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31 October 2023

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Tēnā koe

**Waikato Regional Council Submission to the discussion document: Managing the use and development of highly productive land - Potential amendments to the NPS-HPL**

Thank you for the opportunity to submit on the proposed discussion document: Managing the use and development of highly productive land - Potential amendments to the NPS-HPL. Please find attached the Waikato Regional Council's (the council's) submission regarding these documents. The submission was formally endorsed by the council's Submissions Subcommittee on **25 October 2023**.

Should you have any queries regarding the content of this document please contact Joao Paulo Silva, Senior Policy Advisor, Policy Implementation directly on (07) 9497179 or by email [joapaulo.silva@waikatoregion.govt.nz](mailto:joapaulo.silva@waikatoregion.govt.nz).

Nāku iti noa, nā,

A handwritten signature in black ink, appearing to read "Tracey May".

Tracey May  
**Director Science, Policy and Information**

## **Submission from Waikato Regional Council on the discussion document: Managing the use and development of highly productive land - Potential amendments to the NPS-HPL**

### **Introduction**

1. We appreciate the opportunity to make a submission on the discussion document: Managing the use and development of highly productive land - Potential amendments to the NPS-HPL.
2. We look forward to continued involvement in any future processes to develop this National Policy Statement and related direction.

### **Summary**

3. Waikato Regional Council (the council) recognises that an amendment to the National Policy Statement for Highly Productive Land (NPS-HPL) would better provide for the construction of specified infrastructure. The council supports option 2. We consider it appropriate to have a consenting pathway for the construction of specified infrastructure.

In terms of issue 1:

- a) We anticipate that specified infrastructure will potentially be needed in HPL in the Waikato region for helping cope with significant adverse events and for providing for renewable energy generation (REG).
  - b) We note that a more enabling consenting pathway would create a route for all infrastructure providers (rather than only requiring authorities) to establish new specified infrastructure in highly productive land (HPL) if needed.
  - c) We understand that the proposed amendment to the NPS-HPL may lead to losses of HPL. However, we consider that solar farms can still provide for some land-based primary production (e.g., raising sheep).
  - d) We acknowledge that there are requirements in place under the NPS-HPL to appropriately manage the development of specified infrastructure on HPL.
  - e) We consider that including the word 'construction' in Clause 3.9(2)(j)(i) is a simplistic and efficient approach for a consenting pathway for new specified infrastructure.
4. At this stage, the council supports option 1 in connection to issue 2. We consider that issue 2 would benefit from further investigation to assess the need for a clearer consenting pathway for intensive indoor production and greenhouses. In terms of issue 2:
    - a) We acknowledge that the NPS-HPL does not provide a clear consenting pathway for development of new intensive indoor primary production and greenhouses on HPL.
    - b) We acknowledge that some districts with large percentages of HPL are facing development restrictions in connection to HPL since the NPS-HPL became operative.
    - c) We acknowledge that the objective of the NPS-HPL is to protect HPL for land-based primary production, and we consider it important to protect HPL for now and future generations.
    - d) We recognise that there are different types of intensive indoor primary production activities, and these can vary in terms of scale and potential losses of HPL and some of these activities have the potential to result in significant losses of HPL.
    - e) We note that currently district plan rules can potentially provide a consenting pathway for developing these activities.
    - f) We acknowledge that there are consenting pathways under Clause 3.9(2)(a) and Clause 3.9(2)(g) that could be used in some circumstances for intensive indoor primary production and greenhouses as well as provisions for the continuation of existing activities.
    - g) We consider it is more appropriate to allow for evidence on the impacts of the NPS-HPL on intensive indoor primary production and greenhouses (if any) to be collected.

### **Issue 1: Providing for new specified infrastructure**

5. The council supports option 2. We consider that including the word 'construction' in Clause 3.9(2)(j)(i) is a simple and efficient approach for providing a consenting pathway for new specified infrastructure.

