

Valuing Highly Productive Land

Tasman District Council Submission to the Ministry for the Environment, October 2019

1. Introduction

Tasman District Council welcomes the opportunity to make a submission on the discussion document on a proposed national policy statement for highly productive land (HPL).

The Council welcomes the proposal to provide stronger national direction on managing HPL and comments on it as follows.

The Council generally is supportive of the NPS. The Council is however concerned that policies two and three do not align with or match the strength of the objectives as proposed.

2. Context - Tasman District

Tasman District provides an example of how HPL is managed in line with the proposed NPS.

In 1994, Tasman District Council commissioned Agriculture New Zealand to develop a Classification System for Productive Land in Tasman (PLC) as the New Zealand Land Use Classification system did not adequately identify the district's most productive land. The LUC system (originally devised for classifying land for soil erosion potential) consistently undervalued some types of soils and climatic areas in Tasman, and was found to be unreliable for ranking horticultural land and other intensive agriculture systems. Tasman's PLC assesses factors of ground slope, soil depth, drainage, inherent fertility, climate factors of soil temperature, available soil moisture and sunshine and availability of water. Only a small proportion (about 4%) of land in the Tasman district has high productive value.

The Tasman Resource Management Plan framework for the district's rural area is based on the productive capacity of the land and soil resources.

In the rural zones where the productive value is high, the policy framework prioritises activities involving plant and animal production above opportunities for other activities unrelated to primary production. Likewise, the rural zone subdivision and land use rules are designed to prevent fragmentation of the productive rural land resource and to give priority to a wide range of plant and animal production activities.

The subdivision rules were amended recently to further limit productive land fragmentation by increasing the level of subdivision consent for HPL from Discretionary to Non-Complying if the minimum or average minimum lot size is not met and to discourage re-subdivision of the same land, whether high productive or general productive land, after 30 January 2016. There are some exceptions such as boundary adjustments which improve productive opportunity.

Complimentary to the production zones, the TRMP policy framework provides zones for other activities that can be appropriately accommodated in a rural area, (Rural Residential (lifestyle), Papakainga, Tourist and Rural Industrial directly associated with plant and animal production). These zone locations generally are associated with land of less productive value, although some

reflect historical development patterns. They are intended to relieve ongoing pressure for fragmentation of the productive land resource.

The TRMP framework also has provisions designed to avoid or mitigate cross-boundary and reverse sensitivity effects and to maintain rural character.

The Plan framework also requires that the loss of land of high productive value is minimised when planning for urban growth, having regard to: (a) the efficient use of resources, including land, infrastructure, and energy; and (b) the quality of the urban environment.

As the main towns in the district are experiencing high rates of growth and largely are located on and surrounded by productive land, Council has provided for some urban expansion on HPL despite the restrictive Plan framework.

An evaluation of the effectiveness of the TRMP policies relating to land use and subdivision in 2013¹ found that both the amount and proportion of rural productive land lost to planned urban and rural residential development was greater for the district's HPL than for other rural productive land. This loss was due to the location of HPL on the periphery of urban settlements and in coastal areas near settlements.

Overall, on assessment of various data (changes to land cover, lot and zone sizes, and resource consent information) the evaluation found that the TRMP regulatory framework is largely avoiding the loss of productive land in Tasman district although this is less evident for HPL. As mentioned above, proportionately the loss of HPL to planned urban development was much higher than the loss of general productive land. In addition, an assessment of land cover showed an increase of urban type land uses on HPL, although this had not necessarily led to fragmentation of titles on that land. The evaluation made various recommendations to increase the effectiveness of the TRMP which culminated in Plan Change 60 – Rural Land Use and Subdivision. The raft of changes introduced by PC60 included Non-Complying consent status of subdivision for HPL that does not meet the minimum lot size and for re-subdivision of any productive land title created after 30 January 2018 with some exceptions for amalgamations that improve land productivity.

3. Problem Definition

The problem statement presumes the RMA is the problem. i.e.: *'Under the RMA there is a lack of clarity on how highly productive land should be managed'*

Clarity around how HPL is managed is not necessarily the problem itself. The focus on the RMA constrains the potential outcomes and options to address the problem.

3.1 **Recommend:** Reframe the problem as:

'There is an ongoing incremental loss of HPL for primary production purposes.'

Reframing allows consideration of some of the identified issues i.e. difficulty in protecting / preserving HPL, fragmentation of HPL, incompatible uses, and rate of conversion of HPL, all of which can be dealt with under the RMA framework if the right mix of policies and rules are in place.

¹ Evaluation Report on the Effectiveness of the Tasman Resource Management Plans Policies relating to Rural Land Use and Subdivision, 2013

4. Preferred option – NPS or NES

- 4.1 Support** the NPS option rather than the NES option as it allows some flexibility for councils to respond to local pressures and priorities when giving effect to the objectives and policies in in the NPS.

