

UNDER

the Resource Management Act 1991

IN THE MATTER OF

a Hearing in relation to Variation 2 to the proposed
Second Generation Dunedin City District Plan (2GP)

**FURTHER SUBMISSIONS FOR THE OTAGO REGIONAL COUNCIL ON THE
NPS-HPL**

Dated 26 October 2022

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FURTHER SUBMISSIONS FOR THE OTAGO REGIONAL COUNCIL ON THE NPS-HPL

May it Please the Commissioners –

Introduction

1. These submissions address matters arising from the hearing on Friday 21 October 2022.

Starting Point

2. The starting point is whether either of the exceptions to clause 3.5(7)(b) apply.

Clause 3.5(7)(b)(i)

3. This exception does not apply to land which is the subject of submissions on Variation 2. It does not apply because the definition of “*identified for future urban development*” is not met because:
 - 3.1. there is no published Future Development Strategy; and
 - 3.2. there is no strategic planning document, that is to say a non-strategy growth plan or strategy adopted by local authority resolution.

Clause 3.5(7)(b)(ii)

4. This is the critical provision: “*subject to council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle*”.
5. This provision raises the question whether a variation is a plan change.

“Plan Change”?

6. What is a “*plan change*”?
7. While the processes for plan changes and variations are for all practical purposes identical, “*plan change*” and “*variation*” have distinct technical meanings in the Resource Management Act 1991 (“RMA”).
8. There is no definition of “*plan change*” in the NPS-HPL.
9. Instead, clause 1.3(2) provides that terms defined in the Act and used in the NPS have the meanings in the Act, unless otherwise specified.
10. The relevant definition provision is section 43AA of the RMA.
11. In that section:

“*change* means—

- (a) *a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1, including an IPI notified in accordance with section 80F(1) or (2); and*
- (b) *a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1*

district plan—

- (a) *means an operative plan approved by a territorial authority under Schedule 1; and*
- (b) *includes all operative changes to the plan (whether arising from a review or otherwise)*

operative, in relation to a policy statement or plan, or a provision of a policy statement or plan, means that the policy statement, plan, or provision—

- (a) *has become operative—*
 - (i) *in terms of clause 20 of Schedule 1; or*
 - (ii) *under section 86F; and*
- (b) *has not ceased to be operative*

plan means a regional plan or a district plan

variation means an alteration by a local authority under clause 16A of Schedule 1 to—

- (a) *a proposed policy statement or plan; or*
- (b) *a change.” (underlining added)*

12. Points to note:

- 12.1. there is no definition in the RMA of “*plan change*”;
- 12.2. there is a definition of “*plan*”, which as far as relevant means a district plan;
- 12.3. a “*district plan*” is an operative plan approved under Schedule 1 and includes all operative changes made to the plan (whether arising from a review or otherwise); and
- 12.4. a “*change*” means a change proposed by a local authority to a “*plan*” under clause 2 of Schedule 1.
- 12.5. That means a “*change*” is made to an approved and operative plan.
- 12.6. The definition of “*operative*” references section 86F, which states when rules in a proposed plan must be treated as operative. It does not relate to when other provisions, such as objectives, policies or maps become operative. It is the maps which delineate the zoning which apply to land.

