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National Policy Statement for Highly Productive Land

Guide to implementation

Ministry for the Environment
Manatū Mō Te Taiao

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Introduction

Purpose

This guide has been developed to help stakeholders understand and implement the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). There will be two parts to the guidance.

- **Part 1** focuses on providing guidance to local authorities, landowners, applicants and planners on the NPS-HPL provisions that relate to subdivision, use and development and rezoning proposals on highly productive land (HPL). This guide will:

a) assist local authorities to understand and interpret the provisions that influence the processing of resource consent applications and rezoning proposals on HPL

b) benefit landowners and applicants in understanding how the NPS-HPL applies to HPL and in preparing resource consent applications for HPL and private plan changes to rezone HPL.

- **Part 2** focuses on mapping, and changes to regional policy statements and district plans to give effect to the NPS-HPL.

The NPS-HPL came into force on 17 October 2022, with most provisions having immediate effect, placing restrictions on rezoning, subdivision and land-use proposals on land that meets the transitional definition of HPL (Land Use Capability (LUC) classes 1–3, with some exceptions).

However, the extent to which the NPS-HPL can influence the outcome of resource consent processes will depend on the operative land-use and subdivision rules in each district plan. The influence of the NPS-HPL on rezoning plan changes will depend on whether that area has been identified for future urban development, and whether the plan change is needed to provide sufficient development capacity under the National Policy Statement on Urban Development 2020 (NPS-UD).

Structure of the guide

The guide is divided into the following sections:

General overview

- Provisions with immediate effect
- Implementation timeframes for mapping and updating district plans and regional policy statements
- What is highly productive land?
- What is land-based primary production?

Part 1 – Resource consents and rezoning

- Subdividing highly productive land (Policy 7 and Clause 3.8)
- Land use and development on highly productive land (Policy 8 and Clause 3.9)

- Exceptions on highly productive land for permanent or long-term constraints (Clause 3.10)
- Rezoning highly productive land to an urban zone (Policy 5 and Clause 3.6)
- Avoiding rezoning highly productive land for rural lifestyle (Policy 6 and Clause 3.7)
- Other relevant NPS-HPL policies and clauses (Clauses 3.2, 3.3, 3.11–3.13)

Part 2 – Mapping and plan changes

- Mapping of highly productive land (Policy 3, Clauses 3.4 and 3.5)
- Updating policy statements and plans to give effect to the NPS-HPL (Clauses 3.2, 3.3, 3.11–3.13)

Provisions with immediate effect and implementation timeframes

Provisions with immediate effect

The NPS-HPL will begin to influence the preparation and processing of plan changes to rezone HPL and resource consents (for both land use and subdivision on HPL) from the day the NPS-HPL came into force (17 October 2022).

Before regionwide mapping of HPL is notified, the transitional definition of HPL (Clause 3.5(7)) will apply.

Provisions requiring territorial authorities to introduce new policy and rule frameworks that give effect to this NPS will not need to be implemented until two years after the mapping becomes operative in the relevant regional policy statement. However, these provisions may be relevant for local authorities currently undertaking full plan reviews or preparing plan changes.

Timing of changes to regional policy statements and district plans to give effect to the NPS-HPL

The provisions relating to the timing of changes to regional policy statements and district plans to give effect to the NPS-HPL are Clause 3.5 and Part 4: Timing.

- Clause 3.5(1) provides that every regional council must (using Schedule 1 of the Resource Management Act 1991 (RMA)) notify a change to its regional policy statement to include maps of all the land in its region that is required to be mapped as HPL in accordance with Clause 3.4 (Mapping highly productive land). The identification of HPL must be done as soon as practicable, and no later than three years after the commencement date.
- Clause 3.5(2) allows regional councils to sequence the identification of HPL over three years following the commencement date. This may be a useful option for some regions if there is an area of potential HPL that is facing significant urban development or fragmentation pressure and there is a need to prioritise HPL mapping in a particular location.
- Clauses 3.5(3) and 3.5(4) require that territorial authorities insert HPL maps that are the exact equivalent to those included in the regional policy statement into their district plans, without using the RMA Schedule 1 process, as soon as practicable, and no later than six months after the regional policy statement HPL maps become operative.
- Clause 4.1(2) in Part 4 states that territorial authorities are required to update their relevant objectives, policies, and rules to give effect to the NPS-HPL as soon as practicable, but no later than two years after maps of HPL in the relevant regional policy statement become operative. These district plan changes will need to include objectives, policies and rules to manage subdivision, use and development on HPL in accordance with the implementation requirements in the NPS-HPL. Changes to the provisions of a regional

policy statement to align with the NPS-HPL are not explicitly required under a particular clause of the NPS-HPL. However regional councils are required to change their regional policy statements in accordance with a national policy statement under section 61(1)(da) of the RMA and all regional policy statements are required to give effect to a national policy statement under section 62(3). It is anticipated that any amendments to regional policy statement provisions that are necessary to give effect to the NPS-HPL will be undertaken as part of the proposed change to the regional policy statement to include HPL maps for efficiency.

The combined effect of these clauses is that there will be a period of time where local authorities and applicants will need to consider the policy direction and implementation requirements in the NPS-HPL without HPL being mapped (up to three years) and without specific policy direction and implementation requirements in either regional policy statements (up to three years) or in district plans (up to five years) in relation to the protection of HPL for land-based primary production. There may, however, be existing provisions in district plans relating to highly productive land or versatile soils (however defined) that still need to be considered through this period until the NPS-HPL is given effect to.

NPS-HPL provisions relevant to different proposals and activities

The key NPS-HPL provisions for rezoning plan changes and proposals for subdivision, use and development on HPL are included in table 1 below. The NPS-HPL is designed to be read as a whole, and the information in table 1 does not limit the extent to which any single policy or implementing clause may be relevant to an application. Rather, the table is intended as a quick reference guide for users to find the key NPS-HPL provisions relevant to their type of application.

Table 1: Relevant NPS-HPL provisions for different proposals and activities[1]

Type of application	Policies	Implementing clauses
Rezoning plan change	1, 2, 4, 9 (for all rezoning) 5 (for urban rezoning) 6 (for rural lifestyle rezoning)	3.3 – Tangata whenua involvement 3.5(6) and (7) – Transitional definition of HPL 3.6 – Urban rezoning of HPL 3.7 – Rural lifestyle rezoning of HPL 3.10 – Exemptions for permanent or long-term constraints
Subdivision consent	1, 2, 4, 6, 7, 9	3.5(6) and (7) – Transitional definition of HPL 3.8 – Avoiding subdivision of HPL 3.10 – Exemptions for permanent or long-term constraints
Land-use consent	1, 2, 4, 6, 8, 9	3.5(6) and (7) – Transitional definition of HPL 3.9 – Protecting HPL from inappropriate use and development 3.10 – Exemptions for permanent or long-term constraints
Mapping	1, 2, 3	3.2 – Integrated management 3.3 – Tangata whenua involvement

[1] The NPS-HPL objective is relevant to all types of applications and activities on HPL.

Type of application	Policies	Implementing clauses
		3.4 – Mapping HPL 3.5 – Identifying HPL in regional policy statements and district plans
Updating policy statements and plans	1, 2, 4, 5, 6, 7, 8, 9	3.2 – Integrated management 3.3 – Tangata whenua involvement 3.8 – Subdivision 3.9 – Protecting HPL from inappropriate use and development 3.10 – Exemptions for permanent or long-term constraints 3.11 – Continuation of existing activities 3.12 – Supporting appropriate productive use of highly productive land 3.13 – Managing reverse sensitivity and cumulative effects

Part 1: Resource consents and rezoning

This section of the guide focuses on the key NPS-HPL provisions that will apply to subdivision and land-use applications and rezoning plan change proposals located on HPL (by the transitional definition) before HPL has been mapped and the maps in a regional policy statement have been made operative.

Relevance of NPS-HPL for consideration of resource consent applications

The NPS-HPL will need to be considered for land-use and subdivision applications involving land that meets the transitional definition of HPL from the date the NPS-HPL came into force (17 October 2022). This NPS-HPL will generally not be relevant for regional consenting processes as the provisions are focused on restricting urban and rural lifestyle zoning, subdivisions and land use on HPL.

This includes all resource consent applications that were lodged before the NPS-HPL's commencement date, but where a decision has not been made under section 104 of the RMA. That section sets out what consent authorities must consider when making a decision on a resource consent application, including the requirement under section 104(1)(b)(iii) to have regard to "any relevant provisions of… a national policy statement". It is the timing of the decision-making and the statutory environment that dictates which national policy statements are relevant, not the date a consent application is lodged or how long it has been waiting for processing.

Note that "have regard to" does not mean it is optional to consider the NPS-HPL policy direction. The NPS-HPL represents recent national policy direction (which is more up to date than operative plan provisions) and contains clear and directive provisions. This means that if a decision on an application received before the 17 October 2022 NPS-HPL commencement date has not been made, then any relevant provisions of the NPS-HPL must be considered when undertaking the assessment.

The relevant weighting of factors for a section 104 assessment will depend on the circumstances of the case and how it aligns with other national direction. The extent to which the NPS-HPL will be relevant to a subdivision and land-use consent application will largely depend on:

- the activity status of the resource consent and the scope of matters of control or discretion (if it is a controlled or restricted discretionary activity)
- the nature of the application and whether it is consistent with or contrary to the NPS-HPL objective and the relevant provisions.

Impact of activity status

The likely impact of activity status in the relevant district plan for land-use or subdivision proposals on land identified as HPL under the transitional definition of HPL is as follows.

- **Permitted activity** – not affected by the NPS-HPL. The NPS-HPL will only become relevant at such time as a territorial authority completes a plan change to give effect to it, which may involve changing which activities are enabled as permitted activities on HPL.
- **Controlled activity** – applications for controlled activities must be granted under section 104A of the RMA. The ability of the territorial authority to impose consent conditions is limited to matters over which control is reserved. If control is reserved over a matter that relates to issues covered by the NPS-HPL – such as managing reverse sensitivity effects, enabling land-based primary production or protecting rural production/HPL (or equivalent term) – then a condition that addresses any of these matters could be appropriate. However, any condition imposed must not frustrate the purpose of the consent.
- **Restricted discretionary activity** – the relevance and impact of the NPS-HPL will be determined by the matters of discretion. Territorial authorities have the right to grant or refuse an application for a restricted discretionary activity under section 104C of the RMA. However, the ability to have regard to the relevant provisions of the NPS-HPL under section 104(1)(b)(iii) is limited to the matters over which discretion is restricted. If a restricted discretionary activity does not have any matters of discretion relating to matters covered by the NPS-HPL, then the NPS-HPL must be recognised in the assessment under section 104 but it is given less weight and it cannot be a reason to decline the application. However, if the matters of discretion relate to matters covered by the NPS-HPL, then the relevant NPS-HPL provisions must be considered as part of the assessment of the application under section 104C and may be a reason for declining that application. This may include more generic matters of discretion relating to rural productivity and protecting the rural environment for primary production activities – the matter does not specifically have to mention HPL or versatile soils (however described).
- **Discretionary and non-complying activities** – all relevant matters can be considered when determining discretionary and non-complying activities under section 104B. Therefore consent authorities must have regard to any relevant provisions of the NPS-HPL when considering whether to grant or refuse a discretionary or non-complying resource consent application.

If bundling the reasons for consent means an activity is discretionary or non-complying overall, all relevant matters in the NPS-HPL can be considered. This applies even if the reason for the application being discretionary or non-complying was not the core reason for consent. For example, a restricted discretionary combined land-use and subdivision application that becomes non-complying because of an earthworks infringement would still allow for full consideration of the NPS-HPL.

Note that this advice regarding the ability of territorial authorities to consider the NPS-HPL when making decisions on resource consent applications relates to district plan provisions that were drafted before the NPS-HPL came into effect. Plan changes or full plan reviews that involve updating general rural or rural production zone provisions for land use and subdivision after the NPS-HPL took effect will be required to give effect to the NPS-HPL.

Status of provisions in district plans

Some territorial authorities will have been in the process of reviewing the rural provisions of their district plans at the time the NPS-HPL took effect. This may result in activities having different activity statuses under the operative and proposed provisions. For example, a rural lifestyle subdivision in the general rural zone may be a controlled activity under the operative plan but a discretionary activity under the proposed plan or plan change. Unless a rule has

immediate legal effect under section 86B, the activity status of the rule in the operative district plan will apply until a territorial authority has made a decision on the proposed plan or plan change. As the activity status of a resource consent application has implications on the extent to which the NPS-HPL can be considered, it is important to identify the correct activity status of each application (including bundled applications) before considering the guidance in Impact of activity status above.

What is highly productive land?

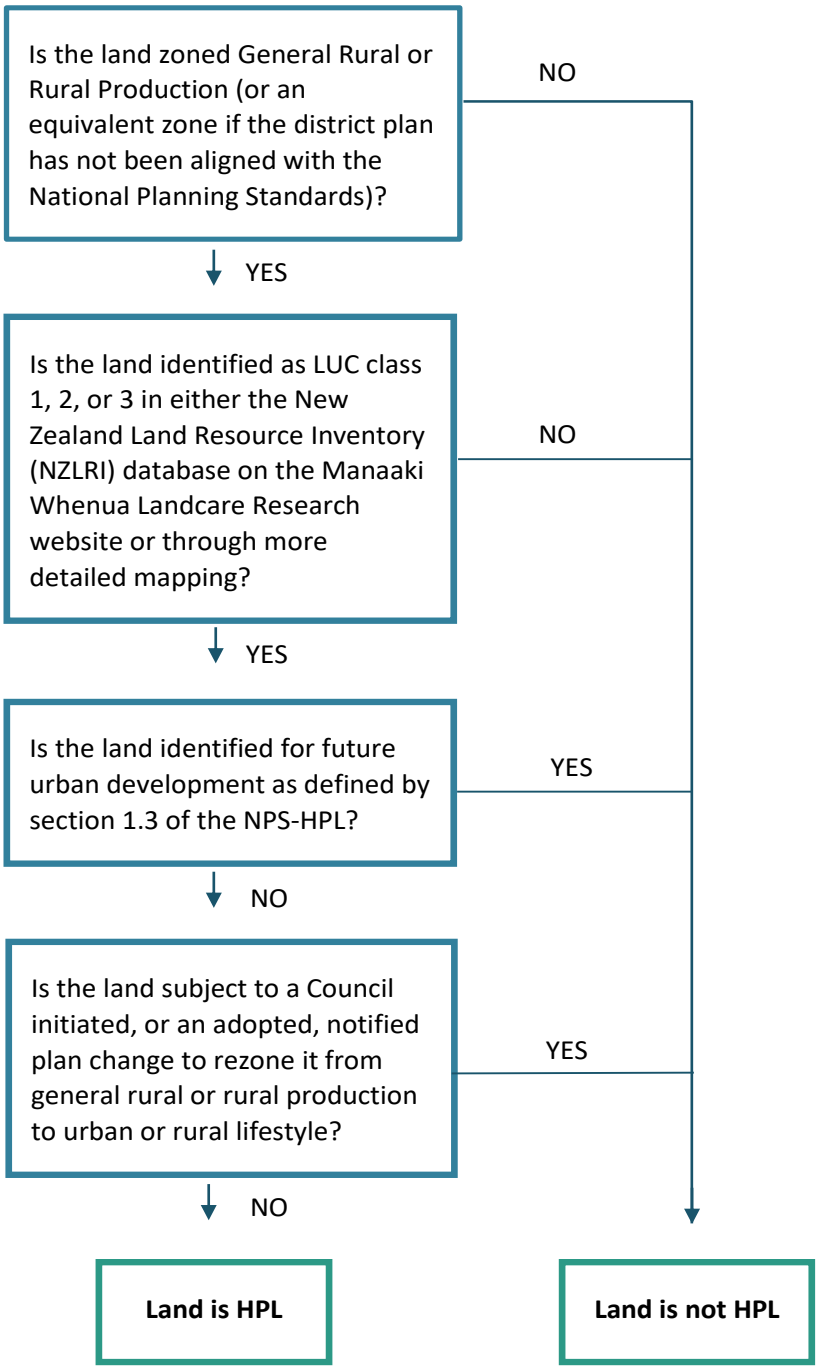
Transitional definition of highly productive land

Until such time as HPL has been mapped as part of the regional policy statement and these maps have been made operative (mapping is covered in Part 2 of this guidance), the 'transitional definition' of HPL in Clause 3.5(7) applies. Clause 3.5(7) states:

> *(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:*
>
> *(a) is*
>
> *(i) zoned general rural or rural production; and*
>
> *(ii) LUC 1, 2, or 3 land; but*
>
> *(b) is not:*
>
> *(i) identified for future urban development; or*
>
> *(ii) 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.*

A flow chart to assist with interpreting Clause 3.5(7) is in figure 1 below.

Figure 1: Basic flowchart to determine if land is HPL under the transitional definition of HPL



It is important to note that the criteria for the transitional definition of HPL are different to those related to mapping HPL in Clause 3.4. In particular, the transitional definition of HPL applies to all LUC class 1, 2, and 3 land in general rural and rural production zones and there is no requirement to consider whether it forms a "large and geographically cohesive area".

The LUC data layer is either available to view on the Landcare Research Our Environment's website, or available for download from the New Zealand Land Resource Inventory.

The intention of the exemptions in Clause 3.5(7)(b) is to make sure the NPS-HPL does not undermine work that is well advanced by local authorities to plan for new urban growth areas. Urban growth planning requires significant effort and resources from local authorities, along with community and tangata whenua engagement. The NPS-HPL transitional definition does not apply to land already 'identified for future urban development' through a Future Development Strategy (FDS) or 'strategic planning document', or land subject to a council-initiated or adopted[2] notified plan change to rezone the land. Land that is already zoned 'future urban' is also exempt. This zone is explicitly excluded from the transitional definition of HPL under Clause 3.5(7)(a)(i). Conversely, where the land is subject to a private plan change that has been 'accepted' (rather that adopted) by the relevant territorial authority, it is captured by the transitional definition of HPL and the NPS-HPL will apply to that plan change.

Interpreting Clause 3.5(7)(a)

Clause 3.5(7)(a) makes it clear the NPS-HPL is only relevant to land zoned general rural or rural production. This means all other zones are excluded from the transitional definition of HPL. All 'urban' zones (including special purpose and future urban zones, as defined in the NPS-HPL) and rural lifestyle zones are excluded from the transitional definition of HPL.

If a district plan has not implemented the National Planning Standards, any reference to zones in the NPS-HPL should be read as applying to the "nearest equivalent zone" in the district plan (refer Clause 1.3(4)(b)). The nearest equivalent zone should be assessed by referring to the zone descriptions in the National Planning Standards and comparing them to the district plan zone description, objectives, policies, activity table and subdivision provisions (in the round). This is to assess whether a 'rural-type' district plan zone is in fact a rural production/general rural, rural lifestyle or settlement zone in the National Planning Standards (as the only four options for rural zones). For example, there may be a special purpose zone in an operative district plan relating to a productive rural environment that is predominately used for primary production activities. Such a zone should be interpreted as rural or rural production zone for the purposes of Clause 3.5(7)(a)(i) rather than an urban zone.

LUC class 1, 2 or 3 land is defined in Clause 1.3(1) as "land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory[3] or by any more detailed mapping that uses the Land Use Capability classification". This means that if a region or district has more detailed LUC mapping than the original New Zealand Land Resource Inventory, then that can be used by the relevant local authority to identify HPL under the transitional definition of HPL and for subsequent mapping of HPL.

More detailed mapping could be tools such as S-Map, however it is not intended to include site-specific soil assessments prepared by landowners. If a local authority intends to use more detailed mapping information, it must be based on the LUC classification parameters (completing the assessment according to the methodology in the Land Use Capability Survey Handbook (2009)), and not consider other factors such as water availability. Part 2 of the guide

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[2] Adopted in this context means a private plan change that was originally advanced by the private sector but was adopted by a territorial authority at notification stage. If the territorial authority adopts a private plan change, it continues through the process as if it was a council-initiated plan change. This implies that the council generally supports the change proposal and bears the cost of managing the plan change from the date that it adopts it.

[3] The LUC data layer is available to view on the Landcare Research Our Environment's website, or for download from the New Zealand Land Resource Inventory.

will provide further guidance on best practice for undertaking more detailed assessment of LUC.

Until HPL has been mapped in a regional policy statement and those maps have become operative, the transitional definition of HPL will apply to all land zoned general rural and rural production that is identified as LUC class 1, 2 or 3, regardless of its shape or size. This means many land parcels may only be partially identified as HPL under the transitional definition of HPL where part of the land parcel is LUC class 1, 2 or 3 and part is not.

