Submission on "Managing the use and development of highly productive land - Potential amendments to the NPS-HPL: Discussion Document"

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SUBMITTER DETAILS

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Introduction

1. This is the Environmental Defence Society's (**EDS**) submission on the Ministry for the Environment's Discussion Document on potential amendments to the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) (**Discussion Document**).

2. EDS is a not-for-profit, non-government national environmental organisation. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to promote better environmental outcomes in resource management.

3. The Resource Management Act 1991 (**RMA**) requires that the life-supporting capacity of soil is safeguarded.[1] In response to growing concern about urban development building over highly productive land, the Government promulgated the NPS-HPL in September 2022. The instrument is still bedding in, and Councils are still giving effect to it in their plans.

4. The objective of the NPS-HPL is to 'protect' highly productive land for use in "land-based primary production".[2] Land-based primary production means "production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land".[3] Use of Highly Productive Land (**HPL**) for this purpose is to be "prioritised and supported"[4] and the land is to be "protected from inappropriate use and development".[5]

5. The new Natural and Built Environment Act 2023 (**NBEA**) mirrors this national direction and includes the following as a system outcome:[6]

[1] RMA, s 5(2)(b)
[2] NPS-HPL, Objective 2.1
[3] NPS-HPL, Clause 1.3
[4] NPS-HPL, Policy 4
[5] NPS-HPL, Policy 8
[6] NBEA, s 6

"*In order to promote the well-being of both present and future generations, highly productive land is protected -*

(a) for use in land-based primary production; and
(b) from inappropriate subdivision, use, and development."

6. This means that those outcomes "must be achieved at the national and regional levels to ensure that the purpose of the Act is achieved",[7] which is a strong legal direction. Any conflict between these and other outcomes must be resolved at the "highest practicable level" and compatibility must be preferred. Although the current proposal is for amendment to an RMA instrument, consistency with the NBEA is also important.

7. Under the NPS-HPL, it has been said that there is no clear consenting pathway for:

    a. Construction of new specified infrastructure on HPL; or
    b. Developing and relocating intensive indoor primary production and greenhouses on HPL.

8. The Discussion Document seeks feedback on the provision of a consenting pathway for these activities.

9. With respect to new specified infrastructure, EDS submits that Option 2 (providing for a consenting pathway):

    a. Represents a significant change in policy direction that was deliberately not provided for in the final NPS-HPL;
    b. The problem definition is not well defined, and new specified infrastructure already has adequate consenting pathways in the NPS-HPL via Clauses 3.9(2)(b), (i) and (h) (except perhaps solar);
    c. Agrivoltaics can be a good outcome for the natural environment and food production and it might be appropriate to provide a clear consenting pathway for this activity if it does not take vegetable growing HPL out of production;
    d. To the extent that the problem is defined, the proposed amendment significantly over-reaches and goes well beyond just dealing with the issue at hand;
    e. The proposed amendment will, in practice, mean that all new specified infrastructure is strongly enabled on HPL; and
    f. The checks and balances of the NPS-HPL will not provide sufficient safeguards against the loss, including cumulative loss, of HPL.

10. If a consenting pathway is determined to be necessary for the types of activities discussed, then ***EDS submits that the following alternative amendment should be applied***:

    New Clause 3.9(2)(k):

    It is associated with one of the following and there is a functional need for the use or development to be on the highly productive land:

    (i) Solar renewable electricity generation where the activity is not currently used for horticulture; or
    (ii) The development of infrastructure that delivers a service operated by a lifeline utility.

[7] NBEA, s 6

11. With respect to intensive indoor primary production and greenhouses, EDS submits that there is limited evidence of the extent to which this is an issue and that providing a consenting pathway for new intensive indoor primary production and greenhouses on HPL would be misaligned with the objectives of the NPS-HPL. ***EDS therefore supports Option 1*** (retain status quo).

General comments

12. There seems to be a mis-understanding circulating that the 'real' purpose of the NPS-HPL is to protect HPL from urban encroachment. Urban growth on HPL was certainly one of the reasons why the Government promulgated the NPS-HPL. But is not the only reason, and the NPS is not narrowly drafted in that regard.

13. The imperative of the NPS-HPL is to ensure that the finite characteristics of productive *soils* are protected from all sorts of inappropriate uses and development, not to control one particular form of development. It is desirable that appropriate uses are tied to activities that rely on use of the soil, with other activities being regarded as inappropriate. Policy 8, elucidated in Clause 3.9, makes this clear.

