Interim Regulatory Impact Statement: Potential amendments to the National Policy Statement for Highly Productive Land

Coversheet

Purpose of Document	
Decision sought:	Cabinet approval to consult on potential amendments to the National Policy Statement for Highly Productive Land (NPS-HPL)
Advising agencies:	Ministry for the Environment (MfE), Ministry for Primary Industries (MPI)
Proposing Ministers:	Hon David Parker, Minister for the Environment Hon Damien O'Connor, Minister of Agriculture (the Ministers)
Date finalised:	5 September 2023

Problem Definition

Two issues have been identified with the NPS-HPL that warrant consultation:

1. It is unclear whether a consent pathway[1] is provided for the construction of new specified infrastructure on HPL (other than via a designation), despite the original intent that a consent pathway for such infrastructure would be provided. This lack of clarity could lead to inconsistencies in district plans and resource consent decisions and with other national direction.
2. No consent pathway is provided for new intensive indoor primary production and greenhouses to develop and relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

Executive Summary

The objective of the NPS-HPL is to protect HPL for use in land-based primary production. This is achieved by restricting inappropriate use, development or subdivision of highly productive land (HPL).

The NPS-HPL came into effect in October 2022, and most regional and district councils will not yet have given effect to the NPS-HPL in their policy statements and plans.

[1] 'Consent Pathway' refers to there being clear direction in the NPS-HPL about when a particular type of use or development may be appropriate on HPL, providing councils with the opportunity to include provision for those activities in their plans and policy statements.

Stakeholders from the renewable electricity and primary production industries have raised concerns about the NPS-HPL. MfE and MPI consider that the issues raised warrant further consideration and consultation.

The options to address each of the issues are assessed against the following criteria:

Criteria	Approach for analysis
1. Consistency with the NPS-HPL	• Supports the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations. • Aligns with policy intent of the NPS-HPL[2].
2. Consistency with the wider resource management system	• The option aligns with relevant sections under the RMA and other legislation and regulations (e.g. Natural and Built Environment bill, proposed National Planning Framework, NPS-REG, etc).
3. Effectiveness	• Provides clear consent pathway for the development of non-land-based primary production on HPL, in line with the policy intent of the NPS-HPL.
4. Implementation	• Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.
5. Cultural, Environmental, Economic and Social Wellbeing	• Balances cultural, economic, environmental, and social Wellbeing in line with the policy intent of the NPS-HPL.

Issue 1: ambiguity about whether a consent pathway is provided for new specified infrastructure

The first issue is that it is unclear whether a consent pathway is provided for the construction of new specified infrastructure on HPL (e.g solar farms). The policy intent expressed in the exposure draft of the NPS-HPL was that development of new specified infrastructure would have a consent pathway to locate on HPL, but this has not been clearly translated into the final NPS-HPL. This lack of clarity could lead to inconsistencies in district plans and resource consent decisions and with other national direction.

Preferred option to provide for the construction of new specified infrastructure on HPL

The preferred option for addressing the lack of a clear consent pathway for the construction of new specified infrastructure on HPL, is to amend the clause that provides a consent pathway for specified infrastructure on HPL (clause 3.9(2)(j)(i)) to clarify that this includes the construction of new specified infrastructure as well as the 'maintenance, operation, upgrade, or expansion of specified infrastructure'.

[2] The distinction between the two bullet points for criterion 1 recognises that the objective of the NPS-HPL is to protect HPL for use in land-based primary production. This is distinguished from the 'intent' of the policy, which provides pathways for non-land-based activities to develop on HPL, subject to specific gateway tests (e.g. functional or operational tests).

This option could result in further losses of HPL to infrastructure, in particular to solar farms. However, these loses are anticipated to be small, noting it is addressing an ambiguity rather than fundamentally changing the intent of the policy. The benefits accruing from enabling such new infrastructure (e.g. economic and environmental benefits) need to be balanced with potential loss of HPL.

This is the preferred option as it is the simplest change needed to address the issue identified and best meets the criteria**.** It ensures that the NPS-HPL provides clear unambiguous policy guidance to councils. It improves alignment of the NPS-HPL with other national direction and with the original intent on the NPS-HPL.

Retaining the status quo will not address the issues raised nor provide a solution to the policy problem identified.

We do not consider that non-regulatory options (such as technical guidance and support for councils) would sufficiently address the issue. Guidance has already been developed[3] which was unable to fully address the issue or provide sufficient clarification.

Issue 2: no clear consent pathway for new intensive indoor primary production and greenhouses

The second issue is that no clear consent pathway is provided for intensive indoor primary production and greenhouses to develop or relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

This differentiates from pathways that the NPS-HPL provides for other non-land-based activities to locate on HPL (subject to tests in the national policy statement).

Options to provide for the development and relocation of intensive indoor primary production and greenhouses on HPL

MPI and MfE do not have a preferred option at this stage as further evidence is needed to justify a change from the status quo.

The issues raised by primary industry stakeholders warrant further consideration and consultation, but the desired outcomes of climate change resilience and supporting food production industries needs to be balanced against the protection of a finite resource for use in land-based primary production, both now and for future generations (objective of NPS-HPL).

Other non-regulatory options such as technical guidance and support for councils is not considered sufficient, because guidance material cannot override provisions in the NPS-HPL.

Public consultation would benefit the analysis of both issues outlined in this interim Regulatory Impact Statement (RIS)

[3] Ministry for the Environment. 2023. National Policy Statement for Highly Productive Land: Guide to implementation. National-Policy-Statement-Highly-Productive-Land-Guide-to-implementation-March-2023.pdf (environment.govt.nz)

In May 2023, as part of early analysis, officials tested the issues and potential options with a selection of different stakeholders[4] from the renewable electricity and primary sector industries and councils in pre-engagement workshops. Industry stakeholders confirmed the issues and supported amendments being made to the NPS-HPL. However, feedback from selected councils was mixed. Urban councils did not consider amendments necessary while those with larger areas of HPL were more supportive of revisiting clause 3.9 exceptions in the NPS-HPL.

On this basis, the issues and potential solutions warrant further engagement from a wider range of stakeholders, including iwi partners, interested organisations and the public via consultation.

It is recommended that public consultation is undertaken to gain a wider perspective of both of these issues and to test whether amendments to the NPS-HPL are necessary.

The information gathered from consultation will inform further analysis and assessment of costs and benefits, and officials' recommendations for any changes to the NPS-HPL.

Limitations and Constraints on Analysis

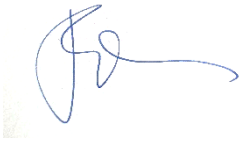
The scope of this RIS is limited to interventions that either align with the intent of the NPS-HPL or is an extension of pathways already provided under the national policy statement. Some of the of key limitations associated with the policy approaches and analysis put forward in this document are because the NPS-HPL has been in effect less than a year, meaning:

- Most councils have not yet undertaken the necessary plan changes to align with the requirements.
- There has been limited testing of the NPS-HPL provisions and little evidence available to understand the extent that the issues, addressed in this RIS, are impacting councils, applicants and stakeholders.
- There is limited evidence (such as lack of available resource consents and case law) to support the issues raised by renewable energy and primary production stakeholders and the need for the amendments proposed.

Another limitation of this interim RIS is that the costs associated with administering the regulations, consent applications and compliance have yet to be quantified. It is likely the costs will vary by district depending on the quantity of HPL within a district and the development pressures the district is facing.

We also have limited information about the marginal costs and benefits of the different options. Consultation will improve our information and evidence base, and previous analysis and available information will be used to inform final policy proposals. This RIS will also benefit from wider input and perspectives to allow officials to fully understand issues and the implications of the potential amendments covered in the discussion document and interim RIS (to address the separate issues related to specified infrastructure and primary production).

[4] Noting that the amendment to provide for specified infrastructure was only tested with renewable energy stakeholders and councils – the same approach was implemented for potential amendments to provide for intensive indoor primary production and greenhouses (tested only with primary industries and councils).

Responsible Manager(s) (completed by relevant manager)	
Thomas Corser Manager, Land Policy, Ministry for Primary Industries  25 July 2023 Jo Burton Manager, Land and Water Systems, Ministry for the Environment  25 July 2023	
Quality Assurance (completed by QA panel)	
Reviewing Agency:	The Ministry for Primary Industries
Panel Assessment & Comment:	The Ministry for Primary Industries' Regulatory Impact Analysis (RIA) panel has reviewed the *Interim Regulatory Impact Statement: Potential amendments to the National Policy Statement for Highly Productive Land.* The regulatory impact statement has been jointly prepared by the Ministry for the Environment and Ministry for Primary Industries and functions as an interim RIA. The RIA panel considers that the interim RIA **fully meets** the RIA requirements. The problem, constraints and limitations have been explained well, and the objectives and analysis of options are clear. The interim RIA also identifies information gaps that are intended to be addressed through forthcoming public consultation.

Section 1: Diagnosing the policy problem

The following section – diagnosing the policy problem – is structured as follows:

Section 1.1 covers the context behind the NPS-HPL and the policy issues including those raised by renewable electricity generation and primary industry stakeholders in relation to implementation of the NPS-HPL.

Section 1.2 covers the context behind the policy issue for new specified infrastructure and how the status quo is expected to develop.

Section 1.3 covers the context behind the policy issue for intensive indoor primary production and greenhouses and how the status quo is expected to develop.

1.1 What is the context behind the policy problem and how is the status quo expected to develop?

1.1.2 Wider context of what the NPS-HPL is, and the issues raised about the policy

The National Policy Statement for Highly Productive Land (NPS-HPL) came into force in October 2022.

The NPS-HPL provides Local Planning Authorities with national direction on how highly productive land (HPL) should be managed through plan making processes and resource management decisions under the Resource Management Act 1991 (RMA). Most provisions have immediate effect, placing restrictions on rezoning, subdivision and land-use proposals on land that meets the transitional definition of HPL (Land Use Capability Classification System (LUC) classes 1–3, with some exceptions)[5]. 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 primary objective of the NPS-HPL is to protect the soil resource for use in land-based primary production as a matter of national importance[6]. The inappropriate use or development of HPL is avoided by restricting activities that are not land based primary production on HPL. However, the NPS-HPL recognises that there are a range of non-land-based activities that may need to locate on HPL to deliver wider cultural, social, environmental and economic benefits. These include specified infrastructure, activities that support land-based primary production, freshwater and biodiversity management, addressing public health and safety, extraction activities, and public access. To accommodate this, there are pathways in the NPS-HPL for non-land-based activities to

[5] In the NPS-HPL, land is ranked against one of eight categories or classes based on its long-term potential for sustained agricultural production. This is known as the Land Use Capability Classification System (LUC). LUC Class 1 land is the most versatile and suitable for growing the largest range of crops. At the other end of the scale, class 8 land is the least versatile for primary production and is typically used for conservation purposes. Classes 1, 2 and 3 land are generally regarded as the most highly productive land in New Zealand.