See When only part of a land parcel meets the transitional definition of HPL below for how the NPS-HPL applies to land parcels comprising a mix of HPL and non-HPL under the transitional definition.

Interpreting Clause 3.5(7)(b)

Identified for future urban development

Clause 3.5(7)(b) excludes areas *'identified for future urban development'* from the transitional definition of HPL.[4] '*Identified for future urban development'* is defined in Section 1.3 of the NPS-HPL as follows:

> *(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.*

The definition of 'identified for future development' only applies to areas identified as 'suitable for commencing urban development over the next 10 years' in a Future Development Strategy or other strategic planning document. 'Suitable'[5] in this context should be based on whether the area has been clearly identified for urban development/rezoning in the short to medium term (up to 10 years). The intent is to ensure future urban development areas are only excluded from HPL (transitional definition and mapping) when there is a high level of certainty the land will be developed for urban use in the next 10 years. It recognises that areas identified for future urban development in the next 10 years have often already been factored into decisions about servicing, infrastructure, transport links, and so on. Introducing the NPS-HPL should not undermine this work. The 10-year timeframe also aligns with the definition of short term ('within the next 3 years') and medium term ('between 3 and 10 years') in the NPS-UD.

If there is no indication in the Future Development Strategy or strategic planning document that the land is suitable for urban development in the 10 years following 17 October 2022, then the future urban growth area is captured by the definition of HPL. This does not mean

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[4] Operative future urban zones are already excluded from the transitional definition of HPL as they are special purpose zones under the National Planning Standards.

[5] The reference to 'suitable' should be interpreted based on its plain and ordinary meaning. It is not intended to align with how that term is used in the NPS-UD in relation to business land.

future urban development of that area is now inappropriate under the NPS-HPL. It simply means the relevant urban rezoning provisions (Policy 5 and Clause 3.6) will apply when that land is rezoned, or the relevant resource consent provisions (Policies 7 and 8 and Clauses 3.8, 3.9 and, in some cases, 3.10) will apply when subdivision and land-use consents for urban development are applied for. Whether a future urban growth area meets the definition of 'identified for future urban development' needs to be assessed on a case-by-case basis with reference to the guidance on Future Development Strategies and strategic planning documents below.

Future development strategies

Future development strategies (FDS) are required for tier 1 and 2 territorial authorities under Clause 3.12(1) of the NPS-UD (and were previously also required under the NPS-UDC 2016). However, other local authorities that are not tier 1 or 2 can also prepare a Future Development Strategy under Clause 3.12(4) of the NPS-UD. Both of the following tests must be met for land identified for future urban development in a Future Development Strategy to be excluded from the transitional definition of HPL:

- **is published** – the Future Development Strategy needs to be approved by the relevant local authority and published on its website before 17 October 2022. This means land identified for future urban development in a Future Development Strategy that was being consulted on 17 October 2022 but is still in draft form would be captured by the transitional definition of HPL, and
- **identifies the land as being suitable for commencing urban development over the next 10 years** – the land must be identified for urban development **and** identified as being suitable for commencing urban development in the next 10 years from 17 October 2022. The purpose of a Future Development Strategy under Clause 3.13 of the NPS-UD is to provide at least sufficient development capacity over a 30-year timeframe, so not all land identified for future urban development in a Future Development Strategy will be excluded from the transitional definition of HPL – only the land identified as being suitable for future development in the next 10 years (ie, in the short to medium term to provide development capacity to meet demand).

Strategic planning documents

Many regional councils and territorial authorities have prepared non-statutory growth strategies to plan for future urban growth that are not a Future Development Strategy – either on their own or in collaboration with other local authorities. These strategic documents are covered by the definition of "strategic planning document" in Clause 1.3 of the NPS-HPL as "means any non-statutory growth plan or strategy adopted by local authority resolution". Both of the following tests need to be met for land identified for future urban development in a strategic planning document to be excluded from the transitional definition of HPL:

- **identifies the land as being suitable for commencing urban development over the next 10 years from 17 October 2022** — the land needs to be identified for future urban development **and** suitable for commencing development in the 10 years following 17 October 2022. Other types of strategic planning documents, including those prepared as part of Local Government Act processes, or spatial planning processes may also identify land that is suitable for urban development over the next 10 years, and
- **is identified at a level of detail that makes the boundaries of the area identifiable in practice** — strategic planning documents vary in how they identify areas for future urban development. Some documents identify land down to parcel level, so it is easy to

determine whether land has been identified for future urban development. Other documents use indicative layers that may appear like blobs or circles, which provide some indication about where urban growth might occur but no certainty on which land parcels are captured. For future urban development land identified in a strategic planning document to be excluded from the transitional definition of HPL, it must include mapping that is specific enough to identify the boundaries of the future urban area and know with certainty whether a particular land parcel is included or excluded. Territorial authorities will need to make the assessment of whether the area is identified at a level of detail to meet the definition of 'identified for urban development' in the NPS-HPL based on their detailed knowledge of their own strategic planning document.

Subject to a council-initiated, or adopted, notified plan change

Clause 3.5(7)(b)(ii) is intended to exclude land from the transitional definition of HPL if there is a council-initiated, or adopted, notified plan change to rezone the land to either an urban zone (defined in Clause 1.3(1) of the NPS-HPL) or to a rural lifestyle zone. If a territorial authority has progressed a plan change to rezone rural land to urban and this has already been notified, then the NPS-HPL does not undermine the work undertaken by territorial authorities and their communities to get to this point in the process.

However, the clause makes a distinction between plan changes (as defined under s43AA) that are council-initiated or adopted under Clause 25(2)(a) of Schedule 1 of the RMA vs a private plan change that is 'accepted' for notification under Clause 25(2)(b) of Schedule 1 of the RMA. Private plan changes that are not adopted by territorial authorities are often more contentious and driven by individual landowner aspirations for land development as opposed to being considered strategically as part of wider district and urban growth planning by a territorial authority in accordance with a Future Development Strategy. If a notified private plan change was not made operative by 17 October 2022 and is still proceeding through the process in RMA Schedule 1, then the land subject to that plan change is captured by the transitional definition of HPL. This does not mean that private plan changes should not occur on HPL, but the NPS-HPL will need to be given effect to when making a decision on that private plan change (and the relevant tests of either Clause 3.6 for urban rezoning or Clauses 3.7 and 3.10 for rural lifestyle rezoning).

Occasionally a private plan change needs to be amended during the RMA Schedule 1 process to align with other planning processes affecting other parts of the district plan. The introduction of the Medium Density Residential Standards (MDRS), for example, has necessitated council-initiated variations to private plan changes to align them with the requirements of the MDRS in multiple districts nationally. The policy intent is that the introduction of a council-initiated variation to align a private plan change with national direction (essentially making consequential amendments for consistency) does not mean that the private plan change becomes "council initiated". In this scenario, the policy intent is that the land subject to the private plan change and council-initiated variation is still captured by the transitional definition of HPL.

With respect to submissions on proposed plans, plan changes or variations, submissions do not form part of a council-initiated or adopted plan change, and consideration of the NPS-HPL is relevant.

Clause 3.5(6) – approved plan changes

Clause 3.5(6) applies where HPL is subject to an approved plan change to rezone the land from general rural or rural production to an urban or rural lifestyle zone. Clause 3.5(6) states:

> *If highly productive land is the subject of an approved plan change to rezone the land so that it is no longer general rural or rural production zone, the land ceases to be highly productive land from the date the plan change becomes operative, even if the change is not yet included in maps in an operative regional policy statement.*

In Clause 3.5(6), an "approved plan change" applies to plan changes that have become operative. This makes it clear that land identified as HPL (mapped or under the transitional definition) remains as such until it is rezoned through an operative plan change that is beyond challenge. It is anticipated that regional policy statement maps of HPL will be updated periodically to reflect any rezoning changes on HPL occurring at the district level (as per Clause 3.5(5)).

When only part of a land parcel meets the transitional definition of HPL

Where the transitional definition of HPL applies to part of a land parcel and the balance of the land parcel is LUC class 4–8, the NPS-HPL will only apply to that part of the lot that meets the transitional definition of HPL for land-use activities. If the proposed use or development is located on the HPL part of the parcel and resource consent is required, then Policy 8, Policy 9 and Clause 3.9 of the NPS-HPL will need to be considered. Policies 8 and 9, respectively, are as follows.

> ***Policy 8**: Highly productive land is protected from inappropriate use and development.*
>
> ***Policy 9**: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*

Conversely, if a land-use activity is proposed on the portion of the lot that is not HPL, then the NPS-HPL is less likely to be relevant to the decision-making process.[6] In some situations, a land-use activity may span both HPL and non-HPL land under the transitional definition of HPL. In these circumstances, a holistic assessment should be undertaken with the NPS-HPL provisions applying to the overall land-use activity – the relevant provisions are discussed further in Land use and development on highly productive land below.

A combination of HPL and non-HPL land on a lot has different implications for subdivision. This is discussed further in relation to assessing the overall productive capacity of the land Subdividing highly productive land below.

What is land-based primary production?

Land-based primary production is defined in the NPS-HPL as "production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land". This definition is deliberately narrower than the National Planning Standards definition of

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[6] Policy 8 requiring local authorities to protect HPL from inappropriate use and development and Policy 9 of relating to managing reverse sensitivity effects on land-based primary production on adjacent/nearby HPL may still be relevant, depending on the proposed land-use activity.

'primary production' as there are some activities covered by the primary production definition that do not need to locate on HPL in the same way as agricultural or horticultural activities do. In particular, the following primary production activities in the National Planning Standards definition of primary production do not fall within the scope of the 'land-based primary production' definition:

- **Intensive indoor primary production** – this activity was excluded from the definition of land-based primary production as inherently primary production that occurs predominantly inside buildings (such as intensive pork, poultry or mushroom farming) is not "reliant on the soil resource of the land". The intention is that intensive indoor primary production activities would be encouraged to establish on other rural land that was not HPL. However, refer to guidance on Clause 3.9 – protecting highly productive land from inappropriate subdivision, use and development and Clause 3.9(2)(a) in Table 2 below, as there may be scope for indoor components of a wider land-based primary production activity to be considered 'supporting activities' (as defined in the NPS-HPL) in some circumstances.
- **Hydroponic growing systems** – this activity was excluded from the definition of land-based primary production as hydroponic growing systems occur inside buildings and are not "reliant on the soil resource of the land".

  However, refer to guidance on Clause 3.9 – protecting highly productive land from inappropriate subdivision, use and development and Clause 3.9(2)(a) in Table 2 below, as there may be scope for indoor components of a wider land-based primary production activity to be considered 'supporting activities' (as defined in the NPS-HPL) in some circumstances. Structures that are erected to protect soil-reliant plants from weather, wind or pests (ie, covered crops) are land-based primary production because they rely on the soil.
- **Mining/quarrying** – the intent of the NPS-HPL is not to protect HPL for these primary production activities. However, there is a pathway for mineral and aggregate extraction on HPL under Clause 3.9(2)(j) where these meet certain tests (operational and functional need to be on HPL or provide significant public benefits). Small-scale farm quarries could also potentially have a pathway on HPL as "supporting activities", see discussion in Clause 3.9(2)(a), Clause 3.9 – protecting highly productive land from inappropriate subdivision, use and development, below for more information.
- **Aquaculture** – excluded on the basis that this is not a land-based primary production activity.
- **Processing of commodities** – the intention is that processing of commodities from land-based primary production should occur on land that is not HPL. However, there is the potential for some initial processing activities (as described in the definition of primary production in the National Planning Standards) to be considered "supporting activities" under Clause 3.9(2)(a). Refer to guidance on Clause 3.9 for more information.

The intent of the NPS-HPL is not to create a hierarchy of land-based primary production activities – there should be an opportunity to establish any type of land-based primary production on HPL. Councils may provide more specificity on what types of land-based primary production are supported in their district in objectives and policies of the regional policy statement or district plan – this is covered in Part 2: Updating policy statements and plans to reflect the NPS-HPL.

The definition of land-based primary production in the NPS-HPL specifically includes "forestry activities" which can include both plantation forestry and carbon forestry. Although forestry

may not be the most productive use of HPL, it has the potential to be converted to other land-based primary production activities, following remediation, unlike urban rezoning/development and fragmentation into lifestyle lots, which is irreversible.

Subdividing highly productive land

The NPS-HPL will be a relevant consideration for subdivision on HPL under both the transitional definition of HPL and mapped HPL.

The key policy in the NPS-HPL for subdivision is Policy 7:

> *The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*

The direction that subdivision of HPL be "avoided", apart from the specific exceptions in the NPS-HPL, is intended to provide a stringent approach for any subdivision proposal on HPL to avoid further fragmentation of this finite resource. The implementing clause for this policy (discussed further below in Clause 3.8 – avoiding subdivision of highly productive land) does provide a pathway for some types of subdivision in some circumstances, but these are limited in scope.

Policy 6 provides further direction that rural lifestyle development on HPL is to be specifically avoided as follows (**emphasis added**):

> *The rezoning and **development of highly productive land as rural lifestyle is avoided**, except as provided in this National Policy Statement.*

The National Planning Standards zone standards describe a rural lifestyle zone as areas:

> *used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.*

While rural lifestyle zones may allow primary production to occur, the reason that rural lifestyle on HPL should be avoided is that the use of HPL for predominantly rural lifestyle purposes is an inappropriate use of a scarce resource. Rural lifestyle zoning prevents HPL being used efficiently for land-based primary production as it increases the potential for reverse sensitivity effects and allows for lot sizes that make land-based primary production less viable.

Subdividing land to create smaller land parcels for rural lifestyle use is not provided for unless there are exceptional circumstances (refer to Clause 3.10). This focus on avoiding rural lifestyle subdivision and development is intentional, as the fragmentation of HPL and its inefficient use for rural lifestyle development was identified through the development of the HPL as one of the key contributing factors to ongoing losses of HPL nationally.

In relation to the National Planning Standards description of rural lifestyle zone, the consideration is not whether the sites are large enough for primary production. It is whether the main land use is primary production or residential activity. It is appropriate to consider specific characteristics of the site and reasonably foreseeable opportunities for using the land for land-based primary production (over a 30-year period) in forming these conclusions.

Clause 3.8 – avoiding subdivision of highly productive land

Clause 3.8 of the NPS-HPL is intended to be clear and directive in terms of the outcomes sought for subdivision of HPL as follows (emphasis added).

> *(1) Territorial authorities must **avoid the subdivision of highly productive land** unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:*
>
> *(a) the applicant demonstrates that the proposed lots will **retain the overall productive capacity of the subject land over the long term:***
>
> *(b) the subdivision is on **specified Māori land:***
>
> *(c) the subdivision is for **specified infrastructure**, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a **functional or operational need** for the subdivision.*
>
> *(2) Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
>
> *(a) avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
>
> *(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*
>
> *(3) In subclause (1), subdivision includes partitioning orders made under Te Ture Whenua Māori Act 1993.*

Guidance on the terms in bold above is provided in the following sections.

Productive capacity

Productive capacity, in relation to land, is defined in Clause 1.3 of the NPS-HPL as:

> *…the ability of the land to support land-based primary production over the long term, based on an assessment of:*
>
> *(a) physical characteristics (such as soil type, properties, and versatility); and*
>
> *(b) legal constraints (such as consent notices, local authority covenants, and easements); and*
>
> *(c) the size and shape of existing and proposed land parcels.*

The productive capacity of land does not depend on whether the current use is land-based primary production, or its past history of land uses. The key measure of productive capacity depends on the potential capacity of the land to support land-based primary production activities. To assess whether the "overall productive capacity" will be retained in the context of a subdivision application (under Clause 3.8(1)(a)), or a small scale or temporary activity (Clause 3.9(2)(g)), the emphasis is on the 'overall' productive capacity and not just the productive capacity of the balance lot. This assessment will require the existing productive capacity of the subject land to be assessed so that an overall comparison between the existing and proposed can be made. The relevant factors contributing to the existing productive capacity will vary depending on the local context and may include consideration of:

a) soil type patterns across a site

b) the characteristics of soils, including drainage, potential rooting depth, any existing contamination and erosion proneness

c) land-form features, including slope and aspect, and flood proneness

d) climate, including general characteristics relating to suitability for productive use

e) availability of water

f) legal constraints (such as consent notices, local authority covenants and easements)

g) current and potential opportunities for using the land for land-based primary production.

These characteristics will influence the type of land-based primary production suitable for that particular site. A full range of suitable types of land-based primary production should be considered as part of the assessment, not just the existing land-use type. Consideration of the application in terms of a cumulative loss of HPL may also be relevant, including previous subdivision and planning history of the site and neighbouring sites.

Retaining the overall productive capacity of the land over the long term means there is no loss in the potential of the subject land being used for land-based primary production, when viewed over a 30-year timeframe based on reasonably foreseeable conditions. This should include consideration of effects of the proposed subdivision and/or subsequent proposed land use on the potential land-based primary production use of the subject land, including loss of land from production through access, curtilage development, any setbacks and any changes to the size and shape of property boundaries to mitigate reverse sensitivity effects.

If the proposed subdivision means the productive capacity of the original lots are retained (that is, the likelihood for the land to be used for a particular type or range of land-based primary production has not reduced or has improved), then the test in Clause 3.8(1)(a) would be met. This test envisages enabling:

i) subdivisions such as boundary adjustments where HPL is amalgamated to form a larger productive landholding.

ii) subdividing a large farm into smaller lots that are still capable of being used for a particular type or range of land-based primary production (for example, the separation of a 120-ha farm into two 60-ha farms).

It is unlikely that subdivision into rural lifestyle lots would meet the productive capacity test in this clause.

Where only part of the site is identified as HPL (either under transitional definition or when mapped in a regional policy statement) then the consideration of how the proposal aligns with the direction in the NPS-HPL will be on a case-by-case basis. The intent of Clause 3.8 is that:

- the proposed lot layout should not result in the HPL being further fragmented across multiple lots
- reverse sensitivity effects on land-based primary production activities will be avoided if possible, or otherwise mitigated.

The NPS-HPL deliberately does not contain direction on the size of a lot that will guarantee the productive capacity of HPL will be retained. This will be dependent on a range of factors and will vary from region to region. Whether or not a particular lot can remain productive will vary

depending on, for example, fluctuating markets or local conditions in each district. As discussed above, the determining factor is whether the site is large enough so that the predominant use of the site is land-based primary production and not residential lifestyle.

The way rural businesses operate is constantly evolving. The traditional owner/proprietor model is increasingly being replaced by an aggregated agri-business enterprise model, where operations are spread across several blocks of land. The economy of scale of aggregated agri-businesses enables the sharing of equipment, labour, administrative services and capital assets. Therefore, the size of the parcel is not always as relevant as its potential to support land-based primary production in the context of the agri-business. An assessment of productive capacity should consider a range of alternatives that allow the land to remain productive, such as leases to use a parcel as part of a larger agri-business.

Note that economic viability is not a consideration in an assessment of productive capacity under Clause 3.8. Any constraints on using land identified as HPL for land-based primary production that are not short term and result in land no longer being economically viable (including irreversible land fragmentation and/or water or nutrient constraints) for land-based primary production must be assessed under Clause 3.10 (see Exemptions for HPL subject to permanent or long-term constraints below).

The assessment of productive capacity should be at a sufficient level of detail appropriate to the proposal to ensure an informed decision on the application can be reached and needs to be considered over at least a 30-year period. Where the information necessary for an assessment is not readily available to the applicant from existing or previous landowners, or where inadequate or contradictory information has been provided, then further specialist input may be requested from suitably qualified and experienced professionals. The experience and qualifications needed will depend on the particular aspect of the proposal the further information required relates to. This may, for example, include economists with expertise in agriculture, agricultural consultants, valuers, soil scientists or other land or water scientists. Territorial authorities may wish to have information that is submitted as part of an application peer reviewed, including by seeking the advice from relevant specialists in regional councils so as to validate the information provided.

Cumulative loss and reverse sensitivity effects associated with subdivision

Clause 3.8(2) is as follows.

> *(2) Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
>
> *(a) avoids if possible, or otherwise mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
>
> *(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*

As with Clause 3.8(1) the first direction in Clause 3.8(2) is to avoid a loss of HPL and provides a strong position for territorial authorities to decline a subdivision application that results in a cumulative loss of HPL in that district, unless under an Operative District Plan that application is for a controlled activity or a restricted discretionary application (and the matters of control or discretion do not include loss of HPL). Historically, cumulative effects have been difficult to

consider in terms of HPL. Each application involving a loss of HPL argues that the loss is no more than minor, as it is a small percentage of the entire district/region. The intent of Clause 3.8(2)(a) is to support local authorities taking a strong stance on HPL loss on the basis that any loss should be avoided, because all the minor losses across a district/region collectively result in a more significant loss.

