

National Policy Statement for Highly Productive Land

National | October 2022

What is the NPS-HPL?

The Government's National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on Monday, 17 October 2022.

The purpose of the policy is to direct new urban development away from highly productive land (HPL) to protect this land for food and fibre production.

HortNZ advocated for nearly a decade for government policy that recognises the importance of our best soils and protects them.

District and regional councils have three years to identify and map highly productive land. After that, they have a further two years to update their district and regional plans.

This document goes into detail about the implications of significant clauses within the NPS-HPL.

Objective and Policies

The NPS-HPL has one Objective: "Highly productive land is protected for use in land-based primary production, both now and for future generations."

There are nine policies which support the objective. These set a clear pathway that highly productive land is:

- To be mapped;
- Prioritised for land-based primary production; and
- Protected, with urban rezoning, rural lifestyle and subdivision activities to be avoided and reverse sensitivity effects to be managed.

There are no rules in a national policy statement, but these will follow in the next few years as territorial authorities make changes to district plans to give effect to the NPS-HPL. In the interim, all local authorities (district and regional councils) must give effect to the NPS-HPL to the extent possible in decision making on consents and plan changes.

Key Definitions

The NPS-HPL is framed around key definitions.

- **highly productive land** means land that has been mapped and included in an operative regional policy statement (or until that time all Class 1, 2, 3).
- **land-based primary production** means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.
- **LUC 1, 2, or 3 land** means land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification.
- **productive capacity**, in relation to land, means the ability of the land to support **land-based primary production** over the long term, based on an assessment of:
 1. physical characteristics (such as soil type, properties, and versatility); and
 2. legal constraints (such as consent notices, local authority covenants, and easements); and
 3. the size and shape of existing and proposed land parcels.
- **supporting activities**, in relation to highly productive land, means those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing).

The hook in the definitions that dictates the outcomes sought through the NPS-HPL is that this is about protecting highly productive land for use in land-based primary production which are activities reliant on the soil resource (e.g. outdoor or undercover fruit or vegetable growing that is reliant on the soil resource but not a greenhouse reliant on imported medium).

Mapping

Clause 3.4 of the NPSHPL relates to the mapping of HPL and requires every regional council to map as HPL, in the Regional Policy Statement (RPS), any land in its region that:

1. Is in a general rural zone or rural productive zone; and
2. Is predominately LUC 1, 2, or 3 land; and
3. Forms a large and geographically cohesive area

Any land identified as future urban development must not be mapped as HPL.

Any land that is not LUC 1, 2 or 3 but is, or has, the potential to be HPL may be mapped.

Mapping of land as HPL is to be undertaken in collaboration with relevant territorial authorities, in consultation with tangata whenua and at an appropriate level of detail.

There is no mention of pre-notification consultation with growers, farmers or landowners. Where possible, the boundaries of large and geographically cohesive areas should align to waterbodies, roads, property boundaries, fence-lines.

Timing

The timing for regional councils to notify a RPS which maps all HPL is set out in clause 3.5: as soon as practicable, and no later than three years after commencement (17 October 2025).

Within six months of the RPS becoming operative, territorial authorities must include those maps in its district plan and with two years notify its own objectives, policies and rules to give effect to the NPS-HPL.

Essentially the regional council will map the HPL, provide a regional policy framework around the resource and the territorial authority will bring in rules that will govern activities of subdivision and land use. Regional policy and plans will also be influenced by the NPS-HPL while noting opportunities to maintain or increase the productive capacity of HPL must not be inconsistent with a matter of national importance under the RMA or the National Policy Statement for Freshwater Management 2020.

In the time from 17 October 2022 and before the relevant RPS contains HPL maps, the NPS-HPL must be applied by each territorial authority and consent authority as if references to HPL:

1. Is:

1. Zoned general rural land or rural production; and
2. LUC 1, 2 or 3; but

2. Is not:

1. Identified for future urban development; or
2. Subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

The interim framework is important as from 17 October 2022, all local authorities (district and regional councils) must give effect to the NPS-HPL which means it will become relevant in decision making on resource consents and private and public plan changes. It is also notable that this applies to all LUC 1, 2 or 3 with no nuances in relation to those classes.

Rezoning and Subdivision of HPL

The restrictions on urban rezoning of HPL included in clauses 3.6, 3.7 and 3.8 are strong. Clause 3.6 provides that Tier 1 and 2 territorial authorities may only allow urban rezoning of HPL if:

1. It's required under the NPSUD 2020; and
2. There are no other reasonably practicable and feasible options for providing sufficient development capacity; and
3. The environmental, social, cultural and economic benefits of rezoning outweigh the long term environmental, social, cultural and economic costs of the loss of HPL, including taking into account tangible and intangible values.

For territorial authorities that are not Tier 1 or 2, the restrictions on urban rezoning are also strong but do not relate back to the NPSUD-2020.

Likewise, the restrictions on rezoning in clause 3.7 make it clear that territorial authorities must avoid rezoning on HPL as rural lifestyle. Clause 3.8 provides that territorial authorities must avoid subdivision on HPL unless one of the limited exemptions applies.

Protecting HPL from inappropriate use and development

Clause 3.9 requires inappropriate use and development to be avoided and then provides criteria around what might be considered appropriate. This includes:

- Supporting activities (such as on-site processing and packing, equipment storage, and animal housing).
- The retirement of land for the purpose of improving water quality.
- Small-scale or temporary land use not impacting on productive capacity.

There is no link that broader 'food production' values that might otherwise have been a consideration in regard to the productive capacity of a site.

There is no provision for other traditional primary production activity that might have a functional and operational need to locate in a rural environment (e.g. glasshouses or intensive primary production).

