

**SUBMISSION ON THE DISCUSSION DOCUMENT ON THE PROPOSED NATIONAL POLICY
STATEMENT FOR HIGHLY PRODUCTIVE LAND**

1. SUMMARY

- 1.1 Otereti Limited and Glenbrook Investments Limited ("**Otereti and Glenbrook**") welcomes the opportunity to make a submission on the Ministry for the Environment's Discussion Document on the Proposed National Policy Statement for Highly Productive Land ("**NPS-HPL**").
- 1.2 Otereti and Glenbrook (and its directors) are significant landowners in South Auckland. Their principals have a track record of successfully undertaking large developments. Otereti and Glenbrook's significant landholdings provide an ideal location for the strategic and efficient provision of affordable residential intensification to benefit Drury, Paerata and Pukekohe in particular, and Auckland in general.
- 1.3 While Otereti and Glenbrook acknowledge the need to protect highly productive land, Otereti and Glenbrook is concerned that the NPS-HPL could inadvertently stifle urban development, particularly in relation to major urban centres where urban growth is needed. It is critical that the NPS-HPL does not inhibit urban development in appropriate locations.
- 1.4 At a high level, Otereti and Glenbrook consider that the NPS-HPL needs to be balanced against, and work alongside the Proposed National Policy Statement on Urban Development ("**NPS-UD**"). In particular, Otereti and Glenbrook consider that:
- (a) the definition of highly productive land needs to be amended so as to avoid unreasonable delays to urban development and costs to developers;
 - (b) a cost-benefit analysis and assessment of alternatives of whether land is appropriate for urban development needs to occur at the outset as part of the process for identifying highly productive land; and
 - (c) effects of urban development need to be avoided where practicable, or otherwise mitigated.
- 1.5 These are expanded on below.

2. BACKGROUND

- 2.1 Otereti and Glenbrook control approximately 450 hectares of neighbouring land in South Auckland, which is adjacent to the Rural Urban Boundary as outlined in the Auckland Unitary Plan ("**Site**").
- 2.2 In contrast to the surrounding fragmented land developed for countryside living, the entirety of the Site is under the sole ownership of Otereti and Glenbrook. The Site is also in close proximity to current and planned public transport routes, including rail. The Site, therefore, presents a unique opportunity for the strategic and efficient provision of residential intensification in South Auckland.
- 2.3 The Site's strategic location and Auckland's urgent need for affordable housing close to employment and along transport routes means the Site has significant potential to facilitate urban growth. It is anticipated that the Site could yield up to 10,000 dwellings over time, many of which could be offered to the market as affordable housing.
- 2.4 This has been acknowledged by Infrastructure New Zealand in its 2017 Report, which identified South Auckland (and specifically Paerata) as the ideal location for a satellite city for Auckland.¹ The Report found that, of the areas studied, Paerata was the cheapest and most ideal location to add 100,000 people. This is largely a result of low water supply costs, due to Paerata's situation along the Waikato pipeline, and the ability to leverage planned transport investments.² While Paerata's land is still cheap, it is rising quickly. The Report noted that if authorities can move before the market in Paerata, land value can be captured and used to offset infrastructure costs.³
- 2.5 A large portion of the Site is also currently classified as class 2 – 3 under the Land Use Capability ("**LUC**") classification system. Therefore, Otereti and Glenbrook will be directly affected by the NPS-HPL.

3. THE NPS-HPL NEEDS TO WORK ALONGSIDE THE NPS-UD

- 3.1 The Government is currently consulting on the NPS-UD. The purpose of the NPS-UD is to provide direction to local authorities about when and how cities should plan for growth by removing unnecessary restrictions on development to allow for growth 'up' and 'out' in locations that have good access to existing services and infrastructure. The NPS-UD places particular emphasis on urban development in major urban centres such as Auckland that are experiencing unprecedented housing pressures.

¹ Infrastructure New Zealand's Report "Meeting Auckland's Growth Challenge: The Innovation City 2017" available at <<https://infrastructure.org.nz/resources/Documents/Reports/Infrastructure%20New%20Zealand%20Meeting%20Aucklands%20Growth%20Challenge%20Report.pdf>>.