The cumulative loss of HPL must take into account any loss of HPL resulting from the mitigation of reverse sensitivity effects.

Subdividing land in and of itself does not create reverse sensitivity effects – it is the subsequent land uses that are enabled by the subdivision which can result in reverse sensitivity effects on existing land-based primary production activities. Consideration should be given to potential future reverse sensitivity effects resulting from the subsequent land uses at the time of subdivision. It may be appropriate to implement subdivision consent conditions, such as:

- requiring future dwellings to be constructed on specified building platforms away from boundaries with land-based primary production activities
- restricting the number of future dwellings on a property (if the rules would otherwise allow for more than one dwelling) by way of a consent notice on the title
- requiring the construction of a barrier or screen (eg, shelter belt planting, fencing) to help block potential odours, noise, dust or the visual presence of the land-based primary production activity from a future sensitive activity.

Any loss of HPL that may result from these requirements needs to be taken into account when calculating any loss of productive capacity under Clause 3.8(1).

Should a substantive decision to grant a consent to subdivide HPL under Clause 3.8 be reached then Clause 3.8(2) also requires territorial authorities to mitigate actual or potential loss of HPL and reverse sensitivity effects. Consent notices preventing further subdivision and precedent effects may be considered to avoid cumulative loss in the future.

In terms of mitigating reverse sensitivity effects, some territorial authorities (either currently or historically) impose no-complaints covenants (sometimes known as rural emanations easements) registered on the titles at the time of subdivision as a means to manage reverse sensitivity effects. These covenants contain clauses that remind buyers that they are living in a rural environment, and that farming activities may be undertaken in the area without interference or restraint, with the intention of discouraging neighbouring properties from complaining about effects from adjacent production activities. There are known limitations associated with no-complaints covenants in terms of enforceability, particularly as they do not negate the responsibility of a local authority to follow up on a complaint if it is lodged. Feedback received on the use of no-complaints covenants as a reverse sensitivity tool is they are largely ineffective and do not afford rural activities the same protection as physical measures to separate sensitive land uses from productive rural activities. We would caution local authorities that are considering relying on no-complaints covenants as the main tool for managing reverse sensitivity effects that they are unlikely to provide sufficient protection for land-based primary production activities using HPL.

Some territorial authorities may already have specific direction in their district plans to consider cumulative loss of HPL and potential reverse sensitivity effects at the time of subdivision (ie, as a matter of restricted discretion or as part of a subdivision objective and/or policy). If not, territorial authorities can still consider whether reverse sensitivity effects have

been avoided if possible, or mitigated, as part of their assessment under section 104 of the RMA for discretionary or non-complying subdivision activities (or restricted discretionary activities if reverse sensitivity is a matter over which discretion has been restricted).[7]

Specified Māori land

Clause 3.8(1)(b) provides a pathway for subdivision of HPL on Māori land that meets the definition of specified Māori land in the NPS-HPL. The types of Māori land captured by the definition of specified Māori land (representing approximately 3 per cent of LUC 1, 2 and 3 land) will be evident from existing or historical title records retrievable from Land Record Search | Toitū Te Whenua — Land Information New Zealand (linz.govt.nz).

Subdivision of specified Māori land should still take measures to minimise the actual and cumulative loss of HPL in the district and mitigate reverse sensitivity effects that may adversely affect the productive use of HPL on neighbouring sites.

Further guidance on what the NPS-HPL means for Māori and Māori land is available.[8] An information guide[9] is also available on changing the status of general land owned by Māori to Māori freehold land and rezoning land to Māori purpose zone (as defined in the National Planning Standards).

Specified infrastructure

Subdivision that is required to deliver specified infrastructure is exempt from Clause 3.8, provided there is a **functional or operational need** (see definitions below). "Specified infrastructure" is defined in the NPS-HPL in a manner consistent with other national direction as (emphasis added):

> ***specified infrastructure*** *means any of the following:*
>
> *(a) infrastructure that delivers a service operated by a* ***lifeline utility****:*
>
> *(b) infrastructure that is recognised as* ***regionally or nationally significant*** *in a National Policy Statement, New Zealand Coastal Policy Statement, regional policy statement or regional plan:*
>
> *(c) any public flood control, flood protection, or drainage works carried out:*
>
> *(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or*
>
> *(ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908.*

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7 See Impact of activity status, above.

8 Ministry for the Environment. 22 September 2022. *National Policy Statement for Highly Productive Land: Information on what it means for Māori and Māori land*. Retrieved from https://environment.govt.nz/publications/national-policy-statement-for-highly-productive-land-information-on-what-it-means-for-maori-and-maori-land/

9 *National Policy Statement for Highly Productive land: Further information on changing the status of Māori land and rezoning land to Māori purpose zone. Retrieved from* https://environment.govt.nz/publications/nps-hpl-further-information-on-changing-the-status-of-maori-land-and-rezoning-land-to-maori-purpose-zone

Lifeline utility has the meaning in section 4 of the Civil Defence Emergency Management Act 2002.

The NPS-UD is an example of national direction that identifies 'nationally significant infrastructure', and most regional policy statements include lists of the types of infrastructure assets that are 'regionally significant' in the context of their region. These will be the most common places to find information on whether a particular infrastructure project is "regionally or nationally significant" and therefore meets the definition of "specified infrastructure". Consideration of whether renewable energy generation projects, as supported by the National Policy Statement for Renewable Energy Generation 2011 (NPS-REG), are "nationally significant" will depend on the specifics of an application.

Subdivision for the purposes of developing specified infrastructure is enabled. Some new specified infrastructure may be developed under the maintenance, operation, upgrade or expansion of specified infrastructure, others may choose to seek a designation for the activity which is then enabled on HPL under 3.9(2)(h). There is a pathway to become a requiring authority under s167 of the RMA.

Functional need is defined in the National Planning Standards as follows.

> ***Functional need*** *means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.*

Operational need is defined in the National Planning Standards as follows.

> ***Operational need*** *means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.*

These functional and operational need tests are intended to be sufficiently high to avoid unnecessary loss of a finite resource.

Applicants and consent planners are expected to have regard to relevant case law on functional and operational need when interpreting the relevant provisions in the NPS-HPL that use these terms.

Land use and development on highly productive land

The NPS-HPL will be relevant for proposals for land use and development on land identified as HPL under the transitional definition of HPL from 17 October 2022. The process for determining whether land is HPL is covered in What is highly productive land?What is highly productive land? above.

The key NPS-HPL policy for land use and development on HPL is Policy 8:

> *Highly productive land is protected from inappropriate use and development.*

The policy direction that HPL is to be 'protected' from inappropriate use and development sends a clear message that territorial authorities must prevent inappropriate use and development occurring on HPL. In terms of what types of use and development are "inappropriate" on HPL, Clause 3.9 provides further direction by setting out a list of land uses and activities that may be appropriate on HPL.

Clause 3.9 – protecting highly productive land from inappropriate subdivision, use and development

Policy 8 is to be implemented through Clause 3.9, with Clause 3.9(1) providing strong direction as follows.

> *Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.*

The starting point is that all land use and development activities that are not land-based primary production are inappropriate on HPL and to be avoided. Clause 3.9(2) provides further direction to implement Policy 8 by providing a specific list of activities that may be appropriate on HPL – provided the measures relating to cumulative loss of the availability and productive capacity of HPL and reverse sensitivity effects in Clause 3.9(3) are applied.

Table 2 below provides some guidance on the list of activities that may be appropriate on HPL under Clause 3.9(2) and gives examples of the types of activities anticipated under this clause. The intent is that Clause 3.9(2) applies to the main purpose of the use and development, ie, the 'core' activity being proposed. For example, where the main purpose of the activity is not listed in Clause 3.9 (eg, a proposed golf course or retirement village) but elements of the activity will provide public access and restore some indigenous biodiversity, this does not mean the core activity is also appropriate on HPL by association. Only the public access and indigenous biodiversity elements would be appropriate on HPL.

In order for the activities listed in 3.9(2) to be considered not "inappropriate", Clause 3.9(3) also needs to be satisfied – see Cumulative loss and reverse sensitivity effects associated with land use below.

Table 2: Examples of activities that may be appropriate on HPL under Clause 3.9(2)

Appropriate land-use activity	Intention and examples of activities anticipated
This table/section is currently out of date and does not reflect the NPS-HPL 2022 as amended August 2024. This guide will be updated in 2025 as part of a suite of amendments underway - refer to RMA Reform | Beehive.govt.nz for more updates.	
(a) it provides for supporting activities on the land	Note: Further guidance on preparing objectives, policies and rules that give effect to Clause 3.9(2)(a) with respect to "supporting activities" is provided in Part 2 of the guide. "Supporting activities" are defined in Clause 1.3 of the NPS-HPL as "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 intention of this clause is that activities that support land-based primary production on surrounding HPL or as part of a landholding [10]where the production is occurring, have a pathway to occur on HPL. Activities such as residential accommodation for the landowner and/or farm staff, seasonal worker accommodation, sheds for farm machinery, workshops for repairing and maintaining equipment and roadside sales of goods produced on site would all be anticipated under this clause where

[10] Note that "landholding" in this context is intended to have the same meaning as the definition of 'landholding' in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, which is defined as meaning "one or more parcels of land (whether or not they are contiguous) that are managed as a single operation".

	these support land-based primary production. This clause could also cover on-site processing and manufacturing of goods that were produced on HPL, packing produce, or installing a water reservoir to support the land-based primary production activity. However, the purpose of these activities must be to directly support land-based primary production. For example, a water reservoir would not be appropriate on HPL if it was used to irrigate a golf course. The support provided by these activities must be reasonably necessary in order to be considered appropriate under this clause. Supporting activities of land-based primary production are considered to comprise activities that align with the definition of primary production in the National Planning Standards subclauses (b)–(d). These supporting activities would comprise: • initial processing, as an ancillary activity, of commodities that result from land based primary production; and • any land and buildings used for the initial processing of those commodities; but • excludes further processing of those commodities into a different product For example, this would include minimal processing activities as defined by the Food Act but would not include a dairy factory. Supporting activities also support land-based primary production when they are ancillary to that production activity, but not when they are independent rural industry. For example, supporting activities would include seasonal workers accommodation delivered as part of land-based primary production activity, including accommodation serving multiple sites and landholdings. Supporting activities would not include accommodation provided by labour supply companies operating as an independent rural industry. A "supporting activity" may also include some elements of a wider land-based primary production activity that occur within buildings and/or do not need the HPL soil resource and that might otherwise be excluded from the definition of land-based primary production. Territorial authorities will need to look at the farm system being proposed as a whole to assess whether all components are "supporting" the land-based primary production activity, including whether the farm system occurs on a single parcel or across multiple parcels that are part of the same operation or landholding. For example, an intensive indoor primary production activity or glasshouse may be considered as an integrated part of a wider arable or pastoral farm system through the transfer of nutrients to support the activities of surrounding HPL. Similarly, "supporting activities" may include small-scale farm quarries that only supply aggregate to support land-based primary production enterprise on the same landholding.
(b) it addresses a high risk to public health and safety	Activities such as flood mitigation works, emergency works, removal of dangerous trees and repairs to infrastructure are all anticipated as appropriate activities on HPL under this clause, provided they are only undertaken to address a high risk to public health and safety. Whether these activities are needed to address a "high risk" to public health and safety will need to be assessed on a case-by-case basis, but the intent is that it applies where there is a clear and obvious risk that needs to be addressed.

(c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act	Many of the matters covered in section 6 of the RMA are addressed more specifically in other sub-clauses in this section (eg, public access, management of natural hazards, indigenous biodiversity). However, this clause covers all other section 6 matters not otherwise referred to in other sub-clauses. This includes, for example, the protection of outstanding natural features and landscapes, historic heritage and protected customary rights. The purpose of this clause is to confirm that activities are appropriate on HPL when these are necessary to recognise and provide for one of the matters of national importance in section 6 of the RMA.
(d) it is on specified Māori land	This clause provides a pathway for activities to occur if they are proposed on specified Māori land. The types of Māori land captured by the definition of specified Māori land will be evident from existing or historical title records retrievable from Land Record Search | Toitū Te Whenua — Land Information New Zealand (linz.govt.nz).
(e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity	While the protection of 'significant natural areas'[11] is provided for under Clause (c), this clause is broader and covers the full range of activities to protect, maintain and restore all indigenous biodiversity not just the protection of significant natural areas. Activities such as pest control, replanting and restoration of significant natural areas, riparian margins, wetlands, etc, are all anticipated as appropriate activities on HPL under this clause. Mitigation planting proposed as part of non-land-based primary production would not justify such an activity. The planting itself would be appropriate on HPL, but it would not justify the associated 'core' activity, as discussed above.
(f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality	It is recognised that, in some situations, it may be necessary to retire portions of land from being actively used for land-based primary production, to improve water quality standards under the National Policy Statement for Freshwater Management 2020 (NPS-FM). This clause provides for that to occur as an appropriate land use and activity on HPL. However, retiring land for water quality purposes does not automatically mean the land is suitable for other non-land-based primary production. Any proposed alternative use would need to meet the tests in the NPS-HPL on its own merits.
(g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land	Activities such as home businesses, small-scale visitor accommodation (eg, bed and breakfast) are anticipated as small-scale activities. Temporary activities are likely to be short-term activities with a defined start and end date, such as festivals/events and markets. Both of these types of activities may be appropriate on HPL under this clause, provided they have no impact on productive capacity of the land. 'Productive capacity' is defined in the NPS-HPL and the information requirements to assess productive capacity are outlined in the 'Overall productive capacity' section above in relation to Clause 3.8. There is some overlap with Clause (g) and Clause (a) as some supporting activities may also be small scale with no impact on the productive capacity of the land.
(h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act	This clause recognises that requiring authorities may either already have designations on HPL or may need new or extended designations in the future. Designations are generally for essential public works, and this clause provides for such works as appropriate for use and development on HPL. It is noted that the processes for applying for an activity in relation to a designation or a notice of requirement are managed under

[11] 'Significant natural areas' is the term commonly used to refer to areas of significant indigenous vegetation and significant habitat of indigenous fauna that are to be protected under section 6(c) of the RMA.

	Part 8 of the RMA rather than by regional or district plan rules. Clause 3.9(2)(h) simply clarifies that the NPS-HPL anticipates applications being made by requiring authorities for designation activities or notices of requirement on HPL and the NPS-HPL is not a barrier to those being processed.
(i) it provides for public access	Accessways (walking, cycling or road access, depending on the situation) to provide the public with access to public areas such as beaches or reserves is anticipated under this clause as appropriate use and development on HPL. Providing for public access on HPL under this clause is expected to have no, or very limited, impact on the availability and productive capacity of HPL. For the access to be "public" it would need to be unfettered (no restrictions on the time of day or year) and assured by legal means (eg, land vested to council or access guaranteed via easement).
(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land: (i) the maintenance, operation, upgrade, or expansion of specified infrastructure (ii) the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990 (iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand (iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.	The intention of this clause is to recognise situations where the use or development of specified infrastructure, defence facilities or mineral or aggregate extraction may occur on HPL. The key test is to demonstrate that the use and development has a 'functional need' and 'operational need' to be on HPL. These terms are defined in the National Planning Standards (as discussed in Specified infrastructure above, in relation to Clause 3.8) and fits into one of the categories listed. (a) **Specified infrastructure** – this test recognises that the functional and operational needs of specified infrastructure (as defined in Clause 1.3 of the NPS-HPL) means that they may need to be located on HPL – such as where a new road or transmission lines may need to traverse over an area of HPL. Further, in many cases, the presence of specified infrastructure on HPL does not preclude the balance of the HPL being used by land-based primary production. For example, land surrounding structures used for infrastructure can often be used for animal grazing or some forms of horticulture. (b) **Defence facilities** – this test recognises there are existing New Zealand Defence Force facilities located on HPL and that, to meet obligations under the Defence Act 1990, there will be occasions where these facilities need to be upgraded or expanded, and this may involve new Defence Force activities on HPL. Provided the proposal is needed to meet obligations under the Defence Act 1990 and it also has a functional or operational need to be on HPL, defence facilities will have a pathway to be an appropriate use and development on HPL under this clause. (c) **Mineral or aggregate extraction** – there are two tests for determining whether mineral or aggregate extraction can occur on HPL: there must be a significant national public benefit for mineral extraction and a significant national or regional benefit for aggregate extraction. It must also be proven that the same benefit could not be achieved elsewhere in Aotearoa New Zealand on non-HPL land. The national test is intentionally high, as the activity of extracting minerals or aggregate from land can, in some cases, result in land never being able to be used for land-based primary production again. Extraction activities that result in the permanent loss of HPL are envisaged to only be appropriate where the mineral or aggregate being extracted cannot be supplied domestically from another source on non-HPL land. The degree to which land is able to be restored to support land-based primary production is a relevant consideration. Note that Clauses 3.9(j)(iii) and (iv) are intended to apply to larger commercial-scale mineral and aggregate

	extraction and there is a potential pathway for small-scale farm quarries as "supporting activities" under Clause (a).

Cumulative loss and reverse sensitivity effects associated with land use

Clause 3.9(3) sets out the other measures that must be taken by territorial authorities when considering a use or development on HPL. These measures must be applied before any of the activities listed in Clause 3.9(2) can be considered not "inappropriate" on HPL. Clause 3.9(3) is as follows.

> *(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:*
>
> *(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
>
> *(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.*

The wording of Clause 3.9(3)(a) is slightly different to the equivalent cumulative loss clause for subdivision in Clause 3.8(2)(a). It is intended to recognise that most land use or development that has a pathway under Clause 3.9(2) will inevitably lead to some loss of the availability and productive capacity of HPL[12] – so an 'avoid if possible' test as a starting point was not considered appropriate. Instead, Clause 3.9(3)(a) requires territorial authorities to focus on minimising or mitigating any actual loss or potential cumulative loss of the availability and productivity capacity of HPL, when considering any proposed use and development on HPL. When considering if a use or development "minimises" or "mitigates" a loss of productive capacity, territorial authorities should consider:

- **the location of the activity** – whether it can be sited somewhere on the subject site that minimises the impact on the productive capacity of HPL
- **the footprint of the activity** – whether efforts have been made to keep the footprint of the activity as small as possible to minimise the actual loss of HPL
- **clustering of activities** – whether there is an option to group a number of activities in a similar location to mitigate the cumulative loss of HPL that would occur through activities being spread out across a wider area of HPL (eg, clustering of buildings, co-location of telecommunications infrastructure or containing multiple activities in the same building, such as using an existing residential dwelling for a home business or visitor accommodation activity, rather than constructing multiple buildings)
- **co-existing with land-based primary production** – whether the activity can be designed in such a way that is does not preclude being able to carry out land-based primary production around the activity (eg, the potential for using the land around specified infrastructure to be used for vegetable production or animal grazing).

Clause 3.9(3)(b) requires applicants to "avoid if possible or otherwise mitigate" any actual or potential reverse sensitivity effects on land-based primary production activities from the

[12] The exception is small-scale and/or temporary activities, which are required under Clause 3.9(2)(g) to have no impact on the productive capacity of the HPL.

proposed use or development. Many of the activities listed in Clause 3.9(2) are unlikely to create reverse sensitivity effects (eg, restoring indigenous biodiversity or flood mitigation works). However, supporting activities such as residential dwellings for farm owners/managers, farm worker accommodation or small-scale activities such as home businesses or small-scale visitor accommodation, do have the potential to cause reverse sensitivity effects. Often, potential reverse sensitivity effects can be avoided (or, if not fully avoided, mitigated) by either:

- physically separating the potentially sensitive activity from the land-based primary production activity
- using a barrier or screen (eg, shelter belt planting, fencing) to help block potential odours, noise, dust or the visual presence of the land-based primary production activity.

Most territorial authorities will have existing provisions in the rural chapters of their district plans to manage potential reverse sensitivity effects and may already have setback rules – for example, rules that require the separation of residential dwellings from productive rural environments or require setbacks from effluent-spreading areas or setbacks to manage spray drift. An applicant demonstrating compliance with existing district plan provisions to manage reverse sensitivity effects may be sufficient to give effect to Clause 3.9(3)(b). Non-compliance with an existing rule to manage reverse sensitivity may mean that Clause 3.9(3)(b) may have more relevance when making a determination under section 104 of the RMA as to whether the activity is appropriate or inappropriate on HPL. If a district plan does not currently include provisions to manage reverse sensitivity effects in rural environments, territorial authorities are still able to consider whether reverse sensitivity effects have been avoided if possible, or mitigated, as part of their section 104 assessment for discretionary or non-complying activities (or restricted discretionary activities if reverse sensitivity is a matter over which discretion has been restricted).

