

In Confidence

Office of the Minister for the Environment  
Office of the Minister of Agriculture  
Chair, Cabinet Economic Development Committee

## **PUBLIC CONSULTATION ON THE PROPOSED NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND**

### **Proposal**

1. This paper seeks agreement to undertake public consultation on a proposed National Policy Statement for Highly Productive Land (NPS-HPL). The proposed NPS-HPL would strengthen the requirements under the Resource Management Act 1991 (RMA) for local authorities to manage New Zealand's most versatile and productive land to ensure its long-term availability for primary production.

### **Executive Summary**

2. The Our Land 2018 and Environment Aotearoa 2019 reports highlight a number of issues facing our land and soils. This includes urban expansion and fragmentation into lifestyle blocks occurring on our most productive land, making this land unavailable for food production. These reports also highlighted a number of issues facing soil quality, which will be considered in 2020 as 'phase 2' of this work programme.
3. The New Zealand primary sector, particularly vegetable growers, depend on the availability of highly productive land to produce food for New Zealanders and remain competitive in export markets. Roughly 14% of New Zealand's land can be considered highly productive<sup>1</sup>, and well suited to a range of primary production activities. The availability of this land is gradually and irreversibly being reduced as a result of urban expansion and fragmentation by rural-lifestyle developments. These developments are also causing reverse sensitivity effects, where existing primary production is vulnerable to complaint from these new land-uses.
4. Local authorities (councils) are responsible for controlling the use, development and protection of natural resources, including land, through RMA plans and policy statements. Central government can also provide direction under the RMA to councils on how to manage land (and other natural and physical resources) through national instruments as is currently done for urban development capacity, freshwater management, and a number of other matters.

1 Based on land with a classification of 1-3 under the Land Use Capability Classification

5. There is a lack of clarity for councils on how highly productive land should be managed under the RMA framework. Protection of highly productive land is not specifically recognised as a matter of national importance in the RMA and no specific direction in relation to its management is given. The approaches taken by councils vary, and highly productive land can be undervalued and given less weight in planning decisions than other (at times competing) matters.
6. The NPS-HPL would provide a clear signal to councils that highly productive land should be considered as a matter of national significance in RMA planning and consenting decisions. The proposed NPS-HPL would provide direction for councils to:
  - Recognise and provide for the full range of values and benefits associated with the use of highly productive land for primary production;
  - Maintain the availability of highly productive land for primary production for future generations; and
  - Protect highly productive land from inappropriate subdivision, use and development.
7. The proposed NPS-HPL would sit alongside other RMA national direction instruments. This would include the proposed National Policy Statement for Urban Development (NPS-UD), which is designed to strengthen and build from the existing National Policy Statement on Urban Development Capacity. The proposed NPS-UD is a key component of the Government's Urban Growth Agenda which aims to remove barriers to the supply of land and infrastructure and make room for cities to grow out and up.
8. The Treasury has signalled concerns that the NPS-HPL may conflict with the goals in the Urban Growth Agenda due to introducing restrictions on land use that do not currently exist. However, we consider that the flexibility in the proposed NPS-HPL policies and a focus on redirecting (rather than constraining) growth will ensure these instruments can work alongside and complement each other. This will help councils to better assess and balance the trade-offs between protecting highly productive land for primary production while providing for greater urban capacity. We consider this will ensure the Government's objectives for urban development are not compromised as well as promoting the best use of our highly productive land resource to deliver the most benefit for New Zealand.

9. We propose public consultation on the proposed NPS-HPL occurs over an 8 week period between August and September 2019 alongside consultation on the proposed NPS-UD as well as other proposed national direction<sup>2</sup>. We consider that careful coordination and consideration of the linkages between these programmes during consultation will mitigate this perceptual risk. The Minister for the Environment intends to make a decision that consultation follow an official-led process in accordance with s46A(4) of the RMA. Consultation would inform a report back to Cabinet. If the proposal for an NPS-HPL is approved at that point, it would likely come into force by early 2020. It is proposed that councils would need to fully implement the NPS-HPL within five years after it comes into force and specific feedback on this timeframe will be sought through public consultation.
10. A second phase of work focusing on soil health will commence in 2020. Soils also provide a number of ecosystem services, which are being impacted by past and current agricultural practices and other development activities. This work seeks to address issues across all land classes, and will not be limited to highly productive land.

## Background

11. Many rural communities and their economies have been established around highly productive land. Highly productive land provides direct employment (such as on a farm, orchard, vineyard or market garden), and underpins the primary sector value chain. Any reduction in the availability of highly productive land in existing food production 'hubs' is likely to have flow-on effects on employment and businesses across this value chain, and may result in an increase in the cost of vegetables over time.
12. In developing the discussion document, officials have spoken with two iwi trusts in the Auckland/Tāmaki Makaurau and northern Waikato regions as well as a Māori horticulture trust based in Te Puke. The proposed policy is unlikely to impact decisions relating to large areas of Māori land as whenua Māori tends to be in areas with less versatile soils and therefore less likely to be classified as highly productive by default. Further evidence about the proposal's cultural, social, environmental and economic impact on Māori will be sought through the engagement process, alongside the impact of the other national direction tools.
13. In addition to soil quality, the availability of water, supporting infrastructure, the size and cohesiveness of the area, and the climate (including temperature and frost patterns) contribute to the overall productivity of land. These factors, to some extent, control what, and how much can be grown on that land.

