPS-HPL the magnitude of which will vary across regions. We consider this needs to be resolved case by case given the values / needs will vary case by case. Policies 3, 6 and 7 appear to be an adequate basis to test decisions against, although we note cost / benefit assessments can place greater weight on short term costs and benefits than the long term and can under-value finite resources such as soils.

### **Policy 3**

19. Policy 3 is generally supported and provides a reasonable gateway test for urban expansion onto HPL. However, it could be strengthened by adding a clause to b) with the effect: “the extent to which the urban expansion would reduce the total area of HPL in the district and the potential to exacerbate reverse sensitivity effects on adjacent HPL.”

### **Policy 4**

20. Clause c) should not be limited to rural lifestyle development and instead should be broadened to include all “incompatible land uses” that could potentially compromise HPL. We do not see the need for Clause b) – the decision to incentivise or otherwise should be a matter left for each council to consider and is often better delivered through means other than the RMA (such as rating or development contributions policy). We do not agree with minimum lot sizes for subdivision being set in the NPS-HPL – this again is better left for councils to decide considering the circumstances that apply in their jurisdictions. Also the different forms of primary production have different requirements (i.e. horticulture / vegetable growing can be undertaken on relatively small lots while other cropping or pastoral use generally requires larger parcel size).

### **Policy 5**

21. Policy 5 addresses the most obvious concerns related to reverse sensitivity and is supported, although we doubt the requirement in Clause a) to identify effects associated with primary production in district plans is of much merit or necessary – these effects will also vary widely with land use and potentially change over time. We would not like to see this consideration of proposals in HPL limited by plan content that does provide scope to address all reverse sensitivity effects. The main issue is that reverse sensitivity

effects on HPL (whatever form they may take) are considered in consent / plan change decisions.

### **Policies 6 and 7**

22. Policies 6 and 7 are supported, particularly the requirement for resource consent applications for urban expansion / subdivision on HPL to include a site-specific Land Use Capability Assessment by a suitably qualified expert. Again, an assessment of the proportion of the total HPL in the district affected by the proposal should be a consideration.

### **Interpretation**

23. The definition of HPL is logical except that Clause b) is overly precautionary and will be problematic to apply given the resolution of LUC mapping is not applicable at a property scale down to 4ha. We consider a threshold of 10ha is probably the minimum scale we could define soil class with any accuracy (even that will be challenging). We'd suggest an interim definition could be: "any contiguous area of 10ha or more of Class 1, 2 or 3 soils or combination thereof". It is unclear how the interim definition would be applied to proposals – we assume policies 3, 6 and 7 would then apply to relevant resource consents / plan changes within such areas, but existing plan provisions may provide for large lot subdivision and / or land use change but not enable discretion for councils to apply adequate controls. This will require some thought if an interim approach is to be applied.

24. As noted above, we see some potential issues / perverse outcomes if the definition of primary production includes plantation forestry. We do not see the need to identify HPL for the benefit of forestry and in fact a perverse outcome could arise whereby forestry is enabled on HPL that would be better used for food / cropping or pastoral use. We recommend it be deleted from the definition of primary production for the purposes of the NPS-HPL.

25. We recommend definitions align as far as possible with those used in National Planning Standards. If the term 'strategic planning process' is retained in Objective 3, we recommend adding a definition for reasons of clarity and certainty. Our preference however would be to delete it and instead refer to the tests in Policies 3, 6 and 7.

### **Potential conflict / tension with essential freshwater**

26. The new National Policy Statement for Freshwater Management (proposed NPS-FM) and new National Environmental Standard for Freshwater (proposed NES) as proposed, will affect people wanting to convert land to horticulture, vegetable cropping and / or intensification generally. The proposed NES contains standards (national rules) for

intensification of land use, which will apply where the NPS requirements have not been fully implemented. Standard 34(2) of the NES states that any increase in the amount of land used on a farm (which includes horticultural farming) for irrigated production is a discretionary activity if the increase since the commencement date of the NES is more than 10 hectares. If a consent is granted by a regional council it must specify as a condition of the consent that the nitrogen, phosphorus, sediment, or microbial pathogen losses from the farm will not exceed the average existing losses from the farm during the farm year 2017/2018. Standard 35(1) permits land use change to horticulture and commercial vegetable production provided the area of land for the purpose does not exceed the greatest total amount used for vegetable growing in any one farm year between 2013 and 2018. Otherwise the land use change will be a discretionary activity with a requirement that the nitrogen, phosphorus, sediment, or microbial pathogen losses from the farm will not exceed the average existing losses from the farm during the farm year 2017/2018.

27. Further, the new NPS-FM will require regional councils to set target attribute states (i.e., numerical water quality objectives) that must be at or above the current state of each attribute (water quality parameter, e.g., dissolved inorganic nitrogen, dissolved oxygen, water clarity, etc). Regional councils will also be required to set limits on resource use to achieve the target attribute states. This means that regional councils will be required to maintain water quality at its current state (as at the date the new NPS will come into force). In effect, this is likely to preclude (or at least make it very difficult) new uses and development of land that will result in increases contaminant losses to water. In effect, there is some risk that the NPS-FM and proposed NES will restrict land use changes to horticulture, other cropping or more intensive land uses – or at a minimum will create a good deal of uncertainty for those looking to undertake such land use changes. This will apply to HPL. This means while the NPS-HPL will protect HPL from ‘inappropriate’ subdivision, use and development, the NPS-FM and NES may have the effect of constraining ‘appropriate’ development of HPL (i.e. land use change to cropping, horticulture, irrigation and / or intensification of existing uses). The outcome of the NPS-FM and proposed NES is for HPL to be effectively ‘frozen in limbo’ with extremely limited opportunities for land owners to maximise the productive capacity of HPL or undertake alternative uses. This needs some serious thought and coordination across both Ministry for the Environment and Ministry for Primary Industries to resolve these strategic tensions. We strongly urge both ministries to work together to resolve the inherent tensions across these national instruments.

## **Conclusion**

We thank the Ministry for the opportunity to provide feedback on the proposal. The intent of the NPS-HPL and the policy direction signalled in the discussion document appear sound

and are generally supported subject to the specific comments provided above. We agree with the problem statement and consider that a national policy statement is the most appropriate response but highlight the very real tensions between the NPS-HPL and Proposed NPS-FM and proposed NES for freshwater.

A handwritten signature in black ink, appearing to read 'M Nicolson', with a large, stylized flourish above the name.

Malcolm Nicolson (CEO)  
On behalf of Northland Regional Council

Dated: 9 October 2019