
Government releases National Policy Statement for Highly Productive Land

The Government last week released its latest national environmental initiative, the new National Policy Statement on Highly Productive Land (NPS-HPL) which takes effect on 17 October 2022.

The NPS-HPL is a push by the Government to protect the availability of favourable soils for food and fibre production. However, it doesn't purport to provide absolute protection for highly productive land recognising that ensuring compatibility with the National Policy Statement on Urban Development (NPS-UD) is also a key consideration.

The scope of the NPS-HPL is limited to rural land recognised through Land Use Capability (LUC) classifications as having productive value. It does not apply to land zoned or identified for urban purposes (including residential, commercial and industrial). The objective is to protect highly productive land for land-based primary production, both now and for future generations. The policies ensure a consistent approach to the management of highly productive land and reverse sensitivity associated with primary production across the whenua. There is also a renewed approach to ensuring tangata whenua involvement across decision-making structures for whānau, hapū, and iwi.

We summarise the key elements of the NPS-HPL below.

Definition

Regional councils must map as highly productive land any land that:

- is in a general rural zone or rural production zone;
- is predominantly scored as having LUC classification 1, 2, or 3. LUC class 1 signals the highest versatility of the land to accommodate primary production, with the fewest limitations on its use for that purpose. The lowest rating is an '8' which indicates no productive value; and
- forms a large and geographically cohesive area.

Regional councils may map land that is zoned general rural or rural production but is not LUC 1, 2 or 3 as highly productive if the land is or has the potential, depending on the region, to be highly productive for land-based activity in the region.

However, land identified for future urban development will be excluded.

Timing for mapping and the transitional position until the mapping has occurred

The NPS-HPL comes into effect on 17 October 2022. As soon as practicable, or within a maximum of 3 years, regional councils must notify a proposed regional policy statement with updated planning maps of the region identifying highly productive land. Within 6 months of notification, corresponding district councils must update district planning maps in accordance with the proposed regional plans.

Critically, in the transition period until regional councils have mapped all highly productive land, a transitional definition applies such that all land zoned general rural, rural production and classed LUC 1, 2, or 3 is deemed highly productive (and therefore subject to the provisions of the NPS-HPL) unless the land:

- is identified by the relevant council for future urban development; OR
- is subject to a council-initiated, or council adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

We expect this transitional definition and the resultant application of the NPS-HPL provisions could have significant implications for a number of proposals seeking to utilise rural land for urban purposes.

Rezoning, subdivision and/or development of highly productive land

Where, either through the transitional definition or through the subsequent regional council mapping, a site is identified as containing “highly productive land”, the NPS-HPL directs that rezoning, subdivision or development of that land is to be avoided (not undertaken at all) except in certain circumstances.

In a nod to the aspirations/requirements of the NPS-UD, rezoning that land for urban purposes may occur in Tier 1 or Tier 2 territorial authority areas only if:

- the urban rezoning is required to meet demand for housing/business land to give effect to the NPS-UD;
- there are no other reasonably practicable or feasible options for providing sufficient development capacity within the same locality and market (considering both location and housing typology); and
- the environmental, social, cultural and economic benefits of rezoning must also outweigh the long-term environmental, social, cultural and economic costs associated with a loss of highly productive land, considering both tangible and intangible values.

In addition to restrictions on rezoning proposals, the NPS-HPL also includes a range of constraints on subdivision and use or development of highly productive land (including where no rezoning is proposed). Those constraints generally seek to prevent subdivision and use/development where it will adversely impact the productive capacity of the land. There are specific exceptions to that general prohibition on inappropriate use/development of highly productive land, including where it is on specified Maori land; relates to indigenous biodiversity; is for a designated activity; or where it is needed for the operation, maintenance, upgrade or expansion of specified infrastructure.

Where those exceptions do not apply to the subdivision, use or development, the NPS-HPL will only authorise such activities on highly productive land where territorial authorities are satisfied that:

- permanent or long-term constraints exist in respect of that land which mean use of it for primary production is not economically viable for at least 30 years;
- the subdivision, use or development avoids significant loss (either individually or cumulatively) or productive capacity of such land in the district; avoids the fragmentation of large areas of highly productive land; and avoids/mitigates any potential reverse sensitivity effects on surrounding primary production; and
- the environmental, social, cultural and economic benefits of the proposal must also outweigh the corresponding long-term costs associated with the loss of highly productive land.

What does the NPS-HPL mean for you?

As illustrated above, this NPS, like a number of those issued in recent years, contains strong directions designed to protect a specific feature of the natural environment, in this case, productive land. Where that feature is identified on a subject site, those directions could have the effect of precluding the rezoning, subdivision, land use or development entirely.

Given the importance of our highly productive soils to human health and the health of the environment, these constraints may well be justified. It is also clear that the potential tensions of the NPS-HPL with the aspirations and requirements of the NPS-UD relating to housing capacity have been recognised, and attempts have been made with the former to provide some accommodation to the latter. However, the difficulty, as we see it, is the potential for significant areas of land to be classified as highly productive under the NPS-HPL when in reality they have very limited productive value. This is made possible by the heavy (though not exclusive) reliance within that document on the LUC classifications to determine whether land is “highly productive” or not. In reality (and as anticipated by the discussion document version of the NPS-HPL) there are a wide range of reasons why land may have productive value (or not), and there would appear to be limited opportunity to account for those in the identification of highly productive land either during the transitional default period, or through the regional councils’ mapping exercise.

As a result, large areas of land otherwise suitable for housing, for example, could, for example, be withdrawn from any rezoning proposal because of their LUC classification, despite the fact that land may otherwise be constrained for productive use.

The NPS-HPL could also significantly constrain the establishment of new renewable energy proposals on highly productive land, noting though that an exception can exist where environmental and economic benefits outweigh the costs of loss of productive use. This might seem at odds with both the direction within the NPS on Renewable Electricity Generation 2011, and with broader energy policy in this space.

To that end, if you are considering or currently preparing a rezoning proposal for rural land or are undertaking activities on rural land falls within LUC classifications 1, 2 or 3, we would strongly recommend that you contact [Francelle Lupis](#) or [Lauren Semple](#) to discuss the potential implications of the NPS-HPL. You can review the LUC classification of your site for free through the Landcare/Manaaki Whenua website.