<sup>2</sup> Officials are working to align the consultation process for all proposed national direction between August and December 2019, including: the NPS Urban Development (Aug-Sept); further amendments to the NPS for Freshwater Management 2014 (Aug-Sept); the National Environmental Standards for Freshwater Management (Aug-Sept); and the NPS for Indigenous Biodiversity (Oct-Dec).

14. Our towns and cities have typically been established adjacent to large pockets of land with favourable characteristics that provide a food source for their populations. This means that as our towns and cities have grown outwards, new urban areas have encroached on the very land that communities rely upon for primary production. While we need to ensure we have enough land to build the houses people need, we must also protect our most productive areas so that they are available to future generations for primary production.
15. The reduction in availability of land for primary production has been most notable in large vegetable growing communities that are located in close proximity to growing urban centres, for example Pukekohe and the Horowhenua. However, this is a nationally significant issue due to our economy being based strongly on food production export earnings. There are significant food producing hubs in regions such as Gisborne, Hawke's Bay and Canterbury and these make a strong contribution to the New Zealand economy and the resilience of New Zealand's rural communities. Both councils and primary sector participants across New Zealand have raised concerns about the cumulative, and irreversible reduction in the availability of highly productive land as urban and lifestyle development has occurred<sup>3</sup>.
16. Additionally, there may be some cost efficiencies, albeit small, in producing vegetables within close proximity to population centres. While a degree of inter-regional food supply will always be needed due to certain crops performing better in different regions, there is a growing desire from consumers for locally grown food. It is therefore important to retain local food production as much as possible.
17. The land that has been identified as the most productive (class 1-3) through the Land-Use Capability classification system<sup>4</sup> makes up only 14% of New Zealand's overall land area (excluding conservation land and existing urban areas). Given this is a limited resource, any further reduction needs to be managed and should be avoided where other options for urban development exist.
18. In addition to the direct reduction in availability of highly productive land through urban expansion, fragmentation by lifestyle blocks and ad-hoc urban development has resulted in productive landscapes being divided into parcels that are not large enough to support primary production at scale. A return to primary production use is very unlikely due to increased land prices.

3 From 1996 to 2012, New Zealand's urban areas increased by 10 percent to approximately 228,000 hectares. From 1990 to 2008, 29 percent of these new urban areas were on LUC Class 1 and 2 land. The number of lifestyle blocks has also increased sharply in recent decades, with an average of 5,800 new blocks a year since 1993. A 2013 study found that 35% of Auckland's highly productive land was used as lifestyle blocks.

4 The Land Use Classification (LUC) System is the main database used in New Zealand to describe the productive capability of land. The LUC assigns land to a class between 1 and 8, class 1 being the most productive and versatile, and class 8 having severe limitations to productive use.

19. Rural lifestyle developments, as well as new urban areas, are often incompatible with rural activities in close proximity. This has created a rise in reverse sensitivity issues where residential activities and other sensitive land uses conflict with established primary production activities, and have potential to compromise the operation and productivity of those activities. This has been identified as a key issue in some of our most productive food hubs such as Pukekohe and the Heretaunga Plains.
20. The soil science community, horticultural sector participants, and some local government stakeholders have called on successive governments to introduce national direction for highly productive land to ensure it is available for primary production now and for future generations. In light of the findings in the Environment Aotearoa: Our Land 2018 report (Our Land 2018) it is now time for us to act. Further delay in issuing national direction will result in the continued reduction in the availability of highly productive land for primary production due to urban expansion and rural lifestyle development. This land use change cannot be easily reversed and is highly unlikely in most situations.
21. In April 2018 we asked officials to begin work to develop a national policy statement (NPS) to help councils better consider the value provided by highly productive land through planning decisions. We were particularly concerned about the findings in Our Land 2018, which showed that around 29 percent of land previously used for vegetable production was lost to urban development between 1996 and 2012. The need for stronger RMA national direction for highly productive land was signalled in May 2018 when the Minister for the Environment updated Cabinet on the RMA national direction forward agenda [CAB-18-MIN-0246 refers].
22. We have also asked officials to look into the impact of our current and past primary production practices on the health of our land and soil, and how issues such as erosion, soil compaction and contamination can be better managed through the RMA. This will be undertaken as a second phase of work which will commence in 2020 once the land-use planning issues affecting highly productive land have been addressed. This will also allow time for the Essential Freshwater programme, which will address overlapping issues, to be further developed. At this stage we have not made any decision on whether the soil health dimension will be best managed through a regulatory or non-regulatory approach.

**There is a lack of clarity on how councils should manage highly productive land under the RMA**

23. There is a lack of clarity under the RMA on how highly productive land should be managed. As a result, a variety of approaches have been adopted by local authorities across New Zealand with mixed results. Some councils have clearly defined highly productive land in their planning frameworks and include clear direction on how it should be managed. Conversely, some plans are completely silent and it is clear that in some jurisdictions councils are not adequately providing for the long-term availability of this resource for primary production through their planning documents.

