

National Policy Statement for Highly Productive Soils 2022 in relation to SUB21/47781

1. The relevant National Policy Statement in relation to the subdivision and land use at 6 and 42 Leith Road (SUB21/47781 and LUC22/48312) is the National Policy Statement for Highly Productive Soils 2022.
2. About 15% of New Zealand's land is categorised as highly productive. That means it's the country's most fertile and versatile land. The National Policy Statement (NPS) for Highly Productive Land will improve the management of this land. The NPS came into effect on 17 October 2022. The purpose of the NPS is to ensure highly productive land is available for growing vegetables, fruit, and other primary production, now and into the future.
3. Highly productive land is categorised as land that is LUC Class 1 -3 in the NPS-HPS. Whilst the subdivision and land use consent application were lodged prior to the NPS-HPL coming into effect the NPS-HPL requires all decisions made after the 17th of October to be consistent with this higher order document.
4. Subdivision of highly productive land is forefront of the policy, the objective of which is "*Highly productive land is protected for use in land-based primary production, both now and for future generations.*". For the ease of assisting the Commissioner and providing advice on the NPS-HPL this advice is based on the subdivision consent for the site at 6 and 42 Leith Road. This NPS-HPL assessment is based upon the Commissioner in Minute 7 outlining at point 4 that he would like this NPS to be addressed.
5. Relevant policies include:
 - *Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.*
 - *Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*
 - *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.*
6. The land subject to the proposal is located on highly productive land made up of some Class 2 land. The Manaaki Whenua Landcare Research website is the current tool we have available for identifying land class. This website identifies the flat land near the Leith Road frontage subject to SUB21/47781 as Class 2 land.
7. Section 3 of the NPS sets out what Regional Councils and Territorial Authorities must do to give effect to the NPS but also requires that effect be given to the NPS despite the actions required not yet being undertaken. In this regard, Section 3.8 is relevant to the proposal.
8. Section 3.8 states that Territorial Authorities must **avoid** the subdivision of highly productive land unless one of the 3 exemptions applies to the subdivision (Subsection

- 1). If an exemption applies to the subdivision, then there are further considerations to take into account (Subsection 2).
9. In this case, I consider that the proposal is not exempt from the requirement to avoid the subdivision of highly productive land because Section 3.8 (1) (b) and (c) are not applicable to the subject site. Further, it does not appear that the subdivision would meet exemption 3.8 (1) (a) which requires the lots to retain the overall productive capacity of the subject site over the long term. This is because the subdivision would result in excess of 4ha of highly productive land being lost from pastoral production and being created into smaller lifestyle allotments.
10. Given my determination under Section 3.8 above in relation to SUB21/47781 of the NPS-HPL an assessment is then required under Section 3.10 which provides exemptions for highly productive land subject to permanent or long-term constraints. From the information I have on the subject sites productive capacity (or lack thereof), which is limited due to the timing of the NPS-HPL and the lack of assessment provided by the applicant it is difficult to sustain or apply any of these exemptions to the subject site. It does appear that only the flatter pastoral land adjoining Leith Road is considered 'highly productive' under the NPS-HPL and a large portion of the larger farming unit is lower land classification given its undulating nature and the presence of the waterbodies traversing the site. Further, clause 3.10 (1) (a) requires the presence of a permanent or long-term constraint on the land being present that would mean land-based primary production is not able to be economically viable for at least 30 years. This exemption does not seem likely to the subject site given its current productive use as a dry stock farming unit. Given the application fails 3.10 (1) (a) then there is no need to address the subsequent sections of 3.10 (1) (b) and (c). It is also important to note the onus is on the applicant to demonstrate an exemption applies under 3.10 and the applicant. Therefore, I can only conclude the application does not meet an exemption under 3.10 of the NPS-HPL.
11. Overall, I consider that the subdivision consent application will be inconsistent with the NPS for highly productive land as it does not align with Section 3.8 of the NPS-HPL. It is acknowledged that the timing of this NPS-HPL is unfortunate given the application was lodged well before this NPS coming into effect. However, the NPS does not set out any exemptions for consents lodged prior to the NPS-HPL coming into effect.
12. Given the conclusions reached under this assessment against the NPS-HPL it is considered this is a further reason that SUB21/47781 should be declined and that this assessment needs to be considered alongside the assessment made in the Section 42A for SUB21/47781 and the additional information provided at the hearing on this application.