Exemptions for HPL subject to permanent or long-term constraints

For the majority of proposed activities seeking to establish on HPL (rezoning, subdivision, use and development) there is a specific policy and set of implementing clauses in the NPS-HPL to direct whether or not that activity should be allowed. The starting point is to protect HPL for use in land-based primary production (as per the NPS-HPL objective). If an activity is for another purpose, proposals should refer to:

- Urban rezoning – Policy 5 and Clause 3.6
- Rural lifestyle rezoning of HPL – Policy 6 and Clause 3.7
- Subdivision – Policies 6 and 7 and Clause 3.8
- Use and development – Policy 8 and Clause 3.9.

If a proposed activity is unable to find a pathway through these policies and implementing clauses, then in most cases it should not be able to occur on HPL and the HPL should continue to remain available to be used for land-based primary production.

However, in rare circumstances it may be that the HPL is subject to “permanent or long-term constraints” that mean the use of land for land-based primary production is not economically viable for at least 30 years. Clause 3.10 provides a series of specific and deliberately stringent tests to determine whether the permanent or long-term constraint on the land justifies the

HPL being used for a purpose that is not land-based primary production. It is not expected that Clause 3.10 will be used regularly, and it has been designed to apply to genuine scenarios where land is subject to permanent or long-term constraints that cannot be addressed through reasonably practicable options. An applicant would need to first demonstrate there is not a pathway for their proposal under any other clause of the NPS-HPL, then show their particular situation meets the requirements of Clause 3.10, before a non-land-based primary production activity could occur.

Clause 3.10 cannot be used as a pathway for urban rezoning if a proposal has not met the requirements of Clause 3.6. If there is justification for land that is subject to a permanent or long-term constraint being zoned urban, then it should be able to pass the tests in Clause 3.6 on its own merits. Essentially, urban rezoning of HPL always has a potential pathway under Clause 3.6, whereas rural lifestyle rezoning and some types of subdivision and land-use activities do not have pathways under 3.7, 3.8 and 3.9. Therefore, for these activities, Clause 3.10 is the only available pathway, which can only be used when the relevant territorial authority is satisfied the specific tests have been met.

Clause 3.10 contains an intentionally high bar in terms of evidence needed to justify the subdivision, use or development of HPL in a way that is not provided for in Clauses 3.7, 3.8 and 3.9. It should only be used in situations where the use of HPL for land-based primary production is not economically viable for at least 30 years because of a permanent or long-term constraint, and where the other relevant tests in Clause 3.10 are met.

Clause 3.10(1) – tests

Clause 3.10(1) sets out three tests that must be met for an activity not otherwise provided for under Clauses 3.7, 3.8 or 3.9 to occur on HPL. A proposal must meet **all parts of all three tests** to be allowed on HPL (although meeting these tests does not presume an application will be approved). The three tests are met where:

> *(a) 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; and*
>
> *(b) the subdivision, use, or development:*
>
> *(i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and*
>
> *(ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and*
>
> *(iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and*
>
> *(c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

Test 3.10(1)(a) – permanent or long-term constraints

The first step is to demonstrate there is a permanent or long-term constraint on the land that will be present for at least 30 years. The types of constraints envisaged under this clause include the following.

- **Access to water** – water constraints are the most likely constraint to create a situation where the absence of water means that land-based primary production is no longer economically viable. It is anticipated that potential restrictions on water takes arising out of processes under the NPS-FM and National Environmental Standards for Freshwater 2020 (NES-F) may result in some HPL needing to be considered under Clause 3.10. It would need to be clear these constraints are indeed permanent and not short term (ie, not able to be resolved by improvements or reallocation of resources within the catchment within the next 30 years).
- **Contamination** – although less likely to occur compared to water constraints, it is possible a piece of HPL has been contaminated by a past land use to the point where it cannot be used for land-based primary production. This contamination would need to be severe, extensive and unable to be remediated to the point where land-based primary production could not take place. In the case of contamination, a territorial authority will also need to consider what is an appropriate alternative use for the land. Extensive contamination that makes land unsafe for land-based primary production will usually make the land unsuitable for residential use or other sensitive activities such as rest homes, childcare centres, healthcare or community facilities.
- **Natural hazards or climate change–related hazards** – note that works to mitigate natural hazards or climate change-related hazards are provided for under Clause 3.9(2)(b) if they are needed to address a high risk to health and safety, or under Clause 3.9(2)(c) if they are needed to manage significant risks from natural hazards under section 6(h) of the RMA. Territorial authorities will need to consider whether there are any other uses for the land, as, if the natural hazard or climate change hazard risk is so severe it prevents the HPL from being used for land-based primary production, it is also likely to mean the land is unsuitable for other types of subdivision, use and development.
- **Non-reversible land fragmentation** – territorial authorities may consider that some areas of HPL in their district have become highly fragmented (eg, extensive amount of rural lifestyle-sized lots covering a particular area due to historic or operative subdivision rules) that there are no reasonably practicable options available to consolidate the land and return it to a productive use. Note that although the size of a landholding in which the HPL occurs is not of itself a determinant of a permanent or long-term constraint (see discussion in Clause 3.10(4) – size is not determinant below), a territorial authority could look at a large area of fragmented HPL and determine whether the fragmentation is significant enough to pass the tests in Clause 3.10. If subdivision patterns across a territorial authority's district indicate areas of extensive fragmentation, this could potentially be a permanent or long-term constraint. Councils have the discretion to decide whether non-reversible fragmentation is relevant to a resource consent application made under Clause 3.10.

Test 3.10(1)(a) – economic viability

The second step once a permanent or long-term constraint has been identified is to demonstrate that the constraint means that land-based primary production cannot be economically viable for at least 30 years. Applicants will need to demonstrate it is **the presence of the constraint** that makes land-based primary production economically unviable, not simply

that the landowner thinks it is uneconomic to use the HPL productively. Using 30 years as a timeframe for "long-term" is intended to ensure it is a genuine long-term constraint that cannot be addressed – recognising the importance of protecting the finite HPL resource for current and future generations. This timeframe also ensures the assessment of constraints and economic viability can take account of potential changes in technology and markets that are reasonably foreseeable over this 30-year period.

Technical evidence supporting the presence of the constraint will be required in the first instance (eg, information on available water, contaminated land analysis). Secondly, economic analysis will generally need to be provided as part of the evidence base for the impact that the constraint is having on the economic viability of land-based primary production.

Note that the size of the landholding containing the HPL is not in itself a permanent or long-term constraint. This is discussed further in Clause 3.10(4) – size is not determinant below.

Test 3.10(1)(b) – avoidance and/or mitigation

The second test involves looking at the wider context for the potential loss of HPL within a district, and the potential impact the change of land use or subdivision might have on the ability of surrounding HPL to continue to be used for land-based primary production. It gives territorial authorities the ability to decline an application for subdivision, use or development which relies on the Clause 3.10 pathway if it will compromise the ability of other HPL in the district to be used for land-based primary production.

- Clause 3.10(1)(b)(i) is strong direction that a subdivision, land use or development must 'avoid' any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district. Whether the loss of productive capacity in a district is 'significant' is somewhat subjective and will need to be assessed by the territorial authority on a case-by-case basis. Generally, the larger the proposed loss of HPL in a spatial sense, the less likely a proposal will be to pass this test. Significant loss of HPL can also result from the cumulative effects of very small losses of HPL adding up over time, as opposed to just single subdivision, use or development resulting in a significant loss of HPL. In assessing the significant cumulative loss of HPL, territorial authorities should consider past subdivision patterns or approvals for non-productive land uses to determine if HPL in their district is at a tipping point for unacceptable cumulative loss of productive capacity of HPL. Refer to information requirements for assessment of productive capacity in relation to Clause 3.8 in Productive capacity above.
- Clause 3.10(1)(b)(ii) is another strong 'avoid' test that focuses on avoiding the fragmentation of large and geographically cohesive areas of HPL. Again, this test is subjective and will depend largely on how HPL is spatially distributed in a district. For example, if the proposed loss of HPL is limited to a small area on the edge of an already isolated small area of HPL, then this test could be met. However, if the proposal involves subdivision, use or development in the middle of a large area of HPL, then this test may not be met. It will be up to the territorial authority to determine whether a proposal constitutes fragmentation of a large and geographically cohesive area of HPL based on the individual circumstances of the proposal.

Clause 3.10(1)(b)(iii) focuses on reverse sensitivity and is the same reverse sensitivity test as proposed for both subdivisions and land use in Clauses 3.8(2)(b) and 3.9(3)(b), respectively. Refer to Cumulative loss and reverse sensitivity effects associated with subdivision and Cumulative loss and reverse sensitivity effects associated with land use in the guidance above for these clauses.

Test 3.10(1)(c) – benefits outweighing costs

The third test is intended to shift the assessment of whether or not HPL can be used for a non-productive purpose away from a purely economic assessment, towards a more robust consideration of the environmental, social, cultural and economic impacts of a proposal. Clause 3.10(1)(c) directs territorial authorities to only allow HPL to be subdivided, developed or used in a manner not provided for by Clauses 3.7, 3.8 or 3.9 if they are satisfied that:

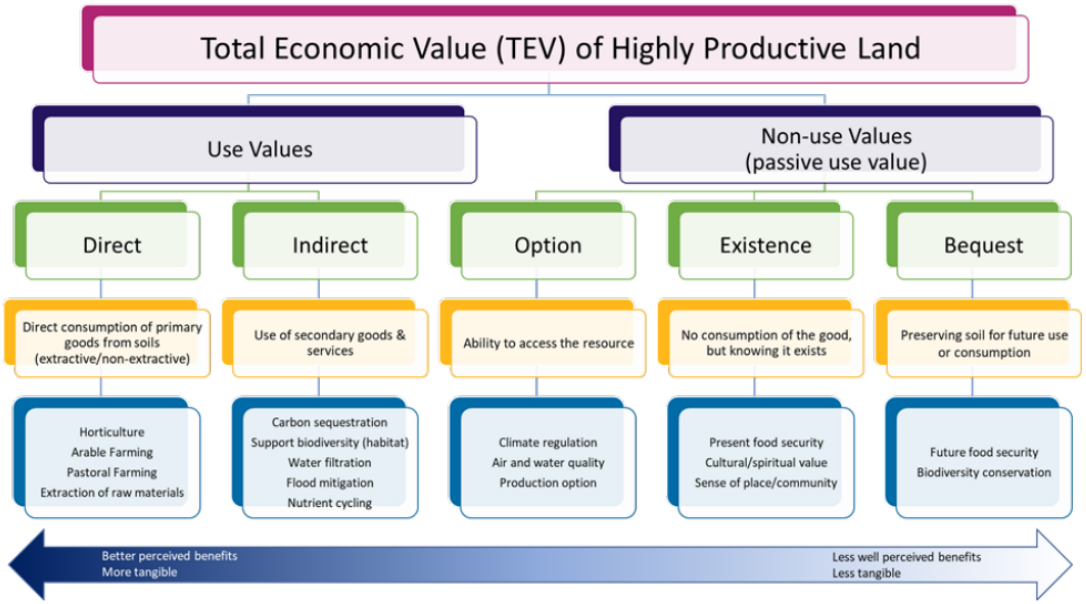
> *…the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

Examples provided by territorial authorities during the development of the NPS-HPL highlighted the difficulties in assessing the benefits and costs of converting HPL to a non-productive use, and the relative weight given to economic arguments that the highest and best use of the land was the use that generated the highest monetary return. This narrow focus on economic costs and benefits has a tendency to skew decision-making in favour of urban or rural lifestyle land uses, as landowners will naturally experience a higher return on their land if it can be used for those purposes, compared to land-based primary production. The purpose of this third test is to build on best practice decision-making and direct both applicants and territorial authorities to consider the environmental, social and cultural costs and benefits of a proposal, including tangible and intangible benefits.

The section 32 analysis for the NPS-HPL[13] identified a range of benefits of retaining HPL for land-based primary production that are often intangible, and it is inappropriate to assign them a monetary value. This includes, for example, connection of a farming community to land, sense of identity, ecological functions of retaining land in productive use, and intergenerational benefits such as future food security, and the value of keeping HPL available for land-based primary production. The range of benefits and costs discussed in the NPS-HPL section 32 analysis may provide a good starting point for considering an application under Clause 3.10(1)(c). Some of the tangible and intangible benefits associated with retention of HPL are covered in figure 2.

[13] Above, n **Error! Bookmark not defined.**.

Figure 2: Total economic value of HPL



Source: CBA of NPS-HPL prepared by Market Economics

Note that, to pass this test, the benefits of the subdivision, use or development must outweigh the costs when considered over the long term (at least 30 years). As with any weighting exercise, territorial authorities will be required to consider each proposal on a case-by-case basis using best practice methodologies aligned with section 32 evaluations.

Clause 3.10(2) – assessing reasonably practicable options

The second part of the Clause 3.10 assessment is a consideration of reasonably practicable options that could result in the HPL being retained for land-based primary production use. The purpose of this exercise is to require an applicant to:

- demonstrate they have considered alternatives for continuing land-based primary production on their HPL
- provide relevant evidence as to why these alternative options were not reasonably practicable.

The list of potential options in Clause 3.10(2) is deliberately non-exhaustive, as individual situations nationally may warrant consideration of other options not on this list. However, the list of options in Clause 3.10(2) may be a useful starting point for an assessment. Table 3 provides some examples of solutions to retain HPL for land-based primary production,

Table 3: Examples of reasonably practicable options under Clause 3.10(2)

Subclause of 3.10(2)	Example
(a) alternate forms of land-based primary production	As per Clause 3.10(3)(c), the future productive potential of highly productive land must be considered, and this should not be limited to past or present uses.
(b) improved land-management strategies	Should an existing form of primary production be found to be unviable due to permanent or long-term constraints, this subclause requires consideration of the economic viability of alternative forms of primary production. For example, should

(c) alternative production strategies	reduced access to water result in an area of HPL no longer being considered economically viable for its continued use in dairy farming, consideration should be given to alternative pastoral, arable or horticultural uses that may be economically viable within the water access constraints. An alternative production strategy should be considered in cases where conventional (or regenerative) primary production practices (to the region) are no longer profitable in the long term. A combination of improved land-management strategy with an alternative productive strategy may typically involve: • investment in methodology improvement • alternative approaches from advancements in agricultural technology • diversification of use • or adopting new methods that improve the productivity of the landowner's existing primary sector operations. Some examples are: • increasing the diversity of pasture species • grazing management, such as a rotational grazing plan • planting of perennials over single winter crops. Other considerations may include the investment of technology to reduce manual labour, in cases where the uncertainty within the labour market have resulted in the unviability of primary production. Landowners are encouraged to consider alternative production strategies so they are prepared for future challenges. These include climate change adaptation, managing disruptions to supply chains, and responding to changing consumer preferences.
(d) water efficiency or storage methods	Availability of water is anticipated to be one of the key constraints that may make land-based primary production economically unviable. This sub-clause requires consideration of whether alternative options for more efficient water usage or storage have been explored, such as developing systems that use significantly less water – eg, drip irrigation, using less water-intensive crops or products, so that what water is available can be used efficiently. Additionally, for some properties with water permits, there may be the option of constructing storage and taking water at generally higher winter flows for use during the summer.
(e) reallocation or transfer of water and nutrient allocations	For properties that are mainly limited by water and/or nutrient restrictions, this clause requires an assessment on whether those restrictions can be managed or mitigated. For example, depending on the region and specific rules in place, it may be possible to seek a transfer of a water permit or part of a nutrient load to the property from areas of land that have excesses available (eg, a farm converting to a forest may be able to transfer nutrients and water takes to elsewhere in the catchment). Other options include joining schemes or groups that enable water or nutrients to be shared between participants, for example irrigation schemes or water and nutrient user groups. While these options may come at a cost, we expect them to be seriously considered.
(f) boundary adjustments (including amalgamations)	As per Clause 3.10(4), discussed below in Clause 3.10(4) – size is not a determinant, the size and shape of land parcels is not in of itself a permanent or long-term constraint. However, it is recognised that the legal configuration of land parcels can be a contributing factor to a constraint. For example, it may be more difficult to adapt to an alternative form of land-based primary production to make better use of a water resource if the land parcel is undersized for that activity. Rearranging legal boundaries, either through boundary adjustments or amalgamation of land parcels, should be considered as an alternative to losing more HPL to unproductive uses.
(g) lease arrangements	Another option to altering legal boundaries between land parcels, as discussed in respect of subclause (f) above, is investigating whether a piece of HPL can be leased so that it becomes part of a wider land-based primary production operation. It is not

	essential that a piece of leased land be physically adjoining a land-based primary production activity on another site for a leasing arrangement to work, as many farming operations can operate on multiple, physically separated land parcels across a district (although physical proximity can help with making operations more efficient).

Clause 3.10(3) – cost-benefit analysis

Clause 3.10(3) addresses several status quo arguments that are typically used to justify the conversion of HPL to unproductive land uses. The clause provides direction on how to complete the evaluation of reasonably practicable options under Clause 3.10(2), as follows.

> *(3) Any evaluation under subclause (2) of reasonably practicable options:*
>
> *(a) must not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production; and*
>
> *(b) must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs; and*
>
> *(c) must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.*

Clause 3.10(3)(a) removes the ability for an applicant to use the potential economic benefit of using the HPL for an activity other than land-based primary production as an argument for converting it to a non-productive use. Historically, there have been examples of cost-benefit analysis reports placing more weight on the economic benefits of other land uses (rural residential subdivision, residential housing, business land, etc) over the benefits of retaining the land for land-based primary production.

HPL will always be more valuable in monetary terms when converted to an urban or rural residential use, particularly in the short term, compared to being retained for land-based primary production. The purpose of Clause 3.10(3) is to explicitly remove this argument from consideration of the merits of various, reasonably practicable options.

Clause 3.10(3)(b) requires specific consideration of the loss that the HPL would have on the landholding in which that HPL is located. This is in response to arguments that the loss of a small portion of HPL does not impact on what the balance of the property can be used for. In the wider context of a Clause 3.10 assessment (where the core argument is that there is a permanent or long-term constraint that makes the use of HPL for land-based primary production economically unviable), the loss of a small portion of HPL may exacerbate a constraint on the balance of the landholding by reducing the size of the land parcel. This should be factored into the wider assessment of reasonably practicable alternatives.

Clause 3.10(3)(c) aims to shift the discussion away from the previous or current use of an area of HPL and move it towards the potential use of the HPL. Under the status quo, arguments for using HPL for non-productive purposes, and arguments around the economic viability of a land-based primary production activity, often centre around the ability of a current landowner to make that land productive. Economic analysis often focuses on the cost of new technology, or the capital investment needed in the operation to make it economically viable, to suggest that it is beyond the means of the current landowner to afford to make those changes. However, a lack of resources and/or willingness from the current landowner to adapt the land-based primary production activity does not mean that another owner with different resources and/or willingness to invest in new technology would not be able to make the operation

economically viable. It also does not mean the HPL itself no longer has characteristics that make it productive. The purpose of Clause 3.10(3)(c) is to focus on future potential of the HPL and whether or not the reasonably practicable options considered as part of Clause 3.10(2) could enable the HPL to remain in use by land-based primary production.

Clause 3.10(4) – size is not a determinant

Clause 3.10(4) makes it clear that "the size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent or long-term constraint". This is important, as landowners will often use the size of their particular land parcel as a reason for why it cannot be used productively and why it should be allowed to be developed further. The legal arrangement of parcel boundaries does not make HPL inherently any less productive – the same soil, slope and climatic conditions exist regardless of where legal boundaries are placed. However, the existing pattern of land ownership on HPL is challenging, and it is acknowledged the more fragmented HPL is, the more difficult it is to find solutions to enable its use in land-based primary production (refer to the commentary on non-reversible fragmentation as a potential constraint above). However, there are multiple options available for either amalgamating land parcels or finding other ways to combine parcels that enables them to be used productively (and these options are required to be explored, as discussed in Clause 3.10(2) – assessing reasonably practicable options above).

