

Transpower submission on potential amendments to the National Policy Statement for Highly Productive Land

Date	19 October 2023
To	Ministry for the Environment; Ministry for Primary Industries
By email	highlyproductiveland@mfe.govt.nz
Address for service	Transpower New Zealand Limited PO Box 1021 Wellington 6140 Attention: Keitaria Haira, Corporate Counsel Email: keitaria.haira@transpower.co.nz Phone: 04 590 7390

- 1 Transpower New Zealand (**Transpower**) is the State-owned enterprise that plans, builds, maintains, owns and operates New Zealand's high voltage electricity transmission network (**National Grid**).
- 2 Thank you for the opportunity to make a submission on *Te whakahaere i te whakamahinga me te whanaketanga o ngā whenua whai hua – Managing the use and development of highly productive land MfE / MPI (2023) (Discussion Document)*. The Discussion Document proposes amendments to the National Policy Statement for Highly Productive Land (**NPS-HPL**) to address two issues that have been raised since the policy was introduced in 2022.

Transpower's interest in the Discussion Document

- 3 The objective of the NPS-HPL is to protect highly productive land (**HPL**) so it can be used for land-based primary production. To do this, the NPS-HPL restricts inappropriate use, development or subdivision of HPL. The Discussion Document raises two issues with the implementation of the policy:
 - a. The lack of a clear consent pathway for construction of new specified infrastructure on HPL in clause 3.9(2)(j)(i) of the NPS-HPL; and
 - b. The lack of a clear consent pathway for developing and relocating intensive indoor primary production and greenhouses on HPL.
- 4 Transpower's interest in the Discussion Document relates to the first of these issues.

The National Grid and Highly Productive Land

- 5 The National Grid is specified infrastructure as defined in the NPS-HPL. It runs the length of the country, from Kaikohe to Bluff. Given its linear nature, there are technical, operational and locational constraints that require it to locate in, or traverse, a wide range of landscapes across Aotearoa. National Grid infrastructure, despite a careful route selection process, may inevitably need to locate on HPL.
- 6 Just over a third of Transpower's assets are located on HPL (being Land Use Capability (**LUC**) classes 1-3). Given the age of our assets, the majority of these were established before the LUC classification system was developed. Transpower is a requiring authority under the Resource Management Act 1991 (**RMA**), and can therefore make use of the consenting pathway in clause 3.9(2)(h) of the NPS-HPL should it have a technical, operational or locational need to locate new infrastructure on HPL.
- 7 However, in some instances, generation projects (including necessary substations to connect to the National Grid) are led by parties that are not requiring authorities. These parties must seek resource consents. There is no consenting pathway for developing generation or transmission via consent, rather than designation.
- 8 We wish to highlight that renewable electricity generation such as solar farming, will in most cases, need to connect to the National Grid. Therefore, the effects of transmission infrastructure must be considered (and provided for) alongside these renewable energy projects. Accordingly, any amendments to resolve the implementation issues identified by renewable electricity generators, must also consider the implications for our infrastructure.

Consultation Questions: Specified Infrastructure

Question 1: Are you aware of any other issues that could impede the development of new specified infrastructure on HPL?

Clause 3.9(2)(h) of the NPS-HPL, together with the proposed amendments appear broad enough to provide for designated infrastructure as to not impede development of transmission infrastructure on HPL.

However, when considering the functional or operational need at clause 3.9(2)(j)), decision makers should recognise the need for transmission infrastructure to connect electricity generation (and also demand) wherever they happen to be located.

The location of the connection is dependent on the location of the new generation and the closest point on the existing National Grid. Because of this, Transpower often has very few options for where the connection is located and the values it impacts. These issues should be considered at the time the new electricity generation is consented.¹

Question 2: Do you think the NPS-HPL requires an amendment to provide for the construction of new specified infrastructure on HPL?

Yes. Construction of specified infrastructure was not included in clause 3.9(2)(j)(i) of the NPS-HPL, on the basis that new infrastructure could instead be authorised by designation under clause 3.9(2)(h).² We agree that option 1 does not provide a consent pathway for all new specified infrastructure which in turn, does not resolve the issues for non-designated activities and infrastructure providers that are not requiring authorities.