[6] The NPS-HPL defines land-based primary production as *production from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land* (clause 1.3(1) of NPS-HPL).

develop on HPL, subject to specific requirements, such as functional or operational tests[7], being met.

Clause 3.9 of the NPS-HPL ensures that councils have some flexibility to respond to local need by providing consent pathways for certain activities that are deemed 'not inappropriate' on HPL.[8] The circumstances where activities would be 'not inappropriate' are outlined in subclause 3.9(2). This includes things like *supporting activities,* and the *maintenance, operation, upgrade, or expansion of specified infrastructure* (see Appendix 1 for full list of exemptions).

Two issues have been identified with the NPS-HPL that warrant further consider and wider public consultation:

1. It is unclear whether a consent pathway is provided for the construction of new specified infrastructure on HPL (other than via a designation despite the original intent that a pathway for such infrastructure would be provided). This lack of clarity could lead to inconsistencies in district plans and resource consent decisions and with other national direction.
2. No consent pathway is provided for intensive indoor primary production and greenhouses to develop and relocate on HPL, despite their importance for ensuring a diverse and resilient primary sector.

These are considered separate policy issues and are discussed separately throughout this interim RIS.

1.2 Policy problem and its context (construction of new specified infrastructure)

1.2.1 Policy Problem - providing for new specified infrastructure on HPL

The main policy issues are

- the lack of a clear consent pathway for the construction of <u>new</u> specified infrastructure on HPL in clause 3.9(2)(j)(i), (where specified infrastructure is a defined term)
- the consent pathway provided in the NPS-HPL for the construction of new specified infrastructure is limited to designations and excludes developers/providers that are not requiring authorities under the RMA
- the length of time needed to undertake a designation limits specified infrastructure that is needed at pace.

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[7] These are defined in the National Planning Standards:

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 - 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.

[8] Clause 3.9 (1) directs Territorial Authorities to 'avoid the inappropriate' use of HPL. Clause 3.9(2) provides a list of 'exceptions' which are therefore deemed 'not inappropriate'.

Requiring authorities can establish new infrastructure on HPL via designation under subclause 3.9(2)(h)[9], however, there is no clear consent pathway for new specified infrastructure that is not undertaken by a requiring authority.

This also prevents new/replacement infrastructure being provided at pace as the only clear route for establishing new specified infrastructure is via designation, which is a long process.

While this is an issue for all new specified infrastructure, it is of particular concern to renewable electricity generation operators, specifically solar farms[10], telecommunications/ broadband providers and those responding to the effects of cyclone Gabrielle. This potentially presents a limiting factor in building resilience to climate change.

1.2.2 Context to the Policy Problem for specified infrastructure

Drafting changes between the exposure draft and the gazetted versions of the NPS-HPL

Throughout the development of the NPS-HPL, providing a pathway for the development of new specified infrastructure on HPL was the intent of the policy as expressed in the exposure draft of the NPS-HPL and the section 32 analysis[11]. Drafting changes between the exposure draft and gazetted version resulted in ambiguity for stakeholders as to whether new specified infrastructure is provided with a consent pathway on HPL or not. This is detailed further in Appendix 2.

Ensuring consistency with the NPS-HPL objective and with other national direction/regulatory framework for specified infrastructure

Any amendment to address these issues will need to accord with the objective of the NPS-HPL to protect HPL from inappropriate use. This will also need to be balanced with the intent to give councils scope to provide for non-land-based uses on HPL that provide wider benefits and that are necessary for social, economic, environmental or cultural wellbeing.

The NPS-HPL should also be consistent with other national direction and emerging national policy. Transpower[12] and the National Infrastructure Strategy[13] note unresolved conflicts between national policy direction as one of the barriers to improvement of distribution capacity and establishment of local generation schemes.

Ensuring consistency with the *National Policy Statement for Indigenous Biodiversity (NPSIB) and Freshwater Management (NPSFM)*

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[9] New Zealand Infrastructure Commission - Rautaki Hanganga o Aotearoa, New Zealand Infrastructure Strategy, 2022-2052. (pg61-62)

[10] RMA designation powers are limited to electricity distributors under section 166 of the RMA and section 4 of the Electricity Act 1992 and does not include electricity operators that do not also distribute, such as such as renewable electricity generators.

[11] Proposed National Policy Statement for Highly Productive Land Exposure Draft Testing, p.11 https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/proposed-national-policy-statement-for-highly-productive-land-exposure-draft-testing/

National Policy Statement for Highly Productive Land Evaluation under section 32 of the Resource Management Act, 2022

[12] Transpower 2020, Whakamana i Te Mauri Hiko - Empowering our Energy Future - TP Whakamana i Te Mauri Hiko.pdf (amazonaws.com)

[13] New Zealand Infrastructure Commission - Rautaki Hanganga o Aotearoa, New Zealand Infrastructure Strategy, 2022-2052. (pg61-62)

The NPSIB[14] allows the "maintenance, operations, upgrade of established use activities" (clause 3.15) or and provides a consent pathway for new and major upgrades to specified infrastructure in or affecting SNAs using the effects management hierarchy[15] (Clause 3.11).[16] The construction or upgrade of specified infrastructure is provided with a consent pathway in clause 3.22(1)(b)(i) of the NPSFM.

The NPS-HPL provides a consent pathway for maintenance, operation, upgrade or expansion of existing specified infrastructure (clause 3.9). Construction/development of new specified infrastructure is not specifically provided for as in the NPSFM and NPSIB. The approach is to allow decision-makers to weigh up the need for the maintenance, operation, upgrade or expansion of specified infrastructure on HPL, subject to specific tests within clause 3.9. Not having a clear consent pathway for the construction of new specified infrastructure (other than via designation) will create inconsistency.

Ensuring consistency with the *National Policy Statement for Renewable Energy Generation (NPSREG), the National Policy Statement on Electricity Transmission (NPSET) and the National Environment Standards for Electricity Transmission Activities (NESETA)*

Some of the issues raised with respect to the construction of new specified infrastructure are a part of wider work being undertaken to strengthen current RMA national direction on renewable electricity generation and electricity transmission, especially the NPSREG, NPSET and the NESETA. Changes to consent pathways for renewable energy and the proposed NPSREG and NPSET have recently been the subject of public consultation (20 April 2023 to 1 June 2023)[17] and the feedback is now under review.

The proposals in that discussion document focus on strengthening the current national direction on renewable electricity generation and electricity transmission, to provide a consenting process that is more efficient, certain and environmentally sustainable for renewable energy generation (REG) and Electricity Transmission Network (ETN) projects[14]. The aim is to provide clear and nationally consistent consent pathways for renewable electricity generation and electricity transmission. That discussion document did not specifically mention the NPS-HPL, nor did it address REG or ETN development on HPL.

Providing a clear consent pathway for the construction of new specified infrastructure (which includes REG and ETN) in the NPS-HPL would be consistent, in the context of the importance of highly productive land recognised in the NPS-HPL, with the work being undertaken to amend the NPSREG, NPSET and NESETA on consent pathways for REG and ETN development.

Ensuring consistency with *Resource Management Reform – including the Natural and Built Environment (NBE) Bill and the proposed National Policy Framework (NPF)*

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[14] National Policy Statement for Indigenous Biodiversity https://environment.govt.nz/acts-and-regulations/national-policy-statements/proposed-nps-indigenous-biodiversity/

[15] Effects Management hierarchy is an approach managing and mitigating the adverse effects of an activity on indigenous biodiversity or other natural values (see full definition in NPSIB).

[16] NOTE NPSIB provisions do not apply to renewable electricity generation or electricity transmission network infrastructure.

[17] MfE and MBIE 2023 Strengthening National Direction on Renewable Energy Generation and Electricity Transmission - Consultation Document (mbie.govt.nz)

Highly productive land is also a key environmental outcome in the NBE Bill. The NPF will guide interpretation and implementation of the NBE. The NPS-HPL will be transferred to the new system through the preparation of the first iteration of the NPF for public consultation.

Any amendment to the NPS-HPL will need to be consistent with these other instruments to facilitate a smooth transfer to the new system.

Target to achieve 100 per cent renewable electricity generation and the demand for renewable electricity generation on HPL

There is a clear need for a significant uptake and development of renewable electricity generation to meet future need and government climate and zero carbon goals. The interim Climate Change Committee 2019 report[18] found that New Zealand needed to build a substantial amount of new renewable electricity capacity over the next 15 years to support a 100% renewable electricity option.

Solar electricity generation activities have preferred site attributes for solar development, that closely align with that of HPL, including aspect, solar irradiance and topography alongside access to transmission and/or distribution infrastructure. Many solar farms across Aotearoa New Zealand are already located on HPL. Appendix 3 includes a sample of maps that show established solar farm locations in relation to HPL.

There has been a noticeable increase in the number of resource consent applications to district councils and under the Covid-19 Recovery (Fast-track Consenting Act 2020) for the development of renewable electricity generation infrastructure on HPL, such as the Waiterimu Solar Farm and the Tauhei Solar Farm in the Waikato. One has been refused and the rest are awaiting decisions, see table in Appendix 4). The processing of these consents is coming up against the need to protect HPL while trying to provide for additional renewable electricity generation to reduce greenhouse gas emissions, meet market demand and achieve government targets.

Delay for necessary specified infrastructure while waiting for the designation process

Currently emergency legislation is having to be developed to respond to the aftermath of Cyclone Gabrielle. This includes the need for infrastructure on HPL to facilitate the recovery operation in Hawkes Bay. The NPS-HPL's lack of a clear pathway for the construction of new specified infrastructure (other than via a designation) limits the ability of councils and other infrastructure providers to respond at pace to emergency situations such as Cyclone Gabrielle or earthquakes.

Pre-engagement workshops with councils and renewable energy stakeholders

In early May 2023, officials held online targeted workshops with different stakeholders, from the renewable electricity sector and councils, who had previously been involved in the development of the NPS-HPL. The workshops were aimed to gauge initial thinking by councils and different stakeholders on the primary issues and potential options and gain an understanding of the implications.

[18] Interim Climate Change Committee – Accelerated electrification evidence, analysis, and recommendations, 2019

Stakeholders from the renewable energy sector showed strong support for a change to the NPS-HPL to provide clarity for the development of new specified infrastructure particularly that associated with renewable electricity generation (such as solar farms).

Some councils voiced concerns that the pathway for the development of new specified infrastructure on HPL is not clear in the current form of the NPS-HPL and requires guidance. Support for amendments to clause 3.9(2)(j)(i) was dependant on the district, the extent of HPL and the amount of renewable energy generation consent applications currently being processed.

1.2.3 How the status quo is expected to develop - the impact of there being no clear consent pathway for new undesignated specified Infrastructure in clause 3.9

As the NPS-HPL has been in force for less than a year, its impact on the construction of new specified infrastructure has yet to fully be tested through policy development, resource consents and appeal decisions.

