

Your letter of 27 March 2023 requested, pursuant to s. 92 (1) of the Resource Management Act 1991, the following further information:

1. *Please provide a full assessment of the proposed subdivision against each of the relevant objectives and policies under the National Policy Statement for Highly Productive Land (NPS-HPL), with accompanying technical and planning evidence as required. This includes:*
 - a. *Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.*
 - b. *Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.*
 - c. *Policy 6: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.*
 - d. *Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*
 - e. *Policy 8: Highly productive land is protected from inappropriate use and development.*
 - f. *Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*
2. *Please provide an updated assessment of how the proposal shall be assessed against Section 104 of the RMA in light of the relevant provisions under the NPS-HPL.*

The National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) came into force on 17 October 2022. It is an applicable national policy statement, for the purposes of section 104 (1) (b) (iii). When considering the proposed subdivision, the consent authority must have regard to the relevant provisions of the NPS-HPS. The section 32 report and the Regulatory Impact Statement (**RIS**) supporting the NPS-HPL describe three issues that the NPS seeks to address:

- loss of highly productive land, primarily from urban rezoning, primarily greenfield areas adjoining towns and cities;
- land fragmentation by rural lifestyle development, particularly in peri-urban areas; and
- concerns about the impact of new sensitive and incompatible activities (including residential living) conflicting with established land-based primary production activities ('reverse sensitivity').

Examples of urban rezoning pressures included in the RIS include (at page 14 of the RIS): *'Numerous submitters on the proposed NPS-HPL provided examples of recent urban rezoning onto HPL; from ribbon development to the east and west of Palmerston North, to future urban areas identified on the Heretaunga Plains in the Hawke's Bay. Others highlighted urban rezoning on the Taieri Plains outside Dunedin, the Cromwell Basin in Central Otago, Richmond in the Tasman Region and Cambridge in the Waikato'*. The stated concern is that the policy tools currently available to protect HPL are not effective enough.

At page 45, the RIS reiterates the particular focus in the Hawke's Bay context as: *'prioritising HPL for land-based primary production, particularly in regions such as Auckland, Canterbury and Hawke's Bay where HPL is under constant urban rezoning and rural lifestyle development pressure'*.

Clause 3.4 of the NPS-HPL requires all regional councils to map the 'highly productive land' in their regions. For this purpose, 'highly productive land' is land (excluding land identified for future urban development) that is:

- (a) in a general rural zone or rural production zone; and
- (b) is predominantly LUC 1, 2, or 3 land; and
- (c) forms a large and geographically cohesive area.

The regional council mapping exercise is not required to be completed until October 2025 (clause 3.5 (1)). Within six months of completion of this mapping, district councils are required (clause 3.5 (3)) to identify the mapped 'highly productive land' in their district plans. In the meantime, clause 3.5 (7) of the NPS-HPL deems all land that is LUC 1, 2 or 3 that is zoned general rural or rural production to be 'highly productive land' and requires consent authorities to apply the NPS-HPL to that land. The RIS clarifies (page 30) that the definition of 'highly productive land' and the mapping process focus on areas of LUC 1, 2 and 3 in rural zones as the *starting point* for defining 'highly productive land', followed by whether the land is in a Rural Production or General Rural Zone. The mapping process also explicitly requires consideration of whether the land forms part of a large and geographically cohesive area of 'highly productive land'.

While the Hawke's Bay Regional Council has not yet completed the required mapping process, Central Hawke's Bay District Council has identified and mapped the 'highly versatile' and 'highly productive' land in the District. This was done to support the delineation of a 'Rural Productive Zone' in the proposed District Plan. What is apparent from the mapping undertaken¹ is that the LUC 3 land at Pourerere does not form part of a large or geographically cohesive area. That perhaps explains why that land is excluded from the proposed 'Rural Productive Zone'.

