

**Before the District Plan Hearings Panel appointed by Central Hawke's Bay District Council**

In the matter of                    the Resource Management Act 1991 (RMA)

And

In the matter of                    the hearing of submissions on the Proposed Central Hawke's Bay District Plan

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**Legal Submissions for Central Hawke's Bay District Council in relation to the National Policy Statement on Highly Productive Land 2022**

Dated 9 November 2022

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**May it please the Panel**

**Introduction**

1. The National Policy Statement for Highly Productive Land 2022 (NPS-HPL, or NPS) was published on 20 September 2022, and came into force on 17 October 2022 with no transitional provisions. It has a single objective, namely:

Highly productive land is protected for use in land-based primary production<sup>1</sup>, both now and for future generations.

2. In an area such as Central Hawke's Bay with significant areas of Class 1, 2 and 3 land, the NPS will have a significant impact, including on the content of the Central Hawke's Bay Proposed District Plan (PDP). District plans must be prepared 'in accordance with'<sup>2</sup> and 'give effect to'<sup>3</sup> an NPS, and s 55(3) RMA provides that "*a local authority must...take any...action that is directed by the national policy statement*". The NPS-HPL therefore has immediate consequences for the PDP process.

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<sup>1</sup> 'Land-based primary production' is defined to mean production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.

<sup>2</sup> RMA, s 74(1)(ea)

<sup>3</sup> RMA, s 75(3)(a)

3. The Ministry for the Environment has not issued any guidance documents on the application of the NPS, and, while the document is relatively clear on its face, there are certain 'grey' areas on which there is, as yet, no judicial guidance. With that proviso, these submissions address:
  - (a) Land that is affected by the NPS;
  - (b) Implications of the NPS for requests for re-zoning;
  - (c) Implications of the NPS for other sections of the PDP;
4. A copy of the NPS-HPL is provided as **Attachment A**.

#### **Land affected**

5. What constitutes 'highly productive land' (HPL) under the NPS-HPL is an important preliminary point. The term is defined in cl 1.3 to mean land mapped by the Regional Council and included in an operative Regional Policy Statement (RPS), in accordance with the process set out in the NPS. However because that mapping process need only be commenced in the next 3 years, and then only applies once the changes to the RPS have been made operative, it could easily be 5 years before HPL is mapped in the Hawke's Bay RPS.
6. The NPS addresses this interim period by providing at clause 3.5(7):

Until a regional policy statement containing maps of [HPL] in the region is operative, each relevant territorial authority and consent authority must apply this [NPS] as if references to [HPL] 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.
7. There are four factors that need to be considered to determine if land is HPL under this clause.
  - (a) *Is the land zoned general rural or rural production?*

While there is no definition of 'zoned' in the NPS or RMA, I take the reference in 3.5(7)(a) to refer to zoning in an operative district plan.<sup>4</sup> Because the CHB Operative District Plan does not use the Zone Framework Standard of the National Planning Standards, the reference to 'general rural or rural production' zones would be to the Operative District Plan's Rural Zone. I have not produced a map of the Rural Zone, but the extent of that zone is equivalent to the combined extent of General Rural (**GRUZ**), Rural Production (**RPROZ**) and Rural Living (**RLZ**) Zones in the PDP.

(b) *Is the land LUC 1, 2 or 3?*

LUC 1, 2 or 3 land is defined to mean land mapped as such by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the LUC classification. **Attachment B** shows the extent of LUC 1, 2 and 3 in CHB, derived from the Hawke's Bay Regional Council maps which I understand are based on the NZLRI data. The definition theoretically leaves open the potential for a person to engage their own appropriately qualified soil specialist to undertake more detailed site specific soil mapping to establish the land is not LUC 1, 2 or 3, or to narrow down the areas within the site that are, in an effort to avoid those areas.

(c) *Is the land identified for future urban development?*

As CHB does not have a Future Development Strategy, 'identified for future development' means that land has been identified in a strategic planning document as an area suitable for commencing urban development over the next 10 years, at a level of detail that makes the boundaries identifiable in practice. The Central Hawke's Bay Integrated Spatial Plan 2020 - 2050 is a strategic planning document (defined as a non-statutory growth plan or strategy adopted by local authority resolution) which was adopted by the Council on 24 September 2020. If there is land that is currently zoned Rural and is LUC1, 2 or 3, but is sufficiently clearly earmarked for urban growth in the Spatial Plan, it will not be treated as HPL.