This lack of clarity around whether or not new specified infrastructure is provided for under clause 3.9(2) is likely to lead to inconsistent application of this clause in district plans and in resource consent decisions. It is possible that this will result in new specified infrastructure activities on HPL, particularly undesignated infrastructure, being allowed in some district plans and in others captured as prohibited or non-complying. This may lead to greater costs to applicants and councils with more decisions being taken to appeal, leaving it to the courts to determine and provide clarity on the clause through case law.

Further analysis and consideration of how the status quo is provided as part of the section on option analysis.

MfE and MPI consider the issues identified are relevant to how the NPS-HPL is being implemented and that addressing them may have merit and warrants further investigation. There are potential benefits to providing a clear consent pathway for the construction of new specified infrastructure on HPL provided the existing tests are met[19] and the need for infrastructure is balanced with the key objective of the NPS-HPL to protect HPL for use in land-based primary production.

To better understand the impact of the NPS-HPL and the extent of this issue, further input from partners, Māori/iwi, stakeholders and the public is needed.

1.3 Policy problem and its context (intensive indoor primary production and greenhouses)

The following section diagnoses the policy problem in relation to intensive indoor primary production and greenhouses. Further, it notes why in the policy development of the NPS-HPL, these activities were excluded as appropriate use and development of HPL. Lastly, it covers how the status quo is expected to develop.

1.3.1 The policy problem

[19] i.e. Applicants will need to demonstrate a functional and operational need to locate on HPL and demonstrate that loss of HPL will be minimised and reverse sensitivity effects on HPL is avoided.

There is no clear consent pathway for new intensive indoor primary production and greenhouses to test their functional or operational need to locate on HPL despite their importance for ensuring a diverse and resilient primary sector.

The NPS-HPL provides pathways for other non-land-based activities to locate on HPL (subject to tests in the national policy statement). Some primary industry stakeholders have argued that specific provision for intensive indoor primary production should be provided (as they are identified in National Planning Standards as operations that can be provided for in the general rural zone and in the rural production zone)[20].

1.3.2 Context behind the issue

The definition of 'land-based primary production' in the NPS-HPL has been drafted so that HPL is prioritised for use in land-based primary production (activities that use and rely on the soil resource). This definition is differentiated from the National Planning Standards definition of primary production. The National Planning Standards provides a wider scope of activities anticipated as 'primary production'[21].

The narrower definition in the NPS-HPL recognises that activities that do not rely on the soil resource of the land (some which are provided for in the National Planning Standards) could locate in alternative parts of the rural environment that are not HPL (such as intensive indoor primary production and greenhouses).

There are examples of greenhouses which use the soil, such as those utilised by LeaderBrand. Greenhouses that utilise the soil resource are anticipated as having a clearer consent pathway to be enabled on HPL under the status quo of the NPS-HPL (figure 1).

[20] The National Planning Standards defines intensive indoor primary production as primary production activities that principally occur within buildings and involve growing fungi or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry.

Industry have raised that this definition of intensive indoor primary production in the National Planning Standards excludes greenhouses, thus, the matter is included as separate potential amendment. Greenhouses is a broad term that encompasses an array of different structures erected to house cropping systems. Greenhouses are structures erected for the purpose of indoor growing. They do not typically rely on the soil resource but are rural activities. Greenhouses can include glasshouses, plastic houses, shade houses and tunnel houses.

[21] Primary production in the National Planning Standards means:
(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.

Figure 1: LeaderBrand greenhouse that uses soil resource[22].

Most greenhouses, however, use mediums that do not rely on the soil (e.g., primarily use soil-less growing media). For instance, greenhouse crops may use soil-less media such as planting into pumice or sawdust filled plastic bags/buckets, or in rock wool or cocopeat slabs. There is an estimated 310ha of greenhouse area across New Zealand with a majority being non-soil reliant. The projected vulnerability of the primary sector as identified in the National Adaptation Plan 2022 [23] to the impacts of climate change may warrant some high value crops such as leafy greens to utilise greenhouses for protection from the elements. Enabling a range of primary production activities also helps enable a more diverse primary sector, which is inherently more resilient to natural disasters and economic shocks.

1.3.3 Primary industry concerns on the NPS-HPL: Intensive indoor primary production and greenhouse industries

Some primary sector bodies have pointed to other activities that are not soil reliant such as specified infrastructure having a pathway under the NPS-HPL to test whether they meet functional or operational tests. Furthermore, industry have argued that their activities are provided for in the General Rural and Rural Production Zones in the National Planning Standards, and it is not feasible for them to locate in other environments such as urban or industrial areas. This is primarily to address biosecurity risks, reverse sensitivity considerations, and proximity to ancillary activities. Furthermore, for districts where rural zones are predominantly HPL, such as, Matamata-Piako and Horowhenua districts, the primary sector have argued that they would find it difficult to establish new sites due to such districts being primarily HPL (see table 1 below).

Table 1: high level outline of some of the key issues raised by the primary sector about the NPS-HPL

Key issue	
Climate change considerations	• National Adaptation Plan 2022 (NAP) identifies land-based primary sector as one of the most vulnerable sectors to the impacts of climate change. • Diversification of production builds resilience.

22 Homepage - LeaderBrand

23 Urutau, ka taurikura: Kia tū pakari a Aotearoa i ngā huringa āhuarangi | Adapt and thrive: Building a climate-resilient New Zealand (environment.govt.nz)

	• absence of a pathway may make decarbonisation of both sectors more challenging.
Locating intensive indoor primary production and greenhouses away from rural environment	• Locating these activities in urban or industrial areas are unlikely to be feasible as they could place added pressure on urban waste infrastructure due to solution management and discharge requirements. • Urban land values are about 10 times higher than suitable location in a rural zone, making these activities commercially unviable. • Viable options limited in districts with high proportions of HPL • The risk of reverse sensitivity arising from truck movement and light. • Locating these activities (such as piggeries or poultry) in other zones like a special purpose zone presents biosecurity risks due to requirements of separation between farms. • Industrial zones would require significant surrounding land area to mitigate impacts of the operation on neighbouring properties[24].
Sector growth	• anticipated growth of both sectors in response to a growing New Zealand population and opportunities in low emissions food markets.

Historically, the development of intensive indoor primary production and greenhouses has been on land that is often HPL, which means that both sectors have established necessary ancillary activities to ensure safe and optimal function of their operations. Intensive indoor primary production and greenhouses are often synergistic but not supportive of land-based primary production. Intensive indoor primary production and greenhouses prefer to be located near other farming systems and horticultural businesses where efficiencies in packhouses, transportation, distribution, and labour can be achieved.

Some primary industry stakeholders have noted that locating intensive indoor primary production and greenhouse activities on land that is not Land Use Capability System (LUC) class 1-3 is unlikely to be economically viable. Historically, intensive indoor primary production and greenhouses have been located on land that is flat and has suitable climate, which is often LUC 1-3 land. This is primarily driven by:

- cost-effectiveness of locating on flat land (minimal earthworks required for cut and fill)
- proximity of HPL to ancillary activities such as labour markets and transport
- Proximity to nutrient solution management and discharge infrastructure
- constraints such as biosecurity risks if they were to be established in an urban area
- land availability and constraints in other areas that is not rural (e.g., reverse sensitivity considerations and biosecurity risks of locating in urban areas)
- constraints in rural areas which are primarily surrounded by HPL, thus limited alternatives
- reverse sensitive considerations such as noise, odor, truck movements and light
- less prone to erosion and nutrient run-off.

[24] For instance, the high concentration of Nitrogen in pig effluent means that ample land is needed to spread effluent, but this will depend on the size of the pig farm, its composition (breeding versus fattening only), the effluent treatment system on farm, and the regional council rules for maximum Nitrogen loading per year.

1.3.4 What are the current potential options under the NPS-HPL for intensive indoor primary production and greenhouses to develop on HPL, and what are the perceived limitations of these options?

Under the status quo, the development of new intensive indoor primary production and greenhouses are directed away from HPL. However, there are some potential options (discussed below) to potentially enable these activities on HPL and for them not be considered as inappropriate use and development of highly productive land.

The NPS-HPL has been in effect for less than a year and most councils have not yet undertaken the necessary plan changes to align with the requirements of the NPS-HPL. How the potential options (discussed below) in the NPS-HPL are expected to develop and be given effect to in regional and district plans will differ across New Zealand depending on the size and scale of these activities in different regions.

Status Quo Pathway 1 – clause 3.9(2)(a)

Clause 3.9(2)(a) provides for supporting activities that are reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing)[25]. The intention is that activities that support land-based primary production on surrounding HPL or as part of a landholding where the production is occurring, have a consent pathway on HPL[26].

In relation to intensive indoor primary production and greenhouses, clause 3.9(2)(a) anticipates that it may be within scope to consider these activities as 'supporting' a wider arable or pastoral farm system (for instance, through the transfer of effluent or nutrients to support the activities of surrounding HPL).

However, primary production stakeholders have argued that these activities are rarely the supporting activity but are the primary activity. For instance, in the definition of 'supporting activity' in the NPS-HPL, activities deemed to be 'supporting' are ancillary activities to the wider function of a farming system. Primary industries have raised that clause 3.9(2)(a) does not apply to commercial scale intensive indoor primary production and greenhouses. These operations although synergistic to other farming systems, often do not support the functions of land-based primary production and thus would not have scope under clause 3.9(2)(a).

MPI and MfE consider that although it is intended that clause 3.9(2)(a) may capture some intensive indoor primary production and greenhouses as 'supporting activity', this clause would not extend to capture the development of commercial scale operations.

Status Quo Pathway 2 - clause 3.9(2)(g)

Clause 3.9(2)(g) covers small-scale or temporary land-use activity that has no impact on the productive capacity of the land.

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[25] See clause 1.3 of NPS-HPL for definition of "supporting activities".

[26] 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".

Primary sector stakeholders have commented that this does not address concerns for the development of commercial scale operations. This is because commercial scale operations are neither small-scale or temporary and are likely to have some impact on the productive capacity of the land. The design life of a typical greenhouse for instance, is generally 25 years, which is not considered to be a temporary activity. In New Zealand, 37% of greenhouses are larger than 5ha, while 18% are smaller than 1ha in size. Minimum lot sizes for intensive indoor primary production and greenhouses are not prescribed as it is normally driven by factors such as crop type, location and environment that determines its viability.

MPI and MfE view that clause 3.9(2)(g) does not provide a clear consent pathway for the development of intensive indoor primary production and greenhouses on HPL. This clause would not extend to nor capture the development of commercial scale operations.

Status Quo Pathway 3 - clause 3.11

Clause 3.11 of the NPS-HPL 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.

For the intensive indoor primary production and greenhouse industries, it may mean that they can use clause 3.11 to upgrade existing operations to respond to changing animal-welfare legislation and practices, including the rebuilding and the expansion of a building's footprint.