5. Scope of NPS

Future urban areas

- 5.1 Support** the exclusion of areas identified for future urban use in district plans from the NPS-HPL.

In addition there needs to be some recognition of non-statutory strategies that have followed a robust process like the Future Development Strategy which the National Policy Statement on Urban Development / Capacity (NPS UDC/UD) requires for the major urban centres and encourages for urban environments such as Tasman’s urban settlements. Such a process should include use of a multi criteria assessment process including criteria that avoid the use of HPL for urban development, public consultation and formal adoption e.g. Nelson/Tasman FDS.

- 5.2 Recommend:** Provide some recognition for future urban areas identified in non–statutory strategies encouraged by other national planning instruments where a robust process and set of assessment criteria have been followed.

Case Study - Nelson Tasman Future Development Strategy, 2019

N-T FDS is informing our 30 year growth and infrastructure strategies and Long Term Plans.

The FDS recognises that while areas have been identified for growth, further detailed planning is required to determine viability and some areas may fall out.

When identifying possible growth areas there was a presumption against including HPL where possible. This was supported through community feedback that clearly showed a preference for avoiding HPL. Factors that were taken into account when assessing HPL were the degree of fragmentation, surrounding land use, location in relation to existing built areas, services and the need to provide a mixture of intensification and expansion - up and out.

Direct insertion of policies (RMA section 55)

- 5.3 Support** the use of section 55, RMA directing the insertion of policies until plans catch up. This can provide clear direction and avoid re-interpretation or dilution of policies and litigation risk to Councils. Use LGNZ to obtain agreement on what would work for local government.

6. Purpose of the NPS-HPL

From the discussion document, the overall purpose (i.e. objective) of the proposed NPS is to improve the way highly productive land is managed under the RMA by:

“• recognis(ing) the full range of values and benefits associated with the use of highly productive land for primary production;

- maintain(ing) the availability of highly productive land for primary production for future generations; and
- protect(ing) highly productive land from inappropriate subdivision, use and development” (page 33).

The purpose as written is about managing HPL under the RMA, but the crux of the problem is that we are losing our productive land to incremental development and at some stage the versatile and HPL will be lost to other uses. As worded, the proposed NPS does not afford long term protection of the resource from incremental development, which can and will continue to occur if unchecked. The NPS should give priority to the preservation of HPL for productive purposes over other competing land uses to limit the further loss of HPL.

6.1 Recommend: The purpose recognises the finite nature of the HPL resource and provides the outcome the NPS is seeking to achieve to address the defined problem statement.

7. Objectives of the NPS-HPL

Focus of NPS on versatile soils or HPL

Soil attributes are dependent on site properties including climate and terrain attributes (including slope, degree-days, frost risk, available soil moisture at rooting zone) to yield both productivity and versatility of the land concerned. Not all highly productive land relies exclusively on soil characteristics, as also not all highly productive “soils” are versatile. HPL, in varying degrees has both soil and site characteristics of value.

7.1 Support that the focus of the NPS is on HPL rather than high quality soil which may be disqualified for primary production by various factors such as climate and terrain attributes.

7.2 Recommend: NPS focus on protecting versatile land with high productive potential, not just HPL.

On-going incremental loss of HPL

As the discussion document elaborates, the intent of the objectives does not imply a no nett loss requirement.

“In practice, this means development that leads to the irreversible loss of highly productive land for primary production should be avoided where other feasible options exist.

Objective 3 provides direction to all decision makers to ensure highly productive soils are protected from “inappropriate” subdivision, use and development through avoiding certain types of development and adverse effects” i.e.

“uncoordinated urban expansion that has not been subject to a strategic planning process.” (page 36).

As described in paragraph 2 above – Tasman context, the TRMP contains a suite of provisions, (including mapped HPL) well equipped to protect HPL. The TRMP provisions match or exceed the strength of the proposed NPS, yet the district is still experiencing the incremental loss of HPL to urban uses and would continue to do under the proposed NPS. One way to reverse this would be to make subdivision of HPL a prohibited activity but the Council was not prepared to go this far and instead reserved the discretion to decide on the direction and rate of growth management affecting HPL. The proposed NPS preserves this flexibility.

7.3 Recommend: NPS-HPL to be clear as to expectations on local government.

'Inappropriate subdivision'

The NPS should provide clear national guidance on what is 'inappropriate' subdivision, use and development.

7.4 Recommend: NPS should include guidance to determine what 'inappropriate' means in practice.

8. Policy 1 – Identification of highly productive land

Unfortunately, LUC is a poor default until better identification systems are developed. This is because the LUC system (originally devised for classifying land for soil erosion potential) consistently undervalues some types of soils and climatic areas.