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<sup>4</sup> Zoning is a type of rule. The RMA defines a 'district rule' as a rule in an operative or proposed district plan, but s 86B provides that rules (generally) do not have legal effect until decisions on submissions are made.

One matter of note is that land must be identified for ‘urban’ development, and the NPS-HPL does not treat rural lifestyle as ‘urban’. If the Spatial Plan was to identify land as appropriate for future rezoning as rural lifestyle, this would not be sufficient to take it outside the definition of HPL.

- (d) *Is the land proposed to be changed from Rural to urban or rural lifestyle in the PDP?*

The Operative Plan does not have a separate Rural Lifestyle Zone (**RLZ**), so any land notified as RLZ falls under this category as being proposed through a notified plan. Note it does not exclude land which is proposed to be zoned RPROZ or GRUZ which is sought to be rezoned to RLZ or any form of urban (residential / commercial / industrial) zone through submissions.

8. In preparing the PDP, there was a deliberate decision to seek to include the District’s LUC 1, 2 and 3 land within the RPROZ. This is evident on **Attachment B** which shows the land use classifications overlaid on the PDP zones. While there will be exceptions either way (and in particular, some GRUZ land includes areas of HPL), a rule of thumb is therefore that any land within the notified RPROZ will be HPL and subject to the NPS-HPL.

#### **Implications of NPS-HPL for Rezoning submissions**

9. There are two relevant policies in the NPS that are relevant to the Panel’s consideration of requests to rezone HPL:

Policy 5: The urban rezoning of [HPL] is avoided, except as provided in this [NPS]

Policy 6: The rezoning and development of [HPL] as rural lifestyle is avoided, except as provided in this [NPS].

10. My opening submissions for Hearing Stream 1 touched on the Supreme Court’s decision in *King Salmon*, which held that where a planning instrument uses directive language is to be strictly interpreted. It specifically held that “‘avoid’ in policies 13(1)(a) and 15(a) [of the New Zealand Coastal Policy Statement] is a strong word, meaning “not allow” or “prevent the occurrence of”<sup>5</sup>. The use of ‘avoid’

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<sup>5</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*, [2014] NZSC 38, [2014] 1 NZLR 593, at [126].

terminology in the NPS-HPL would have been deliberate, and used in light of the *King Salmon* interpretation.

11. The NPS-HPL takes the approach of setting out a relatively concise set of objectives and policies and then providing a '*non-exhaustive list of things that local authorities must do to give effect to [them]*'.<sup>6</sup> The clauses giving effect to Policies 5 and 6 are at clauses 3.6, for urban rezoning, and 3.7 for rezoning to rural lifestyle.

#### *Urban Rezoning*

12. Clause 3.6 first deals with tier 1 and 2 territorial authorities, which does not apply to CHB. However at cl 3.6(4) it goes on to provide (**emphasis added**):

Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land **only if**:

- (a) the urban zoning is **required** to provide sufficient development capacity to meet expected demand for housing or business land in the district; **and**
  - (b) there are **no other reasonably practicable and feasible options** for providing the required development capacity; **and**
  - (c) the environmental, social, cultural and economic benefits of rezoning **outweigh** the 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.
13. The bolded terms, and the fact that the requirements are cumulative, emphasise that there is a very high threshold for allowing urban rezoning of HPL.
  14. In terms of cl 3.6(4)(a), expected demand for housing and business land in CHB was assessed in the Integrated Spatial Plan, by reference to an economic report prepared by Squillions Ltd, titled 'Central Hawke's Bay District Demographic and Economic Growth Projections 2020-2051'. Predicted demand is considered to be fully met by the extent of urban zoning in the PDP, largely by providing for infill development, rather than extending onto productive land.
  15. Officers have addressed these matters as relevant to rezoning submissions, but as a general observation, any such rezoning is unlikely to be in accordance with, or give effect to, the NPS-HPL. Submitters seeking urban rezoning of HPL will need to

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<sup>6</sup> Clause 3.1, NPS-HPL.

provide evidence to satisfy the Panel that criteria (a), (b) and (c) above are all met (noting they are cumulative requirements).