However, the upgrade to intensive indoor primary production and greenhouse facilities provided in the NPS-HPL does not extend to increased intensity in the activity. This is likely to restrict the ability of industry to expand existing operations beyond that provided in clause 3.11. The poultry sector for instance may not be able to use this pathway to expand their building footprint, which would mean one of the most popular meat proteins for New Zealanders would not be able to expand their building footprint beyond that anticipated through clause 3.11.

1.3.5 How is the status quo expected to develop for intensive indoor primary production and greenhouses?

HPL brings significant economic benefits including employment for the communities that surround them, and collectively add significant value to New Zealand's primary sector. In recognising the finite nature of highly productive land, keeping the status quo would:

- Retain the policy objective of the NPS-HPL: to protect HPL for use in land-based primary product.
- Allow for the NPS-HPL to mature – as it has been operative for less than a year.
- Allow the accumulation of evidence of restriction imposed by the NPS-HPL on intensive indoor primary production and greenhouses (if any). One example is through gathering any case law and resource consent outcomes for these matters, as this will allow for a wider understanding of the scale of the issue(s).
- Result in intensive indoor primary production and greenhouses continuing to be excluded on HPL where their operation is neither supporting a wider farming system nor meets the provisions of 'supporting activity' in clause 3.9(2)(a) of the NPS-HPL, or other provisions in the NPS-HPL.
- Retain the possibility of having the NPS-HPL revisited in the future to provide for the development of new and relocating intensive indoor primary production and greenhouses on HPL. This is a possibility driven by the forecasted growth of both

industries to accommodate New Zealand's growing population[27] as well as export opportunities, and the land-based primary production sector being identified as being particularly vulnerable to climate change.

The absence of a consent pathway to test if intensive indoor primary production and greenhouses have a functional or operational need to locate on HPL (status quo) may result in less investment certainty for both industries. The absence of a consent pathway under the status quo could mean that both sectors have less flexibility to adapt to climate change and continue to meet food requirements by New Zealand's population. It is likely that food producing sectors like intensive indoor primary production and greenhouses may look to increase the use of structures to house animals and crops to ensure some level of security and resilience to adverse weather events[28].

Currently, many operations uses coal or gas to heat animal sheds or greenhouses. Primary sector stakeholders have expressed that reducing options for intensive indoor primary production activities and greenhouses to locate on HPL will make it more difficult to adapt these activities to climate change or to set up new ones in appropriate locations to enable decarbonisation. For example, many greenhouses that currently rely on gas or coal for heating may need to relocate to somewhere with a geothermal electricity source as one of the more affordable sources of renewable energy, and not being allowed to locate on HPL may make this transition more difficult.

Other considerations for how the status quo is expected to develop for intensive indoor primary production and greenhouses:

1. The Environment Committee in their report back on the Natural and Built Environment Bill have recommended that the proposed National Planning Framework needs to provide direction *"to enable supply of fresh fruit and vegetables"* [29]. The rationale of the recommendation is the importance of ensuring that the proposed NPF provides specifically for the supply of fresh vegetables and fruit. Although the committee's recommendations are subject to change and approval, if the recommendation is maintained, the status quo of the NPS-HPL will likely conflict with the direction provided in the NBE bill. This is because some fruits and (mainly) vegetables are primarily produced in greenhouses, and primarily for domestic consumption (e.g., leafy greens, tomatoes, cucumbers). Therefore, then NPS-HPL may become a barrier for the supply of vegetables and fruit, primarily produce that is grown in greenhouses.

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[27] For instance, New Zealand imports a very small quantity of poultry and a vast majority of poultry meat consumed in New Zealand are all locally produced and processed (due to biosecurity constraints on imports). Chicken meat is one the most affordable meat proteins which has made it a popular choice for domestic consumption. Changing animal regulations and meeting demands for poultry means that the sector anticipates growth to meet demands. For districts like Matamata-Piako where the rural environment is primarily HPL, the district also has the greatest number of poultry farms in the country, they noted in pre-engagement workshops with officials that their district may warrant flexibility in providing for indoor poultry farms on HPL.

[28] It should be noted that locating these activities indoors does not provide guaranteed protection from climate change induced weather events as buildings are also vulnerable to damage. Furthermore, the NPS-HPL does enable for weather protection structures to be erected over land-based primary production activities without the activities being considered intensive indoor primary production or being in a greenhouse.

[29] natural-and-built-environment-bill-proof.pdf (www.parliament.nz)

2. The National Adaptation Plan 2022 and National Climate Change Risk Assessment 2020 outline that the primary production sector needs to be proactive in adapting to climate impacts to build their resilience[30]. This adaptation could be through relocating out of high-risk areas, such as those impacted by recent weather events (e.g. flood plains), as well as flexibility in how crops/goods are produced. A key concern raised by primary production sectors is that they require flexibility to adapt to climate change. Restricting intensive indoor primary production and greenhouses on HPL reduces their flexibility to site new activities or relocate existing activities to more appropriate, future proofed locations. Like many other sectors, the intensive indoor primary production and greenhouse sectors will also need to transition to renewable energy sources to support a low-emissions economy.

2. What objectives are sought in relation to these two policy problems?

The consideration of objectives is guided by the purpose of the RMA and the objective and intent of the NPS-HPL. There are a range of tensions and trade-offs in the consideration of objectives. For instance, protecting a finite resource in highly productive land whilst ensuring that appropriate pathways are provided for development needed to deliver wider public benefits and work toward meeting Government goals (e.g. climate resilience and emission reduction).

At the top of the hierarchy of objectives for this analysis is the objective of the NPS-HPL:

- to protect highly productive land for use in land-based primary production, both now and for future generations.

In undertaking this analysis we need to balance the issues and concerns raised by renewable electricity and primary production stakeholders, with ensuring that the objective and intent of the NPS-HPL is maintained.

The objectives for the potential amendment to provide for specified infrastructure are:

1. Resolve the ambiguity in interpretation of clause 3.9(2)(j)(i);
2. Achieve a balance between a nationally consistent approach to managing and protecting HPL from inappropriate subdivision, use and development, while considering the local context and needs;
3. Ensure a consistent approach across national direction;
4. Provide a consent pathway for the construction of new specified infrastructure on HPL (which cannot occur via the designation pathway), which improves the resilience of rural infrastructure, can be developed at pace to respond to emergency situations or supports the Government's climate change commitments including 100% renewable electricity generation by 2030;

[30] National Climate Change Risk Assessment - Main Report (environment.govt.nz)

5. Address the increased demand for renewable electricity generation on HPL, by providing for a clearer regulatory framework on how to balance the need to increase renewable electricity generation against the need to protect HPL;

There is a need to minimise the impacts that specified infrastructure can have on the most productive soils, through the existing tests under clause 3.9. Meeting the infrastructure needs of rural communities and providing for infrastructure with wider public benefits may come at the cost of further losses in HPL. The objectives above relating to the construction of new specified infrastructure on HPL will not always completely fulfil the HPS-HPL objective to protect HPL for land-based primary production. The tests in the NPS-HPL are needed to allow councils to balance the loss of HPL against wider public benefit. More detail is provided in the cost benefit analysis below.

The objectives for the potential amendment to provide for intensive indoor primary production and greenhouses are to gather evidence about:

1. how a pathway for intensive indoor primary production and greenhouses to establish on HPL may lead to outcomes inconsistent with the intent of the NPS-HPL.
2. how activities which are not land-based primary production but vital for New Zealand's food system might be provided flexibility by the NPS-HPL
3. how the NPS-HPL might restrict the establishment of new intensive indoor primary production and greenhouses – particularity in districts where the rural environment is primarily HPL
4. how industries are able to grow to meet the food needs of New Zealanders if they are unable to expand existing activities beyond that provided in the NPS-HPL, and how might the NPS-HPL impact future growth of food producing industries if the status quo is maintained.

The second and third objectives for the potential amendments to provide for intensive indoor primary production and greenhouses are likely to lead to outcomes inconsistent with the objective of the NPS-HPL. Although these objectives are extensions of existing provisions in the NPS-HPL for non-land-based primary production (activities not relying on or using the soil), the objectives will need to consider and weigh up the likelihood that it will lead to further loss and availability of HPL for use in land-based primary production.

Section 2: Deciding upon an option to address the two policy problems

What criteria will be used to compare options to the status quo?

Following the objectives above, the criteria below in table 2 were used to evaluate the options in this interim RIS.

Table 2: criteria used to assess option

Criteria	Approach for analysis
1. Consistency with the NPS-HPL	• Supports the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations. • Aligns with policy intent of the NPS-HPL[31].
2. Consistency with the wider resource management system	• The option aligns with relevant sections under the RMA and other legislation and regulations (e.g. Natural and Built Environment bill, proposed National Planning Framework, NPS-REG, etc).
3. Effectiveness	• Provides clear consent pathway for the development of non-land-based primary production on HPL, in line with the policy intent of the NPS-HPL.
4.Implementation	• Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.
5. Cultural, Environmental, Economic and Social Wellbeing	• Balances cultural, economic, environmental, and social Wellbeing in line with the policy intent of the NPS-HPL.

The criteria in Table 2 have been used to assess whether the options put forward to address the two policy issues outlined in this document achieve the objective of the NPS-HPL. Additionally, the criteria are used to assess the consistency of the options with provisions in the NPS-HPL and the objectives identified above.

What scope will options be considered within?

The scope and extent of options considered for new specified infrastructure has also been limited by the approaches taken in other national direction, emerging national policy and the options consulted on in the discussion document on Strengthening National Direction on Renewable Energy Generation and Electricity Transmission.

[31] The distinction between the two bullet points for criterion 1 recognises that the objective of the NPS-HPL is to protect HPL for use in land-based primary production. This is distinguished from the 'intent' of the policy, which provides pathways for non-land-based activities to develop on HPL, subject to specific gateway tests (e.g. functional or operational tests).

The scope and extent of options considered for intensive indoor primary production and greenhouses are limited to pathways already provided under the NPS-HPL for activities that do not meet the definition of land-based primary production.

What options are being considered?

Potential options to provide for Specified infrastructure

In working through viable options to address the issues a range of possible approaches were considered, which are discussed in full below. The proposed options to be consulted on, are:

- **Option 1:** Retain the NPS-HPL as currently written (status quo).
- **Option 2 (preferred):** Amend clause 3.9(2)(j)(i) to include the word 'construction'.

Option 1 –Status Quo

The NPS-HPL continues to provide a consent pathway only for the maintenance, operation, upgrade or expansion of specified infrastructure and for activities undertaken by requiring authorities in relation to a designation.

Option 1 would allow time for the NPS-HPL to be fully implemented and to be fully tested through council policy development and decision making. However, the lack of clarity for stakeholders and councils, regarding the application of clause 3.9(2)(j)(i) to new specified infrastructure, would remain. There would be no clear pathway for undesignated infrastructure.

It also risks having to revisit the policy later, which would require new work programs for MPI and MfE to be developed, as well additional need for industry and council involvement and greater regulatory burden.

Option 2 – amend 3.9(2)(j)(i) to include the word 'construction'

This would make clear that there is consent pathway for construction of new specified infrastructure on HPL.