13. There is no definition of “*plan change*” in the RMA. However, the words “*plan*” and “*change*” are defined. On the face of it, they should be read in the sense they are defined. They do not, as such, apply to a “*variation*”.
14. A variation is a council initiated process to alter a proposed policy statement or plan, or a proposed change to a policy statement or plan. A variation is promoted by a local authority under Clause 16A of the First Schedule of the RMA.
15. A “*proposed plan*” is defined in section 43AAC of the RMA and reads:
- “(1) *In this Act, unless the context otherwise requires, proposed plan—*
- (a) *means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 or given limited notification under clause 5A of that schedule, but has not become operative in terms of clause 20 of that schedule; and*
- (b) *includes—*
- (i) *a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1:*
- (ii) *an IPI notified in accordance with section 80F(1) or (2).”*
16. The term “*proposed plan*” encompasses:
- 16.1. A proposed regional or district plan in its entirety;
- 16.2. A change to a proposed or adopted plan by local authority; and
- 16.3. A variation to a proposed plan or proposed change.
17. It is obvious that a “*variation*” to a “*proposed plan*” is legally different from a “*change*” to an operative “*plan*”.
18. Variation 2 was notified as a variation to 2GP, not as a change.
19. 2GP is not a “*plan*”; that is to say 2GP is not an operative plan approved by DCC under Schedule 1 of the Act.
20. Variation 2 is an alteration under Clause 16A of the First Schedule to a proposed plan, 2GP.
21. If this analysis is correct, then the exception in (b)(ii), does not apply because there is a “*variation*”, not a “*plan change*”.
22. That outcome may seem surprising. However, the words “*plan change*” are also not capable of comprehending a “*proposed plan*” either, even though a proposed plan may intend to change the zoning of land from general rural or rural production to urban or rural lifestyle.

23. The words “*plan change*” in Clause 3.5(7) cannot possibly comprehend a “*proposed plan*”. A “*proposed plan*” replaces an existing “*plan*”. It does not change it.
24. There is nothing in the wider context of the NPS itself to warrant reconsideration of this textual meaning.
25. The next question is whether there is anything external to the NPS-HPL which justifies a different approach.
26. When the NPS was made, the Government released the Recommendations and Decisions Report on the National Policy Statement for Highly Productive Land. This document is co-authored by officials from the Ministry for the Environment and Ministry for Primary Industries. It contains their recommendations following submissions on the draft NPS. It records that all recommendations presented in the report were adopted by the Ministers for the Environment and Primary Industries. The full document can be accessed at <https://environment.govt.nz/assets/publications/Recommendations-and-decisions-report-on-NPS-highly-productive-land.pdf>.
27. Sections 6 and 9 of the report are **attached**.
28. It is in those sections that transitional provisions are discussed, in particular the interim definition of “*highly productive land*”.
29. In section 9 officials recommended that the definition of “*highly productive land*” be refined so that it did not apply to “*council-planned future urban growth areas in the short to medium term through two means*:

“D. *Exclude areas from the transitional definition of HPL which are:*

identified for future urban development in RMA plan or policy statement, future development strategy, or other strategic planning document published prior to the NPS-HPL taking effect.

subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle at the commencement date.”¹
30. The same recommendation is repeated in section 6 of the report, Identification of HPL – transitional definition².
31. The report does not either illuminate the issue nor lead to a different approach to the words “*plan change*”.

The Alternative Approach

32. If this analysis is wrong, then it is necessary to consider carefully the words “*subject to a council initiated, or an adopted, notified plan change*”.
33. This interpretation question has to be resolved on the assumption that the words “*notified plan change*” include “*a notified variation*”.

¹ Page 33 of the Report.

² Page 20 of the Report

34. The combination of “*council initiated, or adopted*”, means that the proposal has received Council endorsement.
35. This point is underscored by use of the word “*notified*”. That means that when notified, the plan change applied to land which would otherwise be deemed to be highly productive land.
36. Land which is sought to be rezoned through a submission is not subject to a “*council initiated, or adopted, notified plan change*”. It is simply the subject of a submission.
37. That falls outside the scope of clause 3.5(7)(b)(ii).
38. The argument advanced by Gladstone Family Trust and by CC Otago Limited, Peter Doherty and Outram Developments Limited, in substance, rewrites clause 3.5(7)(b)(ii).
39. They add in words, which the makers of the NPS have not used. In essence, their submissions result in subparagraph (ii) reading “*subject to a proposal to rezone from general rural to rural production to urban or rural lifestyle under Schedule 1 of the Resource Management Act*”.
40. The subparagraph could have been written to encompass submissions on plan changes but it has not.
41. It can be taken that the makers of the NPS were well aware of the processes for rezoning land are under the RMA. That is clear from the way in which subparagraph (ii) has been written. But it has been limited so that like subparagraph (i), the exemption under subparagraph (ii) only applies when the proposal has the “*council stamp*” on it.
42. Legislative instruments typically contain savings and transitional provisions for matters already in train.
43. Often, they are so broad that they provide that any matters on foot are not affected.
44. Here the makers of the NPS have chosen to take a much more restrictive course.
45. In short, land which is the subject of a submission seeking that land be rezoned from general rural or rural production to urban or rural lifestyle is outside the exception in clause 3.5(7)(b)(ii).