14. The RMA has a long tradition of failing to guard against cumulative effects. The proposed changes set out in the Discussion Document risk repeating that with what is an extremely important and finite resource – productive soils – for reasons that seem rooted in arguments about minor inconvenience or greater cost. What seems like minor impacts now will, down the track, become more obviously significant cumulative effects.

15. More generally, what seems to be missing from the conversation is the role of spatial planning. EDS has not seen a robust assessment of where the activities sought to be enabled actually need to be located, and therefore the extent to which there *is* a need to enable their construction on a finite and limited resource. The Discussion Document instead refers frequently to what stakeholders (which seems to refer to development proponents) have said would, essentially, be desirable or easier, and general statements that seem to assume exactly where, spatially, infrastructure is 'needed'.

16. The purpose of spatial planning under the recently enacted Spatial Planning Act 2023 is to determine what should go where on an evidence based assessment, rather than enable any private or public sector activity to be assessed on a reactive and *ad hoc* basis through a consenting process. If evidence shows a compelling functional need for specific renewable energy or indoor primary production to be located on specific HPL and nowhere else, that should be clearly outlined so the trade off being made is obvious in a spatial plan. The obvious risk otherwise is that cumulative impacts gradually erode the purpose of the NPS-HPL.

Issue 1: There is no clear consenting pathway for new specified infrastructure

17. Under the NPS-HPL, "land-based primary production" is to be prioritised and supported on HPL.[8] Use and development that does not meet that definition must be avoided if it is "inappropriate".[9] As stated by the Supreme Court in the *King Salmon* case, "avoid" has its ordinary meaning of "not allowing" or "preventing".[10] Essentially, a strong avoidance policy (in

[8] NPS-HPL, Policy 4
[9] NPS-HPL, Clause 3.9(1)
[10] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [24(b)]

the absence of other, equally strong, conflicting policies) is seen to preclude a consent application being granted even in the absence of prohibited activity status.

18. All use and development is "inappropriate" unless it meets one of the criteria set out in Clause 3.9(2) of the NPS-HPL. Stakeholders have raised concern that the criteria *may not* provide for 'new specified infrastructure', saying that the NPS-HPL is ambiguous on this point. Thus, this use or development may have to be avoided.

19. To address this concern, the Discussion Document recommends that Clause 3.9(2)(j)(i) be amended to explicitly refer to "construction" as follows (Option 2):

> *"(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:*
> *…*
> *(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 **construction** maintenance, operation, upgrade, or expansion of specified infrastructure:"*

20. It states that this amendment will provide clarity that there is a consenting pathway for new specified infrastructure to be authorised on HPL.

21. If explicitly provided for under Clause 3.9(2)(j)(i), the construction of specified infrastructure (i.e., new specified infrastructure) is no longer deemed to be 'inappropriate' by the NPS-HPL because it falls within one of the exceptions in Clause 3.9(2). As such, new specified infrastructure does not have to be avoided,[11] and HPL does not have to be "protected"[12] from new specified infrastructure. A consenting pathway for new specified infrastructure would be provided for.

Do the proposed changes align with original intent of the NPS-HPL?

22. The Discussion Document states that providing a consenting pathway for new specified infrastructure aligns with the original intent of the NPS-HPL. It states that drafters intended for a consent pathway for new specified infrastructure on HPL to be provided in the NPS-HPL, as was provided in the Exposure Draft of the NPS. The Discussion Document states that during redrafting the word "development" was removed from the clause, restricting it to the "maintenance, operation, upgrade, or expansion of specified infrastructure".

23. The Discussion Document seems to imply that removing the consenting pathway for new specified infrastructure was an oversight or mistake, and that the proposed amendment set out above is simply rectifying that. This is reinforced by the Regulatory Impact Statement which states that the proposed amendment "… is addressing an ambiguity rather than fundamentally changing the intent of the policy."[13]

24. Under a heading "[n]ew specified infrastructure …" the Exposure Draft of the NPS-HPL provided that new use and development associated with specified infrastructure that provides significant

[11] NPS-HPL, Clause 3.9(1)
[12] As would otherwise be required under Policy 8 NPS-HPL
[13] https://environment.govt.nz/assets/publications/regulatory-impact-statement-mfe-NPS-HPL-21-July.pdf at p 2

national or regional benefit was "not inappropriate"[14] if there is a functional or operational need for the use or development to be located on HPL.