Option 2 would clarify a consent pathway for new (and undesignated) specified infrastructure on HPL, provided proposals met tests relating to operational and functional need and that loss of HPL was minimised and reverse sensitivity effects were avoided.

The key benefit of this approach is that it is a straightforward amendment that maintains the overall intent and objective of the NPS-HPL and reflects the policy intent of the clause in the exposure draft and the s32 report. It will address the demand for renewable electricity generation infrastructure and other infrastructure. It also aligns with how new specified infrastructure is addressed in other national direction and emerging national policy.

Other options considered, but not recommended

Different options for redrafting of 3.9 were considered including:

- removal of the words '*the maintenance, operation, upgrade or expansion of ...'* from 3.9(2)(j)(i) and (ii). This option would have been a more complex amendment that created further drafting inconsistencies within the NPS-HPL and did not align with the approach used in other national guidance. It could also have resulted in further

ambiguity as to which specific activities associated with specified infrastructure this related to.

- Providing a bespoke pathway for solar farms or renewable electricity generation activities on HPL. This would have been an unnecessarily complex change that was unlikely to align with the original intent to provide for all new specified infrastructure. It would also result in inconsistencies with other national direction, such as the NPS-REG for which a bespoke consent pathway for renewable electricity generation has recently been consulted on.

Non-regulatory options

We do not consider that non-regulatory options (such as technical guidance and support for councils) would sufficiently address the issue for new specified infrastructure outlined in this document. As guidance cannot extend the scope or reach of a national direction document. Guidance has already been developed[32] which was unable address the issue or provide much clarification.

Potential options to provide for intensive indoor primary production and greenhouses

Given the short timeframe since the NPS-HPL came into effect, there is limited evidence on the extent of the issue, whether a problem exists and if it does, whether it requires further regulatory intervention. More work is required to fully understand the implications the NPS-HPL on both the intensive indoor primary production and the greenhouse industries.

The issues raised by primary production stakeholders may have merit, and MPI/MfE view that the issues should be tested with wider partners, stakeholders, interest groups and individuals.[33] The desired outcomes of climate change resilience and supporting the food production industries also need to be balanced against the need to protect the finite HPL resource for use in land-based primary production, both now and for future generations (objective of NPS-HPL).

For the purposes of discussion, the following potential options have been identified, noting that there is no preference.

Option 1 - Status Quo

Highly productive soils bring significant economic benefits including employment for the communities that surround them, and collectively add significant value to New Zealand's

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[32] Ministry for the Environment. 2023. National Policy Statement for Highly Productive Land: Guide to implementation. National-Policy-Statement-Highly-Productive-Land-Guide-to-implementation-March-2023.pdf (environment.govt.nz)

[33] There are two resource consents MPI and MfE are aware of at this point, these examples are relevant to intensive indoor primary production and greenhouse development and relocation.

1) New Zealand Hothouse has three greenhouses in the South Auckland Area. Their 10 Ha greenhouse in Drury is on a site that has been rezoned urban and acquired by a developer for industrial land use. NZ Hothouse is seeking a new site to relocate onto.

2) Rohe Produce has resource consent to build two 9-ha greenhouses North of Ohaaki. The site they are developing is leased from Māori. Because the site is Māori owned, the NPS-HPL may provide a pathway. However, future developments may not be able to be located on specified Māori land.

primary sector. In recognising the finite nature of HPL, the status quo would result in many or most intensive indoor primary production and greenhouse developments being excluded on HPL where their operation is neither supporting a wider farming system nor meets the provisions of 'supporting activity' in clause 3.9(2)(a) of the NPS-HPL.

Option 2 - Provide a consent pathway for both intensive indoor primary production and greenhouses in clause 3.9

This option would provide a bespoke consent pathway for the development and relocation of intensive indoor primary production and greenhouses on HPL. This will be subject to specific tests such as consideration of alternative locations, and functional or operational tests being met (similar to tests for other non-land-based primary production activities provided in the NPS-HPL).

A key limitation of this option is the misalignment with the intent of the NPS-HPL in its development, where intensive indoor primary production and greenhouses (as primary production that is not soil reliant), were deliberately excluded as appropriate use and development of HPL.

In pre-engagement with primary production stakeholders, they did not consider that this option would provide certainty for the establishment of new intensive indoor primary production and greenhouses on HPL. They noted that that a pathway under clause 3.9 is subject to tests and considerations listed in the NPS-HPL (such as clause 3.9(3) that directs territorial authorities to take measures to ensure activities with exemptions to develop on HPL, do not impact HPL)[34].

Officials do not consider that other options besides Option 2 would meet the policy intent of the NPS-HPL. Other options (such as those listed below) would risk unduly losing HPL through uncoordinated development.

Other options considered, but not recommended:

Amend the definition of land-based primary production to include both intensive indoor primary production and greenhouses

- Amending the definition of land-based primary production to provide for non-soil reliant activities would enable the development and relocation of intensive indoor primary production and greenhouses. This option could potentially open pathways in the NPS-HPL to accommodate other food-producing activities and primary activities that could locate in alternative parts of the rural environment.

Provide an open pathway for intensive indoor primary production and greenhouses to develop on HPL

- An open pathway would allow for the development and relocation of intensive indoor primary production and greenhouses on HPL. This option will address the

[34] Clause 3.9(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.

concerns raised by stakeholders about their inability to adapt to climate related risks and challenges around energy requirements. This option, however, could risk uncoordinated development of intensive indoor primary production and greenhouses on HPL where alternative locations could have been utilised, and functional or operational tests have not been met. This option would also be inconsistent with provisions in the NPS-HPL that ensure HPL is protected, and the productive capacity of the soil is maintained (such as clause 3.9(3) which directs territorial authorities to take measures to ensure that any use or development on HPL minimises or mitigates and avoids loss of HPL). This option would also be inconsistent with the pathways the NPS-HPL provides for other non-land-based primary production (which are subject to tests).

Non regulatory options

Officials do not consider that non-regulatory options (such as implementation guidance and support for councils) would sufficiently address the issues outlined in this document about intensive indoor primary production and greenhouses. The implementation guide published in March 2023 on the NPS-HPL have gone some way to address concerns of industry, however, current provisions in the NPS-HPL relevant to the development of both industries would not extend to the development of commercial scale operations nor the development of new operations on HPL. Under the status quo, there is no consent pathway for some primary production industries to test functional or operational need to locate on HPL, this could make adapting to climate change and decarbonising the industries more challenging.

How do the options compare to the status quo/counterfactual?

Key: ++ much better than doing nothing/the status quo, + better than doing nothing/the status quo,
- worse than doing nothing/the status quo, - - much worse than doing nothing/the status quo,
0 similar to making no change retaining the status quo

New Specified Infrastructure

	Option One – Status Quo	Option Two – Add the word 'construction' to clause 3.9(2)(j)(i)
Consistency with the NPS-HPL.	**0** Meets the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations Rely on implementation guidance to ensure consistent interpretation and implementation.	**+** It will enable a standardised approach to new specified infrastructure in council policy development and decision making in line with the original policy intent. Accords with policy intent expressed in the s32 by allowing councils the flexibility to balance the need for specified infrastructure, like solar farms, with the loss of or lessening of the availability of HPL to land based primary production for current and future generations.
Consistency with the wider resource management system	**0** Is consistent with RMA s5 and s7 in that it safeguards the life-supporting capacity of soil and limited HPL resource. Will retain misalignment with the approach taken to new specified infrastructure in current and emerging national direction and policy.	**+** Accords with the RMA s7 by giving councils scope to have particular regard to the benefits to be derived from the use and development of renewable energy balanced against finite characteristics of HPL resource It improves the NPS-HPL consistency with other national direction and emerging national policy, by providing a consent pathway for new specified infrastructure to develop on HPL when there is a functional or operational need.
Effectiveness	**0** Ensures that HPL is protected from inappropriate use and development. However, it will not provide a clear consent pathway for new (undesignated) specified infrastructure to establish on HPL.	**+** This amendment is the simplest approach to addressing the issues identified by providing a consent pathway for new specified infrastructure. However, it is likely to result in the further loss of HPL available to land based primary production, in particular to solar farms.
Implementation	**0**	**++** It will enable a standardised implementation approach to new specified infrastructure in council policy development and decision making in line with the original policy intent.

	Option One – Status Quo	Option Two – Add the word ‘construction’ to clause 3.9(2)(j)(i)
	The NPS-HPL is continues to be implemented and monitoring of policy development and decision making by councils could establish if there is an issue. This will rely on implementation guidance to ensure consistent interpretation and implementation Uncertainty and lack of a clear consent pathway for undesignated specified infrastructure will remains. Lack of clarity and inconsistent implementation may result in litigation costs as applicants appeal council decisions	Improves the clarity of subclause 3.9(2)(j)(i) by making clear to councils that construction of new specified infrastructure that meets the tests can be provided a consent pathway This is the most straightforward solution to resolving the issue with clause 3.9(2)(j)(i). It not anticipated to increase the costs for councils as most have yet to give effect to the NPS-HPL in their plans and policy statements. It is considered that it may reduce costs for infrastructure providers and is unlikely to place undue costs on central government, tangata whenua, landowners and other stakeholders.
Cultural, Economic, Environmental and Social wellbeing	**0** The NPS-HPL has been fully assessed and found to be consistent with community expectations and to fulfil Crown Te Tiriti obligations. It protects the soil resource while providing for other land uses and activities needed to support communities or that provide local benefit.	**0** It will allow the protection of HPL to be balanced against local and national infrastructure needs. Construction of new infrastructure will still be assessed against the gateways tests to establish its need to locate on HPL, but inclusion of this clause provides scope for more development on and loss of HPL. In all other aspects it remains the same as the current NPS-HPL
Overall assessment	**0**	**+**

Intensive indoor primary production and greenhouses

	Option One – *Status Quo*	Option two- Provide a consent pathway for both intensive indoor primary production and greenhouses in clause 3.9
Consistency with the NPS-HPL.	**0** Ensures that HPL is protected from inappropriate use and development. Meets the objective of the NPS-HPL to protect highly productive land for use in land-based primary production for current and future generations	**-** Could lead to outcomes inconsistent with the policy objective of the NPS-HPL to protect HPL for use in land-based primary production. Some alignment with provisions under the status quo of the NPS-HPL that provide for other non-land-based use and development of HPL.
Consistency with the wider resource management system	**0** Is consistent with RMA s5 that it safeguards the life-supporting capacity of soil. May be misaligned with the provisions in the Natural and Built Environment bill and proposed National Planning Framework relevant for the supply of fresh fruit and vegetables **(noting the provisions are subject to change and approval).**	**0** Could lead to outcomes inconsistent with the s5 of the RMA to safeguard the life-supporting capacity of soil. Aligns with provisions in the Natural and Built Environment bill and proposed NPF relevant for the supply of fresh fruit and vegetables **(noting the provisions are subject to change and approval).**
Effectiveness	**0** Ensures that HPL is protected from inappropriate use and development. The absence of a consent pathway for intensive indoor primary and greenhouses to develop on HPL would remain.	**++** Provides a consent pathway for intensive indoor primary production and greenhouses. However, does not provide a clear pathway that would result in these activities being permitted (will be subject to tests in the national policy statement). Aligns with policy intent provided for other non-land-based use and development of HPL.
Implementation	**0** The implementation and monitoring of the NPS-HPL continues as anticipated in the development of the policy. Some costs imposed on councils and resource consent applicants due to no specific provision for intensive indoor primary production and greenhouses.	**+** Supports consistent decision making and management by councils, without placing undue costs on central government, councils, tangata whenua, landowners and other stakeholders.