6. The Waikato region contains about 15% of New Zealand's highly productive land (HPL), which represents around 24% of the region's land that is currently classified as LUC 1-3. We anticipate that in our region, specified infrastructure will potentially be needed on HPL for the reasons highlighted in the discussion document, such as providing for specified infrastructure at pace to cope with significant adverse events and for providing for renewable energy generation (REG).
7. We are aware that there is interest from renewable electricity operators to establish new solar farm activities in our region and some of these potential developments may be connected to HPL. Considering the restrictions imposed by the NPS-HPL, it is most likely that these proposals would not be able to progress. As currently worded, Clause 3.9(2)(j)(i) could constrain or prevent new specified infrastructure from being established on HPL. We understand that there is a consenting pathway for requiring authorities, but we agree that providing only requiring authorities with a consenting pathway for specified infrastructure is problematic, especially when dealing with urgent developments such as for infrastructure needed to support clean-up and repairs in the aftermath of Cyclone Gabrielle. A more enabling consenting pathway would create a route for all infrastructure providers to establish new specified infrastructure in HPL (if needed) this will capture all REG providers and broadband developers.
8. Therefore, we consider it appropriate to have a consenting pathway for specified infrastructure in HPL, especially when considering REG activities and infrastructure needed at pace. REG activities are essential for our wellbeing and for helping to reduce our reliance on fossil fuels. We need a process to provide for urgent infrastructure when recovering from unexpected events. We understand that having a consenting pathway for specified infrastructure under the NPS-HPL may lead to losses of HPL. However, we consider that some specified infrastructure such as solar farms can still provide for some land-based primary production (e.g., raising sheep). Available data suggests that the amount of HPL needed for solar farms is likely to be less than 1 per cent of the total HPL in Aotearoa.
9. We acknowledge the requirements in place under the NPS-HPL to appropriately manage the development of specified infrastructure in HPL. Clause 3.9(2)(j) requires applicants to demonstrate the functional or operational need for the development to be located on HPL and Clause 3.9(3)(a) requires applicants to demonstrate the development minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of HPL. We are confident that these requirements are appropriate to manage the development of specified infrastructure on HPL.

## **Issue 2: Intensive indoor primary production and greenhouses**

10. We consider that more investigation is needed to fully assess this issue and its consequences. We recommend keeping the status quo. The council supports option 1.
11. The council acknowledges that the NPS-HPL does not provide a clear consenting pathway for development of new intensive indoor primary production and greenhouses on HPL. However, we consider that more evidence is needed to assess the real need of amending the NPS-HPL to address this issue.
12. We acknowledge that some districts with large percentages of HPL are facing development restrictions in connection to HPL since the NPS-HPL became operative. However, we also acknowledge the objective of the NPS-HPL is to protect HPL for land-based primary production, i.e., for activities that use and rely on the soil, and we consider it important to protect HPL for now and future generations.
13. We recognise that there are different types of intensive indoor primary production activities, and these developments can vary in terms of scale and potential losses of HPL. We consider that some of these activities have the potential to result in significant losses of HPL given the large footprint needed to undertake these activities.

14. We acknowledge the issues of having piggeries and chicken farms near urban centres as mentioned in the discussion document, however we do not consider that the same issues, such as biohazards, or the need of large areas for effluent mitigation would apply for greenhouses. We consider that greenhouses can potentially have large footprints that cannot be reversed to land-based primary production once constructed. To cope with this issue, vertical farming could be retrofitted in other zones than rural to accommodate greenhouses. Therefore, we suggest investigating these activities separately to better understand the potential losses of HPL in connection to this issue. This would provide for a more evidence-based approach to inform a potential response to the issue.
15. We note that currently (throughout the transitional period) district plan rules can provide a consenting pathway for developing these activities. This could happen where district plans allow for restricted discretionary activities with no matters of discretion addressing matters covered by the NPS-HPL. The guide for implementing the NPS-HPL reads that: *'the relevance and impact of the NPS-HPL will be determined by the matters of discretion. Territorial authorities have the right to grant or refuse an application for a restricted discretionary activity under section 104C of the RMA. However, the ability to have regard to the relevant provisions of the NPS-HPL under section 104(1)(b)(iii) is limited to the matters over which discretion is restricted. If a restricted discretionary activity does not have any matters of discretion relating to matters covered by the NPS-HPL, then the NPS-HPL must be recognised in the assessment under section 104 but it is given less weight and it cannot be a reason to decline the application.'*<sup>1</sup> In this case the NPS-HPL has less weight in terms of decision making prior to the district plan being updated in response to the NPS-HPL. Therefore, we suggest gathering data from territorial authorities to better understand the current situation.
16. We also note that there may be changes in the political environment and a new government could mean more changes to the NPS-HPL, potentially through the National Planning Framework that could potentially address this issue.
17. We acknowledge that there are consenting pathways under Clause 3.9(2)(a) and Clause 3.9(2)(g) that could be used in some circumstances for intensive indoor primary production and greenhouses as well as provisions for continuing existing activities, therefore, we consider it is more appropriate to collect evidence on the impacts of the NPS-HPL on intensive indoor primary production and greenhouses (if any).

#### **Submitter details**

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<sup>1</sup> [National Policy Statement for Highly Productive Land: Guide to implementation | Ministry for the Environment](#) at page 12