Functional and operational need is limited only to infrastructure, defence and mineral/aggregate activity considerations.

This appears at odds with the National Planning Standard's definition of primary production and zone descriptions:

"General rural zone: Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location."

"Rural production zone: Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor

primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.”

There is very limited discussion of this in the section 32 (cost benefit analysis). The only relevant comments are:

Page 31 (appropriate and inappropriate uses of HPL)

“Therefore, the NPS-HPL should include a definition of ‘land-based primary production’ including production from agricultural, pastoral, horticultural and/or forestry activities that are reliant on the soil resource of the land. The definition should also clarify that ‘land-based primary production’ includes activities reasonably necessary to support the production of materials on HPL (eg, packing sheds or equipment storage). This will help avoid potential confusion and implementation issues with the National Planning Standards definition of primary production. It also makes it clear that the focus of the NPS-HPL is to protect HPL for land-based primary production activities reliant on the soil resource – not other forms of primary production with no reliance on soil resource (eg, intensive indoor primary production)”.

Page 113 (Table 12 – Assessment of efficiency)

As an environmental benefit: “Land-based primary production is often more compatible with remaining natural ecosystems on HPL compared to other activities such as urban rezoning, rural lifestyle development and intensive indoor primary production”.

As an economic cost: “restricts land available for other non[1]primary production activities on HPL other than where exceptions are provided elsewhere in the NPS-HPL. In particular, it will limit options for other non-land-based primary production activities that typically rely on a rural location to operate (eg, indoor intensive farming and glasshouses). Potential increased costs for these activities to be located elsewhere”.

Pages 96 & 97

Appropriate uses on HPL recognised in clause 3.9(2) follow.

Supporting activities – the NPS-HPL includes a definition of ‘supporting activities’ which is intended to cover activities that support land-based primary production activities on the land where the land-based primary production is taking place. The ‘supporting activities’ definition is deliberately non exhaustive (although some examples such as on-site processing, packing sheds, equipment storage and animal housing are included in the definition), as it is anticipated territorial authorities will use the definition as the starting point for deciding the range of permitted activities, they will provide for on HPL in their district plan. The key point is that the supporting activity needs to relate to the land-based primary activity on the land where the production is taking place, that is, on-site processing of eggs or produce grown on the HPL would be a supporting activity, but a larger-scale milk processing facility that processed milk from a large number of HPL properties would not (as this activity could just as easily be set up on non-HPL land, retaining the HPL for the actual production of milk).

The status of a pack-house/post-harvest facilities that service a number of growers is not clear. Are these deemed “supporting activities that relate to the land-based primary activity on the land where the production is taking place”? Clearly the intent is to exclude milk processing facilities which serve a similar function as a pack-house/post-harvest facility.

Being unable to establish (or expand) on LUC 1, 2, 3 will restrict these activities spatially and other actual or potential effects become a consideration e.g.:

- Land disturbance effects.
- Landscape and visual effects.
- Nutrient management effects.
- Construction Cost/Geotechnical.

How this is resolved at a district land use level is unknown but may require a specific response, spatially and in rules.

Exemption for HPL subject to permanent of long-term constraints

Clause 3.10 sets out where a territorial authority may allow HPL to be subdivided, used or developed for activities not enabled through clauses 3.7, 3.8 or 3.9.

The gateway into the assessment is that:

- there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years;
- that subdivision, use and development:
- *Avoids* any significant loss of HPL.
- *Avoids* the fragmentation of large and geographically cohesive areas of HPL.
- *Avoids* if possible, or otherwise *mitigates*, any potential reverse sensitivity.

A territorial authority must be satisfied that the constraints cannot be addressed through any reasonably practical options including but not limited to:

“(a) alternate forms of land-based primary production:

(b) improved land-management strategies:

(c) alternative production strategies:

(d) water efficiency or storage methods:

(e) reallocation or transfer of water and nutrient allocations:

(f) boundary adjustments (including amalgamations):

(g) lease arrangements.”

This is a narrow provision and expected to be heavily tested.

Continuation of existing activities

Clauses 3.11 provides an existing use right framework for those existing activities consented, designated subject to a notice of requirement or with rights current protected or allowed under the RMA.

Territorial authorities are to include objectives, policies and rules in their district plans for those existing activities with limitations that should enable “maintenance, operation, or upgrade” of those activities on HPL but that the loss of HPL is minimised.

The terms “maintenance, operation, or upgrade” are also expected to be tested. For example, is a new greenhouse along-side an existing greenhouse that is not land-based primary production considered within the scope of “maintenance, operation, or upgrade”?

Supporting appropriate productive use

Clause 3.12 requires territorial authorities to include objectives, policies and rules in their district plans that prioritises the use of HPL for land-based primary production over other uses.

Opportunities to maintain or increase the productive capacity of HPL are to be encouraged but only where that does not conflict with a matter of national importance under s6 of the RMA or the National Policy Statement for Freshwater Management 2020.

Managing reverse sensitivity and cumulative effects

Clauses 3.13 provides a directive approach to for territorial authorities to manage reverse sensitivity and consider cumulative effects through:

1. Identifying typical activities and effects of land-based primary production that should be anticipated and tolerated in a rural environment.
2. Require reverse sensitivity effects from urban zoning and rural lifestyle development to be avoided if possible or otherwise mitigated (e.g. through setbacks or buffers).
3. Require consideration of the cumulative effects of subdivision, use and development on the productive capacity of HPL.

This is a directive implementation requirement and will significantly influence district plan structure.

WHERE TO GO FOR MORE INFORMATION

- [Ministry for the Environment website](#)
- Keep an eye on [HortNZ's website](#)