	Option One – *Status Quo*	Option two- Provide a consent pathway for both intensive indoor primary production and greenhouses in clause 3.9
Cultural, Economic, Environmental and Social wellbeing	**0** Balances cultural, economic, environmental, and social Wellbeing in line with the policy intent of the NPS-HPL. However, does not provide flexibility for new operations which could have economic and environmental impacts for the intensive indoor primary production and greenhouse industries.	+ Recognises local context and potential need for intensive indoor primary production and greenhouses to develop on HPL. Economic benefits for primary production industries as it could reduce consenting costs and establishment on land requiring comprehensive earth works. Could be inconsistent with environmental considerations of protecting HPL for use in land-based primary production. However, provides resiliency for primary production to respond to and mitigate against adverse weather events.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Specified infrastructure

Option 1 is to retain the NPS-HPL as currently worded for specified infrastructure. However, under the status quo, any person, company or organisation wishing to undertake development of new specified infrastructure on HPL and are not a requiring authority would not have a clear consent pathway for the development of new specified infrastructure. The ambiguity for stakeholders and councils regarding the application of clause 3.9(2)(j)(i) to the construction of new specified infrastructure would remain.

Retaining the NPS-HPL as written would retain consistency with policy intent of the NPS-HPL to prioritise land based primary production on HPL and limit the potential losses of HPL.

The key risks of this option relate to the persistence of a lack of clarity in the application of clause 3.9(2)(j)(i) including:

- inconsistent decision-making and policy development
- increased litigation costs
- no clear consent pathway for development of undesignated infrastructure
- the capture of new specified infrastructure activities on HPL, such as renewable electricity generation, as prohibited or non-complying in district plans
- limits on the ability of infrastructure to be developed at pace, i.e. in response to emergency situations
- NPS-HPL will not align with other national direction, that provide pathways for construction of new specified infrastructure

Retaining the status quo will not address the issues raised the objective identified nor provide a solution to the policy problem identified.

Option 2 consists of an amendment that provides a consent pathway for the construction of new specified infrastructure while applying the existing tests to ensure its need to locate on HPL is weighed against the loss of available HPL.

The key benefits of **option 2** is that adding the word ‘construction’ in clause 3.9.2(j)(i) would improve the clarity, consistency and support effective implementation by:

- providing for specified infrastructure that cannot designate or is needed at pace, while retaining the current intent of clause 3.9 and the NPS-HPL
- ensuring that councils have flexibility to consider and provide for other (non-soil based) development/uses on HPL in the circumstances outlined in subclause 3.9
- representing the simplest method for resolving the policy problem
- addresses the issues and objectives identified
- ensures that the NPS-HPL provides clear unambiguous policy guidance to Councils.
- would align the NPS-HPL with other national direction and emerging national policy including the resource management reforms.

This amendment would also facilitate faster development of new and replacement infrastructure needed in response to natural disasters, such as that needed in the wake of Cyclone Gabrielle.

There is a risk that this amendment will result in the loss of HPL, however, these losses are not anticipated to be significant, given the checks and balances and the limit on what is considered specified infrastructure in the NPS-HPL.

We recommend Option 2 as it meets the NPS-HPL policy objectives and delivers net benefits in improved implementation, effectiveness, clarity and consistency.

See section below for an assessment of the costs and benefits of providing for construction of specified infrastructure on HPL.

Intensive indoor primary production and greenhouses

As stated throughout this interim RIS, further consultation /engagement with partners and stakeholders is required before recommending a preferred option in relation to intensive indoor primary production and greenhouses. MPI and MfE consider that, although the concerns of primary production industries may have merit, these need to be weighed up against the potential loss of a finite resource in HPL. Given the short time (less than a year) the NPS-HPL has been in effect, more work is required to gather evidence on the extent of the issue and whether it requires regulatory intervention. This will allow time for understanding potential impacts of the NPS-HPL on both the intensive indoor primary production and greenhouse industry.

As noted in section 2 of this interim RIS, there is a potential option being considered (other than the status quo), but the option and analysis in this RIS would benefit from wider input and perspectives to allow officials to fully understand the implications of the potential amendments.

The option that is presented alongside maintaining the status quo would likely address the issue and be in line with the pathways in the NPS-HPL provided for other non-land-based primary production. Option Two would:

- Provide a clearer consent pathway for the establishment of new intensive indoor primary production and greenhouses. Provide flexibility for these primary production activities to adapt to climate change and work toward decarbonising the industries.
- Align with the Environment Committee's recommendations for the assertion of a new clause in the NBE bill that the proposed NPF provides specifically for the supply of fresh vegetables and fruit. Noting, this is subject to change and approval.

Consideration however will need to be given to the impact that such a pathway could have on further permanent losses of HPL.

Based on current provisions in the NPS-HPL relevant to intensive indoor primary production and greenhouses, the NPS-HPL is likely to restrict development of new commercial operations on HPL (see section below for costs and benefits of providing for intensive indoor primary production and greenhouses).

What are the marginal costs and benefits of the option?

Benefits and costs of providing for the construction of new specified infrastructure on HPL

Specified infrastructure preferred Option 2 has a **range of benefits**:

- **Councils:** Option 2 will assist with minimising costs to councils associated with administering the HPL provisions. Clarifying the NPS-HPL provides a consent pathway for new specified infrastructure including undesignated infrastructure, removing the ambiguity and complexity for consent applications and potentially the extent of legal challenge.
- **Resource users:** Option 2 will reduce costs to infrastructure providers, in particular renewable electricity generators, associated with consent processing costs by providing a clear unambiguous consent pathway. This will provide greater certainty for business planning and risk assessment phases of infrastructure development. It also allows faster establishment of specified infrastructure. The ability to establish solar farms provides an additional income stream to landowners/lessees.
- **Central government:** Option 2 provides certainty about how the NPS-HPL applies to specified infrastructure and ensures greater consistency with other national direction. It also supports government policies and target on climate change.

However, as a result of this amendment there may be a greater loss of HPL or availability of HPL to soil-based primary production. The **opportunity costs are**:

- Many infrastructure providers can use the designation or notice of requirement route available in clause 3.9(2)(h) meaning HPL would be lost to specified infrastructure under the status quo anyhow. This amendment would open a pathway for all specified infrastructure developers without having to go through the long designation process.
- It increases the likelihood that HPL will be lost to infrastructure development, although there are a range of checks and balances within the NPS-HPL to ensure that the losses are minimised.
- The designation route is not readily available to most renewable electricity developers, so the amendment would mainly provide a consent pathway for renewable electricity generation developments on HPL. As HPL is often the preferred location for solar farms, the amendment is likely to result in the loss of HPL by:
  - significantly reducing its productive potential and use for land-based primary production, or
  - tying it up in the long term with solar electricity generation infrastructure.
- While solar farms do not significantly impact on the soil resource, they decrease the potential productivity of the land limiting it to sheep grazing[35]. In contrast to that it should be noted that the NPS-HPL is agnostic as to what land based primary

[35] While some productivity can be maintained with agrivoltaics – there is very little research in NZ and no practical examples.

production activity it provides for and has no requirement for HPL to be used to its maximum productive potential.

- Given the high value of electricity generation infrastructure it is unlikely in the foreseeable future that land will be returned to solely land-based primary production.
- It will create a greater incentive to establish solar farms or other renewable electricity generation on HPL rather than on lower grade rural land, in industrial areas or urban areas. Rural land is cheaper and more readily available and HPL is easier to develop.
- The amount of HPL that might be 'lost' to solar farms may be relatively small compared to the total HPL resource in Aotearoa. Transpower's most recent Monitoring Report to March 2023 notes that "based on enquiries lodged with Transpower that have a plausible chance of completion" utility scale solar could achieve 7,360 MW of generation by 2030[36] This effectively describes a best-case scenario for the growth of utility solar over the next six years. Industry[37] uses a rule of thumb for utility solar of 1.5 ha of land per 1MW of generation. On this basis , 7,360 MW of utility solar by 2030 would require 11,040 ha of land. Even if all that land was assumed to be HPL, that 11,040 ha would represent approximately 0.28% of the estimated 3,830,000 ha [38]of highly productive land in New Zealand. It is noted that there is limited publicly available data on the overlap between existing or potential solar farms and HPL, thus the outcome of public consultation may help to better define the potential extent of HPL loss to solar farms and indeed other types of infrastructure development that may be approved on HPL as a result of this amendment.

Detail on regulatory burden is provided below in section 3.

Benefits and costs of providing for Intensive Indoor Primary Production and Greenhouses

There are associated benefits of providing for intensive indoor primary production and greenhouses. The intensive indoor primary production and greenhouse industries serve domestic food supply and international trade. These activities are expected to grow in response to serving New Zealand's growing population, export opportunities, and growing international market for low emissions food. Expansion is also anticipated due to climate change adaptation, freshwater limits and targets, and as noted earlier, opportunities within export markets for low-emissions foods both domestically and aboard. Noting careful consideration of the trade-offs for providing for these activities and the potential permanent loss of HPL. Considerations will also need to be given to the impact that a pathway for

[36] Transpower, Whakamana i Te Mauri Hiko monitoring report March 2023, Transpower releases March Whakamana i Te Mauri Hiko monitoring report | Transpower

[37] Ministry for Business, Innovation and Employment 2020 Economics of Utility-Scale Solar Forecast in Aotearoa New Zealand

[38] Total area of Land Use Classification 1-3 land from NZ Land Resource Inventory 2021 – noting that this is a proxy for HPL and does not account for land that has been zoned urban (and not developed) and therefore not available for land-based primary production in the long term.

intensive indoor primary production and greenhouses may have on the availability of HPL for use in land-based primary production (as well as consideration for the impacts on both industries if the status quo is maintained, detail on regulatory burden is provided below in section 3).