As mentioned above, Council, in the early 1990s identified that the LUC system did not adequately protect the district's HPL, hence its commissioning of the 'Agriculture New Zealand Classification System For Productive Land In TDC, 1994' (PLC) and its subsequent reviews and updates of that system.

Tasman productive land classes A, B and C comprise versatile land with high productive value for any particular crop regime. Preliminary map work shows that in the Tasman, HPL in the PLC and LUC largely overlap but are not a direct swap and that Tasman has slightly more HPL under LUC system than PLC.

Council requests clarification on how discrepancies between the LUC and another system will be treated? A landowner wishing to subdivide may invoke LUC rather than a PLC system developed by a council. For example, for Tasman, how will land that is part of LUC 1, 2, 3 but not included in Tasman PLC 1, 2, 3, or visa versa, be treated?

8.1 Support the need for a default definition of HPL until Councils' identify this, but if Councils have already identified HPL, that system should prevail over the default.

8.2 Support the spatial identification of HPL provided careful consideration is given to how the spatial information is applied.

8.3 Recommend: Central government, as soon as possible, develop a better default national productive land classification system specifically designed to identify land with high productive values. The reasons for the recommendations are:

- effectiveness - productive land will be better protected by a more appropriate default national system; and
- efficiency - an appropriate national baseline will reduce the duplication of work at regional council level and make better use of scarce national resources, i.e. those appropriately qualified to develop such systems.

8.4 Recommend: Clarify whether there is flexibility to use existing assessments of HPL, provided they are consistent with the criteria in the NPS. This is to avoid the need to re-do the assessment where it has already been done and to prevent challenge when a local authority assessment result differs from LUC 1, 2 and 3.

Annexure A – Criteria to identify HPL

8.5 Support the proposed criteria to identify HPL, for the reason that the criteria focus on the fixed attributes of the scarce resource, HPL.

The proposed factors that may be considered do not relate to the inherent attributes of the land. Factors relating to wider socio - economic context are variable in nature and change, even the availability of water.

Criteria that identify land that has the most flexibility or versatility for supporting a variety of different plant and animal productive land uses is a more certain way of protecting HPL over the long term.

8.6 Recommend: Limit criteria and factors to those that focus on the fixed attributes of the land - like soil, topography and to a lesser extent climate while allowing for other criteria.

9. Policy 2 – Maintaining highly productive land for primary production

Overall the wording of Policy 2 is weak and lacks connection with the objectives.

2(a) - prioritisation of primary production – this needs to be reflected in the objectives, currently the link is weak.

2(b) - economic weighting for greater protection is problematic. This type of consideration is easy to manipulate. Also the use of the term “consider” further weakens the effectiveness of 2(b).

2(c) - inappropriate – include criteria for determining what is inappropriate, i.e. codify some of the considerations in the NPS.

9.1 Support prioritisation of the use of HPL for primary production.

9.2 Recommend: Reflect the prioritisation in the objectives.

9.3 Recommend: Strengthen the protections in the policy.

10. Policy 3 - New urban development

Urban Growth Agenda

10.1 Support alignment of this NPS-HPL with the Urban Growth Agenda.

10.2 Recommend: NPS-UD includes a requirement to consider HPL as a constraint.

Policy 3

This policy is too weak and too general to provide the level of recognition and protection to match the objective. The policy doesn't do enough to tip the scales toward HPL if that is the intention. In some ways it just reinforces the status quo.

10.3 Recommend: Strengthen the protections in the policy if the purpose is to reduce the loss of HPL.

11. Policy 4 – Rural subdivision and fragmentation

Policies 6 and 7 - Consideration of private plan changes and resource consent applications on HPL

Overall

As Policy 2 proposes, HPL is a scarce resource and its use should be prioritised for plant and animal production. Other activities that are not related to plant and animal production should be strongly discouraged and provided for elsewhere - in an urban area or rural zone intended to accommodate such activity - where the land is not of high productive value.

Increasingly, some intensive plant and animal production methods do not require HPL. These activities, which do require a rural environment within which to operate, could be accommodated elsewhere - in a general rural zone where the land does not have high productive value. However there is a challenge for value-added processing to co-locate and for various locational reasons be located close to the product source which is likely to HPL. This should be provided for.

Production under plastic on desert sand, Almeria, Spain



www.amusing planet.com. Photo credit Edward Burtynsky

District Plans

A combination of effective provisions is required in district plans as some plans have minimum lot sizes that do not adequately protect the productive values of HPL, while simultaneously providing for Controlled consent level subdivision if the minimum lot size is met (which decision makers cannot refuse).