24. The RMA references safeguarding the life-supporting capacity of soil in section 5(2)(b) and the effective use and intrinsic values of soil is a relevant consideration under section 7(b) and 7(g) of the RMA. While other sections of parts of Part 2 of the RMA have been expanded and clarified through national direction, issues facing highly productive land have not.
25. There has been a reluctance from some councils to propose strong provisions relating to highly productive land in the absence of any supporting national direction. These factors are clearly contributing to the loss of highly productive land for primary production that has been demonstrated through the *Our Land 2018* report and more recent Environment Aotearoa 2019 report.

**Broader economic benefits of primary production are not fully considered through land use decision-making**

26. There is a pattern of ongoing incremental, cumulative loss of highly productive land, as decision-makers discount the significance of a parcel of land when considering it in the context of the total area of highly productive land in the region/district. This was highlighted in a recent High Court decision<sup>5</sup> regarding the location of the Rural Urban Boundary in Auckland. It also contributed to a large amount of highly productive land being included within the Rural Urban Boundary or zoned as Countryside Living through the Auckland Unitary Plan process.
27. The primary production potential of land is effectively lost when it is sealed for urban use. Fragmentation of land into smaller lifestyle developments is legally reversible, but this is rare due to higher land prices for lifestyle properties compared to primary production land. While some small parcels of land can be highly productive for certain primary production uses, most lifestyle developments have low or no primary production output.
28. Under the RMA, the land use planning framework generally operates at the aggregate or macro level while the land use market operates at the individual land parcel level. At the macro level, providing for urban development on non-highly productive land is far less costly to the overall economy and the environment than allowing for urban development on highly productive land. However, the nature and structure of the land use planning framework means there is no mechanism through which the long-term productive and sustainability benefits of highly productive land can be protected and preserved for future generations.

<sup>5</sup> *Jay Gock and Fay Gock v Auckland Council* [2019] NZHC 276.



29. The commercial land market operates at the individual land parcel level where the incremental loss of highly productive land is not reflected and often seen as insignificant on a case-by-case basis. The price of individual land parcels represents the current market demand for that land with residential and business uses, in almost all instances, receiving greater returns than rural or highly productive land. This means that land use outcomes at a single parcel level are heavily weighted toward favouring change away from primary production activities. Therefore the commercial market alone is highly unlikely to adequately value and maintain the long-term benefits of New Zealand's highly productive land. This needs to be addressed through the planning framework, including through greater use of spatial planning that better considers and balances the trade-offs of different land uses.
30. The difference in the market price between rural and urban land is a key indicator for councils that additional urban land is needed. When considering these changes councils compare the costs and benefits of zoning rural land for urban use. However, the planning framework does not require councils to adequately consider the opportunity cost to highly productive land of converting that land to urban use. The NPS-HPL would ensure highly productive land is considered when determining what blocks of rural land should be rezoned for urban use.

**National direction will assist local authorities to give greater weight to the protection of highly productive land**

31. While many councils recognise the importance of highly productive land, they are often dealing with a range of competing priorities and other national direction instruments. In particular, councils have raised concern that the requirement for council to provide urban development capacity under the NPS-UDC is contributing to continued urban expansion onto highly productive land.
32. The New Zealand planning system is highly devolved. Through national direction central government can influence planning outcomes by providing direction and guidance to councils on matters of national significance. This type of direction can change planning practice and align it with overarching government resource management objectives.
33. National direction on highly productive land will provide councils with a clearer framework for managing the soil resource and to consider the value of highly productive land alongside competing land uses - in particular urban expansion and rural lifestyle development. Through workshops on highly productive land held in late 2018 and early 2019 councils have raised concern that the structure of the current planning framework does not allow them to provide sufficient weight to highly productive land when making planning decisions – particularly when they need to recognise and provide for a range of matters of national importance under the RMA and give effect to other national direction.

34. Providing a clear signal to local authorities that highly productive land is a matter of national significance will help ensure that it is given greater weight in land-use planning and decision-making. This will also provide clarity that urban development should be avoided on highly productive land where more appropriate options exist based on a clear analysis of benefits, costs and risk at a local, regional and national level.
35. The private property right of a land owner does not include the right to change the use of their land. The use of land is subject to regulatory controls under the RMA and district plans set out controls on what use can occur where. This is true of residential land, where a landowner cannot ordinarily change to commercial or industrial use. The same principle applies to rural land; the landowner does not have an automatic right to subdivide land into residential blocks unless this is expressly authorised by the district plan. Change in land use is both restricted and enabled by the underlying zone plan rules under the RMA. Plans must also give effect to any national direction issued under the RMA and consent authorities must have regard to any relevant national direction.

**A National Policy Statement is the preferred option to protect and manage highly productive land**

36. The Ministry for Primary Industries and Ministry for the Environment assessed the effectiveness and efficiency of a number of potential RMA national direction instruments to address the problems outlined above. These included:
- A National Policy Statement for Highly Productive Land;
  - National Environmental Standards for Highly Productive Land; and
  - Additional amendments to the proposed National Policy Statement for Urban Development that focused on rural-urban interface issues.
37. This assessment identified a National Policy Statement (NPS) as the most appropriate option for improving the management of highly productive land, however this needs to be tested with the public. A key benefit of this option is that an NPS still allows for some flexibility for councils to respond to local pressures and priorities, while also providing clear direction on how to protect and manage highly productive land.
38. Conversely, while nationally focused National Environmental Standards (NES) could provide more prescriptive protection of highly productive land it would further constrain the flexibility needed to consider and balance local and national priorities. This could impose excessive restrictions on some communities. While the RMA can allow for geographically specific requirements to be included in an NES to provide for regional variation, the development of such requirements would likely add significant development time and cost.