The benefits of providing for intensive indoor primary production and greenhouses include[39]:

Poultry

- A vast majority of the poultry that New Zealanders consume is produced and processed in Aotearoa· New Zealand chicken meat production significantly outweighs export of chicken meat. In 2020, over 200,000 metric tonnes of chicken were for the domestic market. In 2021, domestic meat production was around 250,000 metric tonnes. In 2022, it was again over 200,000 metric tonnes. For these years, the export of domestically produced chicken meat was around 50 tonnes annually.
- The relative affordability of poultry has led to chicken being the most popular animal meat protein in New Zealand, accounting for 55% of animal meat consumption.
- New Zealand is essentially self-reliant on domestically produced and processed poultry, this could mean that the NPS-HPL could become a barrier for a vital food producing industry to meet food demands of New Zealanders if the industry is not able to establish new commercial scale sites on HPL.
- New Zealand does not import any live poultry, however, to improve genetics we do import hatching eggs which are hatched in quarantine before being allowed into breeding facility.

Greenhouses

- Total area of greenhouse in New Zealand is estimated to be only 310 Ha (120 Ha tomatoes and 190 ha other vegetables), an area that has been increasing since 2017. 64% of total greenhouse area is in the upper North Island, 17% in the lower north island and 19% in the South Island. Because 90% of crops grown in greenhouses is grown for the domestic market, they tend to be situated near larger population areas and are located in proximity to supply and infrastructure networks.
- Greenhouse vegetables are grown year-round in relatively stable, controlled environment with optimal growing conditions that offer the ability to produce a range of vegetables for domestic consumption as well as international markets. The 'when' that crops are grown matters for covered crop operations, as most are responsible for supplying fresh New Zealand-grown produce in the off-season or when weather events affect outdoor crops[40].

[39] Noting that the examples provided are not an exhaustive list of all the industries that fall within scope of intensive indoor primary production or greenhouses.

[40] The high costs of decarbonisation are leading to increased consolidation in the greenhouse industry. The heavy reliance of the greenhouse industry on fossil fuels means that as the industry decarbonises, they may need develop and relocate to sites close to renewable energy sources, and not being allowed to locate on HPL may make this transition more difficult (for

- Current provisions in the NPS-HPL are likely to restrict the ability of the industry to establish new commercial sites on HPL when they may have a functional or operational need to do so.

Pig farming

- Pork produced in New Zealand primarily serves the domestic market, however, to meet demands, New Zealand imports 60% of pork that is consumed.
- New animal welfare regulations and high importation of internationally produced and processed pork suggests that the New Zealand Pork industry faces challenges to provide the same quantity as those achieved in other countries. However, pork produced in New Zealand are subject to strict health and animal regulations, which could make New Zealand a desirable place for high quality Pork.
- The pig industry does not anticipate proliferation of new commercial indoor farms (noting the challenges the sector faces with international imports). However, industry have noted that the absence of a consent pathway makes the economic viability of the industry even more challenging.

Providing a consent pathway for intensive indoor primary production and greenhouses would provide flexibility for the primary production industries and councils who raised concern in targeted pre-engagement and when the NPS-HPL took effect. Councils with larger areas of HPL and a historical prominence of intensive indoor primary production and greenhouses in their districts noted that amendments would provide clarity and benefit effective processing of resource consents, as well as anticipation for the growth of the industries who may need to locate on HPL for functional or operational needs, or flexibility in adapting to climate risks and working toward decarbonising the industries.

Pre-engagement with primary production stakeholders indicated that intensive indoor primary production and greenhouses are not expected to proliferate beyond that required to meet food demands of New Zealanders. The growth and establishment of new sites are expected to meet animal welfare regulations, adapt to climate change, and allow for the consolidation of the industries[41]. MPI and MfE consider that these industries, due to the tests in the NPS-HPL and historical rate of development, are unlikely to significantly result in large areas of HPL being loss. Careful monitoring of the scale and size of these activities (if permitted) will be vital to ensuring that HPL is not unduly loss when alternative locations are available.

instance, renewable energy sources such as solar, are primarily located on flat land and thus the greenhouse industry may wish to locate close to solar farms).

[41] Changing Animal Code of Welfare may mean some intensive indoor primary production activities may need to obtain new resource consents for their expanded building footprint. Clause 3.11 of the NPS-HPL anticipates that existing activities are able to 'upgrade' to meet requirements such as meeting Animal Code of Welfare changes. Further information can be found in 'Guide to Implementation' on MfE's website.

Section 3: Delivering an option

How will the new arrangements be implemented?

The NPS-HPL was developed under the RMA, meaning it is administered by regional councils as part of their functions and roles under the RMA. Any amendments will need to be given effect to by councils through their resource management plan provisions and when considering resource consents. The NPS-HPL contains transitional provisions to ease implementation and ensure highly productive land is better protected from commencement date (October 17, 2022). Regional councils then have three years to map HPL in accordance with the NPS-HPL. Territorial authorities have two years to give effect to the NPS-HPL once the maps are operative in regional policy statements.

Guidance will be updated as necessary to support the implementation of the full package of amendments to the NPS-HPL, if it is determined that amending the NPS-HPL is required.

The Policy Implementation and Delivery directorate at MfE will ensure that information about any amendments is publicly available and communicated to local planning authorities and Treaty Partners.

Subject to decisions on the preferred option for the two policy problems, officials will determine what other guidance products may be needed to support implementation.

Final Cabinet decisions on the full package of amendments to the NPS-HPL (if determined to be necessary) will be supported by a full RIS, a Section 32 evaluation report, and treaty impact analysis.

Implementation risks and mitigation

Specified infrastructure

It is anticipated that the potential amendment to provide for construction of specified infrastructure will fall within scope of the implementation work program for the wider NPS-HPL and within the original RIS that supported the promulgation of the NPS-HPL.[42] Many councils have yet to give effect the NPS-HPL so this change should be able to be incorporated as part of the necessary plan changes without undue disruption. As discussed in the cost benefit analysis above it is anticipated that the amendment would not cause implementation disruptions and may make implementation easier by improving clarity and consistency.

If any further risks are identified during consultation and on further analysis additional consideration can be given to them in the final RIS. Supporting non regulatory guidance could be developed to assist in mitigation any impacts.

Intensive indoor primary production and greenhouses

It is anticipated that the potential amendments to provide for intensive indoor primary production and greenhouses falls within scope of the implementation work program for the wider NPS-HPL. It is anticipated that the amendment – if deemed necessary – would not

[42] Regulatory Impact Assessment - Full Impact Statement Template (environment.govt.nz)

cause implementation disruptions or unduly strain on decision makers than that covered in the full RIS developed for the NPS-HPL.

If risks or disruptions to the implementation of the NPS-HPL are caused by providing for the amendments, supporting non-regulatory material will be developed to ease the risks. Public consultation is likely to provide insight into potential implementation issues that could be caused by the amendments – however, officials do not consider that there are significant implementation risks. This is because the NPS-HPL is relatively young and has not yet been given effect to in most regional or district plans. Guidance material for example could provide clarification for when intensive indoor primary production and greenhouses maybe appropriate use and development of HPL (as the implementation guide does for other non-land-based developments).

How will the new arrangements be monitored, evaluated, and reviewed?

Monitoring, evaluation and review of any amendments will be undertaken as part of the wider NPS-HPL monitoring and review process.

MPI and MFE will gather data on the implementation of the NPS-HPL, including:

- Obtaining data through collaboration with local government and relevant crown agencies
- Monitoring local government's progress with respect to completion of HPL mapping and the quality of HPL mapping to ensure that mapping is being completed within the timeframes set out in the NPS-HPL
- Using 'indicators reports' (e.g., Stats NZ, and Our Land reports) and regional council zoning layers (e.g., FARMLUC, NZLRI database of land resource information etc) to obtain data.
- Gathering data of consent and appeal decisions including fast track consents.

It is intended that the primary mechanism for monitoring will be monitoring how local government policy and plan change processes give effect to the NPS-HPL as they progress through the Schedule 1 process[43].

Overall regulatory burden

Specified infrastructure

Most councils have yet to give effect to the NPS-HPL, as such it is considered that the burden of the potential amendment will be nominal.

The preferred option is likely to reduce regulatory burden and costs of administering the HPL for Councils and reduce application costs to infrastructure providers by improving clarity and consistency with other national direction. However, work remains ongoing to fully understand the impact that this will have on land-based primary production (such as the loss

[43] Under clause 10 Part 1 Schedule 1 of the RMA, councils must issue their decisions on plans or plan changes within two years of notifying the proposal.

of HPL, availability of HPL for use in land-based primary production, and intensity at which land-based primary production can occur). This needs to be balanced against the need to provide necessary infrastructure to serve and protect rural communities and to meet government targets, such as the move to a low emissions economy.

With respect to the potential amendment to include 'constructure' of new specified infrastructure it is considered that on balance no additional financial costs are anticipated and the existing NPS-HPL Cost-Benefit Analysis (CBA)[44] and s32 report stand for the moment. This will be reviewed as the final policy advice is developed following consultation.

Intensive indoor primary production and greenhouses

There is an overall regulatory burden to consider relating to implementation of any changes to the NPS-HPL to provide for intensive indoor primary production and greenhouses.

- The addition of another sub-clause to clause 3.9 of the NPS-HPL which councils need to have regard to in their processing of consents, is likely to add more complexity. This is because the range and scope of activities that are provided an exception would now also extend to intensive indoor primary production and greenhouses.
- On the flip side, if the amendment to provide for the listed activities are not provided for, there is a potential that primary production industries may try to test other pathways in the NPS-HPL (listed in section 1.3.4 above) – pathways which are not clear or anticipate commercial scale operations. This could place unduly consenting costs on primary industry stakeholders.

Treaty Impacts

The amendment to provide a clear consent pathway for the construction of new specified infrastructure to locate on HPL (other than via a designation pathway) is considered to be low risk for iwi and hapu[45]. This is also relevant to any amendment to provide for intensive indoor primary production and greenhouses.

Neither of the potential amendments will impede upon the developments which can occur on specified Māori land (see Appendix 5 for definition provided in the NPS-HPL). Further engagement with Treaty Partners will provide an opportunity for their feedback and input into any amendment.

A treaty analysis will accompany any final amendments to the NPS-HPL and this will be informed by engagement with Treaty Partners.

Consultation timeline and process

Public consultation will commence on the 5th September to the 31st October 2023 (8-week period).

[44] ME Consulting, 2022, National Policy Statement for Highly Productive Land Cost-Benefit Analysis National Policy Statement for Highly Productive Land Cost-Benefit Analysis | Ministry for the Environment

[45] As the all the amendments outlined in this interim RIS do not impede or interfere with the aspirations of Māori to develop Māori freehold or customary land (specified Māori land as defined in the NPS-HPL) as they see fit.

The discussion document and interim RIS will be published on MfE and MPI's websites for consultation.

Following consultation, officials will report back on submissions received and develop final recommendations.

Any changes to the NPS-HPL would be enacted by Cabinet after the General Election.

Appendix 1

Clause 3.9(2) of NPS-HPL

3.9 Protecting highly productive land from inappropriate use and development

(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.

