

12 July 2023

LEGAL ADVICE

Central Otago District Council

1 Dunorling Street

ALEXANDRA**Attention: Ann Rodgers****E-Mail: ann.rodgers@codc.govt.nz**

Dear Ann

**NATIONAL POLICY STATEMENT HIGHLY PRODUCTIVE LAND (NPS) AND SUBMISSIONS TO PC19
(Our Ref: 285978)**

1. We refer to your email of 10 July 2023 providing a copy of the evidence and legal submissions with respect to mapping of highly productive land which have been presented to the Hearings Panel in support of submissions¹ on Plan Change 19 seeking re-zoning of rural land.
2. The legal submissions are to the effect that the definition of **LUC 1, 2 or 3 land** in the NPS allows the submitters to undertake more detailed mapping which may result in a change the LUC class that is not subject to the NPS. The expert soil evidence undertakes more detailed mapping (using the land use capacity classification) to conclude that the submitters is not land that is LUC 1, 2 or 3, and therefore not subject to the NPS.
3. The definition of **LUC 1, 2 or 3 land** is as follows:

means land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification.
4. The NPS required every Regional Council to notify a proposed regional policy statement that maps highly productive land no later than three years after the commencement date of the NPS. For the purpose of identifying highly productive land, mapping based on the New Zealand Land Resource Inventory is conclusive of LUC status, unless a Regional Council accepts any more detailed mapping that uses the Land Use Capability classification in the New Zealand Land Resource Inventory².
5. The NPS contains transitional provisions pending regional policy statements containing maps of highly productive land becoming operative. Clause 3.5(7) is set out below:

¹ Lowburn Viticulture and Stephen Davies² See Clause 3.4(5) which in turn dovetails in with the definition of LUC 1, 2 and 3 land

Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, **at the commencement date**:

(a) is

(i) zoned general rural or rural production; and

(ii) LUC 1, 2 or 3; but

(b) is not:

(i) identified for future urban development; or

(ii) subject to a Council initiated, or adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

(emphasis added)

6. The transitional clause is deliberate in its wording - *at the commencement date*. In the transitional period therefore, highly productive land will be land that is mapped as LUC 1, 2 or 3 (whether by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability) at the commencement date. More detailed mapping undertaken after the commencement date (whether by a territorial authority or a land owner) will be a matter for the mapping and subsequent Schedule 1 process to which clause 3.4 relates.
7. This interpretation is consistent with the overarching objective of the NPS, and the recent observations of the Environment Court³ that the transitional provisions take a deliberate holding position pending the mapping process provided for in the NPS.

Yours faithfully

MACTODD LAWYERS



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³ *Balmoral Developments (Outram) Limited & Others v Dunedin CC* [2023] NZEnvC59 at [97].