Relevance of NPS-HPL for considering rezoning highly productive land

The NPS-HPL will need to be considered for proposals to rezone land identified as HPL (under the transitional definition of HPL) from a rural or rural production zone to an 'urban' or rural lifestyle zone. This section provides guidance on plan changes that propose to rezone HPL to either an 'urban' (as defined in the NPS-HPL) or a rural lifestyle zone. Further advice on amendments to give effect to the NPS-HPL which may include rezoning and plan changes to amend provisions is covered in Part 2 of the guide.

The NPS-HPL does not apply to council-initiated, or adopted, plan changes to rezone rural land to urban or rural lifestyle if they were notified before 17 October 2022 but where a decision has not yet been made. This is because these types of plan changes are excluded from the transitional definition of HPL (as discussed in more detail in What is highly productive land? above). The NPS-HPL will be relevant for all rezoning proposed plan changes on HPL after that date. The urban rezoning provisions apply equally to all types of plan changes – whether initiated by a council or lodged privately, and whether they use the responsive planning pathway under the NPS-UD or not. The NPS-HPL tests under Clause 3.6 are the same.

The various rezoning provisions (policies and implementation clauses) in the NPS-HPL are intended to work together to provide clear, coherent policy direction on when rezoning HPL to urban or rural lifestyle zoning may be appropriate to achieve the overall objective of the NPS. The NPS-HPL provides a more stringent 'avoid' approach for rural lifestyle zoning on HPL given this is an inefficient (and generally inappropriate) use of this finite resource. A more enabling 'restrict' approach provides for urban rezoning on HPL. This recognises the need for HPL to be used in some circumstances to provide sufficient development capacity for housing and

business land while also ensuring a robust assessment of alternatives is undertaken before this occurs. This also recognises that urban rezoning typically provides significantly greater benefits than rural lifestyle zoning in terms of efficient use of land as it can minimise the loss of HPL by allowing for more intensive urban development on a smaller area of land.

Rezoning HPL to an urban zone

The NPS-HPL provides a pathway for urban rezoning on HPL to align with both the requirements in the NPS-UD and the RMA functions of all local authorities. In this way the NPS-HPL provides a pathway for councils to enable sufficient development capacity to meet demand for housing and business land in regions and districts. Policy 5 is the key policy relating to urban rezoning, which states:

> *The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.*

This requires local authorities to avoid rezoning HPL unless they follow the process set out in Clause 3.6 of the NPS-HPL (restricting urban rezoning of highly productive land). This means that urban rezoning should be avoided on HPL unless all tests in Clause 3.6 can be met.

Policy 5 and Clause 3.6 applies to urban rezoning; it does not apply to 'urban development' generally. Resource consents, designations or other processes for 'urban development' that do not involve rezoning are to be assessed under the provisions relating to the subdivision, use, and development of HPL (Clauses 3.8 and 3.9) as discussed above.

The zones that are considered to be 'urban' zones are defined in Clause 1.3 of the NPS-HPL and this includes nearly all the zones defined in Standard 8 (Zone Framework Standard) in the National Planning Standards. Note that:

- Rezoning of HPL to a Māori purpose zone is not covered by the NPS-HPL on the basis that this zone specifically provides for Māori aspirations for the development of their land.
- The reference to special purpose zone within the definition of 'urban' is intended to capture the standard special purpose zones listed in the Zone Framework Standard in the National Planning Standards. It is not intended to capture bespoke special purpose zones that may be more rural in nature when considering the "nearest equivalent zone".
- Rezoning of HPL to a natural open space zone is not covered by the NPS-HPL as land is usually zoned natural open space due to the presence of a natural hazard, or because the land is part of a coastal or riparian margin. Natural open space zones may also be suitable for use as parks. However, a natural open space zoning does not result in the permanent or irreversible loss of HPL for land-based primary production.

Relationship with the National Policy Statement for Urban Development 2020

Regional councils and territorial authorities are required to give effect to both the NPS-HPL and the NPS-UD as relevant through plan change processes.[14] Proposed plan changes to rezone HPL to an urban zone are where the NPS-HPL and NPS-UD directly interact. The wording of

[14] Noting that the NPS-UD does not apply if a district does not have an 'urban environment' (as defined in the NPS-UD).

Clause 3.6 of the NPS-HPL has been drafted specifically with this interaction in mind — it enables territorial authorities to implement the NPS-HPL urban rezoning provisions to effectively fulfil their obligation to provide sufficient development capacity to meet demand for housing and business land under the NPS-UD.

The NPS-HPL also deliberately uses wording and terms that are consistent with those used in the NPS-UD (eg, sufficient development capacity, feasible, well-functioning urban environment), to ensure consistent terminology and interpretation across both national direction instruments. Clause 1.3(3) of the NPS-HPL confirms that terms defined in the NPS-UD have the same definition in the NPS-UD unless otherwise specified.

Additionally, Policy 2 and Clause 3.2 of the NPS-HPL requires that HPL is managed in an integrated way that considers the interactions with urban development. This encourages local authorities and developers to consider the relationship between the NPS-HPL and the NPS-UD in an integrated and effective manner to enable outcomes that best achieve the objectives and requirements of each national direction instrument.

Sufficient development capacity

The NPS-HPL enables rezoning of HPL to an urban zone (provided certain tests can be met) to enable local authorities to provide "sufficient development capacity" to meet demand for housing and business land to give effect to the NPS-UD. This also aligns with the general function of regional councils and territorial authorities under the RMA to provide sufficient development capacity to meet demand for housing and business land (section 30(1)(ba) and section 31(1)(aa) of the RMA).

Part 3, subpart 1 (providing development capacity) of the NPS-UD has specific requirements to determine whether there is "sufficient development capacity" to meet demand for housing and business land. Those provisions should be referred to when interpreting Clause 3.6(1)(a) of the NPS-HPL which applies to tier 1 and tier 2 local authorities. The use of the same term in the NPS-HPL is intended to provide alignment with the NPS-UD.

Well-functioning urban environment

The use of the term "well-functioning urban environment" is another example of consistent terminology between the NPS-HPL and the NPS-UD. It is used to clearly incorporate the considerations of Policy 1 of the NPS-UD into any decision on an urban rezoning proposal on HPL by a tier 1 and 2 local authority. Policy 1 of the NPS-UD requires planning decisions to contribute to well-functioning urban environments, which are defined as:

> *…urban environments that, as a minimum:*
>
> *(a) have or enable a variety of homes that:*
>
> *(i) meet the needs, in terms of type, price, and location, of different households; and*
>
> *(ii) enable Māori to express their cultural traditions and norms; and*
>
> *(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) support reductions in greenhouse gas emissions; and

(f) are resilient to the likely current and future effects of climate change.

Using the term "well-functioning urban environment" in Clause 3.6(1)(b) when assessing reasonably practicable and feasible options makes it clear that all options should result in good urban outcomes where the plan change contributes to, or achieves, a well-functioning urban environment. This is particularly relevant when considering alternative locations for urban rezoning which are not on HPL but are further away from existing urban environments. For example, it may be possible to avoid HPL further away from the urban edge but this option may not achieve a well-functioning urban environment when considering factors such as transport links, provision of infrastructure, accessibility and so on.

The requirement for an urban rezoning proposal to achieve a well-functioning urban environment should also be considered in the context of the wider "urban environment" it is located within. An urban rezoning proposal does not have to meet all the requirements listed in Policy 1 of the NPS-UD to be a considered a well-functioning urban environment in its own right, but it should contribute to meeting requirements as appropriate to the specific urban rezoning proposal and location.

Clause 3.6(1) – when urban rezoning can occur on HPL for tier 1 and 2 local authorities

Clause 3.6 of the NPS-HPL sets out slightly different processes for territorial authorities considering urban rezoning on HPL depending on what 'tier' they are as defined in the NPS-UD. Tier 1 and 2 local authorities have a particular pathway for urban rezoning of HPL because of their requirement to prepare a Housing and Business Development Capacity Assessment (HBA) under the NPS-UD. These are also the larger urban centres with generally more pressure for urban growth and expansion onto HPL. Clause 3.6(1) describes the three requirements that must be met before urban rezoning of HPL can occur within the district of a tier 1 or 2 local authority.

Clause 3.6(1)(a) – sufficient development capacity

Clause 3.6(1)(a) requires that a tier 1 or 2 local authority may only allow urban rezoning of HPL if (**emphasis added**):

> *the urban rezoning is **required to provide sufficient development capacity** to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020.*

As noted above, "sufficient development capacity" is defined in Part 3, subpart 1 of the NPS-UD. The intention of this test is that rezoning HPL to an urban zone can only be considered if it is "required" to provide sufficient development capacity to meet demand for housing and business land (as assessed in a HBA for tier 1 and 2 local authorities). Where there is already

sufficient development capacity to meet demand for housing and business land within the district, Clause 3.6(a) is not met and urban rezoning on HPL cannot occur.

The intent is the test could support the rezoning of HPL to an urban zone if needed to provide for short term (within next 3 years) and/or medium term (3–10 years) sufficient development capacity as this is required to be zoned for housing and business land for it to be 'plan-enabled' (refer Clause 3.4 of the NPS-UD). Rezoning HPL to an urban zone to provide for long-term development capacity (10–30 years) would not meet this test. This is to avoid the premature loss of HPL to urban rezoning and ensure the maximum amount of HPL remains available for land-based primary production until it is actually needed to be rezoned to provide sufficient development capacity.

Clause 3.6(1)(b) – no other reasonably practicable and feasible options

Clause 3.6(1)(b) is intended to ensure there is a robust assessment of reasonably practicable, alternative options for providing the required development capacity before urban rezoning can occur on HPL. It provides specific direction on how to assess reasonably practicable options for providing the required development capacity which is clarified further in Clause 3.6(2). This makes is clear the assessment of "reasonably practicable options" needs to focus on options that:

1. are feasible (as defined in the NPS-UD)
2. are within the same locality and market
3. achieve a well-functioning urban environment.

These three components are heavily interrelated and should be considered together 'in the round' when identifying and assessing reasonably practicable options for providing sufficient development capacity.

A key point to note is that the assessment of options must be **both** "reasonably practicable" (discussed further in Clause 3.10(2) – assessing reasonably practicable options below) and "feasible". The reference to "feasible" is another example of consistent terminology with the NPS-UD where 'feasible' is defined as follows:

> ***Feasible*** *means:*
>
> *for the short term or medium term, commercially viable to a developer based on the current relationship between costs and revenue*
>
> *for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship.*

The next part of the test is intended to ensure the assessment of reasonably practicable and feasible options focuses on providing development capacity "within the same locality and market". This is discussed further in Clause 3.6(3) – same locality and market below. The last part of the test on Clause 3.6(1)(b) makes it clear all options must still achieve 'a well-functioning urban environment' as defined in the NPS-UD (outlined above).

Clause 3.6(1)(c) – cost-benefit assessment

Clause 3.6(1)(c) requires an assessment of the benefits and costs of rezoning. It is intended to ensure a more robust assessment of benefits and costs across the four wellbeings (environment, economic, social, cultural) is undertaken for all urban rezoning proposals on HPL and that this specifically considers long-term benefits and costs and tangible and intangible values.

This assessment can be undertaken as part of an evaluation under section 32 of the RMA, or it can be a separate assessment specifically focused on meeting the tests of Clause 3.6. Wherever the assessment is completed, the evaluation should be cohesive and comprehensive. Ideally it will be part of a single document, rather than spread across a piecemeal range of documents.

The intent of Clause 3.6(1)(c) is to build on best practice in terms of section 32 evaluations but also to emphasise that, in the case of urban rezoning of HPL, there is an even greater need to look beyond the short-term economic benefits of any urban rezoning proposal and to consider the full spectrum of environmental, economic, social and cultural benefits and costs. A robust section 32 assessment that covered both the section 32 tests and the requirements of Clause 3.6(1)(c) is recommended as best practice.

The references in Clause 3.6(1)(c) to the "loss of HPL for land-based primary production" and "tangible and intangible values" require a consideration of the values of HPL that may be lost if an urban rezoning proposal is approved. This consideration should go beyond the economic value of transitioning from rural to urban use. Intangible values of HPL that should be considered as part of this assessment include:

- its value to future generations
- its finite characteristics and limited supply
- its ability to support community resilience
- the limited ability of other land to produce certain products.

The section 32 evaluation report for the NPS-HPL identified a range of benefits of retaining HPL for land-based primary production that are often intangible and where it is inappropriate to assign them a monetary value. The range of benefits and costs discussed in the NPS-HPL section 32 evaluation report include those shown in figure 2 of this report, which may provide a good starting point for considering a cost-benefit assessment for an urban rezoning proposal on HPL to meet the requirements of Clause 3.6(1)(c).

Clause 3.6(2) – range of reasonably practicable options

Clause 3.6(2) provides more specific direction on how a territorial authority must consider a range of reasonably practicable options to provide the required development capacity to meet the requirements of Clause 3.6(1)(b). Clause 3.6(2) provides a non-exhaustive list of options that should be considered (as a minimum) before pursuing urban rezoning of HPL. As the list is not exhaustive, other reasonably practicable and feasible options may also be considered as appropriate.

Clause 3.6(2) needs to be read with Clause 3.6(1)(b) in terms of what a reasonably practicable option needs to achieve. For example, an option that does not serve the same locality and market that is proposed for development (for example, a completely different part of the

district or within a completely different and distinct part of a large urban city) is not a reasonably practicable option that needs to be assessed. Additionally, the reasonably practicable options assessed must be "feasible" (ie, commercially viable for developers as defined in the NPS-UD). Options that are not commercially viable for developers do not need to be assessed and likewise a territorial authority cannot require developers to assess options that are not commercially viable. This may be due to a range of reasons, for example, infrastructure limitations, development constraints, or the inability to acquire other land.

Finally, while Clause 3.6(2) sets out a minimum list of options that must be assessed, the requirement to assess "reasonably practicable" options does not require an exhaustive assessment of all possible options. The use of the words "reasonably practicable options" is intended to align with the assessment of reasonably practicable options in section 32(1)(b)(i) and ensure a pragmatic assessment of realistic and achievable options to provide the required development capacity is completed. It is also important to recognise there are often limitations on the ability to undertake a detailed assessment of other reasonably practicable options. For example, other options may involve constraints that are not readily apparent or cannot be easily identified by territorial authorities or private plan change applicants as part of the scoping and site selection process.

In the case of private plan changes proposing urban rezoning of HPL, there are often more limitations on the reasonably practicable options that can be assessed – particularly as it is often not possible for a private landowner or developer to acquire a range of other landholdings for development. However, consideration of the listed options in Clause 3.6(2) and any other reasonably practicable options is still required for private plan changes to meet the requirements of Clause 3.6(1)(b). Other key factors to consider when assessing reasonably practicable options for providing the sufficient development capacity include:

- the extent of HPL around the existing urban environment
- options for providing development capacity in surrounding suburbs/similar small settlements nearby
- infrastructure servicing and constraints
- the presence of other constraints, such as natural hazards and sensitive and valued natural environments to be protected.

Clause 3.6(2)(a) – greater intensification in existing urban areas

Clause 3.6(2)(a) requires the consideration of whether greater intensification of existing urban areas can provide sufficient development capacity instead of urban rezoning on HPL. This is part of the requirement to demonstrate there are no other reasonably practicable options. In this context, "greater intensification" could involve 'up-zoning' existing urban zones, removal or reduction of development controls (such as minimum site sizes or recession planes), or a combination of such measures.

The relevance of this potential option will vary depending on the specific urban rezoning proposal and the locality and market it is intended to serve. For some urban rezoning proposals (eg, the rezoning of HPL to a heavy or light industrial zone), intensification is highly unlikely to be a practicable and feasible option to provide the development capacity. This is due to the nature of the activities the zone encourages (ie, industrial activities may find it more challenging to 'intensify' in the same way as residential or some business activities as the space they require usually serves an operational purpose). Greater intensification is likely to be most relevant when the urban rezoning proposal is intended to provide sufficient development

capacity to meet demand for housing. In these cases, it is important to consider relevant constraints on intensification, such as a lack of infrastructure, n5and legal constraints such as covenants. It is also necessary to consider market demand for more intensive residential housing and the likelihood of greater intensification being 'feasible and reasonably expected to be realised' (as defined in Clause 3.26 of the NPS-UD).

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the subsequent introduction of the Medium Density Residential Standards (MDRS) are likely to have resulted in a significant increase in theoretical development capacity in tier 1 and specified tier 2 urban environments across Aotearoa New Zealand. This may have an impact on previously published HBA, or HBA in development, and should be factored into any assessment of reasonably practicable options to provide the required development capacity through greater intensification under Clause 3.6(2)(a).

Clause 3.6(2)(b) – urban rezoning of land that is not HPL

The purpose of Clause 3.6(2)(b) is to ensure urban rezoning is directed away from HPL as a priority, and this is front of mind when considering reasonably practicable options for providing the required development capacity. Whether it is practicable, feasible and appropriate for non-HPL land to be rezoned urban instead of HPL will depend on a range of factors that will need to be assessed on a case-by-case basis. Relevant factors that may need to be assessed include:

- the amount of development capacity that is needed
- the relative locations of HPL and non-HPL land, particularly compared to the broader locality and market intended to be served by the urban rezoning proposal
- infrastructure availability and capacity
- the range of services and considerations needed to achieve a well-functioning urban environment (eg, a contiguous urban form with good accessibility).

Where an urban environment has a range of feasible options for greenfield development, the intent is that Clause 3.6(2)(b) will result in urban rezoning being directed to non-HPL land as the preferred option. For local authorities planning for future urban growth, the NPS-HPL now requires urban rezoning to be directed to non-HPL land unless this is not practicable, feasible or appropriate in terms of the relevant considerations in Clause 3.6(1). For private plan changes, territorial authorities will need to ensure there is a robust assessment of reasonably practicable options for providing the required development capacity on non-HPL land and this assessment should not be limited to the preferred site for the developer.

For all territorial authority urban rezoning proposals and private plan changes, a key consideration will be whether an option for urban rezoning on non-HPL will achieve a well-functioning urban environment. If urban rezoning of non-HPL would result in a disconnected or poorly functioning urban environment, then this could be justification to discount this as a reasonably practicable option under Clause 3.6(1)(b) and Clause 3.6(2)(b).

Clause 3.6(2)(c) – rezoning different HPL that has a relatively lower productive capacity

Clause 3.6(2)(c) requires consideration of the different options for urban rezoning on HPL with relatively lower "productive capacity" (as defined in the NPS-HPL and discussed in Productive

capacity above). For example, this will require an urban rezoning proposal on LUC class 1 land to consider whether urban rezoning on LUC class 2 or 3 is a reasonably practicable and feasible option to provide sufficient development capacity and achieve a well-functioning urban environment. This clause recognises there are a number of urban environments that are completely surrounded by LUC class 1, 2 or 3 land, so any future urban growth is going to result in some loss of HPL. In these situations, the intent of Clause 3.6(2)(c) is that urban rezoning should occur on the HPL with lower productive capacity potential as a priority unless that is not a feasible option or would result in a poorly functioning urban environment.

When considering the relative productive capacity of different parcels of HPL, the intent is to focus the inherent productive capacity of the land, irrespective of its current use or the ability of current landowners to use that HPL productively for land-based primary production. Conducting land productivity assessments for various land parcels (discussed in Land use and development on highly productive land) may assist with determining relative productive capacity of different urban rezoning options on HPL. If the LUC classification of the urban rezoning options is the same or similar (eg, an urban environment surrounded by LUC 3 land), further information and site-specific assessments may be needed to inform an assessment of the productive capacity of the land under Clause 3.6(2)(c).

Clause 3.6(3) – same locality and market

Clause 3.6(3) provides additional guidance to applicants and decision-makers on how to determine whether reasonably practicable options are providing development capacity within the same locality and market as the proposed urban rezoning. This is an important part of the test under Clause 3.6(1)(b) as it is a qualifier for options considered as alternatives to proposed urban rezoning of HPL. The assessment of reasonably practicable options needs to be based on a 'like for like' assessment in terms of development capacity in a location where it is needed, and to the market that is experiencing the demand.

Locality

Clause 3.6(3)(a) clarifies that sufficient development capacity is deemed to be in the same locality as a proposed urban rezoning area if it:

> *…is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020.*

A locality is an urban area (or part of an urban area, or a collection of urban settlements/areas in close proximity) with identifiable demand and supply characteristics for the purpose of assessing demand for housing and the sufficiency of existing development capacity in that locality within an HBA. The intent of Clause 3.6(3)(a) is to ensure options to provide for the required development capacity are located as close as possible to where it is needed, to avoid situations where sufficient development capacity can be provided on non-HPL, but that capacity is not in the right locality to meet the identified demand. This outcome would undermine the provisions of the NPS-UD, which are intended to ensure that sufficient development capacity is available in the localities where it is needed, and that urban rezoning results in a well-functioning urban environment (which inherently involves enabling urban development in the locations where it is needed).