25. Through the process of finalisation of the NPS-HPL, that position was refined to provide a pathway for new infrastructure to be established on HPL by way of a designation or notice of requirement (**NoR**) (in Clause 3.9(2)(h)). The section 32 report on the NPS-HPL said that:[15]

> *"The NPS-HPL has the potential to impact on the establishment of new transmission infrastructure and the upgrading of existing transmission networks when this is proposed or located on HPL. The NPS-HPL addresses this interaction through specifically providing for the maintenance, operation, upgrading or expansion of specified infrastructure (including electricity transmission infrastructure) as an 'appropriate' use on HPL, provided there is a 'functional need' or 'operational need' for that infrastructure to be located on HPL. There is also a pathway for new infrastructure to establish on HPL by way of a designation or notice of requirement under the Act. This is discussed further in relation to specific policies and clauses."*

26. It goes on to state that:[16]

> *"… providing for designated activities (including applications for Notices of Requirement) on HPL in clause 3.9(2)(h)* ***recognises that the suitability of activities, including a consideration of their location, scale and effects, is fully considered*** *through the designation process, noting that there is nothing in the NPS-HPL that precludes new Notices of Requirement being lodged in respect of HPL."*
>
> *"****It is anticipated that new specified infrastructure*** *or new New Zealand Defence Force facilities* ***will use clause 3.9(2)(h) to establish on HPL*** *- existing specified infrastructure or New Zealand Defence Force facilities will use clause 3.9(2)(j) below if they do not currently rely on a designation."*
>
> *"Specific activities that have a functional or operational need to locate on HPL – clause 3.9(2)(j) … Note in the case of specified infrastructure and New Zealand Defence Force facilities, provision is made under this clause for maintenance, operation, upgrade, or expansion,* ***but not construction of new infrastructure or facilities. This is because it is expected new specified infrastructure*** *or New Zealand Defence Force facilities* ***will use the designation process to establish and that this clause focuses on existing infrastructure or facilities that may not have been established using a designation****."*
>
> *[emphasis added]*

27. It is clear from the above that a conscious decision was made to ensure that the final NPS-HPL did not provide a consenting pathway for new specified infrastructure, but rather that new infrastrucutre on HPL could only be provided through the designation/NoR process. That was because the designation/NoR process fully considers potential effects on HPL.

28. Accordingly, the proposed addition of the word "construction" in Clause 3.9(2)(j)(i) does not simply remedy a drafting mistake. It is a significant change in policy direction that was not assessed by the section 32 report.

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[14] https://environment.govt.nz/assets/publications/RedactedCAB-PAPER-Highly-Productive-Land-Proposed-National-Policy-Statement-for-Highly-Productive-Land-Exposure-Draft-Testing.pdf at Clause 3.7(4)

[15] https://environment.govt.nz/assets/publications/NPS-for-Highly-Productive-Land-Section-32-Evaluation-Report.pdf at pg 17-18

[16] Ibid at 98

Is there a need for amendment?

29. The Discussion Document concedes that most operators or providers of specified infrastructure have designation powers under the RMA, so already have a pathway to establish such infrastructure on HPL under Clause 3.9(2)(h).

30. However, it states that including a consenting pathway for new specified infrastructure would "mainly" be for renewable electricity generation (**REG**) development on HPL and infrastructure that is needed at pace.[17] Almost as an aside, the Discussion Document also identifies the need for a consenting pathway for fibre installation.

31. The Discussion Document does not adequately articulate the need for the proposed amendment that would provide a consenting pathway for new specified infrastructure. There is no quantification of the problem, or an attempt to limit its application to particular forms of specified infrastructure where there is a strong case for change. It appears, however, that the main driver for the proposed change is to pave the way for solar farms on HPL.

32. The provision for REG (particularly solar) has gained significant momentum in recent years as Aotearoa New Zealand looks to renewable electricity to achieve its climate change commitments. However, policy development in favour of REG is being proposed at the expense of land with high environmental and social values, such as biodiversity, landscape or, in this case, HPL.

33. EDS has advocated that broad (rather than case-by-case at the consenting level) constraints mapping needs to be urgently completed before REG activities (and any adverse effects) are approved in areas with significant environmental values.[18] A stronger, strategic spatial planning approach would provide clearer direction on appropriate locations for REG activities, including requiring councils to identify existing and potential REG sites. This could negate the need for REG activities to occur on areas of high value, such as HPL, without sacrificing the benefits of such development. It would also provide much more certainty for developers, since providing a consenting pathway is by no means a guarantee that consent would be granted (or granted subject to commercially viable conditions).

