

## Peer Review of NPS-HPL documents supporting Plan Change 95 Application.

### 1 Background

The Western Bay of Plenty District Council (the Council) have engaged Stuart Ford of The AgriBusiness Group (TAG) to confirm that a suitable process was followed and the right information has been provided in Plan Change 95 Application, to rezone land from the Rural Zone to a combination of Residential and Commercial Zones, to assess the relevant clauses in the National Policy Statement on Highly Productive Land (NPS-HPL).

I have been provided with the following reports:

- LandVision: Land Productivity Assessment for Proposed Private Plan. Pencarrow Estate SH 2, Pongakawa.
- NERA: High-level preliminary economic appraisal of Plan Change 95.
- NERA: Plan Change 95: analysis of the geographic boundaries of local housing markets.

#### 1.1 NPS-HPL

The application to rezone the land from Rural to Urban requires that an assessment is made under Clause 3.6 and Clause 3.13 of the NPS-HPL.

##### 1.1.1 Clause 3.6

Clause 3.6 Restricting urban rezoning of highly productive land states:

- (1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
  - (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
  - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
  - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
- (2) In order to meet the requirements of subclause (1)(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:

- (a) greater intensification in existing urban areas; and
  - (b) rezoning of land that is not highly productive land as urban; and
  - (c) rezoning different highly productive land that has a relatively lower productive capacity.
- (3) In subclause (1)(b), development capacity is **within the same locality and market** if it:
- (a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and
  - (b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020).

I do not have the qualifications and experience to comment on (1) (a) but do have some capability under (b) to comment on the adequacy of the Land Use Capability (LUC) assessment and do have the qualifications and experience to comment on (1) (c).

In commenting on whether a suitable process was followed, and the right information has been provided I refer to the MFE Guidance document<sup>1</sup> (the Guide) which states that:

#### **Clause 3.6(1)(c) – cost-benefit assessment**

Clause 3.6(1)(c) requires an assessment of the benefits and costs of rezoning. It is intended to ensure a more robust assessment of benefits and costs across the four wellbeings (environment, economic, social, cultural) is undertaken for all urban rezoning proposals on HPL and that this specifically considers long-term benefits and costs and tangible and intangible values.

This assessment can be undertaken as part of an evaluation under section 32 of the RMA, or it can be a separate assessment specifically focused on meeting the tests of Clause 3.6. Wherever the assessment is completed, the evaluation should be cohesive and comprehensive. Ideally it will be part of a single document, rather than spread across a piecemeal range of documents.

The intent of Clause 3.6(1)(c) is to build on best practice in terms of section 32 evaluations but also to emphasise that, in the case of urban rezoning of HPL, there is an even greater need to look beyond the short-term economic benefits of any urban rezoning proposal and to consider the full spectrum of environmental, economic, social and cultural benefits and costs. A robust section 32 assessment that covered both the section 32 tests and the requirements of Clause 3.6(1)(c) is recommended as best practice.

The references in Clause 3.6(1)(c) to the “loss of HPL for land-based primary production” and “tangible and intangible values” require a consideration of the values of HPL that may be lost if an urban rezoning proposal is approved. This consideration should go beyond the economic value of transitioning from rural to urban use. Intangible values of HPL that should be considered as part of this assessment include:

- its value to future generations
- its finite characteristics and limited supply

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<sup>1</sup> MFE (2023): National Policy Statement for Highly Productive Land: Guide to implementation.

- its ability to support community resilience
- the limited ability of other land to produce certain products.

The section 32 evaluation report for the NPS-HPL identified a range of benefits of retaining HPL for land-based primary production that are often intangible and where it is inappropriate to assign them a monetary value. The range of benefits and costs discussed in the NPS-HPL section 32 evaluation report include those shown in [figure 2](#) of this report, which may provide a good starting point for considering a cost-benefit assessment for an urban rezoning proposal on HPL to meet the requirements of Clause 3.6(1)(c).

### 1.1.2 Clause 3.13

Clause 3.13 Managing reverse sensitivity and cumulative effects states:

- (1) Territorial authorities must include objectives, policies, and rules in their district plans that:
  - (c) identify typical activities and effects associated with land-based primary production on highly productive land that should be anticipated and tolerated in a productive rural environment; and
  - (d) require the avoidance if possible, or otherwise the mitigation, of any potential reverse sensitivity effects from urban rezoning or rural lifestyle development that could affect land-based primary production on highly productive land (where mitigation might involve, for instance, the use of setbacks and buffers); and
  - (e) require consideration of the cumulative effects of any subdivision, use, or development on the availability and productive capacity of highly productive land in their district.

