

Submission on the proposed National Policy Statement on Highly Productive Land
For the Ministry for the Environment

Prepared by the New Zealand Planning Institute – 10th October 2019

INTRODUCTION

1. This submission is made by **the New Zealand Planning Institute**.
2. Established in 1949, the New Zealand Planning Institute (NZPI) is the home of planning in New Zealand and has 11 active branches both within New Zealand and overseas. Our growing membership of over 2000 members are involved in strategic planning initiatives and implementation of urban and rural plans. NZPI delivers extensive training, networking opportunities, advocacy, real time planning news, mentoring, professional standards monitoring, accreditation of tertiary planning education in NZ and good practice guidance through the Quality Planning resource.

SUBMISSION

3. This submission addresses the draft NPS Highly Productive Land (NPSHPL) as set out in the MfE discussion document Valuing highly productive land dated August 2019 which is proposed: “as the most effective way to avert the loss of more of our productive land and promote its sustainable management”. We note the discussion document aims to understand views on introducing such an NPS; test the scope and direction of such a national direction tool; and understand comments and views on questions posed in the consultation document. This submission should be read in conjunction with NZPI’s submission on the proposed NPS Urban Development (NPSUD).

Summary

4. NZPI supports the current draft National Guidance initiative including NPSUD, NPSHPL, NPSFW and other policy strategies that enhance national planning tools that engage with issues New Zealanders want addressed.
5. It is critical that New Zealand’s Resource Management regulatory system has clear, robust and practical National Planning Statements that give direction for central, regional and local government. The NPS’s need to effectively integrate to enable issues related to urban development, housing, freshwater, food production, climate change to be addressed in a coordinated manner.
6. NZPI submits that the draft NPSHPL needs further work – and also that the relationships between this and other NPS’s are unresolved. NZPI submits that further national guidance is required to establish spatial plan frameworks to resolve those relationships. There should then be an additional opportunity for submissions on the final wordings of these NPS’s and supporting national guidance before being gazetted and implemented. Submissions relating to implementation and coordination issues that arise from the current proliferation of

separate National Policy Statements and unintegrated national direction form a key part of this submission.

7. That said, we expect that some of the objectives and policies in the draft NPSHPL could contribute positively to sound resource management outcomes, particularly policies that recognise and strengthen protection of highly productive soils. But NZPI has concerns about the clarity, effect and consistency with the policies as drafted which have the potential: to create uncertainty with the present productive soils protection and regulatory framework; to involve Councils and communities in new but inconsistent assessment work; leading to a less clear-cut statutory environment and a lack of legal clarity.
8. There are important aspects where the draft NPSHPL, including its relationship with the NPSUD, does not offer a strong and sound basis for good planning. These are listed here, along with NZPI submission summaries, which are enlarged upon in the rest of this document:
 - **Making NPSHPL outcomes better than status quo** (NZPI submits that as drafted and considering implementation, the proposed NPSHPL risks unintended consequences in the short term and inadequately considers the needs of future generations.)
 - **Coordinated and consistent implementation of national direction requirements** (NZPI submits NZ's growing set of NPS's requires an over-arching and integrating National Development Policy Framework built on a hierarchy of national, regional and local spatial plans.)
 - **Spatial planning, public participation and national coordination** (NZPI submits a spatial planning framework is the essential tool for Future Development Strategies enabling coordination of national guidance and appropriate public participation.)
 - **Highest and best value economics regime remains in place** (NZPI submits the proposed NPS approach will not protect HPL's from the same sort of incremental and cumulative damage as freshwater resources have suffered.)
 - **Ineffective policies to regulate soil degradation, productive land fragmentation and reverse sensitivity effects** (NZPI is concerned that NPS policies as drafted risk weakening the present regulatory environment and are not robust enough.)
 - **Protection policies emphasise short term and narrow view** (NZPI submits the focus of the proposal on soil classification, needs to be expanded to include national direction on other factors that will enable and affect soil's ability to be productive including climate change risks, location costs, and the availability of transport, labour and water.)
9. NZPI generally supports the broad objective of the proposed NPSHPL to better protect versatile lands, highly productive land, elite soils – whatever descriptor is used – from urbanisation, from damaging farming practices, and from neglect.
10. NZPI submits, however, that the problems inherent in the proposed NPSHPL lie in its recent origins. The discussion document, at pg 9, while citing research identifying two key pressures facing productive land on the edge of towns and cities (urban expansion, and the accompanying loss of NZ's most versatile and productive land; and change of land-use on the fringes of urban areas, in particular the increase in rural lifestyle developments), and noting there are other major issues affecting soils especially agricultural activities, states that the proposed NPSHPL will NOT address those broader soil quality issues. Thus, essentially, the NPSHPL only exists and is proposed to provide national guidance on managing the tradeoff between requiring that identified lands located near the urban boundary remain available for agricultural purposes (but not always), and permitting greenfield development on other lands in response to NPSUD requirements and other development pressures.