The Spatial Extent

46. The NPS-HPL applies to “*highly productive land*” as defined.
47. The definition contains no maximum or minimum areas. It applies irrespective of the percentage of any particular site which may contain highly productive land.
48. It is instructive that the proposed NPS included thresholds for highly productive land of 50% or four hectares, whichever was the lesser³.
49. These thresholds were removed⁴.

³ Recommendations and Decisions Report, page 30.

50. The NPS applies to highly productive land regardless of the area of highly productive land or the percentage of a site that comprises highly productive land.



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Dated: 26 October 2022

Make HPL a matter of national importance under the RMA

Feedback on the NPS-HPL discussion document identified the option of amending section 6 of the RMA to include the protection of HPL as a matter of national importance (similar to the Town and Country Planning Act 1977) It was noted that this option could work on its own or in conjunction with a national direction instrument.

Officials retain the view that amendments to section 6 of the RMA is not the preferred option, as these would need to be considered over a longer timeframe, as part of the wider review of the resource management system currently underway; further, as these resource management reforms will replace the RMA, this option is now somewhat redundant. In any event, there would also be a significant time lag before such amendments could begin to achieve the desired outcomes through RMA plan provisions and resource consent decisions.

As such, adding the protection of HPL as a section 6 matter of national importance is not a viable option and will not effectively address the current pressures facing HPL. However, as noted above, the inclusion of highly productive land as an environmental outcome to be promoted under the Natural and Built Environments Act is being progressed as part of the review of the resource management system.

Recommendations

Recommendations

- A. A national policy statement is developed as the preferred option.
- B. Ensure that key interactions between the NPS-HPL and proposed NPS-UD are clear and aligned.

Ministers' decision:

Agree

6 Scope of NPS-HPL

What was consulted on and policy intent

The [NPS-HPL discussion document](#), in Chapter 3: The problem we want to solve and Chapter 5: How a National Policy Statement would work, referred to three key land-use planning issues affecting highly productive land these are:

1. Urban Expansion on to highly productive land
2. Rural Lifestyle development on highly productive land
3. Reverse sensitivity effects limiting the use of highly productive land

The proposal was to focus on managing risks to a limited HPL resource, primarily managing the irreversible loss of this resource, rather than explicitly the management of the characteristics of the land itself eg, soil quality and availability of water.

The policy intent of the NPS-HPL is to focus on the key land-use planning issues affecting HPL, which include urban rezoning/development, rural lifestyle development and reverse sensitivity

effects. The scope of the NPS-HPL does not extend to wider soil health issues that were also highlighted in *Our land 2018* and *Our land 2021* – these issues are to be considered as part of a second phase of work. This work may also need to be undertaken to implement any soil quality or health limits in the proposed Natural and Built Environments Act.

The proposal was also to maintain the availability of high-quality land for a diverse range of land-based primary production uses, rather than prioritising particular, land-based primary production activities.