In the Guide it states:

### 1.1.3 Managing reverse sensitivity and cumulative effects

Policy 9 requires that reverse sensitivity effects are managed so as not to constrain land-based primary production activities on HPL. It is anticipated that most district plans will already contain both policy direction and rules that manage reverse sensitivity effects in rural zones.

In addition to avoiding reverse sensitivity effects, Clause 3.13 also requires that territorial authorities include objectives, policies and rules in their district plans to ensure that the cumulative effects of any subdivision, use or development on the availability and productive capacity of HPL in their district are considered as part of any subdivision, land use or plan change application.

In terms of how this direction should be translated into district plan provisions, Clause 3.13(1)(a) states that district plan objectives, policies and rules should “identify typical activities and effects associated with land-based primary production on highly productive land that should be anticipated and tolerated in a productive rural environment”. This is anticipated to typically translate into a permitted-activity-rule regime for land-based primary production activities on HPL, supported by a policy framework that specifically identifies effects generated by land-based primary production activities that should be anticipated and tolerated (eg, noise, dust, odour, crop spraying, traffic movements).

For district plans that already contain policy direction relating to reverse sensitivity effects and/or cumulative effects on HPL, Clause 3.13 may not require any further amendments to provisions (although

the section 32 report will need to justify how the existing provisions give effect to Clause 3.13). For district plans that do not currently contain policy direction relating to reverse sensitivity effects and/or cumulative effects on HPL, new clauses that align with the direction in Clause 3.13 will need to be introduced. This is anticipated to be in the form of policy direction on reverse sensitivity and cumulative effects, aligned with the wording in Clause 3.13(1)(b) and (c), and then matters of control/discretion for potentially sensitive activities that allows for consideration of reverse sensitivity and cumulative effects. Another potential option is to consider the use of buffer areas or setbacks around the edges of HPL, where a more stringent activity status applies to new sensitive activities, with the aim of directing these sensitive activities to alternative locations further away from areas of HPL.

I am of the opinion that the purpose of cl 3.13 is primarily to direct future changes to regional policy statements and to district plan provisions but note that in the guide it states that this clause may have some limited applications for resource consents and/or plan change processes from the date of commencement.

## 2 The LandVision Report

In the LandVision report it states that:

The purpose of this report is to provide:

1. A paddock scale Land Resource Inventory and Land Use Capability survey.
2. An assessment of the productive capacity of the land within the proposed residential zone (proposed development site) as required under the NPS for Highly Productive Land (NPS-HPL).
3. An assessment, as per Clause 3.13 of the NPS-HPL, and identification of the activities and environmental effects that should be anticipated in a productive rural environment as well as any cumulative effects from the proposed residential development.
4. An assessment on whether the criteria in Clauses 3.6 under the NPS-HPL is met – that there are no other reasonably practicable and feasible options within the same locality suitable for residential development.

### 2.1 Land Resource Inventory Assessment

I am satisfied that LandVision have used the correct methodology in assessing the LUC and note that their use of paddock scale mapping as opposed to the regional scale mapping has identified considerable differences in the soil and slope classification of the site which both result in a different LUC classification of the site away from the blanket LUC 2 classification made at the regional scale mapping into a more nuanced classification that results from the more detailed and accurate paddock scale mapping as is shown in their Table 2.

Table 2: LUC classification for the proposed subdivision lots from both the regional and paddock scale mapping. Note: LUC class of paddock scale mapping is always denoted in roman numerals where regional scale mapping is denoted in normal numerals.

Regional scale mapping (1:50,000)		Paddock scale mapping (1:6,000)	
LUC Unit	Area (ha)	LUC unit	Area (ha)
2w1	16.9	IIw1	7.2
3e2	0.2	IIs1	5.6
		IIIw1	1.5
		IVe2	2.5
		VIIIw1	0.3
<b>Total</b>	<b>17.1 ha</b>	<b>Total</b>	<b>17.1 ha</b>

LandVision have identified that the potential land uses of their paddock scale mapping are as shown in their Table 6 as:

- IIw1 and IIIw1 (1.7 ha) - Intensive pastoral farming, Horticulture, Cereal crops and Root and green fodder cropping.
- IIs1 (5.6 ha) - Intensive pastoral farming, Citrus and sub-tropical fruit orchards, Orchards, Horticulture, Cereal crops and Root green and fodder cropping.
- IVe2 - Intensive pastoral farming, Citrus and sub-tropical fruit orchards.