### *Lifestyle Rezoning*

16. Clause 3.7 provides 'Territorial authorities must avoid rezoning of [HPL] as rural lifestyle, except as provided in clause 3.10'. Clause 3.10 provides an 'Exemption for [HPL] subject to permanent or long-term constraints'. I have not reproduced the full clause here, but in summary it relevantly provides that HPL may only be rezoned for rural lifestyle if:
  - (a) There are permanent or long-term (30+ years) constraints that mean it is not able to be economically viable for land-based primary production for at least 30 years.
  - (b) Significant loss of productive capacity of HPL, either individually or cumulatively, is avoided;
  - (c) It avoids fragmentation of large and geographically cohesive areas of [HPL];
  - (d) It avoids or mitigates reverse sensitivity effects on surrounding land-based primary production;
  - (e) The environmental, social, cultural and economic benefits of the rezoning outweigh the long-term environmental, social, cultural and economic costs associated with loss of HPL.
17. Clause 3.10 provides further guidance as to what must be considered before allowing rezoning for rural lifestyle, and if there are submitters who continue to seek that relief, the Panel should expect them to provide detailed evidence to satisfy those requirements.
18. It is fair to say that the NPS-HPL strongly discourages rezoning of HPL for rural lifestyle purposes and imposes a very high threshold for allowing such rezoning to occur. There should be a very strong presumption that the Rural Lifestyle Zone as notified will not be increased in area, if it affects HPL.

### **Implications of NPS-HPL for other sections of the PDP**

19. As well as being particularly relevant for submissions seeking rezoning, the NPS-HPL will be relevant to assessment of submissions on the Rural Environment topic, considered in Hearing Stream 3, and potentially subdivision, considered in Hearing Stream 5. It will be useful for the Panel to view any relief sought through the lens of the NPS-HPL, and ensure the PDP is consistent with it to the extent possible, however the Panel is still constrained by the scope of submissions received.
20. The NPS contains particular directions to territorial authorities, summarised as follows:
  - (a) Clause 3.9 - Avoid the inappropriate use or development of HPL that is not land-based primary production (**LBPP**), where all uses and development is inappropriate unless it falls into a limited range of situations in cl 3.9(2) and measures are taken to avoid loss of productive capacity and avoid reverse sensitivity effects on LBPP. This obligation will primarily be met through consideration of applications for resource consent, however the District Plan has an important role to play in ensuring such activities trigger a need for consent to allow that assessment to occur;
  - (b) Clause 3.11 - Include objectives, policies and rules to enable the maintenance, operation, or upgrade of existing activities on HPL and ensure that any loss of HPL from those activities is minimised. 'Existing activity' is defined to mean an activity authorised by consent or by existing use rights.
  - (c) Clause 3.12 - Include objectives, policies and rules to prioritise the use of HPL for LBPP over other uses, and encourage opportunities that maintain or increase productive capacity of HPL (provided such measures are not inconsistent with other nationally important matters);
  - (d) Clause 3.13 - Include objectives, policies and rules to identify typical activities and effects associated with LBPP on HPL that should be anticipated and tolerated and require the avoidance if possible of potential reverse sensitivity effects from urban rezoning or rural lifestyle development.
21. One matter to mention here is that the NPS-HPL particularly seeks to protect and enable LBPP which has a much narrower definition than 'Primary Production' under the National Planning Standards. The NPS definition of LBPP is "*production, from*

*agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land*'. This would only cover the **bolded** parts of the 'Primary Production' definition:

- a. any aquaculture, **agricultural, pastoral, horticultural**, mining, quarrying or **forestry activities**; and
  - b. includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);
  - c. includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but
  - d. excludes further processing of those commodities into a different product.
22. Under the NPS, only those activities shown in bold are to be 'prioritised', while all other activities would be subject to consideration under clause 3.9, in determining whether the activity is 'inappropriate'.
23. Examples would be new or extended quarries, processing activities or seasonal workers accommodation. As these do not fall within the definition of LBPP, the expectation under the NPS is that those activities could only occur if they were not 'inappropriate', with the NPS specifying that any use is inappropriate unless it falls within an exception at clause 3.9(2). Relevant matters may be that it provides for supporting activities on the land<sup>7</sup> (this may be relevant for seasonal workers accommodation or processing activities, but would appear to be restricted to servicing the land on which it is located), it is on specified Māori land,<sup>8</sup> or it is mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand, and there is a functional or operational need for the use to be on HPL.<sup>9</sup> If it allows development under any of those provisions, the Council is required to take measures to ensure that any use or development of HPL minimises or mitigates actual loss of HPL and avoids or mitigates reverse sensitivity effects on land-based primary production.
24. Mining and quarrying, and most forms of intensive primary production (**IPP**) (because they are not reliant on the soil resource) are **not** considered LBPP for the purposes of the NPS-HPL.

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<sup>7</sup> Clause 3.9(2)(a)

<sup>8</sup> Clause 3.9(2)(d)

<sup>9</sup> Clause 3.9(2)(j)

25. Importantly the changes to the District Plan outlined above are to be made using the Schedule 1 process, within 2 years of the Regional Council mapping becoming operative. As noted above, it is reasonable to expect the regional mapping plan change to take at least 5 years to reach an operative stage. Therefore the Panel's focus in this hearing should, in my view, be to making decisions on submissions that reflect the direction of the NPS-HPL where there is scope to do so, rather than on fully implementing the requirements in clauses 3.11, 3.12 and 3.13.
26. In terms of reflecting the direction of the NPS, the PDP was prepared, and reported on in the s 42A reports, with an eye to the NPS-HPL coming into force during the life of the Plan, and there is a high degree of consistency with it. The RPROZ was mapped to capture the vast majority of the LUC 1,2 and 3 land in the district, and the objectives, policies and rules for that section have a high degree of consistency with the NPS.
27. A brief discussion of the extent to which the RPROZ objectives and policies are consistent with the NPS-HPL and those areas which may need to be revisited through a later plan change / variation, include:
- (a) Objective RPROZ-O1 provides that the RPROZ is predominantly used for primary production activities (including IPP) and associated ancillary activities, and Policy RPROZ-P1 'enables' primary production and ancillary activities. This is consistent with the NPS-HPL Policy 4. As discussed below, 'primary production' in the PDP is wider than 'land-based primary production' as defined and prioritised in the NPS, however many of the other aspects of 'primary production' would likely be considered supporting activities,<sup>10</sup> and therefore not necessarily inappropriate.

The reference to IPP is in my view less consistent with the NPS, as it includes a range of activities that are not reliant on the soil resource and do not support other activities on the land. However the inclusion of reference to IPP was by way of clarification that it was included in the definition of 'primary production' and therefore their inclusion does not elevate provision for IPP beyond what was already in the notified PDP.

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<sup>10</sup> Clause 3.9(2)(a)

- (b) Objective RPROZ-O2 seeks to protect land from fragmentation, and from inappropriate building and development, including from ad hoc urban expansion. Policy RPROZ-P8 seeks to avoid residential and rural lifestyle subdivision. These provisions are entirely consistent with the NPS's Policies 7 (avoidance of subdivision) and 8 (protection from inappropriate use and development). Related policies that seek to manage the scale of post-harvest facilities and commercial activities go some way to giving effect to the NPS-HPL, although further changes are likely to be required later, given the NPS only envisages new non-land-based primary production activities establishing in very limited situations. The provision for post-harvest facilities, seasonal workers and visitor accommodation, commercial activities, community and educational facilities which are provided for as permitted subject to standards may need to be revisited and the subject of a further notified variation or plan change at a later date if ultimately deemed necessary.
- (c) RPROZ-O3 provides that activities do not reduce the potential for the highly productive land of the District to be used in a productive and sustainable manner, which is consistent with NPS Policies 4 and 9. RPROZ-P5 and P7 similarly give effect to these NPS policies.
- (d) RPROZ-O4 describes the predominant character of the RPROZ area and is very much in line with the requirement in cl 3.13(1)(a) to *"identify typical activities and effects associated with land-based primary production on [HPL] that should be anticipated and tolerated in a productive rural environment"*.
- (e) RPROZ-O6 seeks to protect the primary productive purpose of the RPROZ from being compromised by incompatible activities. This is consistent with Policy 8 (avoidance of inappropriate development) and Policy 9 (management of reverse sensitivity effects).