11. Thus the proposed NPSHPL, contrary to its national policy statement title which suggests it is concerned with all Highly Productive Land in New Zealand, is very particular in its scope and purpose. It exists primarily to complement in RMA terms the NPSUD.

Making NPSHPL outcomes better and clearer than status quo

12. The NPSHPL is designed as a highly focused piece of national guidance that aims to identify and protect particular agricultural lands located near or on the boundaries of growing towns and cities from being developed including by urbanisation as a consequence of greenfield growth required by the proposed NPSUD.
13. The proposed NPSHPL seeks to improve how highly productive land is managed under the RMA by Regional and District Councils, specifically to ensure the primary production potential of such land is protected for agriculture and not taken for other uses – particularly urban growth and rural lifestyle development.
14. NZPI submits that the national direction that is clear is limited to its policy that land with versatile soils Class 1-3 are to be protected immediately until a review by regional Councils. But the uncertainty, internal inconsistency and lack of direction that is in the rest of the NPS raises questions about its value – compared with the status quo – especially when weighed against the significant assessment and planning work these other provisions would impose on communities and councils.
15. The listed factors that are suggested as being weighed in deciding whether land is highly productive or not are just that – suggestions. There are no measures or directions giving clarity over how to decide. Any land having potential for primary production could be identified as HPL by a council. Local jurisdictions and stakeholders will have to go through new RMA processes without clear national guidance to identify highly productive lands.
16. NZPI submits that this degree of uncertainty, lack of clarity and vagueness will likely result in different interpretations across the country as to what the NPS actually means and requires. The very opposite of a nationally consistent approach. These differences will undermine the quality of HPL identification, and create opportunity for legal challenge by land owners and communities alike where there is disagreement.
17. NZPI submits that in the interests of certainty, practicality and efficiency, the NPSHPL should initially focus on land that can be used for a wide range of primary production and preferably on land that has the scarce versatile soils.

Coordinated and consistent implementation of national direction requirements

18. The discussion documents for the NPSUD, NPSHPL, NPS-Freshwater Management all seek advice and submissions relating to the alignment between these NPS's and with other direction under the RMA.
19. In the past 12 months NZPI has been invited to various informal engagements with MfE officials in the buildup to the recent release of these NPS discussion documents and has consistently expressed its concern about the need to consider the ways in which they interact. We have asked how practitioners should give effect to, and weigh, separate pieces of national guidance in their decisions, particularly decisions relating to resource consent applications where weight must be given to different NPS provisions.