² Infrastructure New Zealand's Report "Meeting Auckland's Growth Challenge: The Innovation City 2017" at page 34.

³ Infrastructure New Zealand's Report "Meeting Auckland's Growth Challenge: The Innovation City 2017" at page 3.

- 3.2 Otereti and Glenbrook consider it is important that the planning processes undertaken under the NPS-HPL take into account, and work alongside, the objectives of the NPS-UD. The need to protect and preserve highly productive land is important, but must be balanced against the need for healthy, secure and affordable homes. As the NPS-HPL Discussion Document notes, the NPS-HPL should "allow for new urban areas on highly productive land in appropriate circumstances."⁴
- 3.3 One way to ensure the NPS-HPL and NPS-UD workstreams complement one another, is to require councils to undertake both workstreams in tandem. The NPS-HPL Discussion Document states that councils *should* undertake identification of highly productive land, and the creation of future development strategies under the NPS-UD in conjunction, to streamline processes, improve spatial planning frameworks and improve planning outcomes.⁵ However, the NPS-HPL does not include any explicit requirement for councils to do so.
- 3.4 If the identification of highly productive land occurs before councils confirm their future development strategies under the NPS-UD, there is a real risk that highly productive land that might be appropriate for urban development could be excluded from the outset, or it will be unreasonably difficult for highly productive land to be urbanised in appropriate cases.
- 3.5 Otereti and Glenbrook seek that the NPS-HPL includes direction to councils to undertake the identification of highly productive land under the NPS-HPL at the same time as developing future development strategies under the NPS-UD. This is appropriate to ensure that planning outputs strike the appropriate balance between protecting highly productive land, and providing for urban development in, and around, major urban centres. It is also appropriate that councils undertake a cost benefit analysis at that stage – we discuss this further below.

4. DEFINITION OF HIGHLY PRODUCTIVE LAND

- 4.1 The NPS-HPL includes a default definition of highly productive land based on LUC classes 1 to 3 that would apply until regional councils have identified highly productive land in accordance with proposed Policy 1.
- 4.2 The Discussion Document states that certain policies, such as those directed at private plan changes and resource consents, would have immediate effect. As such, all land that is subject to the interim definition will also be subject to these policies from the outset.
- 4.3 Appendix A contains a map showing Auckland Council's mapping of LUC 1 to 4 soils across the Auckland Region. LUC classes 1 to 3 cover a very broad area, including a large portion of Otereti and Glenbrook's landholdings. Given the strong directives included in the NPS-

⁴ Discussion Document on the Proposed National Policy Statement for Highly Productive Land, page 43.

⁵ Discussion Document on the Proposed National Policy Statement for Highly Productive Land, page 43.

HPL to promote the protection and preservation of highly productive land, Otereti and Glenbrook consider that the interim definition of highly productive land will have wide-ranging implications.

4.4 In particular, the definition could:

- (a) unreasonably delay urban development as developers may be less inclined to initiate private plan changes and resource consent processes in the interim period while councils are undertaking their exercise to identify highly productive land; or
- (b) result in developers incurring unnecessary costs if they initiate these processes on land that would not otherwise be identified as highly productive, had the relevant council undertaken a proper assessment at the outset.

4.5 For these reasons, Otereti and Glenbrook consider that the interim definition be removed from the NPS-HPL and land should not be classified as highly productive until a full assessment has been undertaken in accordance with Policy 1. However, if some of the policies are to have immediate effect (as currently proposed) and the interim definition remains necessary, Otereti and Glenbrook consider the interim definition should be narrower in scope. For instance, an interim definition based on LUC classes 1 to 2 may be more appropriate.

4.6 That said, Otereti and Glenbrook consider that soil classification alone should not warrant protection of land as being highly productive. Rather, there are a range of factors that need to be considered before classifying land as highly productive land (either on an interim or permanent basis). While proposed Policy 1 sets out mandatory criteria (as well as optional considerations) to identify highly productive land, Otereti and Glenbrook consider that the list of mandatory criteria should be more explicit about the need to consider the topography of land. Topography has a bearing on the productive capacity of land and provides an objective benchmark for identification similar to the other mandatory considerations listed in the Discussion Document.