Clause 3.8 of the NPS-HPL requires that:

- (1) *Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:*
 - (a) *the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:*
 - (b) *the subdivision is on specified Māori land:*
 - (c) *the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.*
- (2) *Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
 - (a) *avoids if possible, or otherwise mitigates, any 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 surrounding land-based primary production activities.*

The RIS clarifies (page 31) that, although the NPS-HPL takes a strongly protective approach, it also intentionally provides a degree of flexibility. That is, although it generally seeks to avoid the subdivision of 'highly productive land', subdivision is enabled where the overall productive capacity of the land can

¹ By LandVision (2018) to support the section 32 report for the proposed District Plan

be maintained. The findings of the Goodman Rural report contained in Attachment 1 demonstrate that the proposed removal of land from the parent title (farm effective area) will not materially affect the overall productive capacity of the farm, accounting for the physical characteristics (including soils), climate, location relative to markets and labour pool and statutory constraints (in particular, the s. 360 RMA Regulations that introduce regulatory intervention to prevent pugging on the farm's gley soils). The Goodman Rural report confirms that the reduction in farm size is small (not significant) and that the proposed land use change from farm to residential subdivision will have negligible effect at the farm scale and district wide scale.

The exclusions provided for in sub-clauses 3.8 (1) (b) and (c) do not apply to the proposed subdivision. Informed by the foregoing context, and the Goodman Rural report contained in Attachment 1, the proposed subdivision can be said to be consistent with the NPS-HPL policies for the following reasons:

<p>Policy 1: Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.</p>	<p><i>Acknowledging that the land proposed to be subdivided is classified LUC3, the proposed subdivision does not include land that the Council has identified as being 'highly productive' or 'highly versatile' or in need of particular protection from the issues that gave rise to the NPS-HPL.</i></p>
<p>Policy 2: The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.</p>	<p><i>Policy 2 is really addressing the challenges presented for urban environments arising from the competing interests of the NPS-HPL and the NPS-Urban Development. The regional council process of identifying and mapping 'highly productive land' has not been completed and is expected to consider these matters. The proposed subdivision is not an 'urban development' in the sense intended by Policy 2 and has addressed the freshwater values of the site.</i></p>
<p>Policy 3: Highly productive land is mapped and included in regional policy statements and district plans.</p>	<p><i>The mapping process required by the NPS-HPL will occur separately but it is notable that the Council's own mapping work has not identified the site as being within an area of 'highly productive land' for the purposes of District Plan resource management.</i></p>
<p>Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.</p>	<p><i>The Goodman Rural report confirms that the effective farm area (excluding the proposed residential allotments) will continue to be viable for the farming system to which this land is suited. The proposed subdivision will, financially, enable the primary farming use to continue. This outcome is preferable, compared to other alternatives such as commercial afforestation of the land.</i></p>
<p>Policy 5: The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.</p>	<p><i>Policy 5 is not directly applicable to the application for subdivision consent, although the applicant is separately seeking a residential zoning to suit the size and density of the proposed subdivision, once consent is granted.</i></p>
<p>Policy 6: The rezoning and development of highly productive land as rural</p>	<p><i>Policy 6 is not applicable to the proposed subdivision. The issues of concern relating to peri-urban rural</i></p>

lifestyle is avoided, except as provided in this National Policy Statement.	<i>lifestyle subdivision described in the section 32 report and RIS are not relevant for this subdivision proposal.</i>
Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.	<i>For the reasons explained earlier, and supported by the Goodman Rural report in Attachment 1, the proposed subdivision falls within the exception provided for by Clause 3.8 (1) (a) of the NPS-HP. The proposed subdivision for residential purposes is therefore an appropriate use and development for the purposes of Policy 8.</i>
Policy 8: Highly productive land is protected from inappropriate use and development.	
Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.	<i>The farming system on the effective farm area is not expected to give rise to 'reverse sensitivity' effects caused by the presence of future residential development and buffers are proposed to separate the proposed subdivision from surrounding farming activities. Also, the applicant intends to impose 'no-complaint' restrictions as covenants on the titles of the proposed allotments to ensure prospective purchasers are alerted to the realities of the location and to prevent 'reverse sensitivity' complaints in future.</i>

The above commentary is relevant for the purposes of section 104 (1) (b) (iii) in any commissioned s. 42A report and in determining the decision on the proposed subdivision. It is provided as a supplement to the AEE lodged with the application (the AEE does not need to be altered to account for these matters).

Christine Foster