20. Members have asked, for example, that if irrigation water is not available because of a constraint or requirement arising from a provision of the Freshwater Management NPS, to an area of land deemed “highly productive” because of provisions in the NPSHPL, then how should those different protections be weighed and assessed. Members have also asked how to trade-off NPSHPL protections when a development application is received under the proposed NPSUD relating to a piece of land which has NPSHPL protection.
21. International literature indicates that in advanced parts of the world, the basic forces determining the future of agricultural land use located near urban areas are associated with urban expansion. Where these forces are in operation, the agricultural pattern quite often is one of increasing intensity with distance from the city. Non-agricultural uses which bring higher rents “push” agricultural production beyond cities. The greater the chances are of urban land uses taking over, the lesser the chances of maintaining agricultural production or increasing its intensity will be – even where the land might be deemed “highly productive”, especially in the long run. Various environment court decisions have tended to support this in New Zealand. To make a difference in New Zealand national guidance needs to recognise and respond to these forces and realities, and establish a workable regulatory environment.
22. NZPI’s interest and concern is how to effectively operationalise these separate pieces of national guidance and direction, in order to achieve alignment and consistency while enabling expected trade-off processes, and to avoid endless conflict. There appear to be at least three optional approaches:
 - Maintain separate NPS’s. Eg NPSUD and NPSHPL. However, international experience indicates that unless the HPL’s are strongly protected they will incrementally erode and be urbanised. US practice now is to designate or zone, and to provide rate discounts and other financial encouragements to maintain and protect those lands. However here in NZ the “highest and best value” economic valuations – market forces – arrangements prevail. Subdivision applications are generally granted – eg well known Env Court decisions of Treadwell. Under present arrangements HPL would suffer the same cumulative losses and damage that freshwater has previously suffered, death by thousand cuts etc.
 - Separate NPSUD and NPSHPL (and other NPS’s) with an integrating National Development Policy Framework (like UK) or perhaps an over-arching General Policy Statement. This would set out priorities and provide hierarchy, measures and criteria for decision-making. Currently as written the NPSUD has the potential to keep overriding the NPSHPL “avoiding” statement as set out Objective 3 if the development or subdivision is deemed appropriate.
 - Integrate the NPSUD and NPSHPL into one NPS. Call it “Urban Growth”. Describe it as the tool for implementing Government’s Urban Growth Agenda. Freshwater would stay outside it – freshwater policy development having gone through a much more thorough process. This NPS would essentially require a process at regional level to manage the “supply” of land for urban development and for agricultural purposes. It could form the rump of a NZ National Planning Policy Framework. And it would explicitly indicate how the trade-offs are to be made between these uses, and what the processes are to change use. Given that the proposed NPSHPL is designed in response to the NPSUD (ie its main focus is peri-urban agricultural land) this option is expedient.

23. One of the key issues that practitioners are raising is how the various NPS's work together – as there is significant tension between them. Overall, NZPI favours Option 2 from this list. Members have worked in the UK using that regime and it appears logical and practical. MfE may not have an appetite for this or consider this approach should be left to the RMA Review Panel and process, but this will not address at a strategic level how national policy statements work together. In our submission this can't be left to individual practice and case law. Option 2 is the most workable approach and can be expanded to incorporate subsequent NPS's – e.g. biodiversity, climate change, heritage for example.
24. The key planning tool needed to give effect to this option is spatial planning. This is the consistent approach now in European countries, especially those most advanced in planning for climate change mitigation and adaptation. Best practice appears to be a hierarchy of spatial plans: national, regional and local/city levels. Each level provides direction to the lower levels.

Spatial planning, public participation and national coordination

25. NZPI has called for spatial planning for some time, and is therefore disappointed by the lack of certainty in both NPSHPL and NPSUD, which hesitates to describe the format of a Future Development Strategy – while suggesting it could be a spatial plan.
26. The tool used to integrate national direction policies should be a national spatial plan. This would be a spatial representation of the Urban Growth Agenda which would show population and settlement changes; urban growth and decline areas; highly valued horticultural lands; freshwater resources; and infrastructure enabling development (be it water or transport for example). This national development spatial plan would provide direction and policy for various Ministries including Transport, Housing & Urban Development and Environment. Regional and Unitary Authorities would be required to prepare consistent regional spatial plans which would map infrastructure (existing and future) and land uses (existing and future) to deliver the national plan, and indicate statutory responsibilities for which regional authorities hold direct responsibility – including water use allocations. City and District spatial plans would be finer grained, and indicate local statutory responsibilities – including land use regulation. Spatial planning would be the tool bringing together, and enabling coordination, of the functional outcomes of natural resource use planning (RMA), infrastructure funding (LGA and LTMA) and development (LGA and MHUD).
27. We note the effectiveness of the national guidance materials that were developed by MBIE and MfE to explain and support the implementation of the NPS Urban Development Capacity (NPSUDC). This included excel spreadsheets providing model financial analysis of land development projects, and model Housing and Business Land Assessments.
28. The Ministry could develop a National Standard spatial plan template as an exemplar Future Development Strategy document. This would avoid the wasteful creation of dozens of different types of spatial plan (or other FDS formats), would demonstrate spatially what needed to be shown in a Future Development Strategy (and illustrate FDS policies), could aim to integrate future planning requirements from NPS's (eg Urban Development, Freshwater and Productive Lands), and make a useful contribution to NZ's planning systems.
29. NZPI submits there is already useful experience in New Zealand that can be drawn on (eg Auckland's spatial plan), and that delaying the staged implementation of spatial planning to underpin development pressures until after the reviewed RMA is enacted is unacceptable.