Appendix 2

Drafting changes between the exposure draft and the gazetted versions of the NPS-HPL

Throughout the development of the NPS-HPL, providing a consent pathway for the development of new specified infrastructure on HPL was the intent of the policy. The exposure draft of the NPS-HPL provided a consent pathway for new specific infrastructure to be established on HPL, provided it did not represent inappropriate development. The exposure draft[46] clause 3.7(4) specifically referred to '*A new use or development on highly productive land is not inappropriate if: (a) the use, or development is associated with: (i) specified infrastructure that provides significant national or regional public benefit*'. This was subject to requiring territorial authorities taking measures to minimise or mitigate any actual loss of HPL.

This clause was redrafted to provide clearer criteria for the types of development deemed 'not inappropriate' on HPL and to give council more scope to determine and address local circumstances. The resulting redraft has resulted in ambiguity for stakeholders whether new specified infrastructure is provided with a consent pathway on HPL or not.

The NPS-HPL Evaluation under section 32 of the Resource Management Act (s32)[47] (s32 report) states that the criteria in clause 3.9(2) clarify the types of activities and uses that may be appropriate on HPL to provide greater certainty to councils and applicants. Clause 3.9(2) will then ensure territorial authorities provide more specific direction on appropriate and inappropriate activities in their district.

The s32 report states that provision was specifically made under this clause for maintenance, operation, upgrade, or expansion, but not construction of new infrastructure or facilities. This was because it was expected new specified infrastructure would be able to use the designation process to establish on HPL and so the clause focuses on existing infrastructure or facilities that may not have been established using a designation.

However, the s32 report in its analysis on clause 3.9 also notes that 'It was also intended the proposed NPS-HPL did not inappropriately restrict other (non-productive) uses of HPL, particularly where these uses deliver wider environmental, economic, social or cultural benefits, and there is clarity on how such uses should be considered and provided for under the NPS-HPL.' It also notes that submitter feedback highlighted the need to minimise the risk of certain activities being precluded from HPL when they deliver wider benefits.

It is clear that the s32 report anticipated that all new specified infrastructure that had a need to establish on HPL would be able to do so via designation under subclause 3.9(2)(h) which states: '*it is for an activity by a requiring authority in relation to a designation or notice or requirement under the Act' (RMA)*. No consideration was made of specified infrastructure providers/developers that did not have those powers nor to significant change to or expansion of existing undesignated infrastructure.

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[46] Proposed National Policy Statement for Highly Productive Land Exposure Draft Testing, p.11 https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/proposed-national-policy-statement-for-highly-productive-land-exposure-draft-testing/

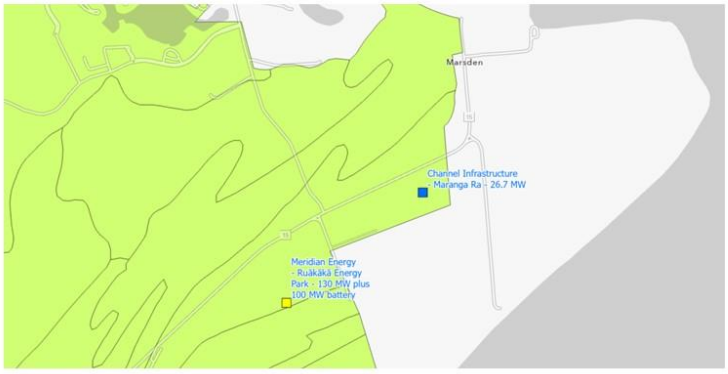
[47] 2022, National Policy Statement for Highly Productive Land Evaluation under section 32 of the Resource Management Act

Appendix 3

Figures showing a selection of existing and potential solar farms and their locations relative to HPL

Region

Northland



Auckland

Waikato (fast-track)

Waikato

Key

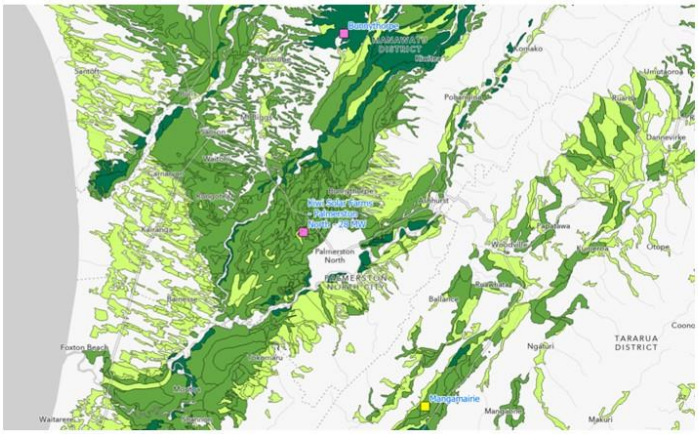
- HPL : LUC1
  - LUC1
- HPL : LUC2
  - LUC2
- HPL : LUC3
  - LUC3
- Application
- Commissioned
- Consented
- Declined
- Pre-application

Region

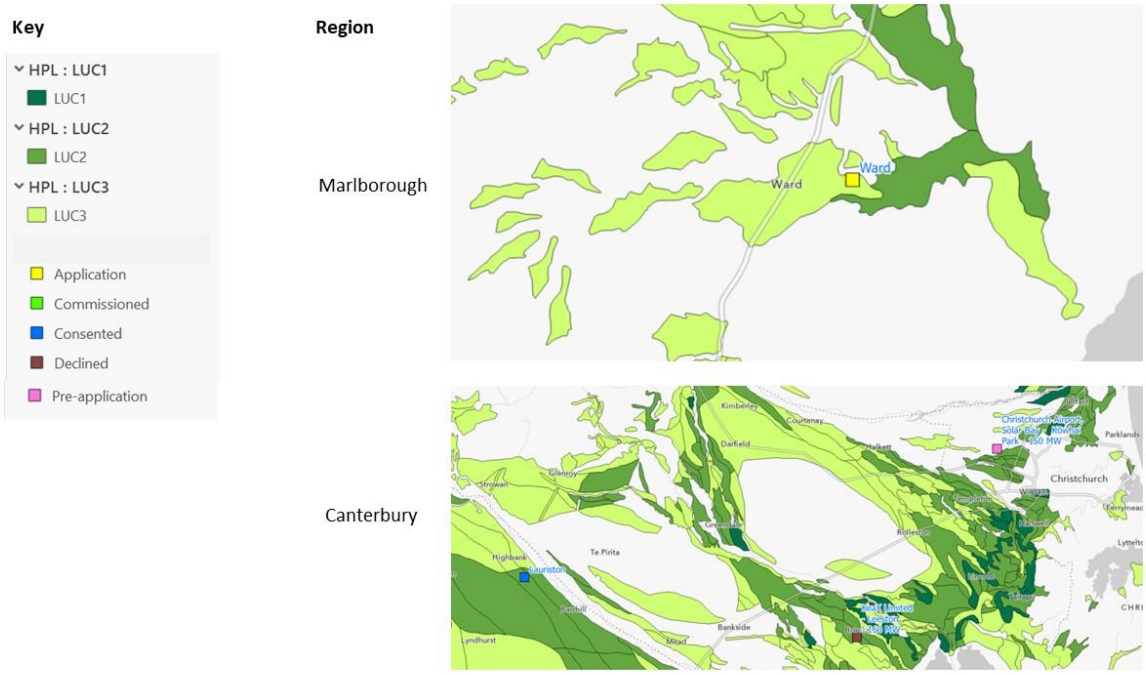
Bay of Plenty

Hawkes Bay

Manawatu—Whanganui



Wellington


Key
HPL : LUC1
LUC1
HPL : LUC2
LUC2
HPL : LUC3
LUC3
Application
Commissioned
Consented
Declined
Pre-application
Region
Marlborough
Ward
Canterbury
Christchurch
Kimberley
Courtenay
Darfield
Halkett
Parklands
Te Pirita
Lyndhurst
Mead
Bankside

Appendix 4

Table showing applications for solar farms *(current according to MfE records as of July 2023)*

Solar farm locations

	Territorial authority	Planning Status	Mega watt (MW)	On HPL?
North Island	Far North	Consented	16	no
38 sites	Far North	Consented	39	yes
	Whangarei	Application	130	yes
	Whangarei	Consented	26.7	yes
	Kaipara	Consented	69	yes
	Kaipara	Consented	4.4	yes
	Kaipara	Pre-application	20	unclear
	Auckland	Pre-application	76	unclear
	Auckland	Pre-application	160	yes
	Auckland	Application	50	yes
	Auckland	Consented	2.3	yes
	Thames Coromandel	Consented	31	yes
	Waikato	Pre-application (fast track)	130	yes
	Waikato	Pre-application (fast track)	180	yes
	Waikato	Pre-application (fast track)	140	yes
	Matamata-Piako	Consented (fast track)	147	yes
	Matamata-Piako	Application	4.5	yes
	Hauraki	Consented	4.4	yes
	Whakatane	Pre-application	115	yes
	Whakatane	Consented	32	yes
	Opotoki	Consented	58	unclear
	Taupo	Consented (under appeal)	400	no
	South Taranaki	Operational	2.1	yes
	South Taranaki	Pre-application (fast track)	94	yes
	South Taranaki	Pre-application	80	yes
	Gisborne	Consented	5	no
	Napier	Pre-application	10	yes
	Central Hawkes Bay	Consented	70	yes
	Ranitikei	Pre-application (fast track)	65	yes
	Ranitikei	Pre-application	84	yes
	Manawatu	Pre-application	20	yes
	Palmerston North	Pre-application	28	yes
	Palmerston North	Pre-application	6	yes
	Tararua	Application	50	yes
	Carterton	Pre-application (fast track)	133	yes
	Carterton	Pre-application	4.5	unclear
	South Wairarapa	Pre-application	100	yes
	South Wairarapa	Application	175	no
South Island	Marlborough	Operational	2.2	yes
18 sites	Marlborough	Pre-application	28	no
	Marlborough	Operational	1	no
	Marlborough	Pre-application	10	yes
	Marlborough	Consented	4.5	yes
	Christchurch	Pre-application	170	no
	Selwyn	Declined	160	yes
	Ashburton	Consented	52	yes
	Ashburton	Pre-application	7	unclear
	Mackenzie	Pre-application	20	unclear
	Mackenzie	Application	88	no
	Timaru	Pre-application	24	unclear
	Waimate	Pre-application	10	unclear
	Central Otago	Consented	50	no
	unknown	Pre-application	14	unclear
	unknown	Pre-application	50	unclear
	unknown	Pre-application	50	unclear
	unknown	Pre-application	34	unclear
56 sites total		*total MW*	3536.6	
		total MW not yet consented and on HPL	1749.5	
of 56 sites total:		consented	1011	
35 are on HPL		application	500	
21 are on HPL and are yet to be consented		pre-application	1862	
14 are on HPL and have been consented or built		declined	160	
		operational	5	
A maximum of 12 more may be on HPL (making 47 total) but their location is unclear				
Mega Watt is an assessment of the maxium capacity				

Appendix 5

Definition of Specified Māori Land in the NPS-HPL

Clause 1.3

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