The intent of the proposed NPS-HPL, as consulted on, was to maintain the availability of HPL for ‘land-based primary production’⁵ generally, to ensure that the NPS-HPL does not favour a particular primary sector at the expense of another. The focus of the proposed NPS-HPL is on managing the types of development that typically result in the irreversible loss of HPL for land-based primary production, ie, urban rezoning/development and rural lifestyle development.⁶

The scope of the NPS-HPL would exclude existing urban zoned land. This recognises that the NPS-HPL should not retrospectively apply to these areas, as it is highly unlikely that these will revert to land-based primary production. The NPS-HPL would also not apply to future urban zones in district plans, as these areas have already been identified as suitable for urban use through a Schedule 1 process under the RMA and provide a clear signal to developers and landowners as to where future urban development can occur. Investment decisions are made on the basis of future urban zoning (for example, the Future Urban Zone in the Auckland Unitary Plan) and the NPS-HPL should not undermine this. The proposed NPS-HPL prepared for public consultation also proposed that the NPS-HPL would not apply to future urban areas identified in some plans developed under other acts, including plans (eg, future development strategies prepared under NPS-UD) to allow councils to reconsider the suitability of these areas for urban development in light of the proposed NPS-HPL. Specific feedback on how the NPS-HPL should apply to future urban areas was sought through public consultation.

The proposed NPS-HPL used LUC classes 1 to 3 as the basis for the definition of ‘HPL’. LUC classes 1 to 3 are used as the transitional definition of HPL, and as a starting point for the council mapping process.

The proposed NPS-HPL did not prioritise particular uses of HPL, although the discussion document did ask if specific areas (eg, food growing hubs) should be subject to specific additional protections.

Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether the focus of the NPS-HPL should be on primary production generally
- how the NPS-HPL will apply to future urban areas in statutory and non-statutory plans
- whether specific activities should be excluded from the NPS-HPL
- what LUC classes should be used as the basis for identifying HPL.

⁵ The draft definition of primary production in the NPS-HPL was based on the National Planning Standards definition but limited to agricultural, pastoral, horticultural and forestry activities (ie, excluding mineral extraction and aquaculture). See the definitions section for further discussion.

⁶ While rural lifestyle development is not strictly irreversible from a physical perspective, the higher land prices and smaller economic units means a return to primary production is generally very unlikely.

Analysis

We recommend that the overall scope and focus of the NPS-HPL, including its national application and general focus on prioritising land-based primary production on HPL, is largely retained as consulted on. The protection of HPL is a nationally significant issue that warrants clear national direction throughout Aotearoa.

Definition of land-based primary production

The primary focus of the submitter feedback on the definition of 'land-based primary production' was on whether forestry should be included in this definition. Submitters were concerned that including forestry in this definition would result in loss of HPL, or that it was an inefficient use of the soil resource.

As discussed above, the scope of the NPS-HPL as consulted on did not extend to prioritising particular primary production uses. One of the reasons for protecting HPL is the inherent flexibility of this land to be used for a range of different productive land uses.

However, officials do agree that the definition of primary production in the NPS-HPL should be more directly related to land use activities that are reliant on the soil resource of the land. This definition is differentiated from the National Planning Standards definition of primary production. Officials therefore recommend that the final NPS-HPL include a definition of 'land-based primary production' that includes production from agricultural, pastoral, horticultural and forestry activities that are reliant on the soil resource of the land. 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 that are reliant on the soil resource – not other forms of primary production with no reliance on soil resource (eg, intensive indoor primary production). Officials also recommend the inclusion of a 'supporting activities' definition to cover activities and structures that are necessary to support land-based primary production on HPL, but which are not covered by the land-based primary production definition. This would include, for example, on-site processing of materials produced on site, packing sheds, equipment storage and buildings to house animals.

The use of the term 'land-based primary production' and the associated link to activities that are dependent on the soil resource of the land is intended to recognise that while the NPS-HPL protects 'HPL' for land-based primary production, councils retain the discretion over what types of land-based primary production can occur on what type of HPL, including for forestry. This gives councils the ability to address concerns about forestry; if forestry is considered an unsuitable use for a particular piece of HPL, it can still be restricted. This enables councils to manage land for particular values, if that is a particular local priority. For example, some soils are inherently better for viticulture, while others are better suited for vegetables. Councils are best placed to know whether their region or district's HPL needs to be managed for specific additional values.