The specification that an urban rezoning proposal is considered to be in the same locality if it is "in or close to a location where demand for additional development capacity has been identified" through an HBA will require an interpretation of any published HBA and the assessment that underpinned it to understand where demand for housing or business land is anticipated. For example, an HBA may cover a whole metropolitan region that comprises multiple districts, each with multiple urban areas. If the HBA identifies different demand characteristics for each of the urban areas, that may be sufficient to determine the locality where additional development capacity is required.

However, a locality should not simply be defined as the entire district administered by the territorial authority (or authorities) that prepared the Future Development Strategy. In a scenario where the territorial authority assessed demand and supply as a whole within the district (and provided no useful distinctions as to locations of demand within the district), consideration of locality is intended to be finer grained than a district as a whole and will require further analysis to understand where the key demand areas for urban growth are. Conversely, not every suburb or settlement will be its own locality – for instance a cluster of similar suburbs, or a group of settlements that cater to the same market may be a single locality. See Market, below.

If there is no guidance or information in the HBA on how development capacity is broken down spatially across the district, it may be appropriate to consider what assessment was undertaken for the Future Development Strategy under Clause 3.13(2)(a) of the NPS-UD, which requires the spatial identification of areas that will require development capacity and refers to Clauses 3.2 and 3.3 of the NPS-UD, and which the HBA is required to inform.

Some HBAs assess capacity and/or demand based on existing methods for spatially identifying small parts of a district, such as neighbourhoods or Stats NZ areas like SA1 or SA2 boundaries. In these cases, supply and demand may be assessed by the HBA at different scales. In these situations, it is important to consider the 'within or close to a location' component within in Clause 3.6(3)(a). Some localities may have high demand but have no or limited options to provide development capacity "within" that location.

Market

Clause 3.6(3)(b) clarifies that sufficient development capacity is deemed to be within the same market as a proposed urban rezoning area if it:

> *…is for a market for the types of dwelling or business land that [are] in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).*

In this context, a development "market" refers to the housing typologies or types of business land that have been identified in the HBA – for example, a single-house typology or heavy industrial land.

Generally, an urban rezoning proposal on HPL considered under Clause 3.6(1)(b) with respect to "market" should serve the market(s) which are experiencing demand, and which do not have sufficient development capacity, as identified in an HBA.

It is not necessary to apply each component of demand rigidly, particularly when there are substitution effects between different elements of demand (eg, between different types of dwellings, such as a three-bedroom terraced house being a substitute, or partial substitute, for a three-bedroom, stand-alone house). It may also be appropriate to provide some capacity for

development types for which there is low or no demand, if this is necessary to service the proposed area for rezoning and important to achieving a well-functioning urban environment (eg, a neighbourhood centre zone associated with a predominantly residential development, or open space and active recreation zones).

Clause 3.6(4) – territorial authorities that are not tier 1 or tier 2

Clause 3.6(4) provides a slightly different pathway for urban rezoning in the districts of territorial authorities that are not a tier 1 and 2 local authority (as defined in the NPS-UD). This recognises these territorial authorities are not subject to the same requirements in the NPS-UD (eg, to prepare a HBA and Future Development Strategy), but are still required to provide sufficient development capacity to meet demand for housing and business land under section 30(1)(ba) and section 31(1)(aa) of the RMA. Clause 3.6(4) applies to all other territorial authorities that are not tier 1 or 2, including those that are not tier 3 under the NPS-UD (ie, districts that do not contain a 'urban environment' as defined in the NPS-UD). This ensures there are still robust tests for urban rezoning on HPL regardless of the size of the urban area.

The intent of Clause 3.6(4) is consistent with the tests for urban zoning for tier 1 and 2 local authorities outlined above. It outlines three tests that must be met before a territorial authority may allow urban rezoning on HPL:

1. it is required to provide sufficient development capacity to meet demand for housing and business land
2. there are no other reasonably practicable and feasible options for providing the required development capacity
3. a robust assessment of benefits and costs is undertaken that demonstrates the benefits of the rezoning outweigh the costs associated with the loss of HPL.

The key differences in the tests for urban rezoning in Clause 3.6(4) are as follows:

- there is no reference to the NPS-UD (even though this applies to tier 3 local authorities and all local authorities with urban environments)
- there is no reference to 'same locality and market' as those terms are specific to an HBA under the NPS-UD
- there is no reference to the urban rezoning achieving a 'well-functioning urban environment'
- there is no list of options that must be assessed to demonstrate there are no other reasonably practicable and feasible options for providing the required development capacity.

Clause 3.6(5) – loss of HPL to be minimised

Clause 3.6(5) applies to all territorial authorities considering proposals for urban rezoning of HPL. The purpose of Clause 3.6(5) is to minimise the amount of HPL lost to urban rezoning and to ensure the loss of HPL is the minimum necessary to provide the required development capacity and achieve a well-functioning urban environment. In practice, this clause should inform how urban rezoning proposals are designed and assessed and to ensure any urban rezoning of HPL is an efficient use of that land (eg, it provides a high yield of housing to meet the demand for housing, rather than lower density residential development which depletes

more HPL). The loss of HPL should only be considered if required to provide enough development capacity. The minimum amount of HPL should be lost to provide that capacity. Acknowledging that the NPSUD refers to providing **at least** sufficient development capacity, significant additional development capacity (beyond that is required for the next 10 years) should not generally be provided on HPL.

Comparisons against other reasonably practicable and feasible options may be a way to demonstrate that the loss of HPL is minimised. For example, an urban rezoning proposal may minimise the loss of HPL by being predominantly on non-HPL land and some smaller areas of LUC class 3 land, while deliberately avoiding larger areas of LUC 1 and 2 land. The design of an urban rezoning proposal can also minimise the loss of HPL and ensure any loss of HPL is an efficient use of this land. For example, this may involve efficient location of infrastructure, key roading connections, and/or a structure plan design that ensures a high yield for the development to minimise the loss of HPL while providing the required development capacity and achieving a well-functioning urban environment.

Avoiding rezoning HPL for rural lifestyle

The NPS-HPL contains strong direction through Policy 6 and Clause 3.7 that rural lifestyle zoning of HPL should be avoided. The rationale is that it is inappropriate to:

- use Aotearoa New Zealand's most productive land for low-density housing, and
- prevent future productive use of this land through allowing fragmented ownership and the construction of dwellings and hardstand areas that have the potential to cause reverse sensitivity effects on land-based primary production activities.

For more detail see section 32 of the evaluation report for the NPS-HPL.

The expectation is that local authorities will not seek to rezone HPL to a rural lifestyle zone and will decline private plan change applications for rural lifestyle zones on HPL in accordance with Policy 6 and Clause 3.7. The only exception to this is if the land is subject to a permanent or long-term constraint that means the use of the HPL for land-based primary production is not able to be economically viable for at least 30 years. In such a scenario, there may be a pathway under Clause 3.10 to rezone the land to a rural lifestyle zone.

Further guidance on the level of information required to support a rural lifestyle rezoning application under Clause 3.10 is contained in Exemptions for HPL subject to permanent or long-term constraintsExemptions for HPL subject to permanent or long-term constraints above.

Integrated management

Policy 2 of the NPS-HPL requires that:

> *The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.*

Clause 3.2 – integrated management

Although the integrated management policy and clause are primarily aimed at regional councils and territorial authorities undertaking plan changes to give effect to the NPS-HPL (see Integrated management, in Part 2), Clause 3.2 also contains direction that local authorities must "manage the effects of subdivision, use, and development of highly productive land, in an integrated way", which has implications for resource consents and rezoning plan changes.

The most relevant subclause is likely to be Clause 3.2(1)(a), which requires consideration of how land-based primary production (including supporting activities) interact with freshwater management at a catchment level. This might be most relevant for proposals seeking to use Clause 3.10 as a pathway for development on the basis there is a permanent or long-term water availability constraint.

The remaining subclauses – Clauses 3.2(1)(b) and 3.2(1)(c) – are more strategic and will be most relevant for mapping and regional policy statement/district plan changes.

Tangata whenua involvement

Clause 3.3 – tangata whenua involvement

Clause 3.3 mainly applies when a local authority is seeking to give effect to the NPS-HPL through changes to regional policy statements and district plans (see Tangata whenua involvement, in Part 2), including any rezoning plan changes initiated by territorial authorities after the commencement of the NPS-HPL on 17 October 2022.

Clause 3.3 is not intended to specifically direct tangata whenua involvement in resource consent applications relating to HPL unless their involvement has been specifically requested.

Further guidance on engagement with tangata whenua is available on the Local Government New Zealand website.[15]

Other clauses

The NPS-HPL contains a number of clauses with the primary purpose of directing future changes to regional policy statement and district plan provisions to give effect to the NPS-HPL. These clauses are:

- Clause 3.11 – continuation of existing activities
- Clause 3.12 – supporting appropriate productive use of highly productive land
- Clause 3.13 – managing reverse sensitivity and cumulative effects.

Part 2 of this guide provides more information on how these clauses inform the development of plan changes to amend regional policy statements and district plans to give effect to the NPS-HPL. However, these clauses may also have some limited applications for resource

[15] Local Government New Zealand | Ko Tātou. June 2017. *Council-Māori Participation Arrangements: Information for councils and Māori when considering their arrangements to engage and work with each other*. https://www.lgnz.co.nz/assets/Uploads/2dac054577/44335-LGNZ-Council-Maori-Participation-June-2017.pdf

consents and/or plan change processes from the date of commencement. For example, Clause 3.11 may be used by a decision-maker on a resource consent application to inform whether they should approve an application to upgrade (including potential expansion) of an existing activity that is already located on HPL.

Part 2: Mapping highly productive land and updating plan provisions to reflect the NPS-HPL

Introduction

Part 2 of this guide focuses on the key NPS-HPL provisions that apply when:

a) a regional council goes through the process of identifying and mapping HPL in their regional policy statement; and

b) regional councils and territorial authorities update objectives, policies and rules in regional policies statements and district plans to give effect to the NPS-HPL.

Integrated management

The NPS-HPL provides as follows:

> *Policy 2: The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.*
>
> ...
>
> *3.2 Integrated management*
>
> *(1) Regional councils and territorial authorities must identify highly productive land, and manage the effects of subdivision, use, and development of highly productive land, in an integrated way, which means:*
>
> *a) considering how land-based primary production, including supporting activities, interact with freshwater management at a catchment level; and*
>
> *b) providing co-ordinated management and control of the subdivision, use, and development on highly productive land across administrative boundaries within and between regions; and*
>
> *c) taking a long-term, strategic approach to protecting and managing highly productive land for future generations.*

The intention of Policy 2 and Clause 3.2 is to highlight the key interactions between HPL, subdivision, use and development of land, and freshwater management. These provisions seek to ensure that decisions to protect HPL are made alongside managing freshwater quality and quantity, and that the management of both these resources are considered together as part of the plan-making process – for example, in setting water quality and quantity limits and allocations. The provisions also reiterate good practice in terms of taking a co-ordinated approach when working across administrative boundaries. Integrated management is not a new concept and is already a function of regional councils and territorial authorities under sections 30(1)(a) and 31(1)(a) of the RMA, respectively.

Although neither Policy 2 or Clause 3.2 mention other pieces of national direction, specifically, these provisions do not override councils' obligation to implement all national direction instruments equally; they do not place the requirements of the NPS-HPL above or below any other national direction instrument. There will inevitably be interactions and trade-offs when considering how to give effect to the NPS-HPL alongside other national direction, such as the NPS-UD and the NPS-FM.

The specific mention of freshwater management in Clause 3.2(1)(a) does not mean that freshwater issues are more important than other issues covered in national direction instruments. Rather, it recognises that provisions introduced to manage HPL will have a strong interaction with freshwater-catchment planning. The other key area of interaction (urban development) already has a specific clause to manage its alignment (Clause 3.6, see examples of other non-LUC class 1, 2 and 3 land that may be considered HPL). However, the integrated management of other areas of resource management should also be considered under Clause 3.2, including any interactions with the coastal environment, implications for climate adaptation and impacts on indigenous biodiversity.

Integrated management and mapping of HPL

With respect to taking an integrated approach to mapping HPL in a regional policy statement (RPS), the specific requirements for mapping HPL set out in Clause 3.4 (discussed in Mapping highly productive land below) set the direction for how the HPL mapping process is to be completed. The more general Clause 3.2 does not override this more specific direction on mapping, rather, it provides direction to regional councils to consider taking an integrated management approach where it is applicable to the mapping process. In practice, taking an integrated management approach with respect to issues such as management of freshwater is likely to be more relevant when deciding if any additional land (other than LUC class 1–3) should also be identified as HPL, as set out in Examples of other non-LUC class 1, 2 and 3 land that may be considered HPL below. Under this clause, regional councils have more discretion to decide if an area of land is a good candidate for being identified as HPL and if taking an integrated management approach to that decision – factoring in other issues such as water availability, for example – would be appropriate.

Integrated management and provisions to give effect to the NPS-HPL

The establishment, implementation and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of a region is a function of regional councils under section 30 of the RMA. Integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district is a function of territorial authorities under section 31 of the RMA. From a practical perspective, Policy 2 and Clause 3.2 in the NPS-HPL are directing regional councils and territorial authorities, when giving effect to the NPS-HPL through mapping and amending plans, to consider questions such as:

- Where is HPL located, relative to freshwater catchments that are experiencing quality and/or water availability issues? Are different approaches needed when drafting HPL provisions to recognise freshwater issues in particularly degraded or constrained catchments?

- Where is HPL located, relative to the coastal environment? Is there a need to amend any provisions that enable land-based primary production on HPL to address sensitive coastal areas?
- How do subdivision, use and development provisions on HPL consider indigenous biodiversity? Is there a way to develop subdivision rules that align with the NPS-HPL but that also achieve positive indigenous-biodiversity outcomes?
- How can local authorities ensure there is sufficient non-HPL land available for primary production activities and other rural activities that do not directly rely on the versatility of the soil but still need to locate in a rural environment?
- Do the new provisions to give effect to the NPS-HPL integrate well with the outcomes sought by other national direction instruments?

Taking an integrated management approach in this context means that, depending on local circumstances, councils need to assess existing provisions in their regional and district plans that address the types of matters stated above, to see if there are any conflicts or tensions that need resolving. Consequential changes to provisions in other chapters of a regional or district plan are within the scope of a plan change to give effect to the NPS-HPL if they are needed to achieve an integrated management outcome. A more detailed discussion of the types of provisions that might need to be looked at in a district plan can be found in this guide (see Subdivision rules and standards and Land use on HPL below, which discusses management of indigenous biodiversity relating to Clauses 3.8 and 3.9).

As part of taking a best practice approach to integrated management, local authorities are encouraged to think about the rural environment holistically when developing provisions to give effect to the NPS-HPL. The rural sector is a significant contributor to the Aotearoa economy and supports rural communities nationwide. It includes land-based primary production activities but also other primary production activities that are not reliant on the soil resource (such as glasshouses, hydroponic operations, intensive indoor -farming activities, seasonal worker accommodation) and rural industries that support primary production.

As part of considering how to give effect to the NPS-HPL, consideration should also be given to how other activities that support the rural sector will be enabled within a district or region. This ensures that the rural sector as a whole is supported. For instance, this may include making provision for labour supply companies which can be an important part of supporting the horticulture industry. District councils should therefore make adequate provision in their district plans for this activity to occur[16].

Considering how to provide for other activities that support the rural sector may include a review of provisions that manage primary production activities in non-HPL areas. Territorial authorities should review whether a sufficient amount of non-HPL land has been zoned to accommodate these other rural activities and industries, and ensure they are taken into account in business land supply assessments required under the NPS-UD[17].

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[16] The cap for Recognised Seasonal Employer (RSE) places has increased since the scheme came into effect in 2007, which has resulted in increased demand for seasonal worker accommodation in some districts. Demand for purpose-built accommodation for labour supply companies that serve an entire district or region may become more prevalent in the future.

[17] The NPS-UD requires tier 1 and tier 2 local authorities to assess how well demand for housing, including seasonal worker accommodation, is met within the urban environment. Local authorities should seek information from the people employing seasonal workers and providing their accommodation. If a

Any provisions in a district plan, RPS or regional plan designed to ensure HPL is managed in an integrated way[18] should be clearly identified in the associated section 32 report, with an accompanying explanation of how the proposed provisions address the identified balance/tension/trade-off.

Tangata whenua involvement

Involvement of tangata whenua in mapping HPL

The criteria for what land is mapped as HPL is intentionally limited by the direction in Clause 3.4 to provide a nationally consistent approach to mapping, and to minimise uncertainty and litigation during the mapping process. However, regional councils retain some discretion about the extent of HPL mapping in their region, in particular for areas of land considered to be highly productive that are not LUC 1, 2 or 3. Subject to the criteria in Clause 3.4(1)–(3), which outline what land can be mapped as HPL, Clause 3.3 requires that each local authority must also enable tangata whenua to be involved in decision making on areas to be mapped as HPL – particularly in relation to areas (not LUC 1, 2 or 3)[19].

Involvement of tangata whenua in changes to policy statements and plans

Clause 3.3 also applies to the involvement of tangata whenua in policy development to give effect to the NPS-HPL, particularly as it relates to specified Māori land (and also other land owned by Māori, including Treaty settlement land[20]) that might be identified and mapped as HPL. Read more about the Ministry for the Environment's National Policy Statement for Highly Productive Land: Information for what it means for Māori and Māori land. As discussed above, objectives, policies and rules to give effect to the NPS-HPL will require consideration of integrated management, which will benefit from the contribution of tangata whenua and consideration of matāuranga Māori and tikanga Māori.

Regional councils and territorial authorities should take into account aspirations of tangata whenua in rezoning decisions, particularly tangata whenua aspirations for any land identified as HPL that is not specified Māori land and which is suited to being rezoned as Māori purpose zone – see additional information on the Ministry for the Environment's National policy statement for Highly Productive Land: Information on changing the status of Māori land and rezoning land to Māori purpose zone.

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shortfall is identified, local authorities are required to understand the reasons for, and take steps to address, the shortfall. Guidance on implementing the NPS-UD, including understanding housing demand and ensuring sufficient development capacity, can be found in *The introductory guide to the National Policy Statement on Urban Development*, and on the NPS-UD landing page.

[18] That is, that the provisions take into account other national-direction instruments and/or other resources that require protection.

[19] See Clause 3.4(3).

[20] Being land held by a post-settlement governance entity (as defined in the Urban Development Act 2020) where the land was transferred or vested and held (including land held in the name of a person such as a tipuna of the claimant group, rather than the entity itself): (i) as part of redress for the settlement of Treaty of Waitangi claims; or (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed.

Clause 3.3(1) – to the extent they wish to be involved

Use of the phrase "to the extent they wish to be involved" intends to allow both iwi/hapū and local authorities to have flexibility when working together to determine appropriate ways to manage and protect HPL. This is also to ensure that local iwi and hapū have the opportunity to participate in local government decision making throughout the implementation of the NPS-HPL, particularly through the development of regional and district plans and policy statements.

Clause 3.3(2) – active involvement of tangata whenua

Clause 3.3(2) requires that the involvement of tangata whenua in giving effect to the NPS-HPL through regional policy statements, regional plans and district plans must include consultation that is early, meaningful, in accordance with tikanga Māori (as far as practicable) and undertaken at the appropriate levels of whānau, hapū and iwi decision-making structures. Note that this may require consultation beyond just the iwi and hapū authorities defined as "tangata whenua" under the RMA.[21] The Crown's Treaty obligations towards Māori are a forefront consideration. The extent to which tangata whenua are involved (and appropriate levels of whānau, hapū and iwi decision-making structures) will depend on the relative landholdings and concerns or aspirations of tangata whenua in a particular district/region. As the application of the NPS-HPL has implications for urban rezoning, freshwater, and the management and development of Māori land, this may require extensive engagement with tangata whenua.

The intent is that early collaboration with tangata whenua in the identification and mapping of the HPL will promote the sharing of expertise in this area and minimise future debate and litigation between local authorities and tangata whenua, recognising that any initial collaboration does not limit the degree to which any constituent group may wish to get involved in the Schedule 1 process for the insertion of HPL maps into a RPS.