39. While the proposal seeks to address matters that are similar in nature to the proposed NPS-UD, it would be inappropriate to include the management of highly productive land in the urban development instrument. Other matters such as biodiversity and freshwater quality are also closely linked to urban development but are dealt with through separate stand-alone instruments (both existing and proposed). A key limitation of including consideration of highly productive land in the NPS-UD is that it would only address part of the problem. Adequately addressing the key issues of fragmentation and reverse sensitivity effects affecting the use of our highly productive land resource would not naturally fit within the NPS-UD framework.
40. Throughout the development of the proposal, officials have closely considered the risk of national direction for highly productive land constraining land supply for urban development. We consider that the flexibility provided by an NPS mitigates this risk by allowing local authorities to consider the need for urban development, while also considering the benefits of highly productive land for primary sector use. Our intention is that councils are provided with discretion to determine the most appropriate use of land based on a clear and transparent consideration of benefits, costs and risks.
41. The discussion document outlines the options considered and explains why an NPS has been identified as the preferred option. The discussion document also seeks feedback on the alternative options as part of the public consultation process. Consideration of this feedback may result in the identification of a new preferred option.

#### **Approach of the proposed NPS-HPL**

42. As a land-use planning instrument the proposed NPS is primarily directed at regional policy statements and district plans. It sets out considerations and requirements to be included in regional policy statements and district plans to manage urban development and subdivision land-use activities on highly productive land. It also includes policies to guide decision-making for resource consent applications for urban development and subdivisions on highly productive land.
43. The proposal sets out three objectives to achieve its overall purpose, outlined below.

*Objective 1: Recognise the full range of values and benefits associated with the use of highly productive land for primary production*

44. Objective 1 sets out the expectations for councils to better recognise the long-term benefits of protecting highly productive land for primary production. These are often undervalued compared to the short-term benefits associated with urban development. The values and benefits of highly productive land can include food production and supply, employment, local and national economic benefits from export earnings and social cohesion.

45. It is expected that councils will articulate the key benefits associated with highly productive land within the context of their region or district to give effect to Objective 1 and to ensure these benefits are better considered in land use planning and decision-making.

*Objective 2: Maintain the availability of highly productive land for primary production for future generations*

46. Land for primary production is maintained for future generations. It would require local authorities to proactively consider and manage the highly productive land resource within their region or district to ensure that this can be used for primary production now and into the future. In practice, this means that development that leads to the irreversible loss of highly productive land should be avoided where other feasible options exist.
47. However, this does not impose a 'no net loss' requirement. We recognise that absolute protection of this land for primary production is not always appropriate. The proposed policies that implement Objective 2 provide clear direction that urban development should be avoided on highly productive land where more appropriate options exist.
48. The policy intent of Objective 2 is to ensure the availability of highly productive land.

*Objective 3: Protect highly productive land from inappropriate subdivision, use and development*

49. Objective 3 addresses the more immediate pressures on highly productive land. It provides direction to all decision-makers to ensure highly productive land are protected from "inappropriate" subdivision, use and development through avoiding certain types of development and adverse effects. This will help to maintain the availability of highly productive land for primary production into the future (Objective 2).
50. What is appropriate and inappropriate will depend on local circumstances and surrounding land use. Some direction on what is appropriate subdivision, use and development is provided in the proposed NPS-HPL, however, the proposed NPS-HPL requires councils to define this further through regional policy statements and district plans and put methods in place to protect highly productive land from inappropriate development.

**Policies have been included to ensure the proposal has immediate effect for RMA decision-making**

51. The proposed NPS includes policies to guide decision-making on:
- Plan changes to rezone highly productive land to an urban use or a more densely populated rural-residential or rural-lifestyle use; and
  - Resource consent applications for urban development and subdivisions on highly productive land.