Definition of land-based primary production – forestry

We recommend that forestry is retained in the definition of land-based primary production in the NPS-HPL, as it is a primary production activity that does make use of the soil resource. However, we note that councils may choose to manage specific areas of HPL for specific primary production activities.

While forestry may not be the most productive use of HPL, there is no strong evidence that large areas of HPL are being converted to forestry and that this presents a risk to the overall HPL resource at a regional or national scale. While the forestry cycle takes place over a longer timeframe (approximately 30 years), it is not irreversible to the same extent as urban rezoning/development and fragmentation into rural lifestyle lots. Therefore, plantation forestry on HPL can be converted to other more productive primary sector uses over time.

The Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF) permit afforestation for plantation forestry in many areas of the country. However, councils retain the ability to make rules for activities or effects that are out of scope of the NES-PF. Existing guidance on the NES-PF confirms that councils can make rules to manage activities that are out of scope (such as permanent forestry) or effects such as water yield. If forestry, or a particular type of forestry, poses a risk to HPL resources in a region, a council could likely make rules to limit afforestation as the protection of HPL is out of the scope of the NES-PF. The Government is also considering changes to the NES-PF to better manage both plantation forestry and permanent forestry, which may include controls for forestry activities on HPL.

Future urban areas

We recommend that the NPS-HPL does not apply to future urban zones in district plans and that this is also extended to exclude future urban areas in regional policy statements, such as those identified in the Bay of Plenty Regional Policy Statement.

We also recommend that the NPS-HPL gives greater recognition of future urban areas that have been identified in a future development strategy prepared under the NPS-UD and in other 'strategic planning documents'. This recognises that councils have undertaken considerable work with developers and their communities to identify suitable future urban areas through non-statutory processes. An analysis of future urban rezoning/development in major urban centres also indicates that requiring councils to revisit future growth areas in light of the NPS-HPL is unlikely to yield any viable alternatives or significantly redirect urban growth away from HPL in the short to medium term in most cases.⁷ Officials propose that 'strategic planning document' is defined in the NPS-HPL as follows: "**strategic planning document** means any non-statutory growth plan or strategy adopted by local authority resolution".

We therefore recommend that the definition of HPL in the NPS-HPL is refined so it does not apply to council-planned future urban growth areas in the short to medium term through two means:

- **Interim definition of HPL (commencement date)** – this definition would exclude future urban areas identified for future urban development or- subject to a council initiated, or adopted, notified plan change-to rezone it from general rural or rural production to urban or rural lifestyle.
- **Regional HPL mapping (three years after commencement date)** – allow councils to not map areas identified for future urban development (located on LUC classes 1 to 3) as HPL when mapping HPL. As discussed above, 'identified for future urban development' is proposed to be defined in the NPS-HPL.

⁷ Market Economics. 2019. *Urban Expansion: Assessment of Potential Policy Impacts Proposed NPS on Highly Productive Land*, Prepared for Ministry for Primary Industries.

These changes will help ensure that councils can consider and balance the protection of HPL with the need to provide for urban rezoning. It also ensures that the NPS-HPL does not unduly constrain urban growth that is already planned to occur. Providing for urban rezoning under the NPS-HPL and the interactions with the NPS-UD are discussed further in [section C12](#) of this report – urban rezoning.

Officials propose that ‘identified for future urban development’ is defined in the NPS-HPL as follows:

“identified for future urban development means:

- (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (b) identified:
 - (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and
 - (ii) at a level of detail that makes the boundaries of the area identifiable in practice.”