28. In terms of rules:

- (a) Limiting development to one residential unit per site, or 2 if greater than 12 ha, plus one additional residential unit is probably consistent with the avoidance of 'inappropriate' use or development, because residential units would be supportive of land-based primary production on the land (cl 3.9(2))

- (b) Provision for seasonal workers accommodation to a maximum gross floor area of 125m<sup>2</sup> is also likely consistent with the NPS in that either it provides for supporting activities or it allows for small scale land use that has no impact on the productive capacity of the land (because of the requirement that buildings be relocatable).
- (c) Provision for primary production activities as permitted is consistent with the NPS, including that this rule excludes post-harvest facilities, mining and quarrying which are not LBPP within the meaning of the NS-HPL. The inclusion of ancillary buildings is consistent with supporting activities not being inappropriate under cl 3.9(2)(a).
- (d) The recommended addition for artificial crop protection structures appears consistent within enabling LBPP and allowing for supporting activities.
- (e) Permitted status for new or expanded rural airstrips is not LBPP and arguably not provided for in cl 3.9 (because it supports activities on other land, not solely the subject land), however the recommended amendments to this rule do not, in my view, increase any inconsistency with the NPS and any reconsideration of this activity would need to occur at a later stage;
- (f) As noted above, there is a potential inconsistency between the NPS-HPL and the PDP's provision for post-harvest facilities, home businesses, visitor accommodation, commercial activities, community facilities, and educational facilities as permitted activities. While these activities *may* be able to meet one of the criteria in cl 3.9 or 3.10, there needs to be a consenting trigger to allow consideration of that. There were submissions seeking the deletion of permitted status for community facilities, educational facilities, and visitor accommodation (in particular, NZ Pork, S42) so there would be scope to change activity status for these matters - as to whether there is merit in doing so, I will leave to the officers. I am not aware of any submission seeking to change the activity status of the other matters and this will need to await a further plan change.
- (g) Emergency service activities and emergency aviation movements are arguably not inappropriate based on the exception for activities addressing a high risk to public health and safety (cl 3.9(2)(b)).

- (h) IPP activities require consent, however the matters for control do not include their effect on the productive capacity of HPL. This is likely a matter needing to be addressed at a later stage.
  - (i) Other activities require resource consent, which allows the full range of matters under the NPS-HPL to be considered.
29. In terms of the Rural Lifestyle Zone, Policy RLZ-P5, which requires *“buildings within the Rural Lifestyle Zone to be setback a minimum distance from property boundaries to avoid or mitigate potential adverse cross-boundary effects and land use conflicts”* is consistent with Policy 9 of the NPS-HPL. Standard RLZ-S5 sets this setback at 15m with submissions seeking a reduction of this recommended to be rejected – this is in line with what the NPS-HPL requires. I note there is a recommendation to allow a 5m minimum setback for residential activities where sites were created before 28 May 2021 and are greater than 4,000m<sup>2</sup> or where a subdivision consent was lodged before that date and subsequently granted. In my view, the appropriateness of that recommended change should be reconsidered to check officers remain satisfied that the requirement to protect LBPP from reverse sensitivity effects are addressed by those reduced setbacks.
30. In terms of the Subdivision section:
- (a) Objective SUB-O1, which specifically seeks to *“[safeguard] the rural land resource ...from inappropriate subdivision”* is consistent with Policies 4 and 7 of the NPS-HPL. Objective SUB-O4 and Policy SUB-P16’s specific recognition of avoiding reverse sensitivity effects is also in line with Policy 9.
  - (b) The ability to subdivide below minimum lot size for infrastructure is generally consistent with the exception to the requirement to avoid subdivision of HPL in cl 3.8(1)(c), although the latter includes a requirement that the infrastructure have a functional need for the subdivision which is not currently reflected in the rule, and may need to be introduced later.
  - (c) Provision for creation of lifestyle sites in conjunction with creation of a conservation lot does not appear to be consistent with the NPS-HPL. Conservation lots are essentially a trade-off between protecting significant natural areas or heritage items and allowing development of lifestyle lots not

otherwise provided for. The NPS allows for 'use or development' where it is for the purpose of protecting, maintaining etc biodiversity or is otherwise associated with a matter of national importance under s 6 RMA, but the same does not apply for subdivision. As no submitter sought deletion or significant tightening of the conservation lot rules, there is no scope to address this apparent inconsistency now, but it does provide additional reasons to reject submissions seeking to provide for additional lots (e.g. The Surveying Company, S50.010).