52. These policies would apply when the NPS is gazetted. This will ensure the proposed NPS has some immediate effect on land-use planning decisions in the transitional period prior to councils amending their plans and policy statements to give effect to the NPS.
53. The NPS could also require certain policies to be directly inserted into policy statements and plans without using the Schedule 1 process in accordance with section 55(2) of the RMA to assist with timely and efficient implementation. The NPS-HPL does not currently propose that policies are directly inserted but we have included questions in the discussion document on the appropriateness of doing so.
54. The NPS-HPL would not apply to land already zoned for urban use. We have also considered whether it should apply to areas identified as future urban through a council led strategic planning process or to future urban zones identified through a RMA plan change process. Excluding future urban areas or zones would ensure the NPS-HPL does not undermine existing work councils have done with their communities to plan for, and accommodate, future urban growth. While urban development is not enabled until the district plan provides for such development, the identification of future urban areas through a strategic planning process and future urban zones sends a clear signal to landowners and developers of where future growth can occur. Individuals, developers and councils will make investment decisions on this basis.
55. The NPS-HPL could set some parameters around the areas where the NPS-HPL would not apply. For example, the NPS-HPL could not apply to future urban zones in district plans (e.g. future urban zones in the Auckland Unitary Plan). It could also not apply to future urban areas identified through non-statutory strategic documents. The latter would need to be council initiated, subject to public consultation, and formally adopted by council prior to the NPS being gazetted, to ensure it has been through a reasonably robust process.
56. The preferred option at this stage is for the NPS-HPL not to apply to future urban zones identified in district plans and provide councils with the flexibility to apply the proposed NPS to future urban areas identified in non-statutory strategic documents. This will allow councils to reconsider these areas in light of the NPS-HPL and avoid the risk of broad indicative future urban areas being excluded from the scope of proposed NPS. We will also seek specific feedback on this approach through public consultation.

**We propose that regional councils will need to undertake a process to identify highly productive land**

57. The proposal recognises that there are other factors in addition to soil quality that determine the productive capacity of land for primary production. While most local authorities define highly productive land based on the Land Use Capability Classification (typically LUC 1-3), there are other types of land that can be highly productive. These may include land types that are important for viticulture or stone fruit production, for example Gimblett Gravels in the Hawke's Bay region.

58. The proposed NPS includes requirements for local authorities to identify highly productive land based on a set of defined criteria (soil capability, climate, water availability, and area of land), as well as discretionary criteria to allow for regionally specific land types to be protected. The consideration of factors other than soil will be particularly important in protecting land where growing vegetables over winter is possible as the presence of these factors may have a stronger influence in enabling production than soil alone. Highly productive land would be identified as LUC 1-3 until this process has been undertaken by regional councils, which will help ensure highly productive land is protected in the interim period.
59. Climate change brings increasing uncertainty about the availability of water and climate that support the suitability of land for primary production. This means that councils will need to take a more dynamic approach to the identification of land they consider to be highly productive to account for these changes and actively consider how productivity will change over time. There will also be a need for councils to undertake periodic reviews of the land they have identified as highly productive and it is expected that they would tie this in with the requirement to review their plans and policy statements every 10 years.
60. The identification of highly productive land will require substantial effort from councils. It has not been possible to quantify the cost for regional councils to identify and map highly productive land due to the:
- Variability of data held by individual councils;
  - Uncertainty on the process that councils will take for this process; and
  - Difficulty in separating this work from other spatial planning exercises required by existing and proposed national direction instruments.
61. Under active consideration [REDACTED] It is proposed that the Government provides guidance and technical assistance to local authorities to assist with this work, focusing on those regions with the greatest pressures on the highly productive land resource.
62. The discussion document also seeks feedback on whether the proposed NPS-HPL should limit key policies to regions and districts where the pressures on the highly productive land resource are the greatest.

### **Alignment with the Urban Growth Agenda**

63. The Government's Urban Growth Agenda work programme aims to remove barriers to the supply of land and infrastructure and make room for cities to grow out and up. This work is being progressed through a set of spatial planning partnerships between central and local government with other partners, establishing the infrastructure funding and financing special purpose vehicle, and the proposed NPS-UD.

64. The proposed NPS-UD would broaden existing requirements for councils with major urban centres to undertake strategic planning through developing a Future Development Strategy. Future Development Strategies require councils in major urban centres to demonstrate how and where they will provide for urban development to meet the needs of current and future communities. Part of this work will require councils to identify no-go areas where urban development may not be appropriate.
65. The proposed NPS-HPL would require councils to undertake a process to identify highly productive land where urban development, and other non-primary production activities should be avoided. There is an opportunity for councils to undertake these assessments jointly to streamline processes, improve their spatial planning frameworks and improve planning outcomes. We consider that the requirement to identify highly productive land under the proposed NPS-HPL would provide a framework to support councils to identify no-go areas through their future development strategy, while allowing for new urban areas on highly productive land in appropriate circumstances.
66. There is the potential that no-go areas identified as a result of the NPS-UD will effectively manage the impact on highly productive land. However, there is likely to be a lack of specificity in the future development strategy requirements of the NPS-UD as these do not directly refer to the need to consider or protect highly productive land in any way. We have asked officials to test this alongside the consultation process.
67. The proposed NPS-UD also requires councils to plan for quality urban environments, and enable opportunities for higher density development in and around existing centres and public transport stops. This would support access to jobs, services, and facilities by active and public transport. We consider that an increased focus on higher density development complements this proposal as it will help to alleviate pressure for outward development onto the highly productive land resource.
68. Work is also progressing across the Urban Growth Agenda in establishing partnerships between central government, local government, and other partners to undertake spatial planning across a number of New Zealand's major urban areas. A spatial plan would outline the high-level geographic direction for future urban growth and set overarching strategic direction for a region. The initial focus of the Urban Growth Agenda spatial planning work is on Auckland, the Auckland-Hamilton corridor, Hamilton, Queenstown and discussions are underway with Wellington, Christchurch and Tauranga. This proposal would support councils in considering the strategic importance of highly productive land when undertaking spatial planning exercises.