Exclusions

We do not recommend that specific activities (eg, nationally significant infrastructure, designations) are excluded from the NPS-HPL mapping process. This would provide no onus for these activities to avoid HPL where practicable or mitigate adverse effects on the productive capacity of HPL. However, we do recognise the need to allow for certain activities to be located on HPL in certain circumstances and provide a consenting pathway for this to occur. This is discussed further in [section C15](#) – Exemptions for highly productive land subject to permanent or long-term constraints.

LUC classes 1 to 3 as the basis for the definition of HPL

We propose to retain the use of LUC classes 1 to 3 as the basis for the definition HPL. These classes are generally consistent with the land that is used most productively in Aotearoa, with classes 1 to 3 containing a mix of horticulture, intensive pastoral uses, and arable uses. The range of land-use activities able to be carried out on the land declines significantly with increasing classes.

LUC classes 1 to 3 land (approximately 14 per cent of New Zealand’s land) is also preferred as the basis for the NPS HPL over LUC 1 to 2 land (approximately 5 per cent of New Zealand’s land). It is consistent with the intent of the NPS-HPL to take a more conservative approach during the transitional period to help avoid (or reduce) the loss of land to irreversible development in advance of it being identified as HPL. Choosing LUC classes 1 to 3 also aligns with a number of existing regional approaches, although it is recognised that some councils recognise LUC classes 1 to 2 as versatile soils (or similar).⁸

However, we recognise that there may be situations where other classes of LUC land are worthy of protection – with some higher-class (ie, LUC 4 and above) land also able to be used

⁸ Councils have taken variable approaches to defining HPL, versatile soils (or similar). A number of regions have based this on LUC classes 1 to 3 (or certain classes of LUC 3), including Northland, Auckland, Waikato and Bay of Plenty. There are other regions that have based this on LUC classes 1 to 2, including Wellington, Canterbury and Southland.

in a highly productive way, including for cherry crops or viticulture. As such, the NPS-HPL will allow these other classes of LUC land to be mapped as HPL as discussed further below.

Recommendations and decisions

Recommendations

- A. Change definition of primary production to 'land-based primary production' and include production from agricultural, pastoral, horticultural and forestry activities that are reliant on the soil resource of the land.
- B. Include a new definition of supporting activities that are necessary to support land-based primary production but are not in of themselves production activities, eg, on-site processing, packing sheds, equipment storage and animal housing.
- C. Exclude areas identified for future urban development from the transitional definition of HPL.
- D. Require that areas identified for future urban development must not be mapped as HPL.
- E. Confirm the use of LUC classes 1 to 3 as the basis for identifying HPL, while allowing higher classes to be included, if this land is or has the potential to be highly productive.

Ministers' decisions:

Agree

7 NPS-HPL objectives and consistency with Part 2 of the RMA

What was consulted on and policy intent

The Chapter 5 of the [proposed NPS-HPL in the discussion document](#) included three overlapping objectives that are intended to work together to achieve the outcomes sought through the proposal – improving the way HPL is managed under the RMA.

- Objective 1: Recognising the benefits of highly productive land
- Objective 2: Maintaining the availability of highly productive land
- Objective 3: Protection from inappropriate subdivision, use and development.

The first objective intended to ensure that the long-term values and benefits associated with using HPL for land-based primary production are better recognised in RMA planning and decision making. This responds to concerns that the long-term benefits of protecting HPL for land-based primary production are often undervalued compared to the short-term and site-specific benefits associated with urban rezoning/development and conversion to rural lifestyle. The intent is that councils would then articulate the key benefits and values associated with HPL within their local context to ensure these benefits and values are better considered in RMA planning and decision making.

The second objective was included to ensure that the availability of HPL for land-based primary production is maintained for future generations. This does not imply a no-net-loss requirement

Recommendations

Recommendations

- A. Agree to the definition of specified Māori land
- B. Enable use and development on specified Māori land without being unduly constrained by the NPS-HPL.
- C. Avoid further restrictions on the subdivision, use and development of specified Māori lands that are mapped as HPL including partitioning orders made under Te Ture Whenua Māori Act 1993.
- D. Direct councils to involve tangata whenua (to the extent they wish to be involved) in giving effect to this NPS-HPL in a manner consistent with the existing provisions of the RMA and LGA.