11.1 Support the intent of the policies.

- 11.2 Recommend:** Plan provisions prioritise HPL for plant and animal production and provide for other activities (rural industrial, rural residential / lifestyle) in specified locations (possibly rural) zoned for that purpose or to a location where the land is not of high productive value.
- 11.3 Recommend:** For Policy 7, call a halt to ‘Controlled’ resource consent level subdivision for HPL as many districts have minimum lot sizes that do not protect the high productive value or potential high productive value of this land.
- 11.4 Recommend:** For Policy 7, require plans to make an application for subdivision on HPL a Non-complying activity (unless zoned for urban or future urban use). The additional policy considerations can then be applied to assessment of the consent application.

Rural lifestyle subdivision

Environment Aotearoa, 2019 notes that New Zealand rural lifestyle subdivision is fragmenting rural land and that seventeen percent of these lifestyle blocks are located on versatile land. This represents a loss of 10 percent of all versatile land in New Zealand. As few life style blocks are used for any productive purpose, they effectively take land out of production and increase the opportunity for reverse sensitivity issues.

- 11.5 Recommend:** Policies are strongly worded to avoid lifestyle subdivision on HPL and the demand for such living is directed to locations zoned for that purpose that are not situated on HPL, but allow for boundary adjustments and amalgamations that improve productive opportunity.

Rural Business – Commercial and Industrial development)

Industrial and commercial activities in rural areas remove land from the potentially productive rural land resource and their presence has the potential to cause adverse cross boundary and amenity effects. Sometimes, however, a tourist activity or rural industry which supports plant and animal production has a functional need to locate in a rural area.

- 11.6 Recommend:** Policies are strongly worded to avoid business development on HPL and that such development is directed to locations zoned for that purpose that are not situated on HPL, although allow co-location where processing activity is dependant and ancillary to primary production.

12. Policy 5 – Reverse sensitivity

- 12.1 Support** the intent of this policy.

13. Interpretation

Adoption of National Planning Standard definitions

Unfortunately the Planning Standards do not include a policy chapter that addresses ‘rural environment /area effects.’ The Planning Standard chapter on Urban Form and Development should exist in counter balance to a chapter on Rural Form and Development so that effects in both rural and urban areas / environments are managed.

- 13.1 Recommend:** The National Planning Standards are amended to include a policy chapter that manages rural environment effects in addition to the chapter for urban environment effects.

The Planning Standards also do not provide specific zones for the full range of activities that typically occur in rural areas (e.g. rural industry, tourism). Instead a broad range of activities is provided for in the definitions of the General Rural and Rural Production zones. This may not protect HPL in these zones for plant and animal production that requires such land.

As mentioned above, there is also the risk that HPL in the above mentioned zones is used for intensive plant or animal production in sheds or glass /plastic structures with concrete flooring that do not rely on versatile land with high productive value or potential.

13.2 Recommend: Amend Planning Standards to provide specific rural zones for the full range of activities that typically occur in rural areas including, but not limited to, a specific zone for HPL where plant and production that requires such land is prioritised and a zone for activities which require a rural production environment but are not reliant on versatile soil, such as intensive plant and animal production in glass houses with concrete floors.

Definition anomaly

The proposed definitions of “Rural area,” “Rural lifestyle development” and “Rural lifestyle zone” do not align in that the definition of “Rural area” includes a general rural or rural production zone but specifically excludes an area identified as a ‘rural lifestyle zone’, but the definition of ‘rural lifestyle zone’ means subdivision and development where the primary purpose is rural residential or rural lifestyle use within a rural area.

Generally rural lifestyle development or a rural lifestyle zone occurs in a rural area / environment.

13.3 Recommend: Amend the definition of “rural area” to include all zones that may occur in a rural area, for example:

‘**Rural area** – means land within any Rural Production, General Rural, Rural Residential, Rural Industrial, or Conservation Zone, or within any Tourist Services, Open Space, or Recreation Zone adjoining any of the above zones. Where any site may also fall in an urban area then the site is deemed to be in an urban area only’.

Land fragmentation

13.4 Recommend: Include a definition of land fragmentation, such as:

“Land fragmentation – means any increase over time in the number of separately developed properties in any area, through successive land subdivision to form new land parcels and associated land development activities such as buildings and roads.”

Rural lifestyle development

13.5 Recommend: Omit the reference in the proposed definition to typical lot size range as both lifestyle and lots with HPL, vary in size. Also size is not a factor in site amalgamation.

14. Implementation and time frames (section 5.6 and 5.7)

14.1 Support timeframes but note that the time frame for implementation of proposed policy 1.1 and 2 may need to be extended if the recommendation for paragraph 8 – Policy 1 is accepted, i.e.: central government, as soon as possible, develop a default national productive land classification system specifically designed to identify land with high productive values.