69. We consider that the proposed NPS-HPL and NPS-UD can and should work alongside and complement each other to better assess and balance the trade-offs between protecting highly productive land for primary production while also providing for urban growth. Some stakeholders have concerns that the proposed NPS-HPL would constrain the ability of councils to provide for sufficient urban development capacity. However, the flexibility in the proposed NPS-HPL for councils to consider what urban expansion and subdivision is appropriate (and inappropriate) on highly productive land, and a focus on redirecting (rather than constraining) urban growth in the NPS-HPL will effectively mitigate this risk. We will continue to work together to align these two national instruments to ensure the Government's objectives for urban development are achieved while also promoting the best use of our highly productive land resource to deliver the most benefits for current and future generations.

### **Interaction with Essential Freshwater Programme**

70. The key interaction between the proposed NPS-HPL and the existing and proposed freshwater national direction instruments will be where land-use controls are required to meet freshwater management objectives (e.g. the proposed Freshwater NES, or regional rules) in areas that may also contain highly productive land. Councils will need to balance both the freshwater management and highly productive land objectives in deciding what and where activities can take place.

### **Impact of the Proposed NPS-HPL**

71. The development of the NPS proposal has been supported by an indicative cost benefit analysis (CBA) undertaken by Market Economics. The CBA showed a moderately positive economic effect from protecting the highly productive land under the proposed NPS for the six cases studies<sup>6</sup> examined, with a benefit-cost ratio between 1.01 and 1.24. The monetised benefits relate to the avoided loss of primary production output that would occur under the NPS-HPL compared to that modelled under the status quo<sup>7</sup>, and the monetised implementation costs for councils and costs of inputs for primary production.
72. It is important to note that cost benefit analysis has limitations in that it was not able to monetise or quantify a number of benefits and costs. In particular, it gives no monetary value to the intrinsic value of natural capital in the form of protection of highly productive land. This limitation to cost benefit analysis is always present when assessing the benefits and costs of environmental regulation and is acknowledged in the CBA.

<sup>6</sup> Auckland, Waipa, Western Bay of Plenty, Horowhenua, Selwyn, and Ashburton.

<sup>7</sup> based on an analysis of current plan provisions and a continuation of current subdivision patterns



73. Similarly, some key costs have not been monetised in the indicative CBA. This includes the value of sub-dividable land, as an indicator of opportunity cost to landowners from less flexibility to subdivide their property when this is identified as highly productive land. At a district level this loss of value for a single parcel may have a commensurate increase in value for parcels with subdivision potential in other parts of the district where projected growth is not constrained. Likewise, the costs of potential restrictions on urban expansion have not been quantified in the CBA. These two categories of costs may be significant, depending on how councils respond to the proposed NPS-HPL. We will work with CBA specialists and the Treasury to include further analysis on the costs and benefits of urban expansion and opportunity costs to land owners in the final CBA following consultation. This may impact on the overall benefit-cost ratio.
74. The monetised results from the six case studies in the indicative CBA are shown in table 1 below for two NPS-HPL scenarios ('low/medium' regulatory response and 'high' regulatory response). These quantitative results are based on a 30-year time period and a conservative discount rate of 8%.

Table 1

		Low-medium scenario (total)	High scenario (total)
Costs (\$M)	Regulatory and administrative costs to councils	\$17	\$17
	Costs of resources used for primary production	\$53	\$198
	Sub-total	\$70	\$215
Benefits (\$M)	Future production protected	\$71	\$266
Net benefits (\$M)		\$1	\$51
Cost benefit ratio		1.01	1.24

75. The main implementation costs for regional councils of the NPS-HPL is the identification and mapping of highly productive land. The indicative CBA was not able to estimate costs for this spatial-economic exercise, but one potential input to that process could be more accurate soil mapping data.

Under active consideration

This is however only one of many inputs expected to be utilised to define HPL in each region so actual costs are expected to be higher.

76. In addition, regional and district councils will need to go through a plan change process to give effect to the NPS-HPL. The indicative CBA estimates these costs based on generic plan change cost information, which indicate that these costs are likely to be highly variable in practice. District plan changes to give effect to the NPS-HPL are estimated to have an average cost of \$1.2M and changes to regional policy statements are estimated to have a cost of \$1.5M on average.

77. The indicative CBA outlines a number of qualitative benefits provided by the proposed NPS. Key benefits identified include greater protection of the primary sector value chain, environmental benefits, improved consistency and certainty under the RMA, improved spatial planning, and better management of reverse sensitivity effects.
78. Other qualitative costs identified include the increase in cost of preparing resource consent applications and the potential inefficiencies associated with redirecting urban development away from highly productive land. There will be limitations to this analysis at a national level due to uncertainty on exactly how councils will give effect to the NPS-HPL, future zoning decisions made by councils, and local variability in the land uses and growth pressures that need to be considered by councils when giving effect to the proposed NPS-HPL. Finer scale analysis of costs and benefits of proposed provisions is a requirement of section 32 of the RMA that needs to be completed for any plan change to give effect to the NPS-HPL.