34. Having said that, the Regulatory Impact Statement states that only approximately 0.28% of HPL might be 'lost' to solar farms, being 11,040 ha of an estimated 3,830,000 ha of HPL (acknowledging that data on the spatial overlap between solar and HPL is limited).[19] These figures provide some comfort as to the extent of potential solar on HPL, but we still question whether even this modest (relative to all HPL land) loss is necessary. Such estimates are also not reflected in the NPS-HPL itself; nowhere is there a provision that would "cap" the loss of HPL at this level if projections turned out not to be accurate or if conditions changed.

35. We are also aware that agrivoltaics are gaining popularity as a means by which HPL can remain in production whilst generating renewable energy. In many cases, this can be a good outcome for the natural environment and food production, particularly if the activity involves destocking the land or, even better, transitioning the land use from dairying to a less-intensive activity like sheep grazing.

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[17] Discussion Document, pg 11

[18] https://eds.org.nz/wp-content/uploads/2023/05/EDS-Submission-on-Strengthening-national-direction-on-renewable-electricity-generation-and-transmission-June-2023-Final.pdf at para 4.4 - 4.11

[19] https://environment.govt.nz/assets/publications/regulatory-impact-statement-mfe-NPS-HPL-21-July.pdf at p 32

36. However, it is unclear the extent to which solar farms can co-exist with horticultural activities in practice (i.e., growing vegetables under the panels). As the Discussion Document states "[a]lthough solar farming does not significantly affect the soil resource, it does decrease the potential land-based primary production of HPL by limiting it to activities such as grazing sheep under and around the panels." This makes the activity similar to subdivision into lifestyle blocks, which also does not affect the soil resource but does, practically, mean that the productive capacity of the land is reduced. EDS is concerned that providing a consenting pathway for solar farms on HPL will remove LUC 1-3 land from food (vegetable) production, especially in areas proximate to urban centres where food mileage may be significant for social and climate outcomes.

37. With respect to other new specified infrastructure that is required at pace, and fibre installations, it is submitted that:

    a. Most infrastructure operators or providers already have designation powers under the RMA so are not captured by Clause 3.9(1) of the NPS-HPL.
    b. Clause 3.9(2)(b) already provides a consenting pathway for use and development if it addresses a high risk to public health and safety.
    c. Clause 3.9(2)(i) already provides a consenting pathway for use and development if it provides for public access.
    d. The "maintenance, operation, upgrade, or expansion" of existing specified infrastructure already provides for extensive use and development.
    e. Clause 3.9(2)(j) states that the use and development of HPL is not inappropriate as long as "*it is associated with*" the "maintenance, operation, upgrade, or expansion of specified infrastructure". Thus the use and development arguably may not even need to meet the definition of "specified infrastructure" to benefit from a consenting pathway.

Using a sledgehammer to crack a nut

38. Providing a consenting pathway for the "construction" of new specified infrastructure risks a wide range of infrastructure being enabled on HPL. It will go much further than creating a consenting pathway for just solar farms, emergency infrastructure and fibre installations. That is because the definition of "specified infrastructure" is broadly defined by the NPS-HPL as:

> *"(a) infrastructure that delivers a service operated by a lifeline utility:*
> *(b) infrastructure that is recognised as regionally or nationally significant in a National Policy Statement, New Zealand Coastal Policy Statement, regional policy statement or regional plan:*
> *(c) any public flood control, flood protection, or drainage works carried out:*
> *(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or*
> *(ii) for the purpose of drainage, by drainage districts under the Land Drainage Act 1908"*

39. Most significant is that specified infrastructure includes infrastructure recognised as regionally or nationally significant in a regional policy statement or plan. Regional plans can, and do, define regionally or nationally significant infrastructure very widely.

40. Further, as noted above, use and development arguably only needs to be "associated" with the "maintenance, operation, upgrade, or expansion of specified infrastructure" to enjoy a

consenting pathway. Thus new use and development may not even need to meet the definition of "specified infrastructure", it merely needs to be associated with it.

41. Providing a consenting pathway for all new specified infrastructure goes well beyond addressing the 'problem definition', which focuses on (relatively thin) evidence that solar electricity infrastructure, fibre installations, and disaster recovery facilities will be required on HPL. It is using a sledgehammer to crack a nut.