30. NZPI notes the limited scope given for public consultation on national direction policies. By way of comparison, Auckland Council was required to adopt its spatial plan using the Local Government Act special consultative procedure. National direction and required Future Development Strategies can be communicated by means of spatial plans which lend themselves to public consultation.

Highest and best value economics regime remains in place

31. The discussion document indicates that the intent of the NPS is to ensure that the economic consideration that HPL is worth more when it is urbanised, does not trump the irreversible loss of its agricultural production capability. It also indicates an intention that urban development should be consistent with future development strategies under the NPSUD which should show where urban development is “not appropriate”. However none of the objectives or policies in the NPSHPL include clear policy direction to this effect. It appears that the existing direction requires a balancing of the costs and benefits of options for the future use of HPL.
32. Sub-clause b of policy 6 and subclause e of policy 7 (when considering applications to change HPL use to urban or rural lifestyle) both require a comparison of the economic benefits from the change of use, with the benefits from use of land for primary production. This is set against sub-clauses a and b of policy 2 which requires councils to maintain the availability of HPLs by “prioritising the use of HPL for primary production” and to “consider giving greater protection to HPL that make a greater contribution to the economy”. Quite how councils should balance these policies, while taking into account other factors that affect versatility is not part of this national guidance proposal.
33. NZPI submits that to begin with, priority should be given to the protection of land with the greatest potential to maintain the future ability of NZ to produce a wide range of food and other primary production, at locations near to where those resources will be consumed and used.

Ineffective policies to regulate soil degradation, productive land fragmentation and reverse sensitivity effects

34. NZPI is concerned that the narrow and targeted nature of the NPSHPL (to support and assist implementation of the NPSUD) is limiting its ability to target other issues which are affecting and reducing the availability of HPLs – including rural land fragmentation, reverse sensitivity and incremental soil degradation. There is a risk the NPSHPL is neither fish nor fowl – it is neither a comprehensive piece of national guidance to protect highly productive soils (as its title and the term “national policy statement” suggests), nor is it tightly enough focussed or robust enough to protect a defined subset of HPLs.
35. For example its policies in relation to the problem of land fragmentation appears to be the imposition of minimum lot sizes, which appears to give the thumbs up for subdivision that will in and of itself reduce the productive potential of land for primary production activities requiring larger areas of land to be economically viable.
36. NZPI supports policies that seek to avoid reverse sensitivity effects that risk curtailing agricultural activities, but notes the proposed policies merely seek mitigation of such effects rather than avoidance. NZPI has already noted the risk to HPLs is an incremental and cumulative one. Reverse sensitivity effects are just that, and HPLs are at risk of the phenomenon of death by a thousand cuts. National guidance needs to be clear and effective

if the objective is to protect HPLs from the effects of creeping urbanisation and rural lifestyle development.

37. NZPI notes the NPSHPL is silent on the issue of soil degradation, despite that being one of the most significant issues reported in the Our Land 2018 report. This might be because of the NPSHPL's narrow focus on the tradeoffs between urbanisation and agriculture in the peri-urban environment. However, just as demolition by neglect can be used by building owners to bypass urban heritage protection, so too can soils and HPLs be mismanaged to bypass HPL protection criteria and fast track them to greenfield use.
38. NZPI submits that strong, consistent, pragmatic and effective national guidance will be essential for regional and district councils and their staff, if they are to be empowered and to act so that the upfront HPL protection objectives of this policy statement have a good chance of being delivered on the ground around high growth cities and towns of New Zealand.

Protection policies emphasis short term and narrow view

39. NZPI notes in appendix A to proposed policy 1 the list of factors that "may be considered" in identifying HPLs. These include factors relating to water; transport routes; labour markets; and supporting facilities and infrastructure. As noted above, there is no national guidance on the application of these factors, no measures and no criteria.
40. NZPI submits that while affordable housing is an important factor underpinning national guidance, food should also be affordable. NZPI submits that keeping the best soils for producing food is also important in the transition to a low emissions economy. The Paris Agreement states countries need to find ways to adapt to climate change in a manner that does not threaten food production.
41. New Zealand should ensure that it is able to grow all the fresh and healthy food that it needs, and that it is likely to need in a world where it will be difficult to import fresh food due to climate change related risks and costs.
42. NZPI submits that the policies proposed for the identification of HPLs are limited and lack appropriate national guidance and force consistent with the purpose of the RMA.

Request to be heard

43. If there is any further opportunity to do so, the New Zealand Planning Institute wishes to be heard in support of this submission.

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