Ministers' decisions:

Agree

9 Identification of HPL – transitional definition

What was consulted on and policy intent

The [proposed NPS-HPL consulted on](#) included an interim (transitional) definition of HPL based on LUC classes 1 to 3. This transitional definition identifies the land to which the provisions of the NPS-HPL apply to provide some protection of HPL until councils have had sufficient time to undertake the necessary work to map HPL within their region and promulgate plan changes. See below for further discussion on mapping HPL.

The transitional definition of HPL proposed in the discussion document:

- comprised LUC classes 1 to 3 land
- included a minimum threshold for LUC classes 1 to 3 within a site of 50 per cent or 4 hectares (whichever is the lesser)
- applied to General Rural and Rural Production zones and other existing rural zones with a similar purpose, but not Rural Lifestyle Zones
- applies from the commencement date until regional councils have mapped HPL within their region.

Key issues from submissions

The key issues identified through submissions and subsequent analysis are:

- whether there should be a transitional definition of HPL prior to mapping being completed
- whether the transitional definition should be based on LUC classes 1 to 3 or LUC classes 1 to 2
- whether the transitional definition should prevail over existing definitions of HPL (however described)
- whether the threshold of LUC classes 1 to 3 within a site to be defined as HPL.

Analysis

Retain a transitional definition prior to mapping

Officials recommend that a transitional definition of HPL based on LUC classes 1 to 3 is retained. The primary benefit of the transitional definition of HPL is that it ensures some immediate protection of HPL and nationally consistent interpretation until the regional assessments are undertaken. In the absence of a transitional definition of HPL, there will be some areas where current protection of HPL is inadequate and a degree of uncertainty and inconsistency in what is deemed to be HPL nationally. While the LUC system has some recognised limitations, it remains the primary classification system used by councils to define HPL (or similar) throughout Aotearoa and, is supported by a number of soil scientists. It is also the best tool available in Aotearoa to classify land as this point of time.

LUC classes 1 to 3 land (which comprises approximately 14 per cent of New Zealand's land) is also preferred as the basis for the transitional definition of HPL over LUC classes 1 to 2 land (which only comprises approximately 5 per cent of New Zealand's land). For these reasons officials recommend LUC 1 to 3 is used as the basis of the policy statement as a whole (see section C11 of this report for further discussion).¹⁴

Further, the transitional period is relatively short – three years – and the transitional definition of HPL does not apply to land that is already zoned for non-rural land uses (for example urban or rural lifestyle) nor land that is identified for future urban development in RMA documents, future development strategies or other strategic planning documents. It is anticipated that once regional councils have completed the HPL mapping, district councils would need to use the HPL maps in their regional policy statements until such time as the district plan has been updated to incorporate the same maps.

Given the proposed NPS-HPL was consulted on before it was announced that the RMA would be repealed and replaced, no submissions requested that the timeframes be aligned with the proposed Natural and Built Environments Act. However, we are aware that submitters requested longer periods to implement some directions and are ensuring that timeframes align.

We recommend providing implementation guidance on the transitional definition to provide clarity on what rural zones it does and doesn't apply to, recognising that some councils apply different zones and zoning frameworks, particularly those councils who have yet to align their plans with the National Planning Standards.

We also recommend removing the minimum threshold of LUC classes 1 to 3 within a site for the transitional definition to apply. Rather, the transitional definition will apply to the portion of LUC classes 1 to 3 within any given site located in General Rural and Rural Production zones. This avoids the potential risk of:

- smaller parcels of LUC classes 1 to 3 land being excluded from the transitional definition
- the transitional definition inappropriately applying to entire sites that contain four hectares of LUC classes 1 to 3, land where this land may only be a small portion of the overall site.