Not permitted, but still strongly enabled

42. The Discussion Document states that creating a consenting pathway for new specified infrastructure will not mean that it becomes a permitted activity on HPL. Technically, that may be true. Introducing a consenting pathway does just that, allowing councils to provide for new specified infrastructure on HPL in their plans (rather than avoid it through policies, or prohibit it through rules) so that decision-makers can consider the merits of proposals through the consent process. It does not automatically mean that the activity can proceed as of right. However, a consenting pathway opens up an assessment of the proposed activity under section 104 and Part 2 of the RMA.

43. Under that assessment, all national direction must be had regard to. Objective 1 and Policies 1, 4 and 9 of the NPS-HPL will remain relevant (however, critically, Policy 8 and associated Clause 3.9(1) will not). But those provisions must be assessed against other NPSs, including the NPS-REG which includes provisions supporting REG activities. Proposed changes to the NPS-REG are proposed to strengthen those provisions even further.[20]

44. In practice, this means that the relative strength of quite disconnected and sometimes conflicting policies are weighed up and traded off on a case by case basis (the antithesis of what is sought to be achieved under the NBEA). It opens the door to 'weaker' policies in the NPS-HPL (i.e., those not requiring avoidance) being overridden by a much stronger enabling policy direction (particularly under the proposed NPS-REG).

45. Indeed, that seems to be the deliberate intent of Option 2 in the Discussion Document: to bring the NPS-HPL into alignment with the NPS-REG by subjugating the protection of HPL in favour of REG activity:[21]

> *"The clause relating to specified infrastructure in the NPS-HPL is not consistent with the way other recent national direction has provided consent pathways for new specified infrastructure. An amendment is also needed to align with work that is ongoing to amend national guidance to provide a consistent straightforward consent pathway for REG and associated electricity transmission."*

46. For this reason, we consider it misleading to say that the change "does not" mean that new specified infrastructure is now permitted on HPL. Even if something is not a permitted activity, it can, and we think will, be strongly enabled through the consenting framework.

47. Further, simply because REG is being enabled in other national direction does not justify that approach being taken with new national direction concerned with completely different things.

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[20] See EDS's submission on the proposed changes to the NPS-REG: https://eds.org.nz/wp-content/uploads/2023/05/EDS-Submission-on-Strengthening-national-direction-on-renewable-electricity-generation-and-transmission-June-2023-Final.pdf

[21] Discussion document at 10

The Discussion Document implies that consistency is a technical matter requiring correction, rather than a significant policy decision to be taken specifically for HPL.

Checks and balances

48. The Discussion Document states that losses to HPL from the proposed addition of a consenting pathway for new specified infrastructure are not anticipated to be significant, given the checks and balances in the NPS-HPL.[22] These checks and balances are contained in:

    a. The definition of "specified infrastructure".
    b. Clause 3.9(2)(j) – there must be a "functional or operational need" for the use or development of the HPL.
    c. Clause 3.9(3)(a) – the use or development must minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of HPL.
    d. Clause 3.9(3)(b) – the use or development must avoid, or otherwise mitigate, any actual or potential reverse sensitivity effects on land-based primary production activities.

49. In response, EDS submits:

    a. "Specified infrastructure" is widely defined as discussed above and extends the consenting pathway for new infrastructure far beyond the problem definition.
    b. An "operational need" is not difficult to establish, and can include financial considerations (for example, if it is more expensive to locate elsewhere).
    c. Minimising or mitigating any loss of HPL does not align with the objective of the NPS-HPL, which is to "protect" HPL because it has "finite characteristics" (see Objective 1 and Policy 4 of NPS-HPL).

50. Consequently, we are not convinced that these checks and balances provide sufficient safeguards against the loss, including cumulative loss, of HPL.

Alternative solution

51. While EDS considers that the addition of "construction" in Clause 3.9(2)(j)(i) over-reaches, we acknowledge the potential opportunity for agrivoltaics to co-exist with HPL, and the potential need for more certainty around the development of emergency infrastructure and fibre installations.

52. The lack of a consenting pathway for these new infrastructure activities could be addressed by insertion of a new policy for new infrastructure. This would align with the approach adopted in the Exposure Draft NPS-HPL, which included a separate policy (Clause 3.7(4)) for new specified infrastructure. We recommend the following clause, which is targeted to addressing the problem definition and provides the appropriate checks and balances we consider are required to both provide a consenting pathway for new infrastructure, but also achieve the Objective and Policies of the NPS-HPL:

    New Clause 3.9(2)(k):

    > *It is associated with one of the following and there is a functional need for the use or development to be on the highly productive land:*

[22] https://environment.govt.nz/assets/publications/regulatory-impact-statement-mfe-NPS-HPL-21-July.pdf at p 30

(iii) Solar renewable electricity generation where the activity is not currently used for horticulture; or

(iv) The development of infrastructure that delivers a service operated by a lifeline utility.