5. A COST BENEFIT AND ALTERNATIVES ANALYSIS IS NEEDED AT THE OUTSET

5.1 Proposed Policy 3 states that urban expansion must not be located on highly productive land unless it is demonstrated that this is the most appropriate option based on a consideration of cost-benefit analysis and assessment of feasible alternatives. This is intended to provide direction to councils on how to consider highly productive land when providing for new areas for urban growth.

5.2 Otereti and Glenbrook consider that this cost-benefit analysis and assessment of alternative options should occur when councils are identifying highly productive land under proposed

Policy 1. Otereti and Glenbrook consider that it is appropriate for this to be undertaken at the outset so as to ensure that the need to protect highly productive land is balanced against the need for urban development. This would also provide greater certainty and clarity for the council and developers at a much earlier stage as to the areas of land that are appropriate for urban development.

- 5.3 The Discussion Document also states that this could also apply to private plan changes to rezone highly productive land to urban use. Otereti and Glenbrook consider that this would impose too high a burden on private plan change applicants. Applicants should not be required to demonstrate that land caught by the NPS-HPL is the best option out of what would likely be, a large and indeterminate number of alternative locations and options.
- 5.4 This would also be contrary to the case law that has developed in relation to private plan changes. The Supreme Court has noted its practical concerns with a rule that requires all alternative locations to be canvassed by an applicant in support of a development proposal.⁶
- 5.5 Further, the effect of proposed Policies 6 and 7 is effectively to require private plan change applicants to undertake a cost benefit analysis and assessment of alternative options so it is unnecessary to impose any additional requirements on those applicants.

6. MITIGATING EFFECTS OF URBAN DEVELOPMENT

- 6.1 Proposed Objective 3 directs that highly productive land be protected from inappropriate subdivision, use and development, including by:

Avoiding subdivision and land fragmentation that compromises the use of highly productive land for primary production;

Avoiding uncoordinated urban expansion on highly productive land that has not been subject to a strategic planning process; and

Avoiding and mitigating reverse sensitivity effects from sensitive and incompatible activities within and adjacent to highly productive land.

- 6.2 The word "avoid" is very directive. The Supreme Court held that "avoiding" has its ordinary meaning of "not allowing" or "preventing the occurrence of".⁷
- 6.3 Otereti and Glenbrook consider the use of the word "avoid" is inappropriate, when there might be circumstances where it is not practicable to do so. Proposed Objective 1 would have the effect of prohibiting any attempt to mitigate or remedy the effects of subdivision,

⁶ *Environmental Defence Society Incorporated v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [163] – [173].

⁷ *Environmental Defence Society Incorporated v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at [24].

use and development on highly elite soils, even in instances where such efforts might work to provide improved outcomes for the community.

- 6.4 Otereti and Glenbrook suggest the wording of proposed Objective 3 be amended to qualify the direction to avoid outcomes and effects. Objective 3 could include the directive to avoid "where practicable", or "to avoid, remedy or mitigate". The latter phrasing would allow parties the opportunity to take measures that mitigate the adverse effects of a particular land use otherwise beneficial for the community. For instance, a party could offer to transfer top soil to an alternative location to mitigate land use effects on highly productive land.
- 6.5 Further, the requirement that a strategic planning process be undertaken runs the risk that developers be precluded from undertaking a private plan change, because they are waiting for a council to undertake a strategic planning process in its own time.

7. CONCLUSION AND OPPORTUNITIES FOR ENGAGEMENT

- 7.1 As set out above, Otereti and Glenbrook have a number of concerns with the NPS-HPL. Otereti and Glenbrook seek the opportunity to further engage with the Ministry in respect of the NPS-HPL.
- 7.2 This is particularly the case in respect of proposed Policy 1, which provides for the identification of highly productive land. Otereti and Glenbrook consider that when councils are identifying highly productive land, there should be opportunities for the public to participate.

OTERETI LIMITED AND GLENBROOK INVESTMENTS LIMITED

Signature:

A handwritten signature in black ink, appearing to be a stylized name, possibly 'M. H. L.', written over a horizontal line.

Date: 9 October 2019

Appendix A – Auckland Council LUC Map