The following links provide guidance on different partnership arrangements and principles of engagement with iwi/Māori:

- Guidelines for engagement with Māori, Te Arawhiti – Office for Māori Crown Relations
- Council-Māori Participation Arrangements: Information for councils and Māori when considering their arranges to engage and work with each other, Local Government New Zealand

Mapping highly productive land

Policy 3

> *Policy 3: Highly productive land is mapped and included in regional policy statements and district plans.*

Policy 3 directs that HPL is identified in accordance with the direction set out in the NPS-HPL and then mapped and included in RPSs (and subsequently in district plans). Policy 3 makes the

[21] Section 2 of the RMA defines "tangata whenua" as, "in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area".

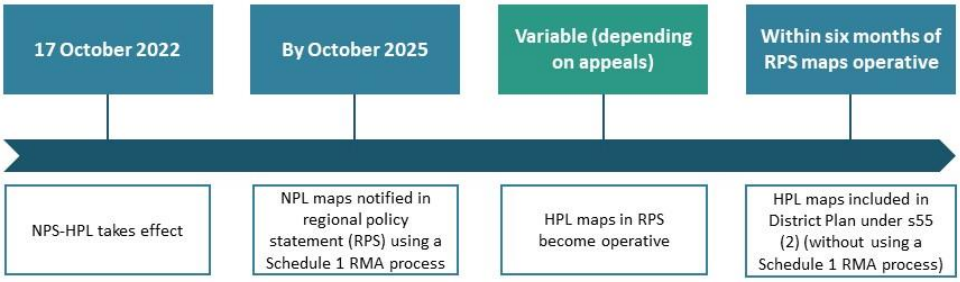
requirement to undertake HPL mapping mandatory for all local authorities and Clause 3.4 provides local authorities with the starting point for a nationally consistent HPL-identification and spatial-mapping methodology. This ensures that HPL is being identified and mapped in the same way nationwide, noting that Clause 3.4(3)[22] gives local authorities some discretion as to which additional classes of LUC (4–8) should be identified as HPL in their region/district, depending on local circumstances. Conversely, local authorities also have some discretion to exclude LUC class 1–3 land from being mapped as HPL if it does not meet the criteria in Clause 3.4(1) and (2).[23] Clause 3.5(1)–(6) provides direction on timeframes for HPL mapping in RPSs and district plans and when they should be updated.

Summary process for mapping highly productive land

Mapping of HPL is intended to be a collaborative process between regional councils and territorial authorities in consultation with tangata whenua (Clause 3.4(4)(a) and (b)) whilst adhering to the limited criteria for mapping set out in Clause 3.4(1)–(3). Refer to Tangata whenua involvement and Integrated management for further guidance on the amount of discretion regional councils have with respect to mapping HPL.

The proposed HPL maps are to be notified in an RPS within three years of the commencement date (Clause 3.5(1)), following a Schedule 1 process under the RMA. Once operative, these HPL maps need to be inserted into district plans under section 55(2) of the RMA (ie, via an amendment to their district plans, without using a process in Schedule 1) within 6 months (Clause 3.5(4)). The intent is to ensure that mapping is done once and at a scale that can be used and relied upon by all parties, and that it will not be subject to multiple iterations.

Figure 3: Summary timeframes for HPL mapping[24]



[22] Clause 3.4(3) provides:

"Regional councils may map land that is in a general rural zone or a rural production zone, but is not LUC 1, 2, or 3 land, as highly productive land if the land is, or has the potential to be (based on current uses of similar land in the region), highly productive for land-based primary production in that region, having regard to the soil type, physical characteristics of the land and soil, and climate of the area."

[23] However, all LUC class 1–3 land is considered to be HPL under the transitional definition of HPL until such time as the HPL mapping process has been completed and tested through the Schedule 1 process.

[24] Note that this figure only covers the NPS-HPL implementation process under the RMA, not any new legislation being developed as part of resource management reform.

A summary of the key sequential steps for undertaking the mapping is outlined in table 4 below.

Table 4: Summary of key sequential steps for HPL mapping

Step	Description	Relevant NPS-HPL provisions
1	Identify all land that is zoned general rural or rural production zone (or equivalent) **and** is LUC class 1, 2 and 3. Determining whether a particular zone in the District Plan is "equivalent" to general rural or rural production zone in the National Planning Standards must be based on the purpose of the zone, not necessarily the name or title of the zone. This may involve considering the zone objectives, policies and rules (including subdivision site sizes) to determine what the 'best fit' National Plannings Standards zone is.	Clause 3.4(1)(a) and (b)
2	Remove all land identified under step 1 that, at the commencement date of the NPS-HPL, is identified for future urban development (as defined in Part 1, Interpreting Clause 3.5(7)(b)).	Clause 3.4(2) Clause 1.3: definition of "identified for future urban development"
3	Identify any other land that is in a general rural or rural production zone (or equivalent), that is or has the potential to be highly productive for land. This could be based on current uses of similar land in the region, having regard to the soil type, physical characteristics of the land and soil, and climate of the area.	Clause 3.4(3)
4	Using the areas identified in steps 1 to 3 as a base, identify large and geographically cohesive areas of HPL that are predominantly LUC class 1–3 (noting that regional councils retain some discretion on including or excluding land from being mapped as HPL under Clause 3.4(1), (3) and (5)).	Clause 3.4(1)(b): "predominantly" Clause 3.4(1)(c): "large and geographically cohesive" Clause 3.4(5): explanation of Clause 3.4(1)

Permanent or long-term constraints on the use of land for land-based primary production are not justification for land not being mapped as HPL, as the inherent characteristics that make land highly productive (and resulted in LUC class 1–3 classification) are still present, regardless of other external constraints, such as water availability or what the land is currently being used for by the landowner. If a piece of land is subject to a permanent or long-term constraint that mean the use of the HPL for land-based primary production is not able to be economically viable for at least 30 years, then a landowner is able to apply for a range of alternative uses of that land (rural lifestyle rezoning, subdivision or non-land-based, primary production activities) under Clause 3.10. Refer to Exemptions for HPL subject to permanent or long-term constraints in Part 1 of this guide for more information on interpreting Clause 3.10.

Data sources for HPL mapping

The starting point for the mapping process is the NZLRI[25], which is a national map series, mapped at 1:63, 360 scale. There are recognised limitations with using the NZLRI map series to

[25] NZLRI and LUC are able to be viewed on the Our Environment website, or are available for download at the LRIS Portal.

identify LUC class 1–3 land; these relate to the scale of the maps, the age of the data and the fact that the soils do not necessarily follow easily identifiable geographic features (eg, river boundaries, roads or land-parcel boundaries). Additionally, it is possible that some pockets of LUC class 1, 2 or 3 land could be excluded from the NZLRI maps, where they exist in compound units (eg, LUC is often expressed by the dominant class in a map unit, but some map units will have more than one class mapped). Notwithstanding these limitations, Clause 3.4(5)(a) states that the LUC information on the NZLRI maps is conclusive of LUC status.

Regional councils may draw on more detailed mapping (where available) to inform the mapping process. More detailed mapping refers to an alternative mapping system that is still based on the LUC classification in the NZLRI, but includes more detailed or up-to-date data that is accepted by the regional council, not individual, site-specific assessments undertaken by landowners. NZLRI and LUC mapping completed by council staff or LUC-mapping professionals approved by councils are appropriate sources of information. Pre-existing soil conservation plans are also valid for assessing farm-scale LUC mapping if completed and approved by catchment board staff.

Where the NZLRI maps do not appear to be logical or reflective of more recent soil survey (eg, S-map) regional councils may wish to undertake more detailed LUC mapping, so as to more accurately define boundaries of LUC class 1–3 land, and use this information to inform the mapping of HPL. Detailed mapping should be based on the latest version of the 'Land Use Capability Survey Handbook'.[26] The soil-survey component should be in accordance with the 'New Zealand soil mapping protocols and guidelines'. In order to undertake more detailed mapping, councils should appoint a LUC or soil-mapping professional. When considering whether an individual is a 'professional' LUC assessor, a local authority could consider whether the individual has:

- been on an LUC training course and can produce assessments consistent with the LUC survey handbook for the past three to five years[27]
- a demonstrated track record and the experience of a LUC assessor in both mapping of soils and NZLRI/LUC, assessments specifically of land within LUC classes 1, 2 and 3 as being highly productive or not.

The section 32 report would need to clearly explain the basis for HPL boundaries and identify situations where more detailed mapping had been relied on over NZLRI (or similar) data.

"Predominantly LUC 1, 2 or 3 land" and "large and geographically cohesive area"

The references to areas of "predominately LUC 1, 2 or 3 land" and to "large and geographically cohesive area" in Clause 3.4(1) are intended to give regional councils the flexibility to define the spatial extent of HPL based on pragmatic geographic boundaries (eg, roads, rivers, property boundaries), instead of requiring that every area of LUC class 1, 2 and 3 land in the region is identified and mapped as HPL. The terms also give regional councils the ability to include small areas of land that are not LUC class 1–3 as HPL if they are part of a larger area

[26] The handbook is available from the New Zealand Soil Science Society or from the Manaaki Whenua Landcare Research Digital Library.

[27] Councils may want to consult with the LUC governance group or professional societies – such as New Zealand Association of Resource Management and New Zealand Society of Soil Science – on both factors to consider, and the process for determining/assessing, 'professional' soil and LUC mappers.

that is predominantly HPL and it makes sense to include the entire area of land as HPL, rather than excluding the small area. This is important to ensure that the maps do not show small areas of non-HPL surrounded by large areas of HPL, as this has the potential to result in reverse sensitivity effects on land-based primary production activities using the HPL.

Once a regional council has determined what data they will use as a starting point for their HPL-identification process, it is recommended that the regional council develops a methodology to translate this data into a mapping layer that identifies land that is "predominantly LUC 1, 2 or 3". This methodology may be as simple as using the LUC class 1–3 boundaries on the NZLRI database and applying them to a HPL mapping layer. Or, it may involve a combination of identifying a percentage figure – to define "predominantly" for areas of land at the edge of the suggested HPL area – and then completing a manual review of identified land – to ensure that the layer captures "large and geographically cohesive" areas. Consideration of what types of natural, legal or non-natural boundaries should be used to determine the extent of HPL (as per Clause 3.4(5)(b)) also forms part of this exercise – see Defining HPL boundaries below for more information on this process.

It is recommended that no matter which methodology regional councils agree on for identifying and mapping HPL, the process be documented, so that there is transparency as to how land parcels were identified as HPL. This transparency will be important to assist regional councils in defend their mapping methodology through the Schedule 1 process, particularly for areas of land parcels that are not LUC class 1–3 but that have been identified as HPL for other reasons (eg, as part of a large and geographically cohesive area or for being productive despite having a higher LUC class). It is also important for retaining a record of the methodology used so that the same process can be repeated in the future if/when new LUC data is made available or when there is a need to update HPL maps.

The intention is that some small, discrete and more isolated areas of LUC class 1–3 land may not need to be mapped as HPL if they are not connected to a wider area of HPL – Clause 3.4(5)(d) was included to ensure that the HPL identification process did not result in isolated pockets of HPL "spot zoning", as this is not aligned with good practice for mapping zones/precincts/overlays. Conversely, small pockets of LUC class 4–8 land may be included in HPL mapping if they would otherwise break up a "geographically cohesive area of LUC 1, 2, or 3 land". For example, the productive kiwifruit land around Te Puke is largely LUC class 1–3 land, but is often divided by steep gullies that contain other classes of LUC land. In this scenario, a regional council could include these gully areas as HPL on the basis that they form part of a large and geographically cohesive area of HPL and the land parcels that contain the gullies are predominantly LUC class 1–3 land.

Defining HPL boundaries

The intention is for HPL mapping to be done at a scale that enables landowners to readily identify whether their land is HPL. The HPL maps prepared by regional councils should leave landowners with no doubt as to whether their land is considered to be HPL or not. This will require some translation of the NZLRI data down to the scale of land parcels and some site-specific decisions as to where the HPL boundary should be. We recommend that the regional council uses the following steps for deciding appropriate boundaries for HPL:

1. Follow the HPL boundary as shown on the NZLRI maps if it aligns with a boundary in terms of Clause 3.4(5)(b).
2. If there is no alignment, look to use natural boundaries (eg, roads, margins of waterbodies) for the HPL boundary.

3. If there is no natural boundary, use a legal boundary (ie, the boundary of a land parcel) and either include or exclude small areas of LUC class 1–3 land in order to create a large and geographically cohesive area of HPL using that boundary.
4. If none of these is an option, fence-lines could be used to separate a large property that had distinct HPL and non-HPL areas – but fences are the least preferred option, as they are the easiest physical boundaries to change.

It is not a requirement that the HPL maps differentiate between LUC class 1, 2 and 3 pieces of land (or any other land classes deemed to be HPL under Clause 3.4(3)). Once land is identified as HPL, it has the same status under the NPS-HPL, regardless of its LUC class.[28] However, it is recommended that councils keep a record of the underlying LUC class as part of the base data for the LUC maps, to assist with future decision making through plan changes and resource-consent applications; it may be helpful background information to understand the spatial distribution of LUC classes, particularly for future discussions about rezoning HPL to an urban zone when considering Clause 3.6(2)(c). It would also be useful information to include in the section 32 report, to transparently explain why each area of land was identified as HPL.

Examples of other non-LUC class 1, 2 and 3 land that may be considered HPL

Clause 3.4(3) allows local authorities to consider land in other LUC classes as potential candidates for being HPL, provided it has certain characteristics that mean that the land is, or has the potential to be, highly productive in the context of that region/district. Some parts of Aotearoa have a disproportionately low amount of LUC class 1–3 land, but have land in other LUC classes that is highly productive in the context of that region/district. Alternatively, a region or district may have a particular, land-based primary production industry that relies on a class of land that is not LUC 1–3 (eg, viticulture). As such, the NPS-HPL provides discretion for regional councils to identify areas of land that have a LUC class other than 1–3 as HPL under Clause 3.4(3), provided there are local circumstances to justify taking such an approach.

Clause 3.4(3) states that a regional council may consider other areas of land that contain LUC classes other than LUC 1–3 as HPL, based on an assessment of:

- soil type
- physical characteristics of the land and soil
- climate of the area

Regional councils should also consider existing land-based primary production activities in the region and where they are located as part of the evidential basis for rezoning non-LUC class 1–3 land as HPL. For example, viticulture and stone-fruit orchards in areas like Hawke's Bay and Marlborough are often located on non-LUC class 1–3 land, but a regional council could identify the locations of these existing activities and map them as HPL on the basis that the land is being utilised productively by a land-based primary production activity and is providing significant employment and economic benefits to the region. Another example could be the shallow, stony, seasonally moisture-deficient soils of the Canterbury Plains. These soils would have a higher LUC classification than LUC class 1–3, but with good management and irrigation they can be regarded as highly productive. However, as discussed in Integrated management above, the inclusion of additional LUC classes as HPL that are not LUC class 1, 2 or 3 needs to be considered alongside other national direction, particularly urban development and

[28] Councils may decide to apply a particular rule framework to different areas of HPL to meet the needs of the district/region, provided the provisions are consistent with the NPS-HPL, including Clause 3.9. Refer to Updating policy statements and plans to reflect the NPS-HPL below.

freshwater management, as there may be other issues to consider (eg, the best location for growth given the spatial distribution of LUC classes, the susceptibility of particular soils to nutrient leaching, the impact of using the land for land-based primary production on water quality and quantity).

Site-specific assessments through the HPL mapping process

The NPS-HPL mapping process does not require widespread ground truthing or site-specific assessment of all potentially HPL land across a region. The intention is that the HPL-identification process would largely be a desktop exercise that is based on the best available information on the location of LUC class 1–3 land and following a mapping methodology agreed on by the regional council, relevant territorial authorities and tangata whenua. This mapping methodology must be based on the principles set out in Clause 3.4.

Some individual landowners may attempt to use their own site-specific assessments to justify why their land should not be included as HPL and provide those assessments to local authorities by way of submissions through the Schedule 1 process for finalising HPL maps. Regional councils have full discretion as to whether they accept third-party, site-specific, detailed mapping information (Clause 3.4(5)(a)) and do not have to accept site-specific assessments provided by landowners as a basis for excluding land parcels from being identified as HPL, as a piece of land may not be LUC class 1–3 but it may form part of a large and geographically cohesive area which necessitates its inclusion in HPL maps. Prior to the consideration or exercise of their discretion, councils should consider whether the site-specific assessments have been authored by professional LUC assessors (see Data sources for HPL mapping) and whether they have adhered to the LUC and soil-survey mapping guidelines[29].

In circumstances where there may be conflicting site-specific assessment information detailing the presence of LUC class 1–3 land or not, local authorities may consider practising the precautionary principle, or take a more conservative approach and map a larger, more cohesive area of HPL.

Detailed site-specific assessments may be provided and considered as part of a resource-consent application or rezoning process, as part of an assessment of the productive capacity of land and may involve peer review – refer to Productive capacity, in Part 1 of this guide.

Removing land from HPL maps or updating HPL maps

Once HPL is mapped in an RPS and subsequently mapped in district plans, there are different processes to go through to update these maps over time. RPS maps cannot be amended by private plan changes – the only opportunity to update RPS maps is as part of a regional-council-initiated RPS plan change or full RPS review. It is expected that each time a RPS requires a review, the HPL maps will be updated to reflect recent changes to zoning, LUC

[29] Detailed mapping should be based on the latest version of the 'Land Use Capability Survey Handbook', available from the New Zealand Soil Science Society or from the Manaaki Whenua Landcare Research Digital Library. The soil-survey component should be in accordance with the 'New Zealand soil mapping protocols and guidelines'.

classification (assuming that the NZLRI database has the potential to be updated in the future) or any other matter affecting the classification of land as HPL (see Clause 3.5(5)).

The process to remove land from district plan HPL maps will require a plan change – refer to Clause 3.5(6) – approved plan changes. If HPL is the subject of an approved district plan change to rezone the land so that it is no longer general rural or rural production zone, the land ceases to be HPL from the date the district plan change becomes operative, even if the change is not yet included in maps in an operative RPS (see Clause 3.5(6)). District councils can remove the HPL layer from the district plan maps through a plan-change process, despite this resulting in an inconsistency between the district plan and HPL maps in the RPS. This is because this scenario is specifically anticipated by Clause 3.5(6) of the NPS-HPL and both RPSs and district plans need to give effect to the NPS-HPL as a higher-order document. It is important that district plans remain current with respect to the HPL layer, particularly for any approved plan changes to rezone HPL to an urban zone using Clause 3.6. Failure to do so would likely result in unnecessary resource consents resulting from HPL provisions relating to the HPL maps, despite the land having changed to an urban use.

Updating policy statements and plans to reflect the NPS-HPL

In addition to the identification and mapping of HPL in RPSs and district plans, objectives, policies and rules in plans and policy statements will also need to be updated to reflect relevant provisions in the NPS-HPL. The degree to which changes are necessary will vary across the country, depending on how aligned operative provisions are with the NPS-HPL and in the distribution of HPL within a district/region relative to other non-HPL land. For some local authorities, minor updates to wording will be sufficient to ensure alignment of terminology and definitions, while others will require more substantial plan changes. Giving effect to the NPS-HPL will require councils to ensure that they have suitable objectives, policies and rules to protect HPL for use in land-based primary production, both now and for future generations. In doing so, it will also be necessary to consider how other rural activities/industries (not provided for on HPL) that are also important to the rural economy are provided for (refer to Integrated management above for more information).

This section outlines the key parts of RPSs, regional plans and district plans to look at when formulating new provisions to reflect the NPS-HPL.

Amendments to regional policy statements

Regional councils will need to amend their RPSs in two ways to give effect to the NPS-HPL – the insertion of objectives and policies to reflect the direction of the NPS-HPL and the insertion of maps showing the location of HPL as identified through the mapping process in Clause 3.5 of the NPS-HPL. The NPS-HPL only provides direction on the timing of RPS plan changes relating to the inclusion of HPL maps (Clause 3.5(1) and (2), as discussed in Mapping highly productive land above). However, regional councils are required to change their RPS in accordance with a national policy statement under section 61(1)(da) of the RMA and are required to give effect to a NPS under section 62(3) of the RMA.

It is recommended that amendments to the RPS policy framework and the insertion of HPL maps occur as part of a single Schedule 1 process (ie, as part of the same plan change) as opposed to separate processes, although there is nothing explicit in the NPS-HPL that requires this. However, combining both the mapping and policy components into a single, cohesive plan change is recommended as best practice, so all parties can understand the new direction of the RPS with respect to HPL at the same time as seeing the spatial extent of where the new policy direction is proposed to apply.