¹⁴ Councils have taken variable approaches to defining highly productive land, versatile soils (or similar). A number of regions have based this on LUC classes 1 to 3 (or certain classes of LUC 3), including Northland, Auckland, Waikato and Bay of Plenty. There are other regions that have based this on LUC classes 1 to 2, including Wellington, Canterbury and Southland.

We do not recommend any amendments to the transitional definition of HPL to recognise existing definitions of HPL (however defined), regardless of whether these are broader¹⁵ or narrower.¹⁶ The transitional definition of HPL will not override existing definitions of HPL – it simply becomes a relevant consideration when plan changes and resource consent applications¹⁷ are considered on LUC classes 1 to 3 during the transitional period. Where existing definitions of HPL are broader than the transitional definition of HPL, these would continue to apply and the NPS-HPL would also apply to LUC classes 1 to 3 land. Additionally, the transitional definition will not weaken protection of existing non-LUC classes 1 to 3 land in plans, as the NPS-HPL explicitly provides for councils to incorporate additional areas of non-LUC classes 1 to 3 land, where this land is or has the potential to be used for high-value primary production.

Conversely, where existing definitions are narrower (eg, LUC classes 1 to 2), the NPS-HPL will introduce protection for LUC 3 land during the transitional period, and the relevant NPS-HPL provisions will need to be considered when plan changes and resource consent applications are proposed on LUC class 3.

Alignment of zone descriptions in the NPS-HPL to zone descriptions in the National Planning Standards

The National Planning Standards, [8. Zone Framework Standard, direction 1](#), requires that councils must use the zones consistent with the description of a zone described in table 13 of the National Planning Standards.

The chapters that come under ‘Rural zones’ are General Rural Zone, Rural Production Zone, Rural Lifestyle Zone and Settlement Zone (See National Planning Standards, 4. District Plan Structure Standard).

The transitional definition is intended to exclude rural lifestyle and settlement zones. To ensure this occurs and to be consistent with the National Planning Standards we recommend that the transitional definition only apply to General Rural and Rural Production zones (or equivalent zones where councils have not yet implemented the National Planning Standards).

¹⁵ For example, the Hastings District Plan includes a definition of versatile land that includes LUC classes 1 to 3 and LUC 7 soils that have high value for viticultural production.

¹⁶ For example, the Canterbury Regional Policy Statement includes a definition of versatile soils based on LUC classes 1 to 2 land and the district plans in the region generally adopt the same definition.

¹⁷ Provided that, for controlled and restricted discretionary activity, the matters of control or discretion allow HPL to be considered.

Future urban areas

As discussed under Part B – [Scope of NPS-HPL](#), officials recommend that the NPS-HPL does not apply to Future Urban Zones and areas identified for future urban development. We recommend that this is achieved through amendments to the transitional definition of HPL so that it does not apply to:

- Future Urban Zones
- areas identified for future urban development¹⁸
- areas subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle.

Recommendations

Recommendations

- A. Retain transitional definition of HPL based on LUC classes 1 to 3.
- B. Remove the minimum threshold of LUC classes 1 to 3 within a site from the transitional definition, and clarify that this only applies to areas of LUC classes 1 to 3 within a site.
- C. Clarify that the transitional definition of HPL only applies to General Rural and Rural Production zones (or equivalent zone where councils have not yet implemented the National Planning Standards).
- D. Exclude areas from the transitional definition of HPL which are:
 - identified for future urban development in RMA plan or policy statement, future development strategy, or other strategic planning document published prior to the NPS-HPL taking effect.
 - subject to a council initiated, or adopted, notified plan change, to rezone it from General Rural or Rural Production to Urban or Rural Lifestyle at the commencement date.

Ministers' decisions:

Agree

¹⁸ We propose that 'identified for future urban development' is defined in the NPs-HPL as follows:

"identified for future urban development means:

- (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (b) identified:
 - (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and
 - (ii) at a level of detail that makes the boundaries of the area identifiable in practice."