An amendment is required to allow for a consent pathway for the development of all new specified infrastructure on HPL.

Question 3: Do you think the proposed amendment to clause 3.9(2)(j)(i) – adding ‘construction’ – will resolve the issues?

The exposure draft of the NPS-HPL included a standalone clause (3.7(4)) for new specified infrastructure which specifically stated that: *“A new use or development on highly productive land is not inappropriate if: (a) the use, or development is associated with: (i) specified infrastructure that provides significant national or regional public benefit”*.³

This clause was not included in the final version of the NPS-HPL and was redrafted to provide criteria for the types of development deemed ‘not inappropriate’ at clause 3.9(2)(j)(i). This omission has resulted in the implementation issues that are subject to this consultation.

The Discussion Document notes that the word ‘development’ was removed during redrafting, restricting it to ‘maintenance, operation, upgrade, or expansion’ of specified infrastructure.⁴

¹ See Transpower’s submission on Strengthening National Direction on Renewable Energy Generation and Electricity Transmission, para 18.8-18.12.

² Regulatory Impact Statement, Appendix 2, p40.

³ Regulatory Impact Statement, Appendix 2, p40. This was subject to requiring territorial authorities to take measures to minimise or mitigate any actual loss of HPL.

⁴ Discussion Doc, p9.

However, there is no analysis in the Discussion Document about why the word ‘construction’ is being proposed rather than ‘development’. This could possibly be to avoid duplicating the term development at 3.9(2)(j).

There is also no assessment of the potential differences in meaning between the terms but effectively asks whether adding ‘construction’ will assist to enable ‘development’. We note that there is no definition of the word ‘construct’ or ‘construction’ in the RMA, or in any national policy statement or the national planning standards.

Transpower is concerned that adding ‘construction’ to clause 3.9(2)(j)(i) of the NPS-HPL would be uncertain, and risks being too narrow. Appendix 1 sets out how construction has been defined in New Zealand legislation which does not include demolition or removal activities at end of life. The Environment Court has also found that construction does not include the removal of structures like a building.⁵

Any amendments, particularly to enable more solar farms, should include ‘de-construction’ activities like the replacement, removal, demolition, or decommissioning of specified infrastructure.

Question 4: Which option do you prefer? Why?

To address Transpower’s concerns noted at Question 3, we support Option 2 with a new definition.

We support the addition of construction to clause 3.9(2)(j)(i), provided a new definition is also included in the NPS-HPL. For example: “construction, for the purposes of clause 3.9 includes any ancillary works, as well as replacement, removal, demolition, or decommissioning”.

Alternatively, if a separate definition is not included, ‘replacement and removal’ could be added to clause 3.9(2)(j)(i) but could risk not providing for all activities carried out by infrastructure operators. If all de-construction verbs were added to the clause, this would become lengthy and difficult to interpret. Our preference would be for a separate stand-alone definition for construction.

⁵ *Waitakere City Council v Minister of Defence* [2006] NZRMA 253.

Appendix 1: Construction definitions in New Zealand legislation

Legislation	Definition
Electricity Act 1992, s 2	construct includes to erect, to lay, and to place; and construction has a corresponding meaning.
Local Government Act 1974, s 2	construction, in relation to any work authorised by this Act, includes the execution, establishment, constitution, undertaking, or carrying out thereof; and construct has a corresponding meaning.
Public Works Act 1981, s 2	construction and execution, in relation to a work, include the establishment, constitution, operation, maintenance and undertaking of the work; and construct and execute have corresponding meanings.
Building Act, s 7	construct, in relation to a building, includes to design, build, erect, prefabricate, and relocate the building.
Infrastructure Funding and Financing Act 2020, s 7	<p>construction, in relation to infrastructure, includes—</p> <ul style="list-style-type: none"> (a) design of the infrastructure; and (b) if the infrastructure is not yet vested,— <ul style="list-style-type: none"> (i) commissioning of the infrastructure; and (ii) operation of the infrastructure between commissioning and vesting; and (c) all other necessary steps in a construction project, including planning, regulatory processes, tenders, project delivery, and contract management and administration.