Regional councils should focus on developing objectives and policies that give effect to the overarching objective and Policy 1–9 of the NPS-HPL. The wording of the objective and policies in Part 2 of the NPS-HPL is clear and direct, and is supported by implementation clauses in Part 3, however, there is scope for regional councils to provide more specificity through the RPS as to how the objective and policies apply in a regional context. For example, Policy 4 relating to prioritising and supporting land-based primary production on HPL could translate into an RPS policy with the same intent, but referring to specific areas of HPL to give it a regional focus.

Changes to an RPS may also be based on a consideration of how the rural environment should be managed as a whole – including the areas identified as HPL, but also the balance of the rural environment and other parts of the region that can accommodate non-land-based primary production activities (as discussed in Integrated management above). It is important that non-land-based primary production activities that are not provided for on HPL, but are still important to the region, are enabled on non-HPL land. Direction at the RPS level to consider the rural environment holistically and how HPL provisions integrate with provisions in other areas/zones will provide useful direction to district councils as they undertake their own NPS-HPL-implementation plan changes.

Best practice for policy development encourages policy drafters to consider the NPS-HPL direction and how it may apply to the specific HPL issues facing their region, as opposed to using the exact wording of the objective and policies from Part 2 of the NPS-HPL and including identical provisions in their RPS.

Amendments to district plans

The NPS-HPL provides specific direction to territorial authorities as to the timing and content of updates to district plans to give effect to the NPS-HPL. Clause 4.1(2) states that:

> *(2) Every territorial authority must notify changes to objectives, policies, and rules in its district plan to give effect to this National Policy Statement (using a process in Schedule 1 of the Act) as soon as practicable, but no later than 2 years after maps of highly productive land in the relevant regional policy statement become operative.*

The updates to district plans are critical for the successful implementation of the NPS-HPL, as it is the subsequent rule framework that falls out of the NPS-HPL and RPS direction that will ultimately have the greatest impact on protecting HPL for land-based primary production and achieving the NPS-HPL objective. The following sections contain guidance as to the sorts of provisions that could be inserted into district plans to give effect to the NPS-HPL with respect to subdivision and land use.

Subdivision of HPL

The key provisions to look at when drafting subdivision provisions to give effect to the NPS-HPL are Policy 7 and Clause 3.8. Policy 7 is clear that the subdivision of HPL must be avoided, except as provided in the NPS-HPL. This means that district plan subdivision provisions must only allow for the subdivision of HPL if it aligns with the direction given in Clause 3.8.

Subdivision objectives and policies

It is expected that subdivision objectives and policies will reflect the direction provided in Policy 7 and Clause 3.8, but not repeat the NPS-HPL wording verbatim, as this does not provide any additional clarity about how the NPS-HPL provisions are being given effect to in the local context of a district. Objective and policy wording will also need to consider the subdivision-policy direction provided in the amended RPS, as (in most cases) amendments to the RPS to introduce both new provisions and mapping will occur in advance of district plan changes to give effect to the NPS-HPL. Where district plan changes are being prepared in advance of RPS changes, territorial authorities should work closely with regional councils in giving effect to the NPS-HPL.

Key principles that any subdivision objectives and policies should cover include:

- direction to "protect" HPL for use in land-based primary production in the objective
- strong 'avoid' direction for subdivision of HPL in Policy 7
- a focus on retaining "overall productive capacity" on all subdivided lots on HPL, in accordance with Clause 3.8(1)(a)
- consideration of whether the subdivision will result in "inappropriate use and development" in terms of subsequent activities that would be enabled by the subdivision, as Policy 8 directs that HPL should be protected from this
- direction that subdivision "avoids if possible or otherwise mitigates" the cumulative loss of HPL in accordance with Clause 3.8(2)(a), including by being explicit in a policy that any further loss of the availability or productive capacity of HPL as a result of subdivision will be an unacceptable outcome
- direction that subdivision "avoids if possible or otherwise mitigates" reverse sensitivity effects that could occur as a result of subdividing HPL in accordance with Policy 9 and Clause 3.8(2)(b)
- consideration of whether any specific policy direction is required to support the subdivision rules and standards (eg, a reference to supporting the amalgamation of existing smaller sized lots or the use of a minimum lot size)
- provision for subdivision on specified Māori land and subdivision for specified infrastructure/defence facilities on HPL in accordance with Clause 3.8(1)(b) and (c).

Subdivision rules and standards

The key direction in Clause 3.8 is that subdivision of HPL can only be provided for if the applicant demonstrates that the proposed lots will retain the "overall productive capacity" of the subject land over the long term (at least 30 years)[30]. Ways that a territorial authority could draft subdivision rules to give effect to this direction include (but are not limited to):

- setting a minimum lot size for the district that is a sufficient size to ensure the land will retain the overall productive capacity. Subdivision in accordance with this minimum lot size could be a controlled, restricted-discretionary or discretionary activity, and anything smaller than this could be a non-complying activity. It is noted that there are difficulties in obtaining objective and credible evidence for reaching a definitive site size at which the productive capacity of land is maintained. Councils may decide to set a minimum lot size that is larger than most existing sites to discourage any further fragmentation of HPL
- having no minimum lot size for subdivision of HPL but making subdivision of HPL a non-complying activity (in line with the 'avoid' direction in Policy 7). The non-complying activity status means that applicants would need to meet the tests of 104D of the RMA. Applicants will need to demonstrate that their proposal will have less than minor effects with respect to impacting the productive capacity of the HPL and not be contrary to the objectives and policies that were introduced to give effect to the NPS-HPL. Objectives and policies should be drafted so as to provide sufficient clarity on when applications to subdivide HPL should be declined. Subdivisions such as small-scale boundary adjustments to allow for minor rearrangements of lots could have a more permissive activity status than other subdivisions (ie, controlled or restricted discretionary).

There are pros and cons to each of these two approaches. Justification of the approach, any thresholds and rationale for activity status will need to be supported by robust evidence and analysis. It will be necessary to undertake some analysis of the HPL resource in the district/region, and of opportunities and constraints for using that land for land-based primary production, including an analysis of the existing subdivision pattern and physical characteristics of the HPL (see Productive capacity), that is:

- Is there capacity for more subdivision of HPL within the district whilst maintaining the overall productive capacity of HPL land in the district?
- Are lot sizes on HPL within the district already uneconomic in terms of supporting land-based primary production activities and should amalgamation or leasing arrangements be incentivised?

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[30] *3.8 Avoiding subdivision of highly productive land*

(1) Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:

(a) the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:

(b) the subdivision is on specified Māori land:

(c) the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.

(2) Territorial authorities must take measures to ensure that any subdivision of highly productive land:

(a) avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and

(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.

Territorial authorities may consider including information requirements for applicants that set out the evidence expectations for demonstrating the retention of "overall productive capacity" of the HPL. Information that could be provided to support an argument that the overall productive capacity of lots is being retained over the long term has been discussed in Productive capacity in Part 1 of this guide.

In the same way as rezoning HPL for rural-lifestyle development is considered to be an inefficient use of a valuable resource, allowing rural-lifestyle subdivisions on HPL is not aligned with the direction in Policy 7 and Clause 3.8 of the NPS-HPL. The direction is to require applicants to demonstrate that the proposed **lots** will retain the overall productive capacity of the subject land over the long term (meaning all lots created by the subdivision, not just the balance lot). Rural-lifestyle-sized lots would generally not align with this direction, however this would depend on the existing configuration of lots and how an applicant was proposing to rearrange them to demonstrate an increase of productive capacity. For example, an applicant may apply to rearrange the boundaries of a number of existing lots to create one large productive-sized lot, but also a number of smaller rural-lifestyle-sized lots.

If the existing configuration of lots could potentially be used for land-based primary production, then rearranging them to create some rural-lifestyle lot(s) would not be appropriate, because land-based primary production activities are already supported on these lots. However, if the existing configuration of lots were already unable to support land-based primary production activities, then it may be appropriate to allow some rural-lifestyle sized lots, so as to create an overall benefit in productive capacity compared to the status quo, provided there was no net increase in the number of lots created and preferably a net loss in the overall number.

Territorial authorities may wish to consider options for enabling the creation of more productive-sized lots and reversing fragmentation, as this would align with the broader objective of the NPS-HPL to protect HPL for use in land-based primary production. Some territorial authorities already use forms of transferable-development-right (TDR) subdivision rules to encourage outcomes such as the protection of indigenous biodiversity, but similar rules could also be used, or may already be in use, to encourage amalgamation of titles on HPL in exchange for development rights in a more suitable location not on HPL. There are other known complications with TDR subdivision rules,[31] so territorial authorities will need to consider whether such an approach would work for their district and/or be supported by the community.

Territorial authorities retain the ability to decide what activity status is most appropriate for their subdivision rules that apply on HPL. As a starting point for discussion, a controlled activity status for subdivisions that are likely to have minimal impacts on the productive capacity of HPL may be appropriate (eg, boundary adjustments, subdivision for specified infrastructure or subdivisions involving lots that can meet a set minimum-lot size that enables the land to be used productively. Any controlled subdivision activity on HPL should have a matter for control relating to maintaining or improving the productive capacity of the land and supporting land-based primary production on HPL.

[31] Known barriers to TDR provisions working successfully include: difficulties with administration and keeping track of where subdivision rights move to; the need to find both a donor and a receiver site; private arrangements between two landowners that can complicate the transfer process; and the availability of a suitable donor zone that can accommodate additional development rights.

For all other subdivisions, particularly in areas, districts or regions where HPL is already highly fragmented, territorial authorities should consider using a more stringent activity status (eg, discretionary or non-complying), combined with strong policy direction aligned with the direction in the NPS-HPL that clearly sets out when subdivision applications should be declined. Having a strict rule framework with respect to subdivision may encourage other arrangements to occur that will improve productive capacity, such as boundary adjustments and leasing arrangements.

Land use on HPL

The key provisions to look at when drafting land-use provisions to give effect to the NPS-HPL are Policy 8 and Clause 3.9. Policy 8 is clear that HPL is to be protected from inappropriate use and development. Clause 3.9 provides direction on how to implement Policy 8, by directing that territorial authorities must avoid the inappropriate use or development of HPL that is not land-based primary production and then setting out the sorts of activities that may be appropriate on HPL.

Table 2 in Part 1 of this guide provides examples of the sorts of activities that may be appropriate on HPL. Territorial authorities can use these examples as a guide when developing objectives, policies and rules to manage activities on HPL. However, when developing any potential rules, the following principles should be considered.

- The direction in Policy 8 and Clause 3.9 is clear that activities that are not land-based primary production should be avoided on HPL, unless they have a pathway under Clause 3.9. When read in conjunction with Policy 4 and Clause 3.12, this directs territorial authorities to:
  - make land-based primary production activities permitted on HPL (or controlled, if there are other factors that require decision makers to reserve the ability to impose consent conditions)
  - require all other activities to go through a more stringent resource-consent process that allows the territorial authority to decline an application, unless the activity is listed in Clause 3.9(2).
- Not all activities listed in Clause 3.9(2) of the NPS-HPL need to be "enabled" on HPL as permitted or controlled activities – the pathway provided under Clause 3.9(2) simply recognises that the activity may not be inappropriate on HPL. For example, rules to encourage and support planting of species that support indigenous biodiversity may have a permitted pathway on HPL, but specified infrastructure may need to go through a consent process. The measures in Clause 3.9(3) to avoid reverse sensitivity effects and minimise the loss of HPL also need to be applied.
- Councils may decide that some activities require parameters around the scale and characteristics of a proposal, if it is to be a permitted or controlled activity. Whether or not an activity needs particular parameters to limit its impact on HPL will depend on the characteristics of the HPL resource or the relevance/significance of the activity to the district/region – refer to table 2 in Part 1 for more guidance on these types of activities.
- It may also be appropriate for activities listed in Clause 3.9(2) to be either restricted discretionary (with relevant matters of discretion) or discretionary on HPL, so that decision makers retain the ability to decline such applications on HPL if the measures in Clause 3.9(3) cannot be met or if there are other project-specific factors that mean the activity is in fact inappropriate on HPL.

Territorial authorities should also consider how to accommodate the balance of primary production activities and rural industries that are not reliant on the soil resource of the land in parts of the district that are not HPL. This may involve looking at provisions in rural zones where there is no mapped HPL and ensuring that they enable a wider range of rural activities and/or considering whether there is sufficient land zoned to accommodate rural industries (such as commercial-scale packhouses and cool stores) off HPL. This could be on rural land, light-industrial land or a special purpose zone catering for rural industry, depending on the needs of the district.

Continuation of existing activities

Policy 8 requires that HPL is protected from inappropriate use and development, however this policy does not override existing use rights for activities in districts where they have been lawfully established. Existing use rights under section 10 of the RMA will continue to apply.

Clause 3.11 gives direction to territorial authorities on how they are required to provide for the continuation of existing activities on HPL through objectives, policies and rules in district plans. The focus of the NPS-HPL is primarily on new activities or rezoning proposals, and on decisions on HPL from 17 October 2022 onwards. The NPS-HPL is not able to be retrospective and amend past decisions on land fragmentation and use of HPL for non-productive purposes. As such, there is recognition in Clause 3.11 that there are activities already established on HPL that would now be considered inappropriate under Clause 3.9.

Clause 3.11(1)(a) states that territorial authorities must include objectives, policies and rules in district plans to "enable the maintenance, operation, or upgrade of any existing activities" on HPL. Territorial authorities have discretion to decide how this will work in their district plan, however potential options include (but are not limited to):

- ensuring that any provisions enabling the maintenance, operation or upgrade of existing activities apply to activities that existed on HPL as at 17 October 2022 (commencement date of the NPS-HPL)
- providing a permitted-activity pathway to maintain, operate or upgrade existing activities on HPL, provided there is no increase in the footprint of the activity and there is no change to the intensity of the activity or the likelihood that the activity will result in reverse sensitivity effects on adjacent land-based primary production activities.
- setting a total maximum area for extending the footprint of an activity (ie, in m^2) on HPL as a controlled, restricted discretionary or discretionary activity, depending on the preference of the territorial authority. This would meet the direction to enable the upgrade of an existing activity, but it would limit the extent of HPL lost and/or give councils the ability to consider whether the loss of HPL has been minimised through the design or location of the extension
- enabling rules tailored to specific scenarios, where the territorial authority anticipates the need for activities to expand (eg, enabling existing intensive indoor primary production, as defined in the National Planning Standards) to respond to changing animal-welfare legislation and practices, including the rebuilding and the expansion of a building's footprint
- provide a controlled, restricted discretionary or discretionary activity status to maintain, operate or upgrade an existing activity, but without setting a specific m^2 area.

Territorial authorities are required by Clause 3.11 to amend provisions in their district plans to give effect to the direction in the clause as soon as practicable, in accordance with the timeframes in Part 4: Timing of the NPS-HPL. It may be appropriate to consider rezoning land that has established uses that are not land-based primary production (refer to Relevance of NPS-HPL for considering rezoning highly productive land), though the NPS-HPL will apply and will need to be considered as part of such any application or decision.

Supporting appropriate productive use of HPL

Policy 4 requires that the use of HPL for land-based primary production is prioritised and supported.

Clause 3.12 directs territorial authorities to support appropriate productive use of HPL through objectives, policies and rules in district plans. The direction is that land-based primary production activities should be prioritised on HPL over other uses. Most district plans will already have provisions that enable primary production activities in their rural environments and discourage other more urban uses, which is largely consistent with Clause 3.12. When Clause 3.12 is read in conjunction with Clause 3.9, it supports a position that a land-based primary production activity on HPL should be prioritised over another rural activity that is not reliant on the soil resource of the land and that non-land-based primary production activities should be redirected to another non-HPL location in the rural environment. Policy 4 and Clause 3.9 do not negate the need to consider other relevant national direction, and how intensively land is used for land-based primary production must be considered alongside the actual and potential effects of this use on freshwater and other environmental limits.

Managing reverse sensitivity and cumulative effects

Policy 9 requires that reverse sensitivity effects are managed so as not to constrain land-based primary production activities on HPL. It is anticipated that most district plans will already contain both policy direction and rules that manage reverse sensitivity effects in rural zones.

In addition to avoiding reverse sensitivity effects, Clause 3.13[32] also requires that territorial authorities include objectives, policies and rules in their district plans to ensure that the cumulative effects of any subdivision, use or development on the availability and productive capacity of HPL in their district are considered as part of any subdivision, land use or plan change application.

In terms of how this direction should be translated into district plan provisions, Clause 3.13(1)(a) states that district plan objectives, policies and rules should "identify typical activities and effects associated with land-based primary production on highly productive land

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[32] ***3.13 Managing reverse sensitivity and cumulative effects***

(1) Territorial authorities must include objectives, policies, and rules in their district plans that:

(a) identify typical activities and effects associated with land-based primary production on highly productive land that should be anticipated and tolerated in a productive rural environment; and

(b) require the avoidance if possible, or otherwise the mitigation, of any potential reverse sensitivity effects from urban rezoning or rural lifestyle development that could affect land-based primary production on highly productive land (where mitigation might involve, for instance, the use of setbacks and buffers); and

(c) require consideration of the cumulative effects of any subdivision, use, or development on the availability and productive capacity of highly productive land in their district.

that should be anticipated and tolerated in a productive rural environment". This is anticipated to typically translate into a permitted-activity-rule regime for land-based primary production activities on HPL, supported by a policy framework that specifically identifies effects generated by land-based primary production activities that should be anticipated and tolerated (eg, noise, dust, odour, crop spraying, traffic movements).

For district plans that already contain policy direction relating to reverse sensitivity effects and/or cumulative effects on HPL, Clause 3.13 may not require any further amendments to provisions (although the section 32 report will need to justify how the existing provisions give effect to Clause 3.13). For district plans that do not currently contain policy direction relating to reverse sensitivity effects and/or cumulative effects on HPL, new clauses that align with the direction in Clause 3.13 will need to be introduced. This is anticipated to be in the form of policy direction on reverse sensitivity and cumulative effects, aligned with the wording in Clause 3.13(1)(b) and (c), and then matters of control/discretion for potentially sensitive activities that allows for consideration of reverse sensitivity and cumulative effects. Another potential option is to consider the use of buffer areas or setbacks around the edges of HPL, where a more stringent activity status applies to new sensitive activities, with the aim of directing these sensitive activities to alternative locations further away from areas of HPL.

Amendments to regional plans

It is not anticipated that extensive changes to regional plans will be necessary, but regional plan changes will still need to give effect to the NPS-HPL to the extent relevant.

It may be necessary for regional councils to amend their regional plans to give effect to the NPS-HPL (where consistent with the function of regional councils under section 30 of the RMA), particularly in regions where HPL may be regionally or nationally significant. The NPS-HPL does not contain specific direction to amend regional plans to give effect to the NPS-HPL and some regional councils may review their existing regional plan provisions and decide that amendments are not required. However, regional councils are required to change their regional plans in accordance with a national policy statement under section 66(1)(ea) of the RMA and are required to give effect to a national policy statement under section 67(3)(a) of the RMA.

Parts of regional plans in which the impacts of using HPL for land-based primary production may need to be considered include:

- establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region. Although this is typically the role of the RPS, consequential changes may also be required to regional plan provisions to align with the RPS direction in this area
- preparing objectives and policies in relation to any actual or potential effects of the use, development or protection of land which has regional significance
- controlling the use of land for the purpose of soil conservation
- controlling the taking, use, damming and diversion of water.

The NPS-HPL may impact regional plan changes relating to the setting of nutrient limits under the NPS-FM. The distribution of water and nutrient allocations may need to be amended to support the use of HPL for land-based primary production or discussions may need to be had with territorial authorities as to the impact that enabling land-based primary production in a particular catchment may have on water quality. For example, greater nutrient reductions may

be needed on non-HPL rural land than on HPL, to continue to enable that HPL to be used for land-based primary production. This enables ongoing use and redistributes nutrient allocations in the catchment to achieve this. It is also worth considering if there are any areas where the regional plan and district plan can align, for example, where a wastewater consent is needed for an activity that is a supporting activity on HPL.

Glossary

Term	Description
FDS	Future Development Strategy
HBA	Housing and Business Development Capacity Assessment
HPL	Highly productive land
LUC	Land Use Capability
MDRS	Medium Density Residential Standards
NES-F	National Environmental Standards for Freshwater 2020
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-HPL	National Policy Statement for Highly Productive Land 2022
NPS-UD	National Policy Statement for Urban Development 2020
RMA	Resource Management Act 1991
RPS/RPSs	regional policy statement/regional policy statements