They then discuss the constraints and limitations that include slight or moderate limitations for arable use, susceptibility to summer drought, high water table and poor natural drainage all of which can be overcome by the establishment of drainage and irrigation.

They then discuss the fact that the LUC units are fragmented and that *This fragmentation may pose management challenges and difficulties as there is not one large contiguous highly productive land unit to utilise.* And that the location of the proposed development which includes SH 2 and the close proximity to residential development *may limit the potential for the highly productive land within the proposed development site to be amalgamated with highly productive land units further to the south and east.*

They summarise this assessment as:

*From strictly a land resource perspective, the highly productive land units (LUC class IIw, IIs and IIIw) within the proposed development site are suited, with correct management, to a range of different land uses. However, the overall productive capacity of the site to sustain a number of different land uses may be affected by the fragmentation and lack of size and scale of the HPL land units, as well as the site location and current surrounding land uses.*

It is my opinion that while this analysis has used the correct methodology, that the summary is too general to assist someone who is tasked with assessing the costs of the loss of HPL to carry out that assessment. This is not a criticism of the results that LandVision have provided it is just flagging the fact that it is not complete in terms of what is required to assess cl 3.6 (1) (c).

## 2.2 Assessment of Clause 3.13

I am happy that the assessment of clause 3.13 has used the correct methodology and is accurate.

## 2.3 Assessment of Clause 3.6 (1) (b)

As regards to LandVision's assessment of (1) (b) I note that in the section on alternative potential areas for development where they compare the LUC units and potential land uses of three alternative sites with the subject site they state:

*The assessment of the land resources utilized the NZLRI mapping system – a national database of New Zealand's physical resource information. This database is a collection of information gathered from published and unpublished material, stereo aerial photography and extensive fieldwork. The database obtained from the LRIS portal is present in 1:50,000 scale. Paddock scale mapping of these larger scale areas was not considered a feasible option due to cost and time restraints.*

*It is noteworthy that the assessment to satisfy Clause 3.6 was a desktop exercise. Paddock scale mapping could have revealed different LUC units to what is presented by the NZLRI, such as with the paddock scale mapping exercise at Pencarrow Estate.*

Considering the quite large changes that occurred on the subject site when the assessment was carried out at a paddock scale, I suspect that there would be a similar level of change which would occur on the alternative site if they were assessed at the same scale. Therefore, I wonder at the confidence that can be put on any conclusions that can be made when comparing the alternative sites at a regional scale with the subject site at a paddock scale.

## 3 The NERA Report

The NERA report is titled *High-level preliminary economic appraisal of Plan Change 95*. In relation to Clause 3.6(1) (c) it states that:

*Clause 3.6(1)(c) of the NPS-HPL requires an assessment of the environmental, social, cultural and economic benefits and costs of rezoning highly productive land. My analysis is only in respect of the **economic benefits and costs**, for which I set out a qualitative discussion of these benefits and costs. (my emphasis)*

This is only a very partial assessment of what is required to satisfy the requirements of Cl 3.6 (1) (c).

## 4 Conclusions

The work carried out by LandVision is satisfactory, apart from my concerns about the degree of confidence that can be placed on any conclusions that can be made when comparing the alternative sites at a regional scale with the subject site at a paddock scale.

The NERA report is also satisfactory as a high level analysis which only looks at the economic benefits of the proposed use of the land once it has been rezoned.

What is missing in the documents sent to me to peer review is an assessment of the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.

There has been no apparent attempt to frame the assessment in a more robust assessment of benefits and costs across the four wellbeing's (environment, economic, social, cultural) or that this specifically considers long-term benefits and costs and tangible and intangible values. It provides part of the necessary assessment, but it is completely inadequate when compared against the suggested standard in the guide which is to provide a robust section 32 assessment that covered both the section 32 tests and the requirements of Clause 3.6(1)(c) is recommended as best practice.

This is not a criticism of either LandVision or NERA, it is just stating my opinion that what is required to carry out the assessment required in cl 3.6 (1) (c) requires additional analysis of elements which maybe outside their area of expertise.

My overall conclusion is that, largely, suitable processes were followed but that the information which I have been provided with is partial and inadequate in order to make an assessment under Clause 3.6 (1) (c) because it does not weigh up the benefits of the proposed land use against the costs of loss of HPL.