(d) Assessment matter RPROZ-AM1 requires consideration of the degree to which proposed buildings will "*adversely affect the life-supporting capacity of the rural soil resource, particularly the highly productive land of Central Hawke's Bay, and any potential for reverse sensitivity effects to arise*". This is consistent with the NPS-HPL's focus on ensuring no reduction in productive capacity of HPL.

31. In summary, the Council's approach of having regard to the draft NPS-in its drafting has meant that there is a very high degree of consistency between the NPS-HPL and the PDP. Reading the officer's recommended version of the RPROZ and Subdivision sections through the NPS-HPL 'lens' demonstrates the close match between what the NPS and the RPROZ seek to achieve.
32. The only other provision I consider the Panel could usefully recommend, using cl 16(2), is to update the National Direction Instruments section on 'National Policy Statements and NZ Coastal Policy Statement'. This section currently records that the National Policy Statement for Highly Productive Land is 'anticipated 2021. This could usefully be updated to include '2022' in the title and then 'The policy statement has not yet been reviewed' in the second column to denote that the 2022 version is the applicable one for plan users to refer to. As the list is for information purposes only, the amendment would be an alteration to information, where the alteration is of minor effect.

## Conclusion

33. The NPS-HPL has had a major impact, particularly on rural communities, and its interpretation and implications have yet to be tested through the Environment Court.

34. As stated above, the Panel do not need to, and cannot, fully implement the NPS-HPL at this stage, however I have identified some areas where better consistency could be achieved within the scope of submissions.
35. I am happy to respond to any questions from the Panel arising, including in relation to the implications of the NPS-HPL for any particular submission or provision.



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Asher Davidson

9 November 2022

Attachment A – National Policy Statement on Highly Productive Land 2022

# National Policy Statement for Highly Productive Land 2022

September 2022



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

Ministry for Primary Industries  
Manatū Ahu Matua



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

**Authority**

This National Policy Statement was approved by the Governor-General under section 52(2) of the Resource Management Act 1991 on 12 September 2022, and is published by the Minister for the Environment under section 52(3) of that Act.

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# Part 1: Preliminary provisions

## 1.1 Title

- (1) This is the National Policy Statement for Highly Productive Land 2022.

## 1.2 Commencement

- (1) This National Policy Statement comes into force on 17 October 2022.
- (2) See Part 4 for timeframes for giving effect to this National Policy Statement.

## 1.3 Interpretation

- (1) In this National Policy Statement:

**Act** means the Resource Management Act 1991

**commencement date** means the date on which this National Policy Statement comes into force, as identified in clause 1.2(1)

**highly productive land** means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)

**identified for future urban development** means:

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

**land-based primary production** means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land

**lifeline utility** has the meaning in section 4 of the Civil Defence Emergency Management Act 2002

**LUC 1, 2, or 3 land** means land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification

**productive capacity**, in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:

- (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

**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

**specified Māori land** means land that is any of the following:

- (a) Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) land vested in the Māori Trustee that—
  - (i) is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and
  - (ii) remains subject to that Act:
- (c) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:
- (d) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):
- (e) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
- (f) land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of the mana whenua over the land

**strategic planning document** means any non-statutory growth plan or strategy adopted by local authority resolution

**supporting activities**, in relation to highly productive land, means those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing)

**urban rezoning** means changing from a general rural or rural production zone to an urban zone

**urban**, as a description of a zone, means any of the following zones:

- (a) low density residential, general residential, medium density residential, large lot residential, and high density residential:
  - (b) settlement, neighbourhood centre, local centre, town centre, metropolitan centre, and city centre:
  - (c) commercial, large format retail, and mixed use:
  - (d) light industrial, heavy industrial, and general industrial:
  - (e) any special purpose zone, other than a Māori Purpose zone:
  - (f) any open space zone, other than a Natural Open Space zone:
  - (g) sport and active recreation.
- (2) Terms defined in the Act and used in this National Policy Statement have the meanings in the Act, unless otherwise specified.
- (3) Terms defined in the National Policy Statement on Urban Development 2020 and used in this National Policy Statement have the meanings in the National Policy Statement on Urban Development 2020, unless otherwise specified.
- (4) A reference in this National Policy Statement to a **zone** is:
- (a) a reference to a zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standards; or
  - (b) for local authorities that have not yet implemented the Zone Framework Standard of the National Planning Standards, a reference to the nearest equivalent zone.