### **We will support councils to implement the proposed NPS-HPL**

79. We are proposing that regional councils undertake a process to identify highly productive land within three years of the NPS-HPL being gazetted, and that territorial authorities change their district plans to give effect to its policies no later than two years after regional councils identify the land that the policies must be applied to. For many councils implementing the proposed NPS-HPL within these timeframes may be challenging, particularly for smaller councils where specialist staff are not available. The discussion document seeks feedback on these timeframes and potential implementation costs and challenges to inform the implementation approach and timeframes. That said, it is the duty of councils to implement the RMA to better provide for economic and environmental outcomes such as this.

80. Under consideration

his approach is likely to consist of guidance documents, technical support and ongoing engagement with councils. The design of this programme will draw on:

- Synergies across planned national direction tools, including NPS Indigenous Biodiversity; and
- Lessons learnt during implementation of other national direction instruments.

### **Consultation process**

81. There are three national direction instrument consultation processes happening between August and September 2019. These relate to highly productive land, urban development and freshwater management. The Ministry for the Environment is working with other agencies to coordinate these processes and consultation occurring later in the year. A consultation summary document is also being produced to provide an overview of the resource management system interactions and coherence.

- 82.** We are proposing that public consultation take place for an 8 week period between August and September. Consultation will be official-led (rather than independently-led), as we propose to use the Minister-led development process set out in section 46A(4) of the RMA, rather than to the Board-of-Inquiry process in sections 57-61.
- 83.** The consultation will be primarily through the attached discussion document, and will be supported by public workshops in communities with a particular interest in highly productive land. Officials will also run targeted engagement with key stakeholders including:
- Workshops with councils;
  - Several hui targeting iwi/Māori in areas with high pressure on the urban-rural interface;
  - Engagement with key stakeholder groups such as Resource Management Law Association, Property Council, Local Government New Zealand, and the New Zealand Planning Institute; and
  - Engagement with Horticulture New Zealand, Beef and Lamb New Zealand and other primary sector groups.
- 84.** As outlined earlier in this paper, there are strong linkages between the objectives of the proposed NPS-HPL and the proposed NPS-UD, which will be considered by the Economic Development Committee on 29 July. Running concurrent consultation processes with councils and other stakeholders will provide an opportunity for stakeholders to give meaningful feedback on the best way to ensure these instruments work together to balance the trade-offs between urban and rural land use. Running a concurrent process will also help to ensure that any conflicts between proposed instruments are considered, and mitigate the risk of a perceived tension between the two instruments.
- 85.** Officials have had initial engagement with a small number of Māori groups with a primary sector interest to better understand how to reflect the needs of Māori/iwi in the objectives and policies for NPS-HPL. Officials have also held a series of workshops with primary sector participants and local government officials to test the proposal as it has been developed; feedback from these sessions has been largely supportive of the proposed approach.
- 86.** We have not undertaken any formal engagement with iwi/Māori authorities. In accordance with section 46A we will be notifying all iwi authorities of the upcoming public consultation phase ahead of the release of the discussion document to give them adequate time and opportunity to consider and make a submission during the 8 week consultation period. Engagement during the consultation period will include meeting directly with hapū/iwi through the regular regional hui held by the Ministry for the Environment. As a Treaty Partner we intend to meet with particularly affected iwi/Māori during the public consultation period, but will be open to work with any iwi that has an interest in further engagement with the detail of the proposal.



87. Following consultation, officials will prepare a report on submissions and recommended amendments in accordance with section 46A(4)(2)(c) of the RMA. Officials will also prepare an evaluation of the appropriateness, effectiveness and efficiency of the objectives and policies proposed in the NPS-HPL in accordance with section 32 of the RMA. These documents will enable the Minister for the Environment to make a recommendation on the proposed NPS to the Governor-General in order to be gazetted by early 2020.

### Departmental Consultation

88. This paper has been prepared by the Ministry for Primary Industries and the Ministry for the Environment. The following agencies have been consulted: Treasury, Ministry for Housing and Urban Development, Land Information New Zealand, Ministry for Business, Innovation and Employment, Te Puni Kōkiri, Department of Internal Affairs, Crown Law Office. The Department of Prime Minister and Cabinet has been informed.

### Financial Implications

89. Further development and implementation of this national direction on highly productive land may require additional agency funding, particularly in regard to supporting regional councils to identify areas of highly productive land through their regional policy statements. Under consideration

#### *Treasury comment*

90. The NPS-HPL's aim to increase protections on productive land is likely to work against the goal of housing affordability set by the Government in its Urban Growth Agenda (UGA). As a result of the NPS-HPL the supply of urban land is likely to be further restricted overall, for three reasons: councils are likely to increase protections including by more than is intended; the NPS-HPL may create more regulatory uncertainty for property developers; and it will increase consideration performed by councils before effect is given to any policy with the intent of freeing up land for housing development.
91. Current supply constraints and unmet housing demand have resulted in a price differential between urban-zoned and agricultural land that is very large, even small increases in restriction risk being very costly. The difference in prices either side of urban-rural boundaries for a 600 m<sup>2</sup> section of undeveloped land in Auckland, Tauranga, and Hamilton is estimated to be at least \$136,000 – \$207,000. This differential translates to lost value in the region of \$120 million to \$182 million for an 80 hectare farm at the urban periphery, prevented from switching to urban land.