53. We do not consider it 'untidy' to specifically list these activities separately in the NPS-HPL. Clause 3.9(2) already does this for several other uses and development. Subclause (i) suggested above would provide a consenting pathway for agrivoltaics, which we consider has the potential for positive co-benefits, without taking vegetable growing HPL out of production.[23] We note that such an approach is aligned with section 7 of the NBEA, where "achieving compatibility between or among outcomes must be preferred rather than achieving one outcome at the expense of another".

54. With respect to Subclause (ii), "lifeline utility" has the meaning in section 4 of the Civil Defence Emergency Management Act 2002, and includes "an entity named or described in Part A of Schedule 1 [of that Act], or that carries on a business described in Part B of Schedule 1 [of that Act]". Such entities include those that provide telecommunication networks. This subclause will provide certainty that new lifeline infrastructure required post an emergency can be established (including fibre installations) and have a consenting pathway through the NPS-HPL, recognising that most other infrastructure providers will already be able to proceed via Clause 3.9(2)(h).

Issue 2: There is no clear consenting pathway for intensive indoor primary production and greenhouses

55. The NPS-HPL has several potential consent pathways for new intensive indoor primary production and greenhouses on HPL (e.g., Clause 3.9(2)(a) and (g) and Clause 3.11). However, feedback from primary sector groups is that these pathways are not clear consenting pathways.

56. The Discussion Document states that there is limited evidence of the extent to which this is an issue and that providing a consenting pathway for new intensive indoor primary production and greenhouses on HPL would be misaligned with the objectives of the NPS-HPL. EDS agrees.

Inconsistency with purpose of the NPS-HPL

57. Land-based primary production, which is what the NPS HPL is designed to protect, is defined as production from agricultural, pastoral, horticultural, or forestry activities, *that is reliant on the soil resource of the land*. The term has been defined in this way for good reason. The whole point of the NPS-HPL is to protect the ability of the soil to be useful, not to ensure that the space above the soil is used for primary production *per se*.

58. The discussion document recognises this:[24]

> *"Intensive indoor primary production and greenhouse operations could potentially result in the permanent loss of HPL. This was a key consideration for these activities not being provided with a consent pathway in the development of the NPS-HPL."*

[23] If there is clear evidence that solar farms can co-exist with vegetable growing, then EDS would accept a pathway for solar generation, without the qualifier "*where the activity is not currently used for horticulture"*

[24] Discussion Document, pg 13

59. There is no substantive difference, in terms of policy, between paving over soils to provide for housing and paving over soils to construct forms of production that do not rely on (and can take away the future practical ability to use) the soil resource.

Lack of evidence of problem

60. There does not appear to be any strong evidence that there is actually a compelling need to provide for new intensive indoor primary production and greenhouses on HPL and what benefit it would have, other than what stakeholders have said would be useful or desirable for them (or speculation about climate benefits).[25] For example:[26]

> *"… for districts where rural zones are predominantly HPL, such as Matamata-Piako and Horowhenua, some primary sector bodies have argued that they would find it difficult to establish new sites".*

61. Some of the reason cited is cost. Such considerations may well be pertinent to proponents of new intensive indoor primary production and greenhouses, but the question is whether that really matters from a public policy perspective? While there may also be the need for building resilience into food production systems by relocating intensive indoor primary production and greenhouses from vulnerable areas (e.g., flood plains), it is not clear that the evidence base for needing to relocate specifically to HPL exists other than a general desire for flexibility in the sector. Moreover, the discussion document does not refer to the importance that *protecting* HPL might have for the resilience of our food system given climate change.

62. EDS therefore supports Option 1 (retaining the status quo). The most compelling reason is the simplest, described in the Discussion Document: it would "retain the policy objective of the NPS-HPL".[27]

[25] For example, at page 15 of the Discussion Document "These operations may need to relocate to close to a source of geothermal electricity, a relatively inexpensive source of renewable energy. Not being allowed to develop on HPL may make this transition more difficult." It is not clear what the correlation is (if any) between proximity to geothermal generation and being located on HPL. Is there a striking coincidence of the two across the country?

[26] Discussion Document, pg 13

[27] At pg 16