#### **1.4 Incorporation by reference**

- (1) Clause 2(1) of Schedule 1AA of the Act does not apply to any material incorporated by reference in this National Policy Statement.

# Part 2: Objective and Policies

## 2.1 Objective

**Objective:** Highly productive land is protected for use in land-based primary production, both now and for future generations.

## 2.2 Policies

**Policy 1:** Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.

**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.

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

**Policy 4:** The use of highly productive land for land-based primary production is prioritised and supported.

**Policy 5:** The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

**Policy 6:** The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.

**Policy 7:** The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

**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.

# Part 3: Implementation

## 3.1 Outline of Part

- (1) This Part sets out a non-exhaustive list of things that local authorities must do to give effect to the objective and policies of this National Policy Statement, but nothing in this Part limits the general obligation under the Act to give effect to that objective and those policies.

## 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.

## 3.3 Tangata whenua involvement

- (1) In giving effect to this National Policy Statement through regional policy statements, regional plans, and district plans, every local authority must actively involve tangata whenua (to the extent they wish to be involved).
- (2) The active involvement must include consultation with tangata whenua that is:
  - (a) early, meaningful and, as far as practicable, in accordance with tikanga Māori; and
  - (b) undertaken at the appropriate levels of whānau, hapū, and iwi decision-making structures, recognising that:
    - (i) some delegates will have to represent the interests and perspectives of more than one group; and
    - (ii) some committees are not always fully representative of every iwi and hapū in the region; and
    - (iii) each constituent group will continue to be entitled to make submissions on notified plans and retain all other rights to be heard and have standing for appeals.

## 3.4 Mapping highly productive land

- (1) Every regional council must map as highly productive land any land in its region that:
  - (a) is in a general rural zone or rural production zone; and
  - (b) is predominantly LUC 1, 2, or 3 land; and
  - (c) forms a large and geographically cohesive area.

- (2) However, despite anything else in this clause, land that, at the commencement date, is identified for future urban development must not be mapped as highly productive land.
- (3) 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.
- (4) Regional councils must undertake the mapping required by this clause:
  - (a) in collaboration with relevant territorial authorities; and
  - (b) in consultation with tangata whenua, as required by clause 3.3; and
  - (c) at a level of detail that identifies individual parcels of land or, where appropriate for larger sites, parts of parcels of land.
- (5) For the purpose of identifying land referred to in subclause (1):
  - (a) mapping based on the New Zealand Land Resource Inventory is conclusive of LUC status, unless a regional council accepts any more detailed mapping that uses the Land Use Capability classification in the New Zealand Land Resource Inventory; and
  - (b) where possible, the boundaries of large and geographically cohesive areas must be identified by reference to natural boundaries (such as the margins of waterbodies), or legal or non-natural boundaries (such as roads, property boundaries, and fence-lines); and
  - (c) small, discrete areas of land that are not LUC 1, 2, or 3 land, but are within a large and geographically cohesive area of LUC 1, 2, or 3 land, may be included; and
  - (d) small, discrete areas of LUC 1, 2, or 3 land need not be included if they are separated from any large and geographically cohesive area of LUC 1, 2, or 3 land.

### **3.5 Identifying highly productive land in regional policy statements and district plans**

- (1) As soon as practicable, and no later than 3 years after the commencement date, every regional council must, using a process in Schedule 1 of the Act, notify in a proposed regional policy statement, by way of maps, all the land in its region that is required by clause 3.4 to be mapped as highly productive land.
- (2) The identification of highly productive land in a regional policy statement may be sequenced over the 3 years following the commencement date.
- (3) As soon as practicable, and not later than 6 months, after a regional policy statement that includes maps of highly productive land becomes operative, each relevant territorial authority must identify the highly productive land in its district, and must do so using maps that are exactly equivalent to those in the relevant regional policy statement.
- (4) The inclusion of the maps of highly productive land in district plans is an amendment subject to section 55(2) of the Act (which means the territorial authority must make the amendment without using a process in Schedule 1 of the Act).