92. The Treasury considers the NPS has a weak problem definition and rationale for intervention. This creates risks of low benefits, high costs, unintended consequences, and risks to achieving other policy objectives. The Cost Benefit Analysis (CBA) did not quantify the costs of restricting urban development, owing to the assumption that urban development can be relocated without any cost.

*Ministry for Primary Industries and Ministry for the Environment response*

93. We consider that the potential impacts of the NPS-HPL to restrict land use supply as described above are overstated. There is no evidence to suggest that councils will provide more protections for highly productive land than what is intended and it is unclear why councils would be incentivised to do so. The potential regulatory uncertainty for property developers is also speculative and there is no clear link between increased consideration performed by councils under the NPS-HPL and actual restrictions on the supply of urban land.
94. The extent to which the NPS-HPL will restrict the supply of urban land will depend how councils give effect to the NPS-HPL. However, we consider that the risks suggested by Treasury are low. This is because the NPS-HPL policies are clearly aimed at redirecting (rather than constraining) urban growth and will not prevent the supply of development capacity required under the NPS-UDC. The NPS-HPL policies are more focused on improved assessment of alternatives, benefits and costs when identifying what areas of rural land should be rezoned to urban use.
95. Paragraphs 63 to 69 of this Cabinet paper outline why we consider the NPS-HPL will not constrain the UGA work programme. We note that Ministry for the Environment and Ministry for Housing and Urban Development officials involved in the UGA also consider that the NPS-HPL can work in the context of the UGA.
96. The problem definition and rationale for intervention is outlined in this Cabinet paper, specifically in paragraphs 23 to 35. To reiterate, there has been an ongoing reduction in availability of highly productive land due urban expansion, fragmentation by lifestyle blocks and ad-hoc urban development. Key drivers include the lack of clarity in the RMA in how highly productive land should be managed and the land use planning framework not adequately considering the long-term productive and sustainability benefits of highly productive land. The commercial land market operates at the individual land parcel level where land use change is heavily weighted towards urban use for greater returns. Therefore the commercial market alone is highly unlikely to adequately value and maintain the long-term benefits of New Zealand's highly productive land and this needs to be addressed through planning framework.

97. We have also clearly identified the limitations in the indicative CBA in paragraphs 71 to 78 and our intent to address these limitations in the final CBA following consultation (including a commitment to working with Treasury as appropriate). It is correct that the costs (and benefits) of restricting urban expansion on highly productive land have not been quantified in the indicative CBA. However, this is not due to an assumption that urban development can be relocated without any costs – these costs are clearly acknowledged in the indicative CBA. Rather, it is due to the uncertainties predicting the timing and location of urban expansion (without detailed assessments of demand, supply and sufficiency) and the expected small losses of highly productive land in the case study areas from urban expansion relative to rural lifestyle development.

### **Legislative Implications**

98. There are no legislative implications arising from the proposals in this paper.

### **Impact Analysis**

99. The discussion document substitutes for a Regulatory Impact Assessment. The Ministry for Primary Industries and Ministry for the Environment has reviewed the discussion document and has confirmed that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to support subsequent decisions.

### **Human Rights, Gender Implications, and Disability Perspective**

100. There are no human rights issues, gender implications or issues from a disability perspective associated with this paper.

### **Publicity**

101. The proposed NPS-HPL will be published through the consultation approach outlined above.

### **Proactive Release**

102. Following Cabinet consideration I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982.



## Recommendations

The Minister for the Environment and Minister of Agriculture recommend that the Committee:

1. **Note** the proposed National Policy Statement for Highly Productive Land is designed to assist local authorities to better manage the impact of competing land uses on the highly productive land resource under the Resource Management Act 1991.
2. **Note** that the proposed National Policy Statement on Highly Productive Land would provide direction for councils to:
  - a) Recognise the full range of values and benefits associated with the use of highly productive land for primary production;
  - b) Protect highly productive land from inappropriate subdivision, use and development; and
  - c) Maintain the availability of highly productive land for primary production for future generations.
3. **Note** that a second phase of work focused on broader soil health concerns will commence in 2020.

The Minister for the Environment recommends that the Committee:

- 1 **Note** that he intends to use the alternative process under section 46A(4) of the Resource Management Act 1991 for undertaking consultation with the public and iwi authorities.

### EITHER

- 2.1 **Agree** to release the attached discussion document for public consultation over an 8 week period between August and September 2019.

OR [supported by The Treasury]

- 2.2 **Agree** to defer consideration until more targeted options are provided that reduce the risk of restricting housing supply accompanied by a cost benefit analysis that quantifies the costs of restricting urban development, and;  
**Agree** to direct the Ministry for Primary Industries to provide targeted options that reduce the risk of restricting housing supply accompanied by a cost benefit analysis.
- 3 **Agree** that the Minister for the Environment in consultation with the Minister of Agriculture may make minor amendments to the discussion document before its release.

- 4 **Note** that Ministers will report back to the Cabinet Economic Development committee in March 2020 seeking agreement to the final national direction instrument that incorporates amendments following consultation and includes further cost benefit analysis advice.

Authorised for lodgement

Hon David Parker  
**Minister for the Environment**

Hon Damien O'Connor  
**Minister of Agriculture**