- (5) All maps of highly productive land in proposed regional policy statements, regional policy statements, and district plans must be updated at the next appropriate plan review to reflect relevant changes to zoning, land use capability classification, or any other matter affecting the classification of land as highly productive land.
- (6) 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.
- (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.

### 3.6 Restricting urban rezoning of highly productive land

- (1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
  - (a) 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; and
  - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
  - (c) the environmental, social, cultural and economic benefits of rezoning 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.
- (2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:
  - (a) greater intensification in existing urban areas; and
  - (b) rezoning of land that is not highly productive land as urban; and
  - (c) rezoning different highly productive land that has a relatively lower productive capacity.
- (3) In subclause (1)(b), development capacity is **within the same locality and market** if it:

- (a) 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; and
  - (b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).
- (4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:
- (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and
  - (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and
  - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the 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.
- (5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

### **3.7 Avoiding rezoning of highly productive land for rural lifestyle**

- (1) Territorial authorities must avoid rezoning of highly productive land as rural lifestyle, except as provided in clause 3.10.

### **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.
- (3) In subclause (1), **subdivision** includes partitioning orders made under Te Ture Whenua Māori Act 1993.

- (4) Territorial authorities must include objectives, policies, and rules in their district plans to give effect to this clause.

### **3.9 Protecting highly productive land from inappropriate use and development**

- (1) Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.
- (2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:
- (a) it provides for supporting activities on the land:
  - (b) it addresses a high risk to public health and safety:
  - (c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:
  - (d) it is on specified Māori land:
  - (e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:
  - (f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality:
  - (g) it is a small-scale or temporary land-use activity that has 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:
  - (i) it provides for public access:
  - (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.
- (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.

- (4) Territorial authorities must include objectives, policies, and rules in their district plans to give effect to this clause.

### **3.10 Exemption for highly productive land subject to permanent or long-term constraints**

- (1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:
- (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.
- (2) In order to satisfy a territorial authority as required by subclause (1)(a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):
- (a) alternate forms of land-based primary production:
  - (b) improved land-management strategies:
  - (c) alternative production strategies:
  - (d) water efficiency or storage methods:
  - (e) reallocation or transfer of water and nutrient allocations:
  - (f) boundary adjustments (including amalgamations):
  - (g) lease arrangements.
- (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.
- (4) 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.
- (5) In this clause:  
**landholding** has the meaning in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020  
**long-term constraint** means a constraint that is likely to last for at least 30 years.

### 3.11 Continuation of existing activities

- (1) Territorial authorities must include objectives, policies, and rules in their district plans to:
  - (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and
  - (b) ensure that any loss of highly productive land from those activities is minimised.
- (2) In this clause, **existing activity** means an activity that, at the commencement date:
  - (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or
  - (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act.

### 3.12 Supporting appropriate productive use of highly productive land

- (1) Territorial authorities must include objectives, policies, and rules in their district plans that:
  - (a) prioritise the use of highly productive land for land-based primary production over other uses; and
  - (b) encourage opportunities that maintain or increase the productive capacity of highly productive land, but only where those opportunities are not inconsistent with:
    - (iv) any matter of national importance under section 6 of the Act; or
    - (v) any environmental outcomes identified in accordance with the National Policy Statement for Freshwater Management 2020.

### 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.

## Part 4: Timing

### 4.1 When this National Policy Statement takes effect

- (1) Every local authority must give effect to this National Policy Statement on and from the commencement date (noting that, until an operative regional policy statement contains the maps of highly productive land required by clause 3.5(1), highly productive land in the region must be taken to have the meaning in clause 3.5(7)).
- (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.

Attachment B – Map on LUC 1, 2 and 3 Land overlaid on PDP zone map

# Land Use Classifications and Proposed District Plan Zones